

## Mark Graff - NOAA Federal

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**From:** Mark Graff NOAA Federal  
**Sent:** Wednesday, January 17, 2018 9:35 AM  
**To:** Lola Stith NOAA Affiliate  
**Subject:** Fwd: Referred documents for FOIA Request 2017 001495  
**Attachments:** referral document to NOAA doc 3.pdf; Referral document to NOAA doc 4.pdf; Referral document to NOAA doc 1.pdf; Referral document to NOAA doc 2.pdf; NOAA Referral 2017 001495.1 16 18.docx

Hey Lola,

For intake and routing

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628 5658 (O)  
(b)(6) (C)

Confidentiality Notice: This e mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.

Forwarded message

**From:** Gitelman, Steve (Contractor) <[SGitelman@doc.gov](mailto:SGitelman@doc.gov)>  
**Date:** Wed, Jan 17, 2018 at 8:22 AM  
**Subject:** Referred documents for FOIA Request 2017 001495  
**To:** "Graff, Mark (Federal)" <[Mark.Graff@noaa.gov](mailto:Mark.Graff@noaa.gov)>  
**Cc:** "Parsons, Bobbie (Federal)" <[bParsons@doc.gov](mailto:bParsons@doc.gov)>

Mr. Graff:

I am sending this email on behalf of Bobbie Parsons regarding the above referenced FOIA request. Please see the attached referral memorandum, along with the attached Certification of Referral Document Disclosure Review and list of FOIA Exemptions.

Please be mindful of the due date, Wednesday, January 24, 2018.

If you have any questions, Bobbie can be reached at x23257 or [BParsons@doc.gov](mailto:BParsons@doc.gov).

Thank you,

**Steven Gitelman**

**FOIA/PA Analyst (Contractor)**

**U.S. Department of Commerce**

**Office of Privacy and Open Government**

**Phone Number: [\(202\) 482-8294](tel:(202)482-8294)**

**Email: [sgitelman@doc.gov](mailto:sgitelman@doc.gov)**



January 17, 2018

MEMORANDUM FOR: Mark Graff  
FOIA Officer

FROM: Bobbie Parsons  
FOIA Officer, Immediate Office of the Secretary

SUBJECT: Referred documents for FOIA Request  
2017-001495

In processing a Freedom of Information Act (FOIA) request from Mr. Michael Ravnitzky, a noncommercial individual requester, the Immediate Office of the Secretary located ten pages which are believed to have originated in and/or contains equity of the Economic Development Administration. The request is seeking

**“each e-mail since March 1, 2017 in the Commerce Department Office of Legislative and Intergovernmental Affairs (OLIA) that contains any of the following words: autocrat - autocratic - blowhard - bombastic - buffoon - crazy - dangerous - egomaniac - egotistical - immature - Infantile - insane - Irresponsible - laughingstock - lunatic - misogynist - narcissism - narcissist - narcissistic - opportunist - sociopath - sociopathic - unbecoming - undignified - unhinged - vulgar - vulgarian - whack”**

I am sending this FOIA request and documents to you for your attention since your office has been identified as possibly having originated or having equity. Please take the following actions:

- Conduct the review of the attached record(s).
- Make determination of the record:
  - it is not an agency record,
  - outside the scope of the request,
  - privileged,
  - confidential,
  - an invasion of personal privacy,
  - or for any other legitimate reason recognized by FOIA.
- If you determine the record(s) to be responsive:
  - Identify whether you believe the records, or any portions thereof, should be withheld from disclosure.
  - Attached is a copy of FOIA Exemptions to assist you with making withholding determinations.
  - Redact/Black out the withheld portion/portions.
  - Mark with the FOIA exemption.
  - Check the box coordinating box(es) on the attached Certification of Disclosure Review.
  - Fill in the name of which office(s) originated the documents.
  - Fill in the name of who made disclosure determinations, showing that the originating office is the office that made the disclosure determinations.

- Check the corresponding box(es) pertaining to the record(s).
- Sign and date the Certification of Disclosure Review.
- Return the completed Certification of Disclosure Review to my office with the referred document(s).

Please provide electronic clean and redacted copies of the ten pages to me within 5 (five) business days of the date of this letter — on or before Wednesday, January 24, 2018.

I am also available to answer any questions you may have about FOIA Exemptions or the FOIA request by phone at 202-482-3257 or by email at [BParsons@doc.gov](mailto:BParsons@doc.gov).

Attachments:

- 1) Certification of Referral Disclosure Determination
- 2) FOIA Exemptions

CERTIFICATION of REFERRAL DOCUMENT DISCLOSURE REVIEW

Name of Bureau that originated the document(s)

THIS RESPONSE MUST BE SIGNED BY A SENIOR OFFICIAL IN YOUR OFFICE.

Please contact me if you have any questions about the scope of this request or the FOIA exemptions, at 202-482-3842.

Please sign this sheet of paper and check all of the appropriate boxes

- I have uploaded the referred documents to FOIAonline. NOAA has reviewed the referred documents for disclosure and found that one or more of the documents and/or portions of the documents are responsive and can be released in entirety.
  - I have uploaded the referred documents to FOIAonline. NOAA has reviewed the referred documents for disclosure and found that one or more of the documents and/or portions of the documents are responsive and should be withheld in part, the exemption(s) is/are noted.
  - I have uploaded the referred documents to FOIAonline. NOAA has reviewed the referred documents for disclosure and found that one or more of the documents and/or portions of the documents are responsive and should be withheld in entirety, the exemption(s) is/are noted.
  - NOAA has reviewed the referred documents for disclosure and found that one or more of the documents and/or portions of the documents are NON-RESPONSIVE to the FOIA request.
  - NOAA has reviewed the referred documents for disclosure and found that one or more of the documents and/or portions of the documents are responsive and should be referred to the following named originating office, bureau, or federal agency for disclosure determination:
- 

- All disclosure determination(s) have been made by the Commerce office in the NOAA that originated the document(s) and/or portion(s) of the document(s).

(Name of Person and Office that reviewed the document(s))

- A foreseeable harm review and analysis has been completed for all withheld document(s) and portion(s) of the document(s) and it has been determined that disclosure of the withheld material would result in harm to an interest protected by the asserted exemption or that disclosure is prohibited by law.

(Name of person most knowledgeable with the issue of foreseeable harm.

- Interim response
- Final response

Signature (Senior Official)

Bureau

(Date)

## **FOIA Exemptions**

**Exemption 1:** classified national defense and foreign relations information;

**Exemption 2:** internal agency personnel rules and practices;

**Exemption 3:** information that is prohibited from disclosure by another federal law;

**Exemption 4:** trade secrets and other confidential or privileged commercial or financial information;

**Exemption 5:** inter-agency or intra-agency communications that are protected by legal privileges, including the deliberative process, attorney-client and attorney work-product privileges;

**Exemption 6:** information involving matters of personal privacy;

**Exemption 7:** records or information compiled for law enforcement purposes, to the extent that the production of those records:

Exemption (7)(A) could reasonably be expected to interfere with enforcement proceedings,

Exemption (7)(B) would deprive a person of a right to a fair trial or an impartial adjudication,

Exemption (7)(C) could reasonably be expected to constitute an unwarranted invasion of personal privacy,

Exemption (7)(D) could reasonably be expected to disclose the identity of and/or information provided by a confidential source,

Exemption (7)(E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or

Exemption (7)(F) could reasonably be expected to endanger the life or physical safety of any individual;

**Exemption 8:** information relating to the supervision of financial institutions; and

**Exemption 9:** geological information on wells.

**Belton, Linda (Federal)**

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**From:** Belton, Linda (Federal)  
**Sent:** Wednesday, April 26, 2017 3:58 PM  
**To:** Schufreider, Jim (Federal); Lenihan, Brian (Federal); Burston, Jocelyn (Federal)  
**Cc:** Branson, Ross (Federal)  
**Subject:** Senate Commerce Hearing on Marine Sanctuaries

The Senate Commerce Committee Subcommittee on Oceans will hold a hearing on May 4 on marine sanctuaries. The Office of Marine Sanctuaries Director, John Armor, will testify. A formal invite will be sent today.

----- Forwarded message -----

**From:** Makeda Okolo - NOAA Federal <makeda.okolo@noaa.gov>  
**Date:** Wed, Apr 26, 2017 at 3:13 PM  
**Subject:** Update on upcoming Senate Commerce Sanctuaries Hearing on 5/4  
**To:** Robert Moller - NOAA Federal <robert.moller@noaa.gov>, Hannah Mellman - NOAA Federal <hannah.mellman@noaa.gov>, Linda Belton - NOAA Federal <linda.belton@noaa.gov>

Hi Everyone,

Additional details about the hearing are in...

(b)(5)

Topics to be discussed include the following -

(b)(5)

Other witnesses tentatively are as follows -

(b)(5)

(b)(5)

**Branson, Ross (Federal)**

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**From:** Belton, Linda (Federal)  
**Sent:** Wednesday, April 26, 2017 3:58 PM  
**To:** Schufreider, Jim (Federal); Lenihan, Brian (Federal); Burston, Jocelyn (Federal)  
**Cc:** Branson, Ross (Federal)  
**Subject:** Senate Commerce Hearing on Marine Sanctuaries

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**Date:** Wed, Apr 26, 2017 at 3:13 PM  
**Subject:** Update on upcoming Senate Commerce Sanctuaries Hearing on 5/4  
**To:** Robert Moller - NOAA Federal <robert.moller@noaa.gov>, Hannah Mellman - NOAA Federal <hannah.mellman@noaa.gov>, Linda Belton - NOAA Federal <linda.belton@noaa.gov>

Hi Everyone,

Additional details about the hearing are in...

(b)(5)

Topics to be discussed include the following -

(b)(5)

Other witnesses tentatively are as follows -

(b)(5)

**Branson, Ross (Federal)**

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**From:** Neill, Andrew <Andrew.Neill@mail.house.gov>  
**Sent:** Friday, April 21, 2017 3:27 PM  
**To:** Kelly, George (Federal); Branson, Ross (Federal); Noble, Erik (Federal)  
**Cc:** Evich, Jordan  
**Subject:** FW: Cong. Cathy McMorris-Rodgers

Hey George,

I was hoping to follow up on these two issues. I understand things are crazy but let me know if you have a second to talk.

Best,

-Andrew

**From:** Neill, Andrew  
**Sent:** Tuesday, April 11, 2017 4:05 PM  
**To:** 'George Kelly - NOAA Federal'; Branson, Ross (Federal)  
**Cc:** erik.noble@noaa.gov; Evich, Jordan  
**Subject:** RE: Cong. Cathy McMorris-Rodgers

George,

Thank you so much for reaching out. Jordan in Jamie Herrera Beutler's office (cc'd) and I were hoping we may be able to discuss two issues with you.

(b)(5)

We would greatly appreciate the opportunity. Please let me know if there is anything else I can provide in the meantime.

Best,



-Andrew

**From:** George Kelly - NOAA Federal [<mailto:george.kelly@noaa.gov>]  
**Sent:** Thursday, April 06, 2017 6:09 PM  
**To:** Branson, Ross (Federal)  
**Cc:** Neill, Andrew; [erik.noble@noaa.gov](mailto:erik.noble@noaa.gov)  
**Subject:** Re: Cong. Cathy McMorris-Rodgers

Andrew:

Following up on this. Please feel free to give me call: (b)(6)

Best,  
George

Sent from my iPhone

On Apr 4, 2017, at 5:06 PM, Branson, Ross (Federal) <[RBranson@doc.gov](mailto:RBranson@doc.gov)> wrote:

Andrew,

I have CCed here the two gentlemen who recently arrived in NOAA. I spoke to them very briefly regarding the Congresswoman's issue but coordinate with them regarding the specifics. If you need anything else please let me know.

Ross Branson  
Associate Director of Legislative Affairs  
United States Department of Commerce  
202-482-0757-Office  
(b)(6)-Cell

## Lenihan, Brian (Federal)

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**From:** Robert Moller - NOAA Federal <robert.moller@noaa.gov>  
**Sent:** Friday, June 30, 2017 2:51 PM  
**To:** Lenihan, Brian (Federal); Branson, Ross (Federal); Schufreider, Jim (Federal)  
**Subject:** Fwd: Independence Day Holiday Travel and Hazards Outlook

Just FYI...

----- Forwarded message -----

**From:** NOAA Significant Weather <[noaa.significant.weather@noaa.gov](mailto:noaa.significant.weather@noaa.gov)>  
**Date:** Fri, Jun 30, 2017 at 2:48 PM  
**Subject:** Independence Day Holiday Travel and Hazards Outlook  
**To:** "NOAA Significant.Weather" <[noaa.significant.weather@noaa.gov](mailto:noaa.significant.weather@noaa.gov)>

Colleagues:

The following report is sent to you as a courtesy of NOAA's National Weather Service (NWS) & NOAA's Office of Legislative and Intergovernmental Affairs.

Sincerely,  
NOAA/NWS Congressional Affairs Team







Matt Borgia | [matthew.borgia@noaa.gov](mailto:matthew.borgia@noaa.gov) | 202-482-1939  
John Sokich | [john.sokich@noaa.gov](mailto:john.sokich@noaa.gov) | 301-332-4680  
Mike Bilder | [michael.bilder@noaa.gov](mailto:michael.bilder@noaa.gov) | 607-857-7789

# Independence Day Holiday Travel and Hazards Outlook

## Forecast Overview and Weather Hazards

- **Eastern U.S.**
  - Scattered showers and thunderstorms are expected from the Ohio Valley through Pennsylvania and western New York into New England at the start of the holiday weekend.
  - The threat spreads across the entire region Saturday. Widespread severe storms are not expected at this time.
  - There should be a lull in activity on Sunday with a chance for thunderstorms across much of the region again on Monday.
- **Central U.S.**
  - Severe storms possible on Friday over Oklahoma along with locally heavy rainfall and isolated flash flooding.
  - Several periods of showers and thunderstorms will result in locally heavy rainfall across the Mid-Mississippi River Valley and portions of the Ozark Plateau on Friday.

**immediate Washington, DC area and is subject to change. For the most recent forecast or a forecast for another area, please visit [www.weather.gov](http://www.weather.gov).**

This Afternoon	Tonight	Saturday	Saturday Night	Sunday	Sunday Night
					
Mostly Sunny	Mostly Cloudy	30% → 60% Chance T-storms then T-storms Likely	70% T-storms Likely	Mostly Sunny	Partly Cloudy
High: 94 °F	Low: 76 °F	High: 89 °F	Low: 73 °F	High: 91 °F	Low: 71 °F

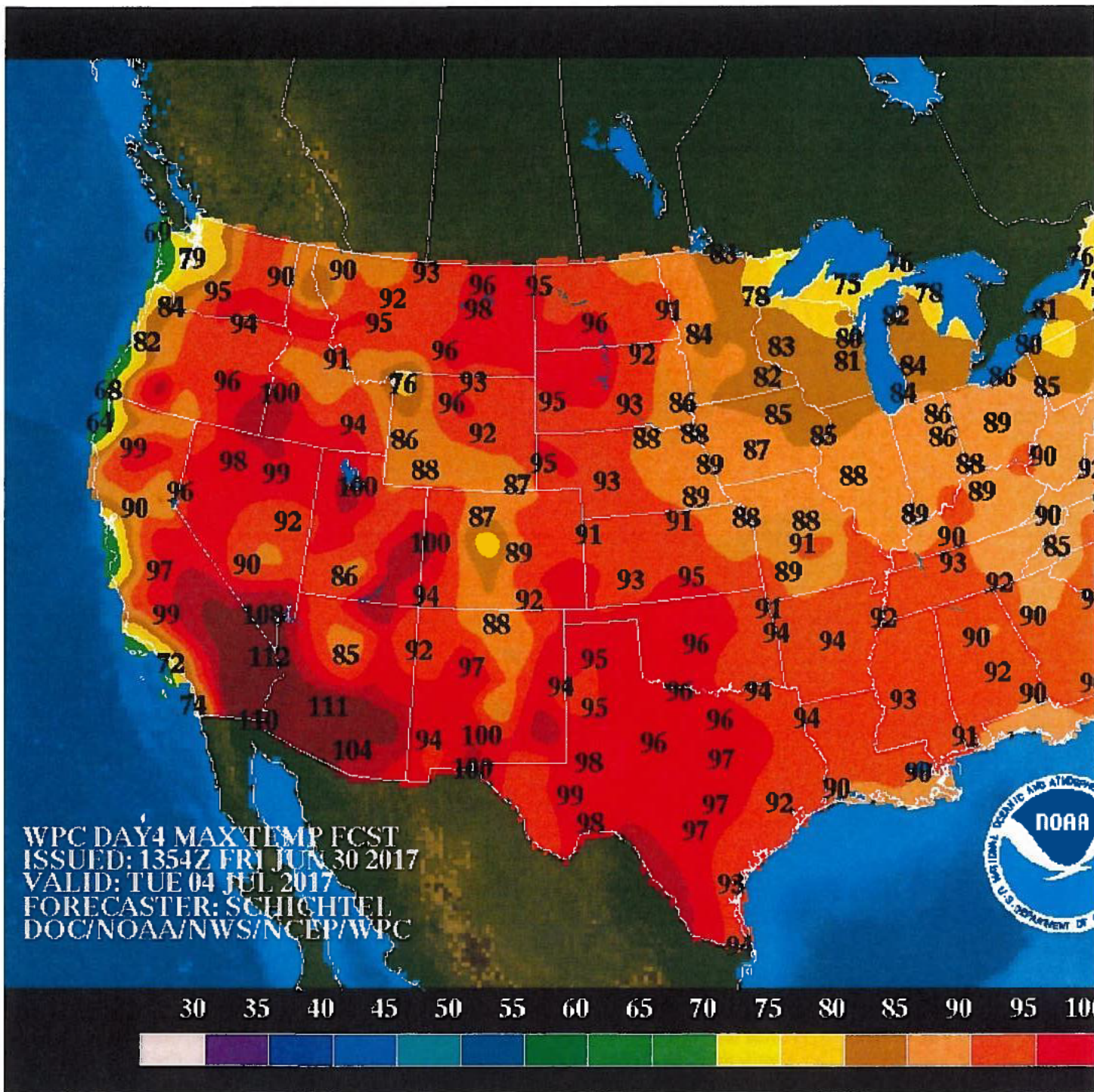
<b>This Afternoon</b>	Mostly sunny, with a high near 94. South wind around 15 mph, with gusts as high as 23 mph.
<b>Tonight</b>	Mostly cloudy, with a low around 76. South wind 9 to 13 mph.
<b>Saturday</b>	A slight chance of showers, then showers and thunderstorms likely after 11am. Mostly cloudy, with a high near 89. South wind 10 to 13 mph, with gusts as high as 20 mph. Chance of precipitation is 60%. New rainfall amounts less than a tenth of an inch, except higher amounts possible in thunderstorms.
<b>Saturday Night</b>	Showers and thunderstorms likely, mainly before 11pm. Mostly cloudy, with a low around 73. Southwest wind 5 mph becoming light and variable after midnight. Chance of precipitation is 70%. New rainfall amounts between a tenth and quarter of an inch, except higher amounts possible in thunderstorms.
<b>Sunday</b>	Mostly sunny, with a high near 91. Northwest wind 5 to 7 mph.
<b>Sunday Night</b>	Partly cloudy, with a low around 71.
<b>Monday</b>	Sunny, with a high near 91.
<b>Monday Night</b>	Partly cloudy, with a low around 71.
<b>Independence Day</b>	Mostly sunny, with a high near 91.
<b>Tuesday Night</b>	Partly cloudy, with a low around 72.

## Potential Impacts to Air Travel

The following airports may experience travel delays due to weather conditions during the holiday period:

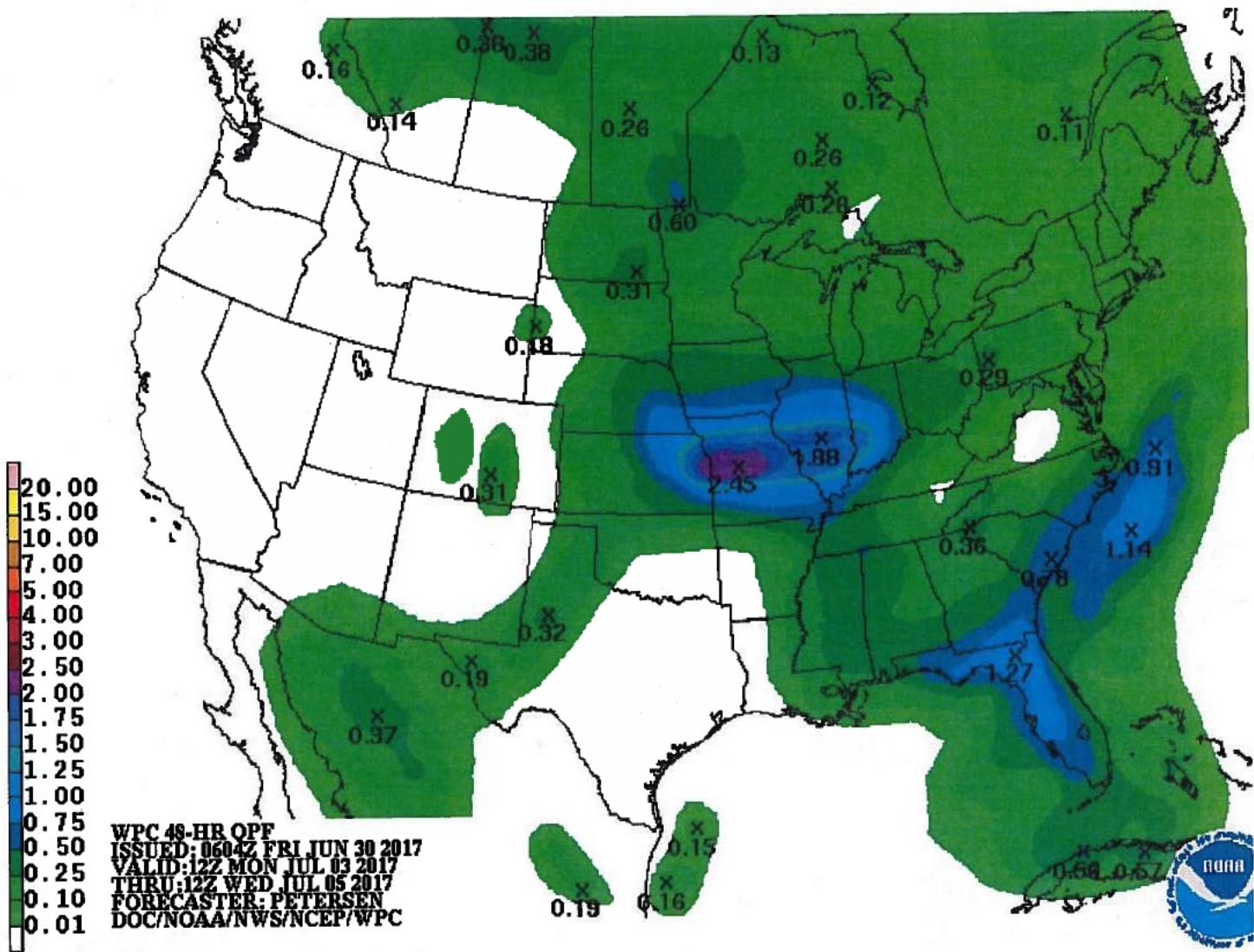
- **Fri 6/30**
  - Low ceilings are forecast at San Francisco and Los Angeles. Thunderstorms impacts are possible at central and eastern U.S. Airports, including Boston, Chicago, Minneapolis, Detroit, Charlotte, Atlanta and all Florida terminals. Impacts are probable at New York due to thunderstorms west of the metro area.
- **Sat 7/1**





*48-hour Precipitation Forecast, starting the morning of Mon., July 3 through the morning of Wed., July 5, issued by the WPC*





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As a way to keep you and your Member informed of unusual weather situations potentially impacting your state or district, NOAA will periodically send you this type of "heads-up" message to alert you to the potential of a significant weather event. The state of the science will not always permit us to provide alerts too far in advance, but some weather circumstances have the potential to cause a significant impact, and when we can identify those conditions, we plan on sending you these email notifications. For latest information and local forecasts, please consult the forecast from your local NWS office on the web at: [www.weather.gov](http://www.weather.gov)

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Robert Moller  
 Deputy Director  
 Office of Legislative and Intergovernmental Affairs  
 National Oceanic and Atmospheric Administration  
 U.S. Department of Commerce  
 1401 Constitution Ave., NW

- Low ceilings are forecast at San Francisco and Los Angeles. Thunderstorms impacts are possible at central and eastern U.S. Airports, including New York, Philadelphia, Washington DC, Charlotte, Atlanta Dallas and all Florida terminals.
- **Sun 7/2**
  - Low ceilings are forecast at San Francisco and Los Angeles. Thunderstorms impacts are possible at eastern U.S. Airports, including Boston, New York, Philadelphia, Washington DC, Charlotte, Atlanta and all Florida terminals.
- **Mon 7/3**
  - Low ceilings are forecast at San Francisco and Los Angeles. Thunderstorms impacts are possible at Chicago and all Florida terminals.
- **Tue 7/4**
  - Low ceilings are possible at San Francisco. Thunderstorm impacts are possible at all Florida terminals.
- **Wed 7/5 - Fri 7/7**
  - Low ceilings are possible at San Francisco. Thunderstorm impacts are possible at central and eastern US terminals.

## Links

- [NWS Watches, Warnings, and Advisories in Effect](#)
- [NWS Weather Forecast Office Washington/Baltimore](#)
- [NWS Weather Prediction Center -- Days 1-3 National Forecast Charts](#)
- [NWS National Forecast Maps](#)
- [NWS Storm Prediction Center](#)
- [NWS Weather Prediction Center](#)
- [NWS Summer Safety Page](#)
- [NWS Social Media Hub](#)
- [NWS Weather-Ready Nation](#)

## Graphics

*High Temperatures Forecast for Tues., July 4, issued by the NWS Weather Prediction Center (WPC)*

- Generally quiet weather will prevail across the region Saturday and much of Sunday before storms return to the Lower Missouri River Valley late Sunday and continue through Tuesday.
- Temperatures will be seasonable through Sunday, when above normal highs are expected across the Central High Plains.
- A lack of precipitation across the Northern Plains will result in a continued worsening of ongoing drought conditions.
- **Southern U.S.**
  - Severe storms possible on Friday over northern Arkansas along with locally heavy rainfall and isolated flash flooding.
  - A few strong to severe storms expected from the Texas Panhandle into Arkansas and Tennessee on Saturday with widely scattered thunderstorms over much of the Southeast.
  - Typical summertime regime with scattered thunderstorms possible over much of the South on Sunday through Tuesday, but widespread impacts are not expected.
  - Temperatures will be close to average for this time of the year.
- **Western U.S.**
  - Warmer than normal temperatures, low relative humidity, and little to no expected precipitation across much of the West will continue to impact ongoing large wildfire incidents in several western states this weekend.
  - Cold and fast moving water continues to create dangers for those recreating in some western streams and rivers, mainly due to increased reservoir releases as a result of the continued mountain snowmelt.
- **Alaska:**
  - Slightly above normal temperatures and periods of rain along the south coast and panhandle with scattered showers across the interior. Trend of decreasing shower activity statewide on Tuesday, July 4.
- **Hawaii, Guam, Northern Marianas & American Samoa:**
  - No significant impacts are anticipated for Hawaii and Guam with isolated to scattered trade wind showers through Tuesday, July 4.
  - Numerous showers are anticipated for American Samoa on Friday with isolated showers on Saturday and Sunday becoming more scattered to start the week. High surf and dangerous rip currents are anticipated until Monday night.
- **Puerto Rico & U.S. Virgin Islands**
  - On Friday, there is a chance of isolated thunderstorms with brief heavy rainfall and gusty winds today across Puerto Rico and the adjacent islands. Heavy rains could lead to urban and small stream flooding mainly over the northern half of Puerto Rico with minor ponding of water on roadways and poor drainage area.
  - There is a moderate risk of rip currents for most of the beaches of Puerto Rico except along the west coast on Friday.
  - Moisture trailing the tropical wave will support the chance of an isolated thunderstorm on Saturday.
  - Another tropical wave will approach the local islands Monday through Tuesday and increase the chance for isolated thunderstorms once again.

## **June 30 - July 4 Forecast for Washington, DC**

***Forecast provided by the NWS Weather Forecast Office for the Washington/Baltimore area (located in Sterling, Virginia) as of 2:39pm ET on Friday, June 30. This forecast is for the***

**Khalid, Sulma (Contractor)**

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**From:** Khalid, Sulma (Contractor)  
**Sent:** Thursday, January 18, 2018 8:51 AM  
**To:** Parsons, Bobbie (Federal); Abello, Isabel; Graff, Mark (Federal); Arnold, Josephine (Federal); Strickland, Wayne  
**Subject:** Follow up: Keys\_DOC OS 2018 000208  
**Attachments:** Keys\_DOC OS 2018 000208\_Dept Wide Tasker\_Request for FOIA Log Retention Statement.docx

Good Morning,

I am writing to follow up with you regarding FOIA request DOC-OS-2018-000208 (b)(5)

- FOIA logs from 1999-2002.
- a brief written statement detailing your bureau's retention practices for FOIA logs

(b)(5)

. If you have any questions or would like to discuss further, please feel free to contact me at [skhalid@doc.gov](mailto:skhalid@doc.gov) or x7432.

Regards,

**Sulma Khalid**  
**FOIA/PA Analyst (Contractor)**  
**U.S. Department of Commerce**  
**Office of Privacy and Open Government**  
**Phone Number: (202) 482-7432**  
**Email: [skhalid@doc.gov](mailto:skhalid@doc.gov)**





November 16, 2017

MEMORANDUM FOR:           Bobbie Parsons, IOS                               Vernon E. Curry, CEN  
                                  Pam Moulder, ESA                                 Stephen Kong, EDA  
                                  Grace Agyekum, BIS                               Victor Powers, ITA  
                                  Josephine Arnold, MBDA                         Catherine Fletcher, NIST  
                                  Wayne Strickland, NTIS                         Stacy Cheney, NTIA  
                                  Mark Graff, NOAA                                Jennifer Piel, OIG  
                                  Jamie Boston, PTO                               Dondi Staunton, BEA  
                                  Joselyn Bingham, OCIO

FROM:                         Michael J. Toland, Ph.D.  
                                  Deputy Chief Freedom of Information Act (FOIA) Officer

SUBJECT:                    FOIA Requests for Older FOIA Logs  
                                  Clay Keys DOC-OS-2018-000208

The U.S. Department of Commerce's FOIA Office, Office of Privacy and Open Government ("OPOG") is issuing this memorandum in response to a FOIA request seeking the agency's FOIA logs from 1999-2002.

Pursuant to the disposition instructions proffered in the General Records Schedule § 4.2, FOIA logs are to be maintained as follows: "Temporary. Destroy or delete 5 years after date of last entry, final adjudication by courts, or final action by agency, (such as downgrading, transfer, or destruction of related classified documents, release of information from controlled unclassified status), as may apply, whichever is later; but longer retention is authorized if required for business use."<sup>1</sup>

The OPOG has received similar requests in the past seeking access to older FOIA logs that have most likely been destroyed pursuant to a records retention schedule. To increase our efficiency in processing requests for older FOIA Logs, OPOG is requesting that all Agency components submit a brief written statement detailing your bureau's retention practices for FOIA logs. If your practice differs from that proffered in the General Records Schedule, please cite to your policy or procedure governing FOIA log retention. If your bureau does not have such a policy, you may cite to the GSR, as outlined above. Although these statements cannot be used to process the present request for old FOIA logs, we intend to use these statements to support our "no record" responses for future requests seeking older FOIA logs.

In order to continue processing the present request, please conduct a search for the following:

"Copies of FOIA Logs from 1999-2002."

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<sup>1</sup> GRS 4.2: Accounting for and control of access to classified and controlled unclassified records and records requested under the FOIA, PA and MDR (DAA-GRS-2016-000200004). (available at: <https://www.archives.gov/files/records-mgmt/grs/grs04-2.pdf>)

I am sending this FOIA request to you for your attention, since your office has been identified as an office that may have responsive records. Please take the following actions:

- Please notify our office if you know of any other bureau/office that may also have responsive documents.
- Conduct a search for responsive records.
  - You must search every place that could reasonably be expected to have responsive documents.
  - The date range for records that may be responsive to this request is FOIA logs from **1999-2002**.
  - Please provide a response within 10 business days from the date of this letter, on December 1, 2017.
- If you identify any records:
  - Please provide electronic copies of the records to me as soon as possible.
    - Upload documents in FOIAonline following the instructions in the attachment entitled “Instructions for uploading documents into FOIAonline.”
  - Identify whether you believe the records, or any portions thereof, should be withheld from disclosure.
    - Attached is a copy of FOIA Exemptions to assist you with making withholding determinations.
    - Sulma Khalid is also available to answer any questions you may have about FOIA Exemptions or the FOIA request by phone at 202-482-7432, or by email at [skhalid@doc.gov](mailto:skhalid@doc.gov).
  - Sign and date the attached Certification of Search.
  - Return the completed Certification of Search along with the responsive records to my office.
- If you do not identify any responsive records:
  - Check the box “My Office has found no responsive document” on the attached Certification of Search.
  - Sign and date the Certification of Search.
  - Return the completed Certification of Search to my office.

#### Attachments

1. Instructions for uploading documents into FOIAonline
2. Certification of Search
3. FOIA Exemptions

## **Instructions for uploading documents into FOIAonline**

A signed Certification of Search should be uploaded separately in Case File/Correspondence/Other. Only the Certification of Search signed by the FOIA Officer/Senior Official from the Bureau should be uploaded. Please do not upload Sub-Agency Taskers.

Responsive documents are to be uploaded in Case File/Records. Please identify whether you believe the document, or any portion of it, should be withheld from disclosure. You must include the FOIA exemption next to any information you identify as protected from disclosure.

- A clean copy and redacted copy shall be uploaded on FOIAonline.
- The clean copy will be uploaded with an UU (Unredacted – Unreleaseable) Publish Option.
- Redacted copy will be uploaded and grouped by exemptions applied, i.e., RR (Redacted-Releaseable) - (b)6, (b)5 (please include the privilege used).
- The format to be used for “Title” of uploaded documents: ITA - 24 documents, RR, (b)4, (b)6. (Bureau [not sub agency] - number of documents - Publish Options – exemptions).
- For documents that are completely withheld UU-Unredacted – Unreleaseable; and RU-Redacted-Unreleaseable (you must apply an Exemption in the Action Column).
- For referred documents use the following format for “Title:” 15 documents refer to NTIA.

**Certification of Search for FOIA Request No. DOC-OS-2018-000208**

THIS RESPONSE MUST BE SIGNED BY A SENIOR OFFICIAL IN YOUR OFFICE.

Please contact me if you have any questions about the scope of this request or the FOIA exemptions, at 202-482-3842.

Please sign this sheet of paper and check all of the appropriate boxes

- Uploaded in FOIAonline are all documents in the possession of my office which are responsive and can be released in entirety.
- Uploaded in FOIAonline are all documents within the possession of my office which are responsive and we have found reason to partially withhold. One clean copy and one redacted copy have been uploaded.
- Uploaded in FOIAonline are all documents within the possession of my office which are responsive and we have found reason to withhold entirely, each document to be withheld entirely has been noted.
- Uploaded in FOIAonline are all documents within the possession of my office which are responsive and must be referred to the originating office, bureau, or federal agency for disclosure determinations.
- My office has found no responsive documents.
- All disclosure determinations have been made by the Commerce Office that originated or has control of the documents
- A foreseeable harm review and analysis has been completed for all withheld documents and portions of documents and it has been determined that disclosure of the withheld material would result in harm to an interest protected by the asserted exemption or that disclosure is prohibited by law. Name of person most knowledgeable with the issue of foreseeable harm:  
.

- Interim response                       Final response

Signature (Senior Official)

Date

## **FOIA Exemptions**

**Exemption 1:** classified national defense and foreign relations information;

**Exemption 2:** internal agency personnel rules and practices;

**Exemption 3:** information that is prohibited from disclosure by another federal law;

**Exemption 4:** trade secrets and other confidential or privileged commercial or financial information;

**Exemption 5:** inter-agency or intra-agency communications that are protected by legal privileges, including the deliberative process, attorney-client and attorney work-product privileges;

**Exemption 6:** information involving matters of personal privacy;

**Exemption 7:** records or information compiled for law enforcement purposes, to the extent that the production of those records:

Exemption (7)(A) could reasonably be expected to interfere with enforcement proceedings,

Exemption (7)(B) would deprive a person of a right to a fair trial or an impartial adjudication,

Exemption (7)(C) could reasonably be expected to constitute an unwarranted invasion of personal privacy,

Exemption (7)(D) could reasonably be expected to disclose the identity of and/or information provided by a confidential source,

Exemption (7)(E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions,  
or

Exemption (7)(F) could reasonably be expected to endanger the life or physical safety of any individual;

**Exemption 8:** information relating to the supervision of financial institutions; and

**Exemption 9:** geological information on wells.



**From:** postmaster@DOCGOV.onmicrosoft.com  
**Sent:** Thursday, January 18, 2018 4:48 PM  
**To:** Mark.Graff@noaa.gov  
**Subject:** Undeliverable: Weekly FOIA Incoming and High Visibility Requests  
**Attachments:** details.txt; Weekly FOIA Incoming and High Visibility Requests



Your message to [cholmes@doc.gov](mailto:cholmes@doc.gov) couldn't be delivered.

**cholmes** wasn't found at [doc.gov](https://doc.gov).

Mark.Graff	Office 365	cholmes
<b>Action Required</b>		Recipient
Unknown To address		

### How to Fix It

The address may be misspelled or may not exist. Try one or more of the following:

- Send the message again following these steps: In Outlook, open this non-delivery report (NDR) and choose **Send Again** from the Report ribbon. In Outlook on the web, select this NDR, then select the link "**To send this message again, click here.**" Then delete and retype the entire recipient address. If prompted with an Auto-Complete List suggestion don't select it. After typing the complete address, click **Send**.
- Contact the recipient (by phone, for example) to check that the address exists and is correct.
- The recipient may have set up email forwarding to an incorrect address. Ask them to check that any forwarding they've set up is working correctly.
- Clear the recipient Auto-Complete List in Outlook or Outlook on the web by following the steps in this article: [Fix email delivery issues for error code 5.1.10 in Office 365](#), and then send the message again. Retype the entire recipient address before selecting **Send**.

If the problem continues, forward this message to your email admin. If you're an email admin, refer to the **More Info for Email Admins** section below.

Was this helpful? [Send feedback to Microsoft.](#)

---

## More Info for Email Admins

Status code: 550 5.1.10

This error occurs because the sender sent a message to an email address hosted by Office 365 but the address is incorrect or doesn't exist at the destination domain. The error is reported by the recipient domain's email server, but most often it must be fixed by the person who sent the message. If the steps in the **How to Fix It** section above don't fix the problem, and you're the email admin for the recipient, try one or more of the following:

**The email address exists and is correct** Confirm that the recipient address exists, is correct, and is accepting messages.

**Synchronize your directories** If you have a hybrid environment and are using directory synchronization make sure the recipient's email address is synced correctly in both Office 365 and in your on premises directory.

**Errant forwarding rule** Check for forwarding rules that aren't behaving as expected.

Forwarding can be set up by an admin via mail flow rules or mailbox forwarding address settings, or by the recipient via the Inbox Rules feature.

**Recipient has a valid license** Make sure the recipient has an Office 365 license assigned to them. The recipient's email admin can use the Office 365 admin center to assign a license (Users > Active Users > select the recipient > Assigned License > Edit).

**Mail flow settings and MX records are not correct** Misconfigured mail flow or MX record settings can cause this error. Check your Office 365 mail flow settings to make sure your domain and any mail flow connectors are set up correctly. Also, work with your domain registrar to make sure the MX records for your domain are configured correctly.

For more information and additional tips to fix this issue, see [Fix email delivery issues for error code 5.1.10 in Office 365](#).

### Original Message Details

Created Date: 1/18/2018 9:47:26 PM  
Sender Address: Mark.Graff@noaa.gov  
Recipient Address: cholmes@doc.gov  
Subject: Weekly FOIA Incoming and High Visibility Requests

### Error Details

Reported error: 550 5.1.10 RESOLVER.ADR.RecipientNotFound; Recipient cholmes@doc.gov not found by SMTP address lookup  
DSN generated by: BY2PR09MB0191.namprd09.prod.outlook.com

### Message Hops

HOP	TIME (UTC)	FROM	TO	WITH	RELAY TIME
1	1/18/2018 9:47:26 PM		10.200.40.219	HTTP	*
2	1/18/2018 9:48:09 PM		mail qt0 x242.google.com	SMTP	43 sec
3	1/18/2018 9:48:09 PM	mail qt0 x242.google.com	CY1GCC01FT010.mail.protection.outlook.com	Microsoft SMTP Server (version=TLS1 2, cipher=TLS ECDHE RSA WITH AES 256 CBC SHA P384)	*
4	1/18/2018 9:48:09 PM	CY1GCC01FT010.eop gcc01.prod.protection.outlook.com	BN3PR09CA0044.outlook.office365.com	Microsoft SMTP Server (version=TLS1 2, cipher=TLS ECDHE RSA WITH AES 256 CBC SHA384)	*
5	1/18/2018 9:48:10 PM	BN3PR09CA0044.namprd09.prod.outlook.com	BY2PR09MB0191.namprd09.prod.outlook.com	Microsoft SMTP Server (version=TLS1 2, cipher=TLS ECDHE RSA WITH AES 256 CBC SHA384 P256)	1 sec

### Original Message Headers

Received: from BN3PR09CA0044.namprd09.prod.outlook.com (10.174.65.140) by BY2PR09MB0191.namprd09.prod.outlook.com (10.255.243.153) with Microsoft SMTP Server (version=TLS1 2, cipher=TLS ECDHE RSA WITH AES 256 CBC SHA384 P256) id 15.20.407.7; Thu, 18 Jan 2018 21:48:10 +0000  
Received: from CY1GCC01FT010.eop gcc01.prod.protection.outlook.com (2a01:111:f400:7d02::204) by BN3PR09CA0044.outlook.office365.com (2603:10b6:400:3::12) with Microsoft SMTP Server (version=TLS1 2, cipher=TLS ECDHE RSA WITH AES 256 CBC SHA384) id 15.20.428.17 via Frontend Transport; Thu, 18 Jan 2018 21:48:09 +0000  
Authentication Results: spf=pass (sender IP is 2607:f8b0:400d:c0d::242) smtp.mailfrom=noaa.gov; doc.gov; dkim=pass (signature was verified) header.d=noaa.gov.20150623.gappssmtp.com; doc.gov; dmarc=bestguesspass action=none header.from=noaa.gov;  
Received SPF: Pass (protection.outlook.com: domain of noaa.gov designates 2607:f8b0:400d:c0d::242 as permitted sender) receiver=protection.outlook.com; client ip=2607:f8b0:400d:c0d::242; helo=mail qt0 x242.google.com;  
Received: from mail qt0 x242.google.com (2607:f8b0:400d:c0d::242) by CY1GCC01FT010.mail.protection.outlook.com (2a01:111:e400:7d00:fc15:b4ff:fe10:2158) with Microsoft SMTP Server (version=TLS1 2, cipher=TLS ECDHE RSA WITH AES 256 CBC SHA P384) id 15.20.302.6 via Frontend Transport; Thu, 18 Jan 2018 21:48:09 +0000  
Received: by mail qt0 x242.google.com with SMTP id zllso8208845qtm.3 for <cholmes@doc.gov>; Thu, 18 Jan 2018 13:48:09 0800 (PST)  
DKIM Signature: v=1; a=rsa sha256; c=relaxed/relaxed; d=noaa.gov.20150623.gappssmtp.com; s=20150623; h=mime version:from:date:message id:subject:to:cc; bh=yew7wcBeYqi0LTlp8BbmT4bYvt2y6CqeLTIQAGNXv5w=; b=GY7UdCWEEdSc32Ue+rmrwrPp/m4vGg/NNHK/V816MjDLpJBD8ddZJMqtak84Kd59 eAVx308Jer9VqrBoPvRjgqHA03MHmvFR54D44zMDfKefXqXxQwIrKPQum9To7Kx+p2kQ KaHTWnq0/qUUVVb3FVzAP1dNNB5m8eLo+IS1hAmdyk8sSysDYnCroNmOXxRonpSpFRC kBuWLU0FbvRX13YJzjDzY38NM9pRFGqor2pDE/j4s1/11DY8uIAFFPbwtr+KCFmJPNm



AHncDP1/AII73mK9+Nd15TnJhJLu2h1D6tgqxriYTk4aVZNd594JIghzx2LJWvDQZpBS  
KJcg==  
X Google DKIM Signature: v=1; a=rsa sha256; c=relaxed/relaxed;  
d=1e100.net; s=20161025;  
h=x gm message state:mime version:from:date:message id:subject:to:cc;  
bh=yew7wcBeYqi0LTlp8BbmT4bYvt2y6CqeLTIQAGNXv5w=;  
b=RPWtmDl2Oby9xYI80EflwAyoXV1DJYJTMx10hZNRgXw7rNJZ1FU/VLmWFMpRYMpk1B  
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hts7o4WCcxzA43omFPeXl71EMyoww7ydCP2tMW43ZwPefyDyVf790ZepTfnfYS0YtCpD  
RLog==  
X Gm Message State: AKWxytcZ8mNS5HWQ4L+mBMy5CwK1XbrTyC5KVRvV+26Muit2w1c1ydmC  
5ufkfn4/dH3hkaVtZjbcQ05cV5fA4SjDdfBJGGGuClvFe9S8=  
X Google SmtP Source: ACJfBougWpccD0b5vyUHUtfgLG561aHXbegXryUyFR5LlpwEr4ymLJaScHQ6pN0o8WovXRmZELTwcY6moNHAXYZQ=  
X Received: by 10.200.48.166 with SMTP id v35mr39382979qta.296.1516312087645;  
Thu, 18 Jan 2018 13:48:07 0800 (PST)

MIME Version: 1.0  
Received: by 10.200.40.219 with HTTP; Thu, 18 Jan 2018 13:47:26 0800 (PST)  
From: Mark Graff NOAA Federal <mark.graff@noaa.gov>Date: Thu, 18 Jan 2018 16:47:26 0500  
Message ID: <CAFW6A95zB Xd+JxgQx2D5U0JoZ1wvs4yFzov72RxfvdZJ6zq@mail.gmail.com>Subject: Weekly FOIA Incoming and High Visibilit  
y Requests  
To: Stephen Lipps NOAA Federal <stephen.lipps@noaa.gov>, "Holmes, Colin" <cholmes@doc.gov>,  
Scott Smullen NOAA Federal <scott.smullen@noaa.gov>, Jeff Dillen NOAA Federal <jeff.dillen@noaa.gov>,  
Kristen Gustafson NOAA Federal <kristen.l.gustafson@noaa.gov>, Robert Hogan <robert.j.hogan@noaa.gov>,  
DUS Staff <duso.staff@noaa.gov>,  
Tanya Dobrzynski NOAA Federal <tanya.dobrzynski@noaa.gov>, Stuart.levenbach@noaa.gov,  
Kevin.Wheeler@noaa.gov, Brandon.Elsner@noaa.gov, Taylor.Jordan@noaa.gov,  
erik.noble@noaa.gov, Wendy.Lewis@noaa.gov  
CC: Tom Taylor <tom.taylor@noaa.gov>,  
Kimberly Katzenbarger NOAA FEDERAL <kimberly.katzenbarger@noaa.gov>, Charles <charles.green@noaa.gov>,  
Dennis Morgan NOAA Federal <dennis.morgan@noaa.gov>,  
Stacey Nathanson NOAA Federal <stacey.nathanson@noaa.gov>,  
Robert Swisher NOAA Federal <robert.swisher@noaa.gov>,  
Steven Goodman NOAA Federal <Steven.Goodman@noaa.gov>,  
Samuel Dixon NOAA Affiliate <samuel.dixon@noaa.gov>, Lola Stith NOAA Affiliate <lola.m.stith@noaa.gov>,  
Zachary Goldstein NOAA Federal <Zachary.Goldstein@noaa.gov>,  
Douglas Perry NOAA Federal <Douglas.A.Perry@noaa.gov>,  
Nkolika Ndubisi NOAA Federal <nkolika.ndubisi@noaa.gov>,  
Jeri Dockett NOAA Affiliate <jeri.dockett@noaa.gov>,  
Lawrence Charters NOAA Federal <lawrence.charters@noaa.gov>,  
Allison Soussi Tanani NOAA Federal <Allison.Soussi Tanani@noaa.gov>,  
"Bogomolny, Michael (Federal)" <MBogomolny@doc.gov>,  
Roxie Allison Holman NOAA Federal <roxie.allison holman@noaa.gov>,  
John Almeida NOAA Federal <john.almeida@noaa.gov>,  
Michael Weiss NOAA Federal <michael.weiss@noaa.gov>,  
Maria Williams NOAA Federal <Maria.Williams@noaa.gov>,  
Shawn Martin NOAA Federal <shawn.martin@noaa.gov>,  
Kathryn Kempton NOAA Federal <kathryn.kempton@noaa.gov>, Ed Kearns NOAA Federal <ed.kearns@noaa.gov>,  
Cheryl Scannell NOAA Federal <cheryl.scannell@noaa.gov>,  
Devin Brakob NOAA Federal <devin.r.brakob@noaa.gov>, OCIO GPD <ocio.gpd@noaa.gov>,  
Darone Jones NOAA Federal <darone.jones@noaa.gov>Content Type: multipart/mixed; boundary="001a113c44325aba54056313eb13"  
Return Path: mark.graff@noaa.gov  
X EOPAttributedMessage: 0  
X EOPTenantAttributedMessage: 44cf3ec3 840c 4086 b7de e3bc9a6c2db4:0  
X MS Office365 Filtering HT: Tenant  
X Forefront Antispam Report: CIP:2607:f8b0:400d:c0d::242; IPV:NLI; CTRY:; EFV:NLI;  
X Microsoft Exchange Diagnostics: 1;CY1GCC01FT010;1:7xDJ522fJoZQdTrASK6MEC7F2+PxMuj/Jz0wWhKe4kgi5dLjgkVxL3WGjqTBXnUdhC1Nusb49RZp  
lpXChtsUHcXTLT/xc3WRQt3tTtZGfUnN7DQSAIc8PhauFgVqnT5  
X MS PublicTrafficType: Email  
X MS Office365 Filtering Correlation Id: f0223ab0 4fe3 4a41 b956 08d55ebd2a26  
X Microsoft Antispam:  
UriScan:;BCL:0;PCL:0;RULEID:(7020095)(205092)(5600026)(4604075)(4605076)(4608076)(49563074)(1401041)(1402041);SRVR:BY2PR09MB0191  
;  
X Microsoft Exchange Diagnostics:  
1;BY2PR09MB0191;3:Q3DqiH+AM3pUpEu7Th8ojLR5sAhVxJ5kgH80B9f5eT2WOyoh8cYP50kE01FjOXZagyJYwow7u4EGmNln5ZgSefBB1+SWVBgmZf1jxRkZ5s8f97  
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s8Tbou8bOPh8YU5GZQ5rCMI6puuYSXJ/C601ja2hV/ednYjU/6/4wNxGhkqv7r123ME3Zeir5yRAfioMaMUkpvrfGHHZhdALD9pWNbzWB/FigwQNoOktvoTIIcxmU  
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04rEh8Hzqi+/3sY/GiFkh4YeB4mZwSo42NeJkFxnMph3nsV7/+WAeVbW07AK6B7HXEQFjAB4gnLS4giSHCM5WYeDxQOTQ8WNACMHSWdWk1lwVgASTcxkYri/zusZv+4  
4mNpMh1PsHS7VUx8i70T3s19V6nhMO0E66/PgIQZirBaIHqMnK03+ZWsARm2nx7Li07E/PcrDHPin5Sme5u9wpl6OfAAstMw2ZCA8ewE1DA=  
X MS TrafficTypeDiagnostic: BY2PR09MB0191:

Reporting-MTA: dns;BY2PR09MB0191.namprd09.prod.outlook.com  
Received-From-MTA: dns;mail-qt0-x242.google.com  
Arrival-Date: Thu, 18 Jan 2018 21:48:10 +0000

Final-Recipient: rfc822;cholmes@doc.gov

Action: failed

Status: 5.1.10

Diagnostic-Code: smtp;550 5.1.10 RESOLVER.ADR.RecipientNotFound; Recipient cholmes@doc.gov  
not found by SMTP address lookup

X-Display-Name: Holmes, Colin

**From:** Mark Graff - NOAA Federal <mark.graff@noaa.gov>  
**Sent:** Thu, 18 Jan 2018 16:47:26 -0500  
**Subject:** Weekly FOIA Incoming and High Visibility Requests  
**To:** Stephen Lipps - NOAA Federal <stephen.lipps@noaa.gov>, "Holmes, Colin" <cholmes@doc.gov>, Scott Smullen - NOAA Federal <scott.smullen@noaa.gov>, Jeff Dillen - NOAA Federal <jeff.dillen@noaa.gov>, Kristen Gustafson - NOAA Federal <kristen.l.gustafson@noaa.gov>, Robert Hogan <robert.j.hogan@noaa.gov>, \_DUS Staff <duso.staff@noaa.gov>, Tanya Dobrzynski - NOAA Federal <tanya.dobrzynski@noaa.gov>, Stuart.levenbach@noaa.gov, Kevin.Wheeler@noaa.gov, Brandon.Elsner@noaa.gov, Taylor.Jordan@noaa.gov, erik.noble@noaa.gov, Wendy.Lewis@noaa.gov  
**Cc:** Tom Taylor <tom.taylor@noaa.gov>, Kimberly Katzenbarger - NOAA FEDERAL <kimberly.katzenbarger@noaa.gov>, Charles <charles.green@noaa.gov>, Dennis Morgan - NOAA Federal <dennis.morgan@noaa.gov>, Stacey Nathanson - NOAA Federal <stacey.nathanson@noaa.gov>, Robert Swisher - NOAA Federal <robert.swisher@noaa.gov>, Steven Goodman - NOAA Federal <Steven.Goodman@noaa.gov>, Samuel Dixon - NOAA Affiliate <samuel.dixon@noaa.gov>, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>, Zachary Goldstein - NOAA Federal <Zachary.Goldstein@noaa.gov>, Douglas Perry - NOAA Federal <Douglas.A.Perry@noaa.gov>, Nkolika Ndubisi - NOAA Federal <nkolika.ndubisi@noaa.gov>, Jeri Dockett - NOAA Affiliate <jeri.dockett@noaa.gov>, Lawrence Charters - NOAA Federal <lawrence.charters@noaa.gov>, Allison Soussi-Tanani - NOAA Federal <Allison.Soussi-Tanani@noaa.gov>, "Bogomolny, Michael (Federal)" <MBogomolny@doc.gov>, Roxie Allison-Holman - NOAA Federal <roxie.allison-holman@noaa.gov>, John Almeida - NOAA Federal <john.almeida@noaa.gov>, Michael Weiss - NOAA Federal <michael.weiss@noaa.gov>, Maria Williams - NOAA Federal <Maria.Williams@noaa.gov>, Shawn Martin - NOAA Federal <shawn.martin@noaa.gov>, Kathryn Kempton - NOAA Federal <kathryn.kempton@noaa.gov>, Ed Kearns - NOAA Federal <ed.kearns@noaa.gov>, Cheryl Scannell - NOAA Federal <cheryl.scannell@noaa.gov>, Devin Brakob - NOAA Federal <devin.r.brakob@noaa.gov>, \_OCIO GPD <ocio.gpd@noaa.gov>, Darone Jones - NOAA Federal <darone.jones@noaa.gov>  
[AWI Original Request.pdf](#)  
[2018.01.08 AWI Complaint.pdf](#)  
[Weekly FOIA Incoming and High Visibility Requests 01.10.18 - 01.17.18.xls](#)

Good Afternoon,  
Attached is the weekly report.

One request of note was received from Friends of Earth, seeking all records regarding Manna Fish Farms from January 1, 2016 to the present. (DOC-NOAA-2017-000587). The Manna Fish Farms aquaculture projects received some local press coverage in the fall (<http://www.27east.com/news/article.cfm/East-Quogue/532310/First-Big-Piece-Of-Fish-Farm-Puzzle-Arrives-On-East-End>). Friends of Earth is a prior FOIA litigant from two prior FOIA requests, including the Queen Conch ESA FOIA litigation and the Cook Inlet Beluga Whales FOIA litigation respectively.

A request was also received from PEER, seeking records regarding actions taken by NOAA to comply with the requirements of the Animal Welfare Act by OAR and NOS. (DOC-NOAA-2018-000572). PEER was a prior FOIA litigant with NOAA in the Observer electronic-monitoring FOIA lawsuit.

In litigation, NOAA was sued by the Animal Welfare Institute premised on constructive denial of their FOIA request. The original request sought records regarding the Public Display Permit NMFS issued for Tilikum the orca whale as well as records about the determination that the necropsy/clinical history requirements for the associated permit were effectively extinguished by the 1994 amendments to the MMPA. The Tilikum orca was the subject of the movie "Blackfish" and has received significant media attention (see, e.g., <https://www.msn.com/en-nz/news/world/seaworld-killer-whale-tilikum-of-blackfish-movie-fame-dies/ar-BBxYJcN>). NOAA has made a single interim release to the requester, totaling approximately 58 documents, and will coordinate the production of the remaining responsive records through NOAA/GC, DOC, and the AUSA. A copy of the original request and Complaint are attached.

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628-5658 (O)  
(b)(6) (C)

Confidentiality Notice: This e mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.

**From:** [Georgia Hancock](#)  
**To:** [FOIA@noaa.gov](mailto:FOIA@noaa.gov); [fwHQ.foia@fws.gov](mailto:fwHQ.foia@fws.gov); [mmc@mmc.gov](mailto:mmc@mmc.gov)  
**Cc:** [Baur, Don \(WDC\)](#); [Naomi Rose](#)  
**Subject:** AWI FOIA to NOAA, FWS, MMC 9-29-2017  
**Attachments:** [NOAA NMFS FWS MMC FOIA 9.29.17.pdf](#)

---

On behalf of the Animal Welfare Institute, please see the attached FOIA request.

Very truly yours,

Georgia Hancock  
*Of Counsel*  
[georgia@awionline.org](mailto:georgia@awionline.org)  
mobile: 607-329-8638  
Animal Welfare Institute  
Visit us at [awionline.org](http://awionline.org)



# Animal Welfare Institute

903 Pennsylvania Avenue, SE, Washington, DC 20003  
awionline.org phone: (202) 397-2332 fax: (202) 446-2031

September 29, 2017

## VIA OVERNIGHT MAIL AND EMAIL

National Oceanic and Atmospheric Administration  
Public Reference Facility (SOU1000)  
1315 East-West Highway (SSMC3)  
Room 9719  
Silver Spring, Maryland 20910  
FOIA@noaa.gov

Carrie Hyde-Michaels  
FWS FOIA Officer  
U.S. Fish and Wildlife Service  
5275 Leesburg Pike  
MS:IRTM  
Falls Church, VA 22041  
fwhq\_foia@fws.gov

Michael Gosliner  
Marine Mammal Commission  
4340 East-West Highway, Room 700  
Bethesda, Maryland 20814  
mmc@mmc.gov

## Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq.*, and the regulations of the Department of Commerce, 15 C.F.R., Part 4; the regulations of the Department of the Interior, 43 C.F.R., Part 2; and the regulations of the Marine Mammal Commission, 50 C.F.R., Part 520; I am writing on behalf of the Animal Welfare Institute ("AWI") to request from the National Oceanic and Atmospheric Administration ("NOAA"), the National Marine Fisheries Service ("NMFS"), the Fish and Wildlife Service ("FWS"), and the Marine Mammal Commission ("MMC"), certain documents related to the Public Display Permit that NMFS issued under the Marine Mammal Protection Act ("MMPA") for Tilikum the orca whale (Permit No. 774).

September 29, 2017

Page 2

Specifically, I request all documents from each of the aforementioned agencies between January 1, 2017 and May 1, 2017 related to NMFS' March 10, 2017 determination that the necropsy/clinical history requirements of Permit No. 774 were effectively extinguished by the 1994 amendments to the MMPA.

For purposes of this FOIA request, "all documents" encompass: (i) any written, printed, or typed material of any kind, including without limitation to all correspondence, memoranda, notes, meeting minutes, emails from or to official or personal e-mail accounts, spreadsheets, reports, calendars; (ii) any electronically, magnetically, or mechanically stored records, such as materials stored on a compact disk, digital video disk, microfiche, regardless of form; (iii) any audio, visual, aural, or video records, including but not limited to photographs, videotapes, microfilm; and (iv) any other records preserved by any other means for documenting thought or expression.

In the event that the requested documents cannot be disclosed in their entirety, AWI requests that you release any material that can be reasonably segregated. Should any documents or portions thereof be withheld, AWI requests that the agency state with specificity the description of the withheld document or portions thereof, and the legal and factual grounds for doing so.

AWI requests that any fees associated with responding to this FOIA request be waived. *See* 15 C.F.R. § 4.11; 43 C.F.R. § 2.45; 50 C.F.R. § 520.7. AWI is a non-profit, charitable institution that was founded over 50 years ago and is dedicated to protecting animals from suffering caused by human action. The documents that AWI is requesting concern the terms of Public Display Permit No. 774, the agencies' interpretation of those terms, and the level of input that NMFS received from other agencies to interpret those terms. Releasing the documents covered by this request will significantly enhance the public's understanding of the necropsy and clinical history requirements of MMPA public display permits issued before 1994 and the agencies' procedures for evaluating those permits. This information will help the public determine whether additional changes to the MMPA permitting processes are needed in order to achieve the goals of the statute.

Disclosure of the requested documents will benefit a broad audience of people interested in the MMPA and public display permits. AWI is an institute with significant expertise in marine mammals and animal welfare and is well suited to convey the information learned from the documents to the public. As a non-profit organization, AWI's primary goal is to increase awareness of human mistreatment of animals and releasing the documents it obtains in response to this FOIA request will further that goal. The documents AWI is requesting are not yet publicly available and thus the release of these documents will significantly enhance the public's understanding of the public display permits at issue.

AWI does not have any commercial interest that will be furthered by releasing the requested documents.

Please contact me if you have any questions.

September 29, 2017  
Page 3

Sincerely,

/s/ Georgia Hancock  
Georgia Hancock, Esq.  
Of Counsel  
Animal Welfare Institute  
[georgia@awionline.org](mailto:georgia@awionline.org)  
mobile: 607-329-8638

cc: Dr. Naomi Rose (via electronic mail)  
Don Baur, Esq. (via electronic mail)

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ANIMAL WELFARE INSTITUTE	)	
900 Pennsylvania Avenue, SE	)	
Washington, D.C. 20003,	)	
	)	
Plaintiff,	)	
v.	)	Civ. No.
	)	
NATIONAL OCEANIC AND ATMOSPHERIC	)	
ADMINISTRATION,	)	
1401 Constitution Avenue, NW, Room 5128	)	
Washington, D.C. 20230	)	
	)	
and	)	
	)	
NATIONAL MARINE FISHERIES SERVICE,	)	
1315 East-West Highway	)	
Silver Spring, MD 20910,	)	
	)	
Defendants.	)	
_____	)	

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1. The Animal Welfare Institute brings this action against defendants National Oceanic and Atmospheric Administration and National Marine Fisheries Service for violations of the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”).

**PARTIES**

2. Plaintiff Animal Welfare Institute (“AWI”) is a 501(c)(3) non-profit organization that seeks to protect animals from human inflicted suffering. In particular, AWI has advocated for the protection of whales and other marine life from life from human activities such as harmful fishing practices, hunting, underwater noise production, and inhumane practices resulting from captive maintenance for purposes of public display and scientific research. AWI is the requester of the records at issue.



3. Defendant National Oceanic and Atmospheric Administration (“NOAA”) is an agency of the federal government within the U.S. Department of Commerce that focuses on the conditions of the oceans and the atmosphere, including marine wildlife.

4. Defendant National Marine Fisheries Service (“NMFS”) is an agency of the federal government within NOAA that has jurisdiction over whales under the Marine Mammal Protection Act (“MMPA”), 16 U.S.C. §§ 1361 - 1423h, and is in possession of the records requested by AWI.

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B).

6. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B).

### **FACTS GIVING RISE TO PLAINTIFF’S CLAIM**

#### **A. FOIA Requirements**

7. The purpose of FOIA is to “pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny.” *Public Citizen, Inc. v. Office of Management and Budget*, 598 F.3d 865, 869 (D.C. Cir. 2010) (quotations omitted). In enacting FOIA, Congress intended the primary objective of the Act to be the full disclosure of federal agency records so long as information is not exempted by clearly delineated statutory language. *Id.*

8. FOIA establishes a broad right of public access to federal agency records, subject only to nine delineated exemptions. 5 U.S.C. § 552(b). “Each agency, upon any request” for enumerated records must “determine within 20 days (excepting Saturdays, Sundays, and legal holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such a request” of the “determination and the reasons therefor . . . .” *Id.* § 552(a)(6)(A)(i). A requester “shall be deemed to have exhausted [its]

administrative remedies” and hence may file suit under the Act’s citizen suit provision “with respect to [a] request if the agency fails to comply with the . . . time limit” set forth in the statute for a substantive response. *Id.* § 552(a)(6)(C)(i).

9. The federal regulations implementing FOIA for NOAA and NMFS are located at 15 C.F.R. § 4.1, *et seq.* 15 C.F.R. § 4.6 codifies the requirement that NOAA/NMFS respond within 20 working days of receiving a FOIA request with a determination of compliance.

#### **B. The Public Interest Need for the Documents Subject to the FOIA Request**

10. In 2013, the documentary film *Blackfish* drew public attention to the plight of Tilikum, an orca held in captivity by SeaWorld Parks & Entertainment (“SeaWorld”), and other orcas now maintained in aquariums and theme parks around the world. *Blackfish* set off a strong negative public reaction to SeaWorld and the conditions under which orcas are held in captivity.

11. On March 8, 2016, SeaWorld released a video on its website describing Tilikum’s declining health and indicating that he was not expected to survive.

12. Beginning in October 2016, the People for the Ethical Treatment of Animals (“PETA”) initiated the first of what would be several meetings and communications with NOAA/NMFS regarding Tilikum. AWI joined this effort by December 2016. In anticipation of Tilikum’s death, NOAA/NMFS was presented with a draft legal opinion explaining why the 1992 MMPA permit authorizing the importation of Tilikum requires SeaWorld to submit to NOAA/NMFS the necropsy report and clinical history for Tilikum in the event of his death. In these meetings and communications, and through the draft legal opinion, AWI (with PETA) sought NOAA/NMFS input and comments on the applicability of the necropsy and clinical history permit requirement.

13. In the following months, AWI also presented its views on the necropsy and clinical history requirements of MMPA permits to the other federal agencies with jurisdiction over marine mammals — the U.S. Fish and Wildlife Service (“FWS”), the Marine Mammal Commission (“MMC”), and the U.S. Department of Agriculture’s Animal and Plant Health Inspection Service (“APHIS”).<sup>1</sup>

14. In these agency meetings and communications, AWI repeatedly stressed the importance of necropsy reports and clinical histories for purposes of scientific research, medical care (including for free-ranging, stranded individuals), animal husbandry, and public education, and demonstrated that the benefits resulting from this information applied to whales held both in captivity and in the wild.

15. In these meetings and communications, NOAA/NMFS never took a position on whether SeaWorld had to comply with the necropsy and clinical history requirements of Tilikum’s permit.

16. Tilikum died on January 6, 2017 at SeaWorld’s Orlando facility. AWI and other animal welfare organizations immediately notified NOAA/NMFS that Tilikum’s MMPA permit required SeaWorld to submit the necropsy and clinical history report within 30 days. Based on information and belief, SeaWorld never submitted the necropsy and clinical history report required by the permit to NOAA/NMFS.

17. On March 10, 2017, NOAA/NMFS responded to the animal welfare organizations’ notice with an email stating that it was willing to meet to discuss the issue but that it had concluded that the necropsy and clinical history provisions of Tilikum’s permit had been

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<sup>1</sup> Under the MMPA, NOAA/NMFS has jurisdiction over whales, dolphins and seals. FWS has jurisdiction over polar bears, manatees, walrus and sea otters. 16 U.S.C. § 1362(12)(A). The MMC serves in an independent advisory and oversight role. *Id.* §§ 1401-1407. APHIS jurisdiction is not under the MMPA but applies to marine mammals in certain captive maintenance facilities under the Animal Welfare Act. 7 U.S.C. §§ 2131-2159.

extinguished by amendments to the MMPA in 1994 and that “the legal analysis supporting this determination is exempt from disclosure under the attorney-client privilege, and we will not be discussing it in any detail at the meeting.” Thus, after months of effort to engage NOAA/NMFS in a collaborative dialogue regarding the permit requirements for SeaWorld to release Tilikum’s health records, AWI and the other organizations had no explanation from NOAA/NMFS for the legal conclusion, contrary to the plain language of the permit, that the necropsy and clinical history requirement did not apply and were told that none would be provided.

18. AWI contacted SeaWorld directly by email on March 25, 2017 asking for voluntary release of Tilikum’s records. SeaWorld refused to do so in an April 13, 2017 email. Five animal welfare organizations sent a letter to SeaWorld on August 8, 2017, again asking for voluntary compliance. SeaWorld has not replied and continues to withhold the documents.

19. On July 24, 2017, Tilikum’s granddaughter Kyara died at SeaWorld’s San Antonio facility. The draft legal opinion previously provided to NOAA/NMFS confirmed that Kyara was covered by the necropsy and clinical history provision of Tilikum’s permit.

20. On July 31, 2017, AWI and other animal welfare organizations wrote to NOAA/NMFS asking for enforcement of the necropsy and clinical history provision of Tilikum’s permit for Kyara’s records. Counsel to AWI submitted a revised version of the draft legal opinion supporting this conclusion to NOAA/NMFS on August 14, 2017.

21. NOAA/NMFS responded on September 7, 2017, simply restating its March 10, 2017 email message that the permit had been extinguished by the 1994 MMPA amendments.

22. On August 15, 2017, Kasatka, an orca held at SeaWorld’s San Diego facility, was euthanized due to a bacterial infection. Kasatka’s 1978 MMPA permit included a necropsy and clinical history requirement. AWI, and the other organizations promptly requested

NOAA/NMFS to enforce the permit, by letter dated August 25, 2017, and by an updated version of the legal opinion, by letter from counsel dated August 30, 2017.

23. By letter dated October 18, 2017, NOAA/NMFS issued the same response as in its March 10, 2017 email on Tilikum's death and its September 7, 2017 letter on Kyara's death, stating that the necropsy and clinical history requirement in Kasatka's permit had been extinguished. Again, NOAA/NMFS provided no explanation for its legal conclusion.

24. After the death of three SeaWorld orcas over a seven-month period, NOAA/NMFS has refused to release or disclose the legal rationale for its conclusion that SeaWorld can ignore clearly stated permit requirements and withhold information that would shed light on the cause of death and medical condition of these whales during their lives in captivity and benefit science and marine mammal husbandry, stranding response, and medical care. SeaWorld refuses to release the whales' clinical histories or necropsy reports.

### **C. The AWI FOIA Request**

25. By letters sent by email on September 29, 2017, AWI submitted FOIA requests to NOAA/NMFS, FWS, and MMC for all documents from January 1, 2017 to May 1, 2017 regarding NMFS' March 10, 2017 determination that the necropsy and clinical history requirements of Public Display Permit No. 774 for Tilikum were extinguished by the 1994 MMPA amendments. Exhibit 1, Declaration of Donald C. Baur, dated January 8, 2018 ("Baur Decl.") at ¶ 2, Attachment A. On the same date, AWI submitted a FOIA request to APHIS, asking for "all requests that APHIS has submitted since January 1, 1994 under 9 C.F.R. § 3.110(g) requesting necropsy records for marine mammals that have died in captivity, and all necropsy records that APHIS has received in response to those requests."

26. Under FOIA, the deadline for agency response to the requests was October 30, 2017.

27. By letter to AWI dated October 5, 2017, APHIS's FOIA Director confirmed receipt of the FOIA request. The letter identified an anticipated response date of October 30, 2017. On December 8, 2017, APHIS responded to AWI's FOIA request.<sup>2</sup>

28. By voice message on October 4, 2017, the MMC confirmed receipt of AWI's FOIA request. In a letter sent by email, dated December 18, 2017, Michael L. Gosliner, MMC General Counsel, responded to the FOIA request with a partial release of documents. In the MMC response letter, Mr. Gosliner stated:

I am sympathetic to the position that your organization finds itself in — the responsible agency (NMFS) has given you its legal conclusion that the 1994 amendments to the MMPA extinguished the permit terms and conditions related to necropsies and clinical histories, but has declined to provide you with its rationale for this conclusion. I can see where that agency would not want to share its draft legal analysis outside of the government, but once a conclusion has been reached, its final position no longer is pre-decisional.<sup>3</sup>

The MMC also stated that it could not release its own documents that would shed light on the NOAA/NMFS legal position without concurrence from NOAA/NMFS.<sup>4</sup>

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<sup>2</sup> APHIS confirmed that, since 1994, it has not required licensees to submit necropsy reports for any marine mammals. As a result, it had no documents to release.

<sup>3</sup> The MMC's FOIA response indicates that NOAA/NMFS had not completed its consultation with its sister agencies on the legal question at the time it announced its conclusion on March 10, 2017.

<sup>4</sup> The MMC request revealed the limited nature of the AWI request, by identifying only nine responsive documents withheld based on the NOAA/NMFS position. The MMC letter also confirmed that it had coordinated its response "with the other agencies," indicating that NOAA/NMFS is aware of the FOIA request.

29. By email on September 29, 2017, FWS's Headquarters FOIA Office acknowledged receipt of the FOIA request. The email stated that the request was forwarded to the Division of Management Authority for processing.

30. The initial FOIA request letter to NMFS was confirmed delivered to NOAA/NMFS by AWI email on September 29, 2017. A follow-up letter was also sent by email to NMFS on December 4, 2017, asking for a response by December 15, 2017. Baur Decl. ¶ 3, Attachment B. Finally, on December 22, 2017, a copy of the December 4 letter was sent again by email, with a specific request that NMFS acknowledge receipt. *Id.* ¶ 4, Attachment C.

31. As of the date of this complaint, NOAA/NMFS has never even acknowledged receipt of the September 29, 2017 request, the December 4, 2017 follow-up letter, or the December 22, 2017 email confirmation request.

32. To date, more than three months after AWI's initial letter, and more than two months after the statutory deadline, NOAA/NMFS has not responded in any way to the September 29, 2017 AWI FOIA request. Nor has the Agency provided AWI with any explanation for the ongoing delay. The other agencies have either responded in full (APHIS and MMC) or acknowledged receipt and confirmed that review is underway (FWS).

### **CLAIM FOR RELIEF**

33. AWI has a statutory right to the requested records. NOAA/NMFS, in violation of FOIA and AWI's rights under FOIA, has failed to provide the records, or any substantive determination regarding them, by the mandatory deadline set forth in 5 U.S.C. § 552(a)(6)(A)(i).

### **REQUESTED RELIEF**

34. AWI respectfully requests that the Court grant the following relief:

- a. Declare that NMFS is in violation of FOIA;

- b. Enjoin NMFS from continuing to withhold the requested records and order NMFS immediately to release the records in full to AWI;
- c. Make a written finding pursuant to 5 U.S.C. § 552(a)(4)(F)(i) that the “circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding . . . .”;
- d. Award Plaintiff its attorneys’ fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E);
- e. Award any other relief this Court finds just and proper.

Dated this 9th day of January, 2018

Respectfully submitted,

/s/Donald C. Baur

Donald C. Baur  
D.C. Bar No. 393621  
Perkins Coie LLP  
700 13th Street, NW, Suite 600  
Washington, D.C. 20005-3960  
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DBaur@perkinscoie.com

Sunny Tsou  
(*pro hac vice* application pending)  
Perkins Coie LLP  
505 Howard Street  
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San Francisco, CA 94105  
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STsou@perkinscoie.com

Counsel for Plaintiff



Tracking Number	Type	Requester	Requester Organization	Submitted
DOC-NOAA-2018-000590	Request	Rose Santos	FOIA GROUP INC	01/17/2018
DOC-NOAA-2018-000589	Request	Rose Santos	FOIA GROUP INC	01/17/2018
DOC-NOAA-2018-000587	Request	Hallie G. Templeton	Friends of the Earth	01/17/2018
DOC-NOAA-2018-000582	Request	Joel P. Angeles		01/17/2018
DOC-NOAA-2018-000572	Request	Jeff Ruch	PEER	01/16/2018
DOC-NOAA-2018-000585	Request	Andrew Hitchings	SOMACH SIMMONS & DUN	01/16/2018
DOC-NOAA-2018-000565	Request	Matthew Owens		01/12/2018
DOC-NOAA-2018-000563	Request	Stephanie Kuzydym	KHOU-TV	01/12/2018
DOC-NOAA-2018-000562	Request	Stephanie Kuzydym	KHOU-TV	01/12/2018
DOC-NOAA-2018-000561	Request	Stephanie Kuzydym	KHOU-TV	01/12/2018

**Custom Report - 01/18/2018 04:14:**

<b>Received</b>	<b>Assigned To</b>	<b>Case File Assigned To</b>	<b>Perfected?</b>	<b>Due</b>	<b>Closed Date</b>
01/17/2018	NOAA	NOAA	No	TBD	TBD
01/17/2018	NOAA	NOAA	No	TBD	TBD
01/17/2018	NOAA	NOAA	No	TBD	TBD
01/17/2018	NOAA	NOAA	No	TBD	TBD
01/16/2018	NOAA	NOAA	No	TBD	TBD
01/16/2018	NOAA	NOAA	Yes	02/14/2018	TBD
01/12/2018	Kehaupuaokal Kamaka	Kehaupuaokal Kamaka	Yes	02/14/2018	TBD
01/12/2018	Lola Stith	Lola Stith	No	TBD	01/17/2018
01/12/2018	Lola Stith	Lola Stith	No	TBD	01/17/2018
01/12/2018	NWS	NWS	Yes	02/14/2018	TBD

11

<b>Status</b>	<b>Dispositions</b>
Submitted	
Submitted	
Submitted	
Assignment Determination	
Initial Evaluation	
Initial Evaluation	
Assignment Determination	
Closed	Other - Aggregate cases
Closed	Other - Aggregate cases
Assignment Determination	

## Detail

[FGI 18- 55919] Relevant to DOCAB133018CN0002, we seek copy of the contract SOW/PWS; and attachments

[FGI 18- 55918] Relevant to DOCAB133018CN0003, we seek copy of the contract SOW/PWS; and attachments

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. &sect; 552, Friends of the Earth requests all records

Hello, Hope this message finds you well. I worked on the NPOESS NPP/JPSS (VIIRS) program from 2005-2008. I

See attached

The request seeks all records and documents subject to disclosure under FOIA within the following nine categories:

Request directed to National Marine Fisheries Service, Pacific Islands Regional Office. Please see attached files. |

January 12, 2018 Pursuant to the Freedom of Information Act, KHOU-TV respectfully requests: Copies of any and

January 12, 2018 Pursuant to the Freedom of Information Act, KHOU-TV respectfully requests: Copies of any and

January 12, 2018 Pursuant to the Freedom of Information Act, KHOU-TV respectfully requests: Copies of any and

pertaining to Manna Fish Farms or its Chief Executive Officer, Donna Lanzetta, from January 1, 2016 to would like to request any contract pertaining to this program for this time period. This was also under NC

s of records. In this request, we use the terms &quot;National Oceanic and Atmospheric Administration Freedom of Information Act request for fisheries data from Tri Marine owned and other US flagged tuna all email between August 23 to August 30 sent or received by National Hurricane Director deputy direct all email between August 23 to August 30 sent or received by Storm Prediction Center director Russell all email between August 23 to August 30 sent or received by Weather Prediction Center director David

present.

OAA Contract No. 50-SPNA-9-00010 <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.201.280>

fisheries" (NOAA Fisheries) and "National Marine Fisheries Service" (NMFS). All such purse seine vessels operating in the Western and Central Pacific Fisheries Commission (WCPFC) command the attention of NOAA Fisheries and NMFS. NOAA Fisheries is represented by Director Ed Rappaport, Warning Coordinator Meteorologist Daniel Brown and Senior Hurricane Specialists Lix Schneider, Warning coordinator meteorologist Patrick Marsh, Branch Chief Bill Bunting and Lead Forecaster Novak, deputy director Kathy Gilbert, administrative officer Crystal Rickett and secretary Dawn Cyrus in



or your time and help. Sincerely, Joel Angeles

istration, National Marine Fisheries Service, and their employees, agents, attorneys, and consultants. In  
ention area for 2012, 2013, 2014, 2015, and 2016, for fishing vessels Cape Breton, Cape Cod, Cape Eliz  
• rain • flood • Houston • Hurricane • Harvey • tropical storm • inches • disaster If this information is avai  
ord(s): • rain • flood • Houston • Hurricane • Harvey • tropical storm • inches • disaster If this information  
opies of any and all email between August 23 to August 30 sent or received by Storm Prediction Center



this request, we refer to the &quot;Sacramen  
zabeth  
lable electronically, I prefer to receive i  
is available electronically, I prefer to receive it vi  
· director Russell Schneide









## Mark Graff - NOAA Federal

---

**From:** Mark Graff NOAA Federal  
**Sent:** Tuesday, January 23, 2018 9:29 AM  
**To:** Lola Stith NOAA Affiliate  
**Subject:** Fwd: Follow up#1: DOC OS 2018 000342  
**Attachments:** Tetzl\_DOC OS 2018 000342\_Department wide tasker.docx

Hey Lola,

(b)(5)

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628 5658 (O)

(b)(6) (C)

Confidentiality Notice: This e mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.

### Forwarded message

**From:** Khalid, Sulma (Contractor) <[SKhalid@doc.gov](mailto:SKhalid@doc.gov)>  
**Date:** Fri, Jan 19, 2018 at 9:54 AM  
**Subject:** Follow up#1: DOC OS 2018 000342  
**To:** "Parsons, Bobbie (Federal)" <[bParsons@doc.gov](mailto:bParsons@doc.gov)>, "Graff, Mark (Federal)" <[Mark.Graff@noaa.gov](mailto:Mark.Graff@noaa.gov)>, "Strickland, Wayne" <[WayneS@ntis.gov](mailto:WayneS@ntis.gov)>, "Arnold, Josephine (Federal)" <[jarnold@mbda.gov](mailto:jarnold@mbda.gov)>, "Moulder, Pamela (Federal)" <[pmoulder@doc.gov](mailto:pmoulder@doc.gov)>

Good Morning,

I'm writing to follow up with you regarding the search tasker for the subject case, DOC OS 2018 000342.

(b)(5)

██████████ ██████████ ██████████ :

1. Any and all contracts or agreements pertaining to settlements of sexual harassment within the Department of Commerce.
2. Total number of cases settled or litigated between the years 2000 – 2017 including the total dollars agreed to as a required part of the settlements and any other fees, benefits etc as part of the total

agreement/contract.

3. The sources of funds in these settlements.
4. Who represented and/or negotiated for the parties involved in these cases/settlements? Are they inside or outside counsel? If counsel is outside the department, how much money was paid in fees and expenses?

(b)(5)

[REDACTED]. If you have any questions, please feel free to contact me at [skhalid@doc.gov](mailto:skhalid@doc.gov) or x7432. Thanks!

Regards,

**Sulma Khalid**

**FOIA/PA Analyst (Contractor)**

**U.S. Department of Commerce**

**Office of Privacy and Open Government**

**Phone Number: [\(202\) 482-7432](tel:(202)482-7432)**

**Email: [skhalid@doc.gov](mailto:skhalid@doc.gov)**



December 18, 2017

MEMORANDUM FOR:           Bobbie Parsons, IOS                               Vernon E. Curry, CEN  
                                  Pam Moulder, ESA                                 Stephen Kong, EDA  
                                  Grace Agyekum, BIS                               Victor Powers, ITA  
                                  Josephine Arnold, MBDA                         Catherine Fletcher, NIST  
                                  Wayne Strickland, NTIS                         Stacy Cheney, NTIA  
                                  Mark Graff, NOAA                                Jennifer Piel, OIG  
                                  Jamie Boston, PTO                                Dondi Staunton, BEA

FROM:                         Michael J. Toland, Ph.D.  
                                  Deputy Chief Freedom of Information Act (FOIA) Officer

SUBJECT:                    FOIA Request Terese Tetzl  
                                  DOC-OS-2018-000342

The U.S. Department of Commerce's FOIA Office, Office of Privacy and Open Government, received a request seeking:

- (1) Any and all contracts or agreements pertaining to settlements of sexual harassment within the Department of Commerce.
- (2) Total number of cases settled or litigated between the years 2000 – 2017 including the total dollars agreed to as a required part of the settlements and any other fees, benefits etc as part of the total agreement/contract.
- (3) The sources of funds in these settlements
- (4) Who represented and/or negotiated for the parties involved in these cases/settlements? Are they inside or outside counsel? If counsel is outside the department, how much money was paid in fees and expenses?\*

I am sending this FOIA request to you for your attention, since your office has been identified as possibly having records that may be responsive to the request. Please take the following actions:

- Please notify our office if you know of any other bureau/office that may also have responsive documents.
- Conduct a search for responsive records.
  - \*Please note that the FOIA does not require the Department to answer questions or create records in response to a request. As such, responsive records are those that contain the answers to the questions in section #4, above.
  - You must search every place that could reasonably be expected to have responsive documents.
  - The date range for records that may be responsive to this request is January 1, 2000-present date
- If you identify any records:
  - Please provide electronic copies of the records to me within ten (10) business days of the date of this letter—on or before January 3, 2018.



- Upload documents in FOIAonline following the instructions in the attachment entitled “Instructions for uploading documents into FOIAonline.”
- Identify whether you believe the records, or any portions thereof, should be withheld from disclosure.
  - Attached is a copy of FOIA Exemptions to assist you with making withholding determinations.
  - Sulma Khalid is also available to answer any questions you may have about FOIA Exemptions or the FOIA request by phone at 202-482-7432, or by email at [skhalid@doc.gov](mailto:skhalid@doc.gov).
- Sign and date the attached Certification of Search.
- Return the completed Certification of Search along with the responsive records to my office.
- If you do not identify any responsive records:
  - Check the box “My Office has found no responsive document” on the attached Certification of Search.
  - Sign and date the Certification of Search.
  - Return the completed Certification of Search to my office.

#### Attachments

1. Instructions for uploading documents into FOIAonline
2. Certification of Search
3. FOIA Exemptions

## **Instructions for uploading documents into FOIAonline**

A signed Certification of Search should be uploaded separately in Case File/Correspondence/Other. Only the Certification of Search signed by the FOIA Officer/Senior Official from the Bureau should be uploaded. Please do not upload Sub-Agency Taskers.

Responsive documents are to be uploaded in Case File/Records. Please identify whether you believe the document, or any portion of it, should be withheld from disclosure. You must include the FOIA exemption next to any information you identify as protected from disclosure.

- A clean copy and redacted copy shall be uploaded on FOIAonline.
- The clean copy will be uploaded with an UU (Unredacted – Unreleaseable) Publish Option.
- Redacted copy will be uploaded and grouped by exemptions applied, i.e., RR (Redacted-Releaseable) - (b)6, (b)5 (please include the privilege used).
- The format to be used for “Title” of uploaded documents: ITA - 24 documents, RR, (b)4, (b)6. (Bureau [not sub agency] - number of documents - Publish Options – exemptions).
- For documents that are completely withheld UU-Unredacted – Unreleaseable; and RU-Redacted-Unreleaseable (you must apply an Exemption in the Action Column).
- For referred documents use the following format for “Title:” 15 documents refer to NTIA.

**Certification of Search for FOIA Request No. DOC-OS-2018-000342**

THIS RESPONSE MUST BE SIGNED BY A SENIOR OFFICIAL IN YOUR OFFICE.

Please contact me if you have any questions about the scope of this request or the FOIA exemptions, at 202-482-3842.

Please sign this sheet of paper and check all of the appropriate boxes

- Uploaded in FOIAonline are all documents in the possession of my office which are responsive and can be released in entirety.
- Uploaded in FOIAonline are all documents within the possession of my office which are responsive and we have found reason to partially withhold. One clean copy and one redacted copy have been uploaded.
- Uploaded in FOIAonline are all documents within the possession of my office which are responsive and we have found reason to withhold entirely, each document to be withheld entirely has been noted.
- Uploaded in FOIAonline are all documents within the possession of my office which are responsive and must be referred to the originating office, bureau, or federal agency for disclosure determinations.
- My office has found no responsive documents.
- All disclosure determinations have been made by the Commerce Office that originated or has control of the documents
- A foreseeable harm review and analysis has been completed for all withheld documents and portions of documents and it has been determined that disclosure of the withheld material would result in harm to an interest protected by the asserted exemption or that disclosure is prohibited by law. Name of person most knowledgeable with the issue of foreseeable harm:  
.

- Interim response                       Final response

Signature (Senior Official)

Date

## FOIA Exemptions

**Exemption 1:** classified national defense and foreign relations information;

**Exemption 2:** internal agency personnel rules and practices;

**Exemption 3:** information that is prohibited from disclosure by another federal law;

**Exemption 4:** trade secrets and other confidential or privileged commercial or financial information;

**Exemption 5:** inter-agency or intra-agency communications that are protected by legal privileges, including the deliberative process, attorney-client and attorney work-product privileges;

**Exemption 6:** information involving matters of personal privacy;

**Exemption 7:** records or information compiled for law enforcement purposes, to the extent that the production of those records:

Exemption (7)(A) could reasonably be expected to interfere with enforcement proceedings,

Exemption (7)(B) would deprive a person of a right to a fair trial or an impartial adjudication,

Exemption (7)(C) could reasonably be expected to constitute an unwarranted invasion of personal privacy,

Exemption (7)(D) could reasonably be expected to disclose the identity of and/or information provided by a confidential source,

Exemption (7)(E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or

Exemption (7)(F) could reasonably be expected to endanger the life or physical safety of any individual;

**Exemption 8:** information relating to the supervision of financial institutions; and

**Exemption 9:** geological information on wells.

**Bogomolny, Michael (Federal)**

---

**From:** Bogomolny, Michael (Federal)  
**Sent:** Tuesday, January 23, 2018 3:56 PM  
**To:** Graff, Mark (Federal)  
**Subject:** FW: Red Snapper FOIA lawsuit  
**Attachments:** 1\_OC\_Complaint\_1 23 18.pdf

Mark,

FYI, as I don't see you on the list.

-bogo

**From:** Kristen Gustafson - NOAA Federal [mailto:kristen.l.gustafson@noaa.gov]  
**Sent:** Tuesday, January 23, 2018 3:43 PM  
**To:** Bogomolny, Michael (Federal) <MBogomolny@doc.gov>  
**Cc:** Cannon, Michael (Federal) <MCannon@doc.gov>; Heller, Megan (Federal) <MHeller@doc.gov>; Grossman, Beth (Federal) <bgrossman@doc.gov>; Mclemore, Michael (Federal) <Michael.Mclemore@noaa.gov>; Smit-Brunello, Monica (Federal) <Monica.Smit-Brunello@noaa.gov>; Levy, Mara (Federal) <Mara.Levy@noaa.gov>  
**Subject:** Red Snapper FOIA lawsuit

FYI -- New lawsuit filed in Maryland District Court today over the red snapper FOIA production.

--

Kristen L. Gustafson  
Deputy General Counsel  
General Counsel's Office  
National Oceanic and Atmospheric Administration  
U.S. Department of Commerce  
[Kristen.L.Gustafson@noaa.gov](mailto:Kristen.L.Gustafson@noaa.gov)  
Office: 202 482 1588  
Cell (b)(6)

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

OCEAN CONSERVANCY  
1300 19th Street, NW, Eighth Floor  
Washington, DC 20036

Plaintiff,

v.

NATIONAL MARINE FISHERIES SERVICE  
U.S. Department of Commerce  
Room 14555  
1315 East-West Highway  
Silver Spring, Montgomery County, MD 20910

NATIONAL OCEANIC AND ATMOSPHERIC  
ADMINISTRATION  
U.S. Department of Commerce  
Room 5128  
1401 Constitution Avenue, NW  
Washington, DC 20230

Defendants.

No. \_\_\_\_\_

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

**INTRODUCTION**

1. Plaintiff Ocean Conservancy brings this case to remedy violations of the Freedom of Information Act (FOIA), 5 U.S.C. § 552, by the National Marine Fisheries Service and National Oceanic and Atmospheric Administration (collectively, Defendants). The violations arise out of Defendants' continuing failure to respond to Ocean Conservancy's FOIA request.

2. In June 2017, Defendants issued a Temporary Rule reopening the Gulf of Mexico private angler red snapper fishing season and extending the fishing season from 3 to 42 days. 82 Fed. Reg. 27,777 (June 19, 2017). Defendants admitted that the action would cause the private recreational fishing sector to substantially exceed the annual catch limit set for that sector and delay rebuilding for the overfished population of red snapper, *id.* at 27,779, in violation of a

number of statutes.

3. Ocean Conservancy filed a FOIA request with the National Marine Fisheries Service (Fisheries Service), an agency of the National Oceanic and Atmospheric Administration (NOAA), on June 19, 2017, seeking pertinent records to enable Ocean Conservancy to analyze the basis for and impact of the Temporary Rule and disseminate the information to the public. The records sought in the FOIA request are essential to Ocean Conservancy's advocacy and public education missions to support protecting the red snapper population. Defendants failed to provide Ocean Conservancy a determination on its FOIA request within the time required under FOIA and have not to date provided Ocean Conservancy a determination on its request.

4. Although Defendants have provided Ocean Conservancy a small, partial release of responsive records, Defendants continue to unlawfully withhold the information sought by Ocean Conservancy. Defendants have provided Ocean Conservancy no information on additional responsive records in their possession. By failing to provide the requested records, Defendants are actively impeding Ocean Conservancy's access to government information and blocking its ability to carry out its organizational missions.

5. Having constructively exhausted its administrative remedies with Defendants, Ocean Conservancy now turns to this Court to enforce FOIA's guarantee of public access to agency records and to remedy Defendants' withholding of that access. Accordingly, Ocean Conservancy asks this Court to declare that Defendants have violated FOIA by failing to make a determination on Ocean Conservancy's FOIA request and by withholding the requested records, to order Defendants to immediately provide Ocean Conservancy with a legally compliant response to its outstanding record request, to order Defendants to promptly provide Ocean Conservancy all responsive records, and to grant other appropriate relief, including attorneys'

fees and costs.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1333 (federal question) and 5 U.S.C. § 552(a)(4)(B) (FOIA).

7. Venue properly vests in this District pursuant to 5 U.S.C. § 552(a)(4)(B) because, on information and belief, the requested agency records are situated in this District. Venue also properly vests in this District pursuant to 28 U.S.C. § 1391(b) and (e)(i) because: (1) the principal office of each Defendant is located in this District and (2) a substantial part of the events and omissions which gave rise to this action occurred in this District.

8. This Court has authority to grant the requested relief in this case pursuant to FOIA, 5 U.S.C. § 552(a)(4)(B), (E), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 2202.

### **PARTIES**

9. Plaintiff OCEAN CONSERVANCY is a nonprofit, science-based conservation organization dedicated to healthy oceans and the wildlife and communities that depend on them. Since 1972, Ocean Conservancy has sought to improve the health of our nation's marine wildlife and fish. To that end, and as part of its organizational goals, Ocean Conservancy seeks to prevent degradation of marine habitats and end overfishing (i.e., catching more fish than the remaining population can replace). Ocean Conservancy has over 125,000 members and supporters worldwide, including over 14,000 in the five Gulf of Mexico states. The organization publishes numerous reports, articles, newsletters, and other analyses on ocean and fishery sustainability topics each year. The organization is routinely called upon to brief and educate federal and state policymakers, and Ocean Conservancy staff are frequently quoted in the media



and invited to present and speak at various conferences and events. Ocean Conservancy's headquarters are located in Washington, DC. It also has offices in Alaska, California, Washington, Oregon, Florida, and Texas.

10. In the 1990s, Ocean Conservancy became involved in the conservation and management of the red snapper fishery. For the past three decades, Ocean Conservancy has worked to promote a healthy red snapper fishery for the benefit of the Gulf of Mexico's ecosystem and coastal communities. Ocean Conservancy staff have regularly attended meetings of the Gulf of Mexico Fishery Management Council and have been involved in public awareness events concerning fisheries for decades.

11. In 2005, Ocean Conservancy successfully challenged the Fisheries Service's rebuilding plan for red snapper. *Coastal Conservation Ass'n v. Gutierrez*, 512 F. Supp. 2d 896 (S.D. Tex. 2007). In 2015, Ocean Conservancy filed *amicus curiae* briefs in support of the federal government in two lawsuits challenging the Fisheries Service's red snapper management.

12. Defendant NATIONAL MARINE FISHERIES SERVICE is an agency of the U.S. Department of Commerce that has been delegated the responsibility to manage the Gulf of Mexico red snapper fishery under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. 16 U.S.C. §§ 1801 *et seq.* The Fisheries Service has authority to issue regulations governing the red snapper fishery seasons and other management measures. The principal office of the Fisheries Service is located in Silver Spring, Montgomery County, Maryland. The Fisheries Service is in possession and control of the records that Ocean Conservancy seeks, and therefore it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

13. Defendant NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION is an agency of the U.S. Department of Commerce with supervisory responsibility for the

Fisheries Service. The principal office of NOAA is located in Silver Spring, Montgomery County, Maryland. NOAA administers and oversees FOIA requests made to the Fisheries Service. NOAA's FOIA office is located in Silver Spring, Montgomery County, Maryland. NOAA is in possession and control of the records that Ocean Conservancy seeks, and therefore is subject to FOIA pursuant to 5 U.S.C. § 552(f).

### STATUTORY BACKGROUND

14. FOIA's basic purpose is to ensure government transparency and the expeditious disclosure of government records. FOIA creates a statutory right of public access to agency records by requiring that federal agencies make records available to any person upon request. 5 U.S.C. § 552(a)(3)(A).

15. FOIA imposes strict deadlines on federal agencies to respond to requests. FOIA requires an agency to issue a final determination resolving an information request within 20 business days from the date of its receipt and to immediately notify the requester of its determination and the reasons therefore. *Id.* § 552(a)(6)(A)(i). This provision requires the agency to "(i) gather and review the documents; (ii) determine and communicate the scope of the agency's documents it intends to produce and withhold, and the reasons for withholding any documents; and (iii) inform the requester that it can appeal whatever portion of the 'determination' is adverse." *Citizens for Responsibility & Ethics in Wash. v. Fed. Election Comm'n*, 711 F.3d 180, 188 (D.C. Cir. 2013); *see* 5 U.S.C. § 552(a)(6)(A)(i).

16. An agency may extend this 20-day period only in "unusual circumstances," as defined by 5 U.S.C. § 552(a)(6)(B)(iii), and only for a maximum of ten working days. *Id.* § 552(a)(6)(B)(i); *see also* 15 C.F.R. § 4.6(b), (d).

17. Agencies are required to provide "an estimated date on which the agency will

complete action on the request” whenever a request will take more than ten days to resolve.

5 U.S.C. § 552(a)(7)(B). Agencies extending the period for unusual circumstances must, when providing notice of the extension, provide “the date on which a determination is expected to be dispatched.” *Id.* § 552(a)(6)(B)(i); *see also* 15 C.F.R. § 4.6(d)(1).

18. The agency must then make the requested records “promptly” available. 5 U.S.C. § 552(a)(3)(A). In so doing, the agency must make reasonable efforts to search for records in a manner that is reasonably calculated to locate all records responsive to the FOIA request. *Id.* § 552(a)(3)(C), (D).

19. The agency may withhold from production the limited classes of records exempted under 5 U.S.C. § 552(b). For any record withheld, the agency bears the burden of proving that one of the statutory exemptions applies. *Id.* § 552(a)(4)(B). Even if some information is exempt from disclosure, “[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt.” *Id.* § 552(b).

20. An agency’s failure to comply with FOIA’s deadlines constitutes a constructive denial of the request, and the requester’s administrative remedies are deemed exhausted for purposes of litigation. *Id.* § 552(a)(6)(C)(i).

#### **STATEMENT OF FACTS**

21. On June 19, 2017, Defendants issued a Temporary Rule reopening the Gulf of Mexico private angler red snapper fishing season and extending that fishing season from 3 to 42 days. 82 Fed. Reg. 27,777 (June 19, 2017).

22. The same day, June 19, 2017, Ocean Conservancy submitted a FOIA request to the Fisheries Service seeking records related to the reopening of the private angler red snapper

fishing season. The request sought all documents relating to the reopening of the red snapper season within the date range of January 20, 2017, through June 19, 2017.

23. Ocean Conservancy's FOIA request furthers the organization's objectives to end overfishing and inform its members and the public about conservation and management of the red snapper fishery to benefit the Gulf of Mexico's ecosystem and coastal communities.

24. On June 20, 2017, Ocean Conservancy received a form email from Defendants acknowledging receipt of the request and assigning the request a tracking number, DOC-NOAA-2017-001394. The acknowledgement did not indicate the scope of the documents Defendants would produce, nor did it indicate any planned withholdings or exemptions.

25. The due date for Defendants to issue a determination on Ocean Conservancy's FOIA request was July 18, 2017, under 5 U.S.C. § 552(a)(6)(A)(i).

26. On July 6, 2017, NOAA notified Ocean Conservancy that the agency had granted Ocean Conservancy's fee waiver request. *See id.* 552(a)(4)(A)(i); 15 C.F.R. § 4.11(l).

27. On July 11, 2017, Ocean Conservancy clarified the scope of its request on a phone call with the Fisheries Service's Southeast Region FOIA Coordinator.

28. On July 17, 2017 the day before FOIA required the Fisheries Service to respond to Ocean Conservancy's request the Fisheries Service requested to extend the due date from July 18, 2017, to August 11, 2017 more than the ten working days allowed for unusual circumstances under 5 U.S.C. § 552(a)(6)(B)(i) and 15 C.F.R. § 4.6(b), (d). Ocean Conservancy agreed to the request.

29. On July 17, 2017, Ocean Conservancy and another organization filed a federal lawsuit challenging Defendants' unilateral decision to extend the private angler red snapper fishing season in the Gulf of Mexico. *Ocean Conservancy v. Ross*, No. 1:17-cv-01408-ABJ

(D.D.C. filed July 17, 2017).

30. On July 25, 2017, NOAA's FOIA Officer emailed Ocean Conservancy requesting additional information in order to make a determination on Ocean Conservancy's eligibility for a waiver of fees. Although NOAA already had granted Ocean Conservancy's fee waiver request, NOAA's FOIA Officer asserted Ocean Conservancy might use the requested records in its lawsuit, which, according to the FOIA Officer, may constitute a "commercial interest" in the records that Ocean Conservancy had not previously disclosed. The FOIA Officer requested additional information on Ocean Conservancy's purported commercial interests in the records.

31. Ocean Conservancy responded via email on July 26, 2017, reiterating that it is a nonprofit organization that has no commercial interest in the requested records.

32. Defendants did not acknowledge or respond to Ocean Conservancy's July 26, 2017 email.

33. On August 2, 2017, Ocean Conservancy sent NOAA an email to inquire about the agency's determination whether Ocean Conservancy has a "commercial interest" in the requested records.

34. On August 3, 2017, Ocean Conservancy received an email from NOAA alleging that Ocean Conservancy had substantively failed to answer the underlying question regarding its commercial interest.

35. Ocean Conservancy emailed NOAA that same day August 3, 2017 recounting and further explaining the ways in which it would use the records.

36. NOAA did not provide any response.

37. Ocean Conservancy sent NOAA an email on August 28, 2017, to inquire as to the status of the request. NOAA responded that same day via email granting a full fee waiver for the

second time.

38. On August 31, 2017, NOAA telephoned Ocean Conservancy asking to further postpone the agency's response to Ocean Conservancy's FOIA request. Ocean Conservancy declined NOAA's request during that call.

39. On September 12, 2017, Ocean Conservancy received an email from the Fisheries Service stating the Fisheries Service's Southeast Regional Office would be closed due to Hurricane Irma. The email did not provide a timetable for responding to Ocean Conservancy's FOIA request.

40. On September 12, 2017, Ocean Conservancy sent NOAA an email narrowing the date range of its FOIA request to March 13, 2017, through June 19, 2017, to lessen the burden of its request on the agency. NOAA did not acknowledge that email or enter it into the agency's FOIA correspondence log.

41. On September 18, 2017, Ocean Conservancy received an email from the Fisheries Service stating that the Southeast Regional Office reopened on September 15, 2017. The Fisheries Service also stated that the server housing the agency's FOIA application and responsive records was not yet operating, but was anticipated to be running by the end of the day on September 18, 2017. The Fisheries Service stated that it had on September 5, 2017, provided the NOAA Office of General Counsel, Southeast Region with an interim records response for that office's legal review and clearance. The email did not provide any further timetable for responding to Ocean Conservancy's FOIA request, any statement on the scope of records that the agency had sent to the General Counsel or that the agency would produce, or any statement on the agency's planned withholdings or exemptions.

42. On October 12, 2017, having not received any interim records response, Ocean

Conservancy sent an email to NOAA requesting an update on the status of its FOIA request.

43. On October 17, 2017, Ocean Conservancy received an email from the Fisheries Service stating that “a records response has been provided to [the Fisheries Service] and NOAA FOIA for release approval.”

44. On November 14, 2017, Ocean Conservancy sent NOAA an email requesting that Defendants commit to providing the requested documents by a date certain.

45. Later that day, November 14, 2017, NOAA informed Ocean Conservancy it would provide a partial, interim release of 38 documents “shortly.”

46. On November 28, 2017, Ocean Conservancy received an “interim response” from Defendants transmitting 38 documents. The majority of the 38 documents consist of correspondence discussing how to set up an email account to accept public comments on the Temporary Rule. The response did not indicate how many or the scope of any other records Defendants were processing or would produce. Nor did the response provide any information on what documents Defendants planned to withhold or the reasons for any withholding.

47. On December 15, 2017, NOAA informed Ocean Conservancy that additional records were undergoing legal review and clearance and a response to the request would be provided “shortly.” This correspondence did not convey the number or scope of the records under review, or any statement on the agency’s planned withholdings or exemptions.

48. On January 5, 2018, Ocean Conservancy sent NOAA an email requesting an update on the status of its FOIA request.

49. Ocean Conservancy has received no further correspondence from the Fisheries Service or NOAA to date.

50. Ocean Conservancy has not received all the responsive records or the reasonably

segregable portion of non-exempt responsive records to date.

51. The due date for Defendants' FOIA determination remains August 11, 2017.

52. While Defendants acknowledged receipt of the FOIA request and granted the fee waiver twice, Defendants have failed to substantively respond to Ocean Conservancy's FOIA request. None of Defendants' responses indicated the scope of the documents they would produce. Nor did any response include information on planned withholdings or exemptions. Defendants thus never provided Ocean Conservancy with the determination required by FOIA and the governing regulations more than seven months after acknowledging receipt of the request, more than six months after initially granting the fee waiver, more than six months after the statutory due date for issuing a determination, and more than five months after the agreed-upon extended due date for issuing a determination.

#### **CLAIMS FOR RELIEF**

##### **Count I – Failure to Make a Determination on a FOIA Request, 5 U.S.C. § 552(a)(6), (7)**

53. The allegations made in all preceding paragraphs are realleged and incorporated by this reference.

54. NOAA and the Fisheries Service are "agencies" under FOIA. 5 U.S.C. § 552(f)(1). NOAA and the Fisheries Service have possession and control of the requested records.

55. Defendants were required to provide a determination within 20 working days on Ocean Conservancy's FOIA request, dated June 19, 2017. *Id.* § 552(a)(6).

56. Defendants were required to provide "an estimated date on which the agency [would] complete action on the request." *Id.* § 552(a)(7)(B); *accord id.* § 552(a)(6)(B)(i).

57. Ocean Conservancy agreed to extend Defendants' deadline to respond to Ocean Conservancy's FOIA request from July 18, 2017, to August 11, 2017. Even so, Defendants have



not issued a determination on Ocean Conservancy's FOIA request, more than six months after the statutory deadline and more than five months after the agreed-upon extended deadline.

58. Ocean Conservancy has constructively and fully exhausted all administrative remedies required by FOIA. *Id.* § 552(a)(6)(A), (C).

59. Defendants violated FOIA by failing to make the required determination within 20 working days in response to Ocean Conservancy's June 19, 2017 FOIA request. *Id.* § 552(a)(6).

60. Defendants violated FOIA by failing to provide an estimated date by which they would complete action on Ocean Conservancy's June 19, 2017 FOIA request. *Id.* § 552(a)(6)(B)(i), (7)(B).

**Count II – Failure to Respond to a FOIA Request, 5 U.S.C. § 552(a)(3), (b)**

61. The allegations made in all preceding paragraphs are realleged and incorporated by this reference.

62. FOIA requires Defendants to process records requests and promptly provide the requested records or the reasonably segregable portion of the requested records not subject to a FOIA exemption. 5 U.S.C. § 552(a)(3), (b).

63. Defendants have provided Ocean Conservancy only a subset of the requested records. Defendants have not claimed that any of the records they have not yet provided are exempt from disclosure. Therefore, the interim response does not constitute the reasonably segregable portion of the requested records not subject to a FOIA exemption.

64. Defendants have acknowledged they are in possession of additional responsive records they have not provided to Ocean Conservancy to date.

65. Defendants have not provided Ocean Conservancy all the requested records. Defendants have not provided Ocean Conservancy the reasonably segregable portion of the requested records not subject to a FOIA exemption.

66. Defendants have violated FOIA by failing to promptly provide the responsive records or the reasonably segregable portion of lawfully exempt responsive records to Ocean Conservancy. *Id.*

### **REQUEST FOR RELIEF**

WHEREFORE, Ocean Conservancy prays that this Court:

1. Declare that Defendants failed to make a timely determination on Ocean Conservancy's records request in violation of FOIA, 5 U.S.C. § 552(a)(6), (7);
2. Declare that Defendants failed to promptly provide records in response to Ocean Conservancy's information request in violation of 5 U.S.C. § 552(a)(3), (b);
3. Order Defendants to provide a determination on Ocean Conservancy's FOIA request, as required by FOIA;
4. Order Defendants to conduct searches that are reasonably calculated to locate all records responsive to Ocean Conservancy's FOIA request, as required by FOIA;
5. Order Defendants to provide Ocean Conservancy all responsive records or the reasonably segregable portions of lawfully exempt records, as required by FOIA, within 20 days of this Court's order;
6. Maintain jurisdiction over this action until Defendants are in compliance with FOIA and every order of this Court;
7. Award Ocean Conservancy its costs and reasonable attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(E) or 28 U.S.C. § 2412; and

8. Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted this 23rd day of January, 2018.

/s/ Khushi Desai

Khushi Desai (MD Bar 17444)

EARTHJUSTICE

1625 Mass. Ave., NW, Ste. 702

Washington, DC 20036

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*Attorneys for Plaintiff Ocean Conservancy*

**Kristen Gustafson - NOAA Federal**

---

**From:** Kristen Gustafson NOAA Federal  
**Sent:** Tuesday, January 23, 2018 5:35 PM  
**To:** Mark Graff NOAA Federal  
**Subject:** New FOIA lawsuit over red snapper  
**Attachments:** 1\_OC\_Complaint\_1 23 18.pdf

Hi Mark,

I wanted to make sure that you were aware of the new lawsuit filed by Ocean Conservancy in District Court in Maryland challenging NOAA's failure to produce documents in response to a FOIA request on the red snapper season reopening. I asked our SE Section attorneys about the status of the production, and here's the response I received:

(b) (5)

Kristen

Kristen L. Gustafson  
Deputy General Counsel  
General Counsel's Office  
National Oceanic and Atmospheric Administration  
U.S. Department of Commerce  
[Kristen.L.Gustafson@noaa.gov](mailto:Kristen.L.Gustafson@noaa.gov)  
Office: 202-482-1588  
Cell (b)(6)

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

OCEAN CONSERVANCY  
1300 19th Street, NW, Eighth Floor  
Washington, DC 20036

Plaintiff,

v.

NATIONAL MARINE FISHERIES SERVICE  
U.S. Department of Commerce  
Room 14555  
1315 East-West Highway  
Silver Spring, Montgomery County, MD 20910

NATIONAL OCEANIC AND ATMOSPHERIC  
ADMINISTRATION  
U.S. Department of Commerce  
Room 5128  
1401 Constitution Avenue, NW  
Washington, DC 20230

Defendants.

No. \_\_\_\_\_

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

**INTRODUCTION**

1. Plaintiff Ocean Conservancy brings this case to remedy violations of the Freedom of Information Act (FOIA), 5 U.S.C. § 552, by the National Marine Fisheries Service and National Oceanic and Atmospheric Administration (collectively, Defendants). The violations arise out of Defendants' continuing failure to respond to Ocean Conservancy's FOIA request.

2. In June 2017, Defendants issued a Temporary Rule reopening the Gulf of Mexico private angler red snapper fishing season and extending the fishing season from 3 to 42 days. 82 Fed. Reg. 27,777 (June 19, 2017). Defendants admitted that the action would cause the private recreational fishing sector to substantially exceed the annual catch limit set for that sector and delay rebuilding for the overfished population of red snapper, *id.* at 27,779, in violation of a

number of statutes.

3. Ocean Conservancy filed a FOIA request with the National Marine Fisheries Service (Fisheries Service), an agency of the National Oceanic and Atmospheric Administration (NOAA), on June 19, 2017, seeking pertinent records to enable Ocean Conservancy to analyze the basis for and impact of the Temporary Rule and disseminate the information to the public. The records sought in the FOIA request are essential to Ocean Conservancy's advocacy and public education missions to support protecting the red snapper population. Defendants failed to provide Ocean Conservancy a determination on its FOIA request within the time required under FOIA and have not to date provided Ocean Conservancy a determination on its request.

4. Although Defendants have provided Ocean Conservancy a small, partial release of responsive records, Defendants continue to unlawfully withhold the information sought by Ocean Conservancy. Defendants have provided Ocean Conservancy no information on additional responsive records in their possession. By failing to provide the requested records, Defendants are actively impeding Ocean Conservancy's access to government information and blocking its ability to carry out its organizational missions.

5. Having constructively exhausted its administrative remedies with Defendants, Ocean Conservancy now turns to this Court to enforce FOIA's guarantee of public access to agency records and to remedy Defendants' withholding of that access. Accordingly, Ocean Conservancy asks this Court to declare that Defendants have violated FOIA by failing to make a determination on Ocean Conservancy's FOIA request and by withholding the requested records, to order Defendants to immediately provide Ocean Conservancy with a legally compliant response to its outstanding record request, to order Defendants to promptly provide Ocean Conservancy all responsive records, and to grant other appropriate relief, including attorneys'

fees and costs.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1333 (federal question) and 5 U.S.C. § 552(a)(4)(B) (FOIA).

7. Venue properly vests in this District pursuant to 5 U.S.C. § 552(a)(4)(B) because, on information and belief, the requested agency records are situated in this District. Venue also properly vests in this District pursuant to 28 U.S.C. § 1391(b) and (e)(i) because: (1) the principal office of each Defendant is located in this District and (2) a substantial part of the events and omissions which gave rise to this action occurred in this District.

8. This Court has authority to grant the requested relief in this case pursuant to FOIA, 5 U.S.C. § 552(a)(4)(B), (E), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 2202.

### **PARTIES**

9. Plaintiff OCEAN CONSERVANCY is a nonprofit, science-based conservation organization dedicated to healthy oceans and the wildlife and communities that depend on them. Since 1972, Ocean Conservancy has sought to improve the health of our nation's marine wildlife and fish. To that end, and as part of its organizational goals, Ocean Conservancy seeks to prevent degradation of marine habitats and end overfishing (i.e., catching more fish than the remaining population can replace). Ocean Conservancy has over 125,000 members and supporters worldwide, including over 14,000 in the five Gulf of Mexico states. The organization publishes numerous reports, articles, newsletters, and other analyses on ocean and fishery sustainability topics each year. The organization is routinely called upon to brief and educate federal and state policymakers, and Ocean Conservancy staff are frequently quoted in the media

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12. Defendant NATIONAL MARINE FISHERIES SERVICE is an agency of the U.S. Department of Commerce that has been delegated the responsibility to manage the Gulf of Mexico red snapper fishery under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. 16 U.S.C. §§ 1801 *et seq.* The Fisheries Service has authority to issue regulations governing the red snapper fishery seasons and other management measures. The principal office of the Fisheries Service is located in Silver Spring, Montgomery County, Maryland. The Fisheries Service is in possession and control of the records that Ocean Conservancy seeks, and therefore it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

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### STATUTORY BACKGROUND

14. FOIA's basic purpose is to ensure government transparency and the expeditious disclosure of government records. FOIA creates a statutory right of public access to agency records by requiring that federal agencies make records available to any person upon request. 5 U.S.C. § 552(a)(3)(A).

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complete action on the request” whenever a request will take more than ten days to resolve.

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#### **STATEMENT OF FACTS**

21. On June 19, 2017, Defendants issued a Temporary Rule reopening the Gulf of Mexico private angler red snapper fishing season and extending that fishing season from 3 to 42 days. 82 Fed. Reg. 27,777 (June 19, 2017).

22. The same day, June 19, 2017, Ocean Conservancy submitted a FOIA request to the Fisheries Service seeking records related to the reopening of the private angler red snapper

fishing season. The request sought all documents relating to the reopening of the red snapper season within the date range of January 20, 2017, through June 19, 2017.

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25. The due date for Defendants to issue a determination on Ocean Conservancy's FOIA request was July 18, 2017, under 5 U.S.C. § 552(a)(6)(A)(i).

26. On July 6, 2017, NOAA notified Ocean Conservancy that the agency had granted Ocean Conservancy's fee waiver request. *See id.* 552(a)(4)(A)(i); 15 C.F.R. § 4.11(l).

27. On July 11, 2017, Ocean Conservancy clarified the scope of its request on a phone call with the Fisheries Service's Southeast Region FOIA Coordinator.

28. On July 17, 2017 the day before FOIA required the Fisheries Service to respond to Ocean Conservancy's request the Fisheries Service requested to extend the due date from July 18, 2017, to August 11, 2017 more than the ten working days allowed for unusual circumstances under 5 U.S.C. § 552(a)(6)(B)(i) and 15 C.F.R. § 4.6(b), (d). Ocean Conservancy agreed to the request.

29. On July 17, 2017, Ocean Conservancy and another organization filed a federal lawsuit challenging Defendants' unilateral decision to extend the private angler red snapper fishing season in the Gulf of Mexico. *Ocean Conservancy v. Ross*, No. 1:17-cv-01408-ABJ

(D.D.C. filed July 17, 2017).

30. On July 25, 2017, NOAA's FOIA Officer emailed Ocean Conservancy requesting additional information in order to make a determination on Ocean Conservancy's eligibility for a waiver of fees. Although NOAA already had granted Ocean Conservancy's fee waiver request, NOAA's FOIA Officer asserted Ocean Conservancy might use the requested records in its lawsuit, which, according to the FOIA Officer, may constitute a "commercial interest" in the records that Ocean Conservancy had not previously disclosed. The FOIA Officer requested additional information on Ocean Conservancy's purported commercial interests in the records.

31. Ocean Conservancy responded via email on July 26, 2017, reiterating that it is a nonprofit organization that has no commercial interest in the requested records.

32. Defendants did not acknowledge or respond to Ocean Conservancy's July 26, 2017 email.

33. On August 2, 2017, Ocean Conservancy sent NOAA an email to inquire about the agency's determination whether Ocean Conservancy has a "commercial interest" in the requested records.

34. On August 3, 2017, Ocean Conservancy received an email from NOAA alleging that Ocean Conservancy had substantively failed to answer the underlying question regarding its commercial interest.

35. Ocean Conservancy emailed NOAA that same day August 3, 2017 recounting and further explaining the ways in which it would use the records.

36. NOAA did not provide any response.

37. Ocean Conservancy sent NOAA an email on August 28, 2017, to inquire as to the status of the request. NOAA responded that same day via email granting a full fee waiver for the

second time.

38. On August 31, 2017, NOAA telephoned Ocean Conservancy asking to further postpone the agency's response to Ocean Conservancy's FOIA request. Ocean Conservancy declined NOAA's request during that call.

39. On September 12, 2017, Ocean Conservancy received an email from the Fisheries Service stating the Fisheries Service's Southeast Regional Office would be closed due to Hurricane Irma. The email did not provide a timetable for responding to Ocean Conservancy's FOIA request.

40. On September 12, 2017, Ocean Conservancy sent NOAA an email narrowing the date range of its FOIA request to March 13, 2017, through June 19, 2017, to lessen the burden of its request on the agency. NOAA did not acknowledge that email or enter it into the agency's FOIA correspondence log.

41. On September 18, 2017, Ocean Conservancy received an email from the Fisheries Service stating that the Southeast Regional Office reopened on September 15, 2017. The Fisheries Service also stated that the server housing the agency's FOIA application and responsive records was not yet operating, but was anticipated to be running by the end of the day on September 18, 2017. The Fisheries Service stated that it had on September 5, 2017, provided the NOAA Office of General Counsel, Southeast Region with an interim records response for that office's legal review and clearance. The email did not provide any further timetable for responding to Ocean Conservancy's FOIA request, any statement on the scope of records that the agency had sent to the General Counsel or that the agency would produce, or any statement on the agency's planned withholdings or exemptions.

42. On October 12, 2017, having not received any interim records response, Ocean

Conservancy sent an email to NOAA requesting an update on the status of its FOIA request.

43. On October 17, 2017, Ocean Conservancy received an email from the Fisheries Service stating that “a records response has been provided to [the Fisheries Service] and NOAA FOIA for release approval.”

44. On November 14, 2017, Ocean Conservancy sent NOAA an email requesting that Defendants commit to providing the requested documents by a date certain.

45. Later that day, November 14, 2017, NOAA informed Ocean Conservancy it would provide a partial, interim release of 38 documents “shortly.”

46. On November 28, 2017, Ocean Conservancy received an “interim response” from Defendants transmitting 38 documents. The majority of the 38 documents consist of correspondence discussing how to set up an email account to accept public comments on the Temporary Rule. The response did not indicate how many or the scope of any other records Defendants were processing or would produce. Nor did the response provide any information on what documents Defendants planned to withhold or the reasons for any withholding.

47. On December 15, 2017, NOAA informed Ocean Conservancy that additional records were undergoing legal review and clearance and a response to the request would be provided “shortly.” This correspondence did not convey the number or scope of the records under review, or any statement on the agency’s planned withholdings or exemptions.

48. On January 5, 2018, Ocean Conservancy sent NOAA an email requesting an update on the status of its FOIA request.

49. Ocean Conservancy has received no further correspondence from the Fisheries Service or NOAA to date.

50. Ocean Conservancy has not received all the responsive records or the reasonably

segregable portion of non-exempt responsive records to date.

51. The due date for Defendants' FOIA determination remains August 11, 2017.

52. While Defendants acknowledged receipt of the FOIA request and granted the fee waiver twice, Defendants have failed to substantively respond to Ocean Conservancy's FOIA request. None of Defendants' responses indicated the scope of the documents they would produce. Nor did any response include information on planned withholdings or exemptions. Defendants thus never provided Ocean Conservancy with the determination required by FOIA and the governing regulations more than seven months after acknowledging receipt of the request, more than six months after initially granting the fee waiver, more than six months after the statutory due date for issuing a determination, and more than five months after the agreed-upon extended due date for issuing a determination.

#### **CLAIMS FOR RELIEF**

##### **Count I – Failure to Make a Determination on a FOIA Request, 5 U.S.C. § 552(a)(6), (7)**

53. The allegations made in all preceding paragraphs are realleged and incorporated by this reference.

54. NOAA and the Fisheries Service are "agencies" under FOIA. 5 U.S.C. § 552(f)(1). NOAA and the Fisheries Service have possession and control of the requested records.

55. Defendants were required to provide a determination within 20 working days on Ocean Conservancy's FOIA request, dated June 19, 2017. *Id.* § 552(a)(6).

56. Defendants were required to provide "an estimated date on which the agency [would] complete action on the request." *Id.* § 552(a)(7)(B); *accord id.* § 552(a)(6)(B)(i).

57. Ocean Conservancy agreed to extend Defendants' deadline to respond to Ocean Conservancy's FOIA request from July 18, 2017, to August 11, 2017. Even so, Defendants have

not issued a determination on Ocean Conservancy's FOIA request, more than six months after the statutory deadline and more than five months after the agreed-upon extended deadline.

58. Ocean Conservancy has constructively and fully exhausted all administrative remedies required by FOIA. *Id.* § 552(a)(6)(A), (C).

59. Defendants violated FOIA by failing to make the required determination within 20 working days in response to Ocean Conservancy's June 19, 2017 FOIA request. *Id.* § 552(a)(6).

60. Defendants violated FOIA by failing to provide an estimated date by which they would complete action on Ocean Conservancy's June 19, 2017 FOIA request. *Id.* § 552(a)(6)(B)(i), (7)(B).

**Count II – Failure to Respond to a FOIA Request, 5 U.S.C. § 552(a)(3), (b)**

61. The allegations made in all preceding paragraphs are realleged and incorporated by this reference.

62. FOIA requires Defendants to process records requests and promptly provide the requested records or the reasonably segregable portion of the requested records not subject to a FOIA exemption. 5 U.S.C. § 552(a)(3), (b).

63. Defendants have provided Ocean Conservancy only a subset of the requested records. Defendants have not claimed that any of the records they have not yet provided are exempt from disclosure. Therefore, the interim response does not constitute the reasonably segregable portion of the requested records not subject to a FOIA exemption.

64. Defendants have acknowledged they are in possession of additional responsive records they have not provided to Ocean Conservancy to date.



65. Defendants have not provided Ocean Conservancy all the requested records. Defendants have not provided Ocean Conservancy the reasonably segregable portion of the requested records not subject to a FOIA exemption.

66. Defendants have violated FOIA by failing to promptly provide the responsive records or the reasonably segregable portion of lawfully exempt responsive records to Ocean Conservancy. *Id.*

### **REQUEST FOR RELIEF**

WHEREFORE, Ocean Conservancy prays that this Court:

1. Declare that Defendants failed to make a timely determination on Ocean Conservancy's records request in violation of FOIA, 5 U.S.C. § 552(a)(6), (7);
2. Declare that Defendants failed to promptly provide records in response to Ocean Conservancy's information request in violation of 5 U.S.C. § 552(a)(3), (b);
3. Order Defendants to provide a determination on Ocean Conservancy's FOIA request, as required by FOIA;
4. Order Defendants to conduct searches that are reasonably calculated to locate all records responsive to Ocean Conservancy's FOIA request, as required by FOIA;
5. Order Defendants to provide Ocean Conservancy all responsive records or the reasonably segregable portions of lawfully exempt records, as required by FOIA, within 20 days of this Court's order;
6. Maintain jurisdiction over this action until Defendants are in compliance with FOIA and every order of this Court;
7. Award Ocean Conservancy its costs and reasonable attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(E) or 28 U.S.C. § 2412; and

8. Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted this 23rd day of January, 2018.

/s/ Khushi Desai

Khushi Desai (MD Bar 17444)

EARTHJUSTICE

1625 Mass. Ave., NW, Ste. 702

Washington, DC 20036

202-667-4500 Telephone

202-667-2356 Fax

kdesai@earthjustice.org

Christopher D. Eaton (*pro hac vice* pending)

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Seattle, WA 98104

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Brettny Hardy (*pro hac vice* pending)

EARTHJUSTICE

50 California St., Suite 500

San Francisco, CA 94111

415-217-2000 Telephone

415-217-2040 Fax

bhardy@earthjustice.org

*Attorneys for Plaintiff Ocean Conservancy*

**Mark Graff - NOAA Federal**

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**From:** Mark Graff NOAA Federal  
**Sent:** Wednesday, January 24, 2018 9:45 AM  
**To:** Samuel Dixon NOAA Affiliate; Steven Goodman NOAA Federal; Velna Bullock NOAA Federal  
**Cc:** Robert Hogan; Robert Swisher NOAA Federal; Lola Stith NOAA Affiliate; Toland, Michael; Bogomolny, Michael (Federal); Stacey Nathanson NOAA Federal; Scott Smullen NOAA Federal; Tanya Dobrzynski NOAA Federal  
**Subject:** Fwd: New FOIA lawsuit over red snapper  
**Attachments:** 1\_OC\_Complaint\_1 23 18.pdf

Good Morning All,

Below is a new lawsuit from Ocean Conservancy, seeking the Red Snapper Season Extension records (b)(5)

[REDACTED]  
[REDACTED] [REDACTED] [REDACTED] (b)(5)  
[REDACTED]  
[REDACTED]  
[REDACTED].

(b)(5)

(b)(5) Thanks guys

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628 5658 (O)  
(b)(6) (C)

Confidentiality Notice: This e mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.

Forwarded message

**From:** Kristen Gustafson - NOAA Federal <[kristen.l.gustafson@noaa.gov](mailto:kristen.l.gustafson@noaa.gov)>  
**Date:** Tue, Jan 23, 2018 at 5:35 PM  
**Subject:** New FOIA lawsuit over red snapper

To: Mark Graff NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)>

Hi Mark,

I wanted to make sure that you were aware of the new lawsuit filed by Ocean Conservancy in District Court in Maryland challenging NOAA's failure to produce documents in response to a FOIA request on the red snapper season reopening. I asked our SE Section attorneys about the status of the production, and here's the response I received:

(b) (5)

Kristen

Kristen L. Gustafson  
Deputy General Counsel  
General Counsel's Office  
National Oceanic and Atmospheric Administration  
U.S. Department of Commerce  
[Kristen.L.Gustafson@noaa.gov](mailto:Kristen.L.Gustafson@noaa.gov)  
Office: [202-482-1588](tel:202-482-1588)  
Cell [\(b\)\(6\)](tel:(b)(6))

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

OCEAN CONSERVANCY  
1300 19th Street, NW, Eighth Floor  
Washington, DC 20036

Plaintiff,

v.

NATIONAL MARINE FISHERIES SERVICE  
U.S. Department of Commerce  
Room 14555  
1315 East-West Highway  
Silver Spring, Montgomery County, MD 20910

NATIONAL OCEANIC AND ATMOSPHERIC  
ADMINISTRATION  
U.S. Department of Commerce  
Room 5128  
1401 Constitution Avenue, NW  
Washington, DC 20230

Defendants.

No. \_\_\_\_\_

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

**INTRODUCTION**

1. Plaintiff Ocean Conservancy brings this case to remedy violations of the Freedom of Information Act (FOIA), 5 U.S.C. § 552, by the National Marine Fisheries Service and National Oceanic and Atmospheric Administration (collectively, Defendants). The violations arise out of Defendants' continuing failure to respond to Ocean Conservancy's FOIA request.

2. In June 2017, Defendants issued a Temporary Rule reopening the Gulf of Mexico private angler red snapper fishing season and extending the fishing season from 3 to 42 days. 82 Fed. Reg. 27,777 (June 19, 2017). Defendants admitted that the action would cause the private recreational fishing sector to substantially exceed the annual catch limit set for that sector and delay rebuilding for the overfished population of red snapper, *id.* at 27,779, in violation of a

number of statutes.

3. Ocean Conservancy filed a FOIA request with the National Marine Fisheries Service (Fisheries Service), an agency of the National Oceanic and Atmospheric Administration (NOAA), on June 19, 2017, seeking pertinent records to enable Ocean Conservancy to analyze the basis for and impact of the Temporary Rule and disseminate the information to the public. The records sought in the FOIA request are essential to Ocean Conservancy's advocacy and public education missions to support protecting the red snapper population. Defendants failed to provide Ocean Conservancy a determination on its FOIA request within the time required under FOIA and have not to date provided Ocean Conservancy a determination on its request.

4. Although Defendants have provided Ocean Conservancy a small, partial release of responsive records, Defendants continue to unlawfully withhold the information sought by Ocean Conservancy. Defendants have provided Ocean Conservancy no information on additional responsive records in their possession. By failing to provide the requested records, Defendants are actively impeding Ocean Conservancy's access to government information and blocking its ability to carry out its organizational missions.

5. Having constructively exhausted its administrative remedies with Defendants, Ocean Conservancy now turns to this Court to enforce FOIA's guarantee of public access to agency records and to remedy Defendants' withholding of that access. Accordingly, Ocean Conservancy asks this Court to declare that Defendants have violated FOIA by failing to make a determination on Ocean Conservancy's FOIA request and by withholding the requested records, to order Defendants to immediately provide Ocean Conservancy with a legally compliant response to its outstanding record request, to order Defendants to promptly provide Ocean Conservancy all responsive records, and to grant other appropriate relief, including attorneys'

fees and costs.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1333 (federal question) and 5 U.S.C. § 552(a)(4)(B) (FOIA).

7. Venue properly vests in this District pursuant to 5 U.S.C. § 552(a)(4)(B) because, on information and belief, the requested agency records are situated in this District. Venue also properly vests in this District pursuant to 28 U.S.C. § 1391(b) and (e)(i) because: (1) the principal office of each Defendant is located in this District and (2) a substantial part of the events and omissions which gave rise to this action occurred in this District.

8. This Court has authority to grant the requested relief in this case pursuant to FOIA, 5 U.S.C. § 552(a)(4)(B), (E), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 2202.

### **PARTIES**

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25. The due date for Defendants to issue a determination on Ocean Conservancy's FOIA request was July 18, 2017, under 5 U.S.C. § 552(a)(6)(A)(i).

26. On July 6, 2017, NOAA notified Ocean Conservancy that the agency had granted Ocean Conservancy's fee waiver request. *See id.* 552(a)(4)(A)(i); 15 C.F.R. § 4.11(l).

27. On July 11, 2017, Ocean Conservancy clarified the scope of its request on a phone call with the Fisheries Service's Southeast Region FOIA Coordinator.

28. On July 17, 2017 the day before FOIA required the Fisheries Service to respond to Ocean Conservancy's request the Fisheries Service requested to extend the due date from July 18, 2017, to August 11, 2017 more than the ten working days allowed for unusual circumstances under 5 U.S.C. § 552(a)(6)(B)(i) and 15 C.F.R. § 4.6(b), (d). Ocean Conservancy agreed to the request.

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31. Ocean Conservancy responded via email on July 26, 2017, reiterating that it is a nonprofit organization that has no commercial interest in the requested records.

32. Defendants did not acknowledge or respond to Ocean Conservancy's July 26, 2017 email.

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36. NOAA did not provide any response.

37. Ocean Conservancy sent NOAA an email on August 28, 2017, to inquire as to the status of the request. NOAA responded that same day via email granting a full fee waiver for the

second time.

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42. On October 12, 2017, having not received any interim records response, Ocean

Conservancy sent an email to NOAA requesting an update on the status of its FOIA request.

43. On October 17, 2017, Ocean Conservancy received an email from the Fisheries Service stating that “a records response has been provided to [the Fisheries Service] and NOAA FOIA for release approval.”

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45. Later that day, November 14, 2017, NOAA informed Ocean Conservancy it would provide a partial, interim release of 38 documents “shortly.”

46. On November 28, 2017, Ocean Conservancy received an “interim response” from Defendants transmitting 38 documents. The majority of the 38 documents consist of correspondence discussing how to set up an email account to accept public comments on the Temporary Rule. The response did not indicate how many or the scope of any other records Defendants were processing or would produce. Nor did the response provide any information on what documents Defendants planned to withhold or the reasons for any withholding.

47. On December 15, 2017, NOAA informed Ocean Conservancy that additional records were undergoing legal review and clearance and a response to the request would be provided “shortly.” This correspondence did not convey the number or scope of the records under review, or any statement on the agency’s planned withholdings or exemptions.

48. On January 5, 2018, Ocean Conservancy sent NOAA an email requesting an update on the status of its FOIA request.

49. Ocean Conservancy has received no further correspondence from the Fisheries Service or NOAA to date.

50. Ocean Conservancy has not received all the responsive records or the reasonably

segregable portion of non-exempt responsive records to date.

51. The due date for Defendants' FOIA determination remains August 11, 2017.

52. While Defendants acknowledged receipt of the FOIA request and granted the fee waiver twice, Defendants have failed to substantively respond to Ocean Conservancy's FOIA request. None of Defendants' responses indicated the scope of the documents they would produce. Nor did any response include information on planned withholdings or exemptions. Defendants thus never provided Ocean Conservancy with the determination required by FOIA and the governing regulations more than seven months after acknowledging receipt of the request, more than six months after initially granting the fee waiver, more than six months after the statutory due date for issuing a determination, and more than five months after the agreed-upon extended due date for issuing a determination.

#### **CLAIMS FOR RELIEF**

##### **Count I – Failure to Make a Determination on a FOIA Request, 5 U.S.C. § 552(a)(6), (7)**

53. The allegations made in all preceding paragraphs are realleged and incorporated by this reference.

54. NOAA and the Fisheries Service are "agencies" under FOIA. 5 U.S.C. § 552(f)(1). NOAA and the Fisheries Service have possession and control of the requested records.

55. Defendants were required to provide a determination within 20 working days on Ocean Conservancy's FOIA request, dated June 19, 2017. *Id.* § 552(a)(6).

56. Defendants were required to provide "an estimated date on which the agency [would] complete action on the request." *Id.* § 552(a)(7)(B); *accord id.* § 552(a)(6)(B)(i).

57. Ocean Conservancy agreed to extend Defendants' deadline to respond to Ocean Conservancy's FOIA request from July 18, 2017, to August 11, 2017. Even so, Defendants have

not issued a determination on Ocean Conservancy's FOIA request, more than six months after the statutory deadline and more than five months after the agreed-upon extended deadline.

58. Ocean Conservancy has constructively and fully exhausted all administrative remedies required by FOIA. *Id.* § 552(a)(6)(A), (C).

59. Defendants violated FOIA by failing to make the required determination within 20 working days in response to Ocean Conservancy's June 19, 2017 FOIA request. *Id.* § 552(a)(6).

60. Defendants violated FOIA by failing to provide an estimated date by which they would complete action on Ocean Conservancy's June 19, 2017 FOIA request. *Id.* § 552(a)(6)(B)(i), (7)(B).

**Count II – Failure to Respond to a FOIA Request, 5 U.S.C. § 552(a)(3), (b)**

61. The allegations made in all preceding paragraphs are realleged and incorporated by this reference.

62. FOIA requires Defendants to process records requests and promptly provide the requested records or the reasonably segregable portion of the requested records not subject to a FOIA exemption. 5 U.S.C. § 552(a)(3), (b).

63. Defendants have provided Ocean Conservancy only a subset of the requested records. Defendants have not claimed that any of the records they have not yet provided are exempt from disclosure. Therefore, the interim response does not constitute the reasonably segregable portion of the requested records not subject to a FOIA exemption.

64. Defendants have acknowledged they are in possession of additional responsive records they have not provided to Ocean Conservancy to date.



65. Defendants have not provided Ocean Conservancy all the requested records. Defendants have not provided Ocean Conservancy the reasonably segregable portion of the requested records not subject to a FOIA exemption.

66. Defendants have violated FOIA by failing to promptly provide the responsive records or the reasonably segregable portion of lawfully exempt responsive records to Ocean Conservancy. *Id.*

### **REQUEST FOR RELIEF**

WHEREFORE, Ocean Conservancy prays that this Court:

1. Declare that Defendants failed to make a timely determination on Ocean Conservancy's records request in violation of FOIA, 5 U.S.C. § 552(a)(6), (7);
2. Declare that Defendants failed to promptly provide records in response to Ocean Conservancy's information request in violation of 5 U.S.C. § 552(a)(3), (b);
3. Order Defendants to provide a determination on Ocean Conservancy's FOIA request, as required by FOIA;
4. Order Defendants to conduct searches that are reasonably calculated to locate all records responsive to Ocean Conservancy's FOIA request, as required by FOIA;
5. Order Defendants to provide Ocean Conservancy all responsive records or the reasonably segregable portions of lawfully exempt records, as required by FOIA, within 20 days of this Court's order;
6. Maintain jurisdiction over this action until Defendants are in compliance with FOIA and every order of this Court;
7. Award Ocean Conservancy its costs and reasonable attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(E) or 28 U.S.C. § 2412; and

8. Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted this 23rd day of January, 2018.

/s/ Khushi Desai

Khushi Desai (MD Bar 17444)

EARTHJUSTICE

1625 Mass. Ave., NW, Ste. 702

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415-217-2000 Telephone

415-217-2040 Fax

bhardy@earthjustice.org

*Attorneys for Plaintiff Ocean Conservancy*

**Mark Graff - NOAA Federal**

---

**From:** Mark Graff NOAA Federal  
**Sent:** Wednesday, January 24, 2018 9:47 AM  
**To:** Parsons, Bobbie  
**Cc:** Toland, Michael  
**Subject:** Fwd: New FOIA lawsuit over red snapper  
**Attachments:** 1\_OC\_Complaint\_1 23 18.pdf

Hi Bobbie

The request below (Ocean Conservancy seeking Red Snapper season extension records) just went to litigation (b)(5)

[REDACTED]

[REDACTED]

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628 5658 (O)  
(b)(6) (C)

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Forwarded message

**From:** Mark Graff - NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)>  
**Date:** Wed, Jan 24, 2018 at 9:44 AM  
**Subject:** Fwd: New FOIA lawsuit over red snapper  
**To:** Samuel Dixon NOAA Affiliate <[samuel.dixon@noaa.gov](mailto:samuel.dixon@noaa.gov)>, Steven Goodman NOAA Federal <[Steven.Goodman@noaa.gov](mailto:Steven.Goodman@noaa.gov)>, Velna Bullock NOAA Federal <[velna.l.bullock@noaa.gov](mailto:velna.l.bullock@noaa.gov)>  
**Cc:** Robert Hogan <[robert.j.hogan@noaa.gov](mailto:robert.j.hogan@noaa.gov)>, Robert Swisher NOAA Federal <[robert.swisher@noaa.gov](mailto:robert.swisher@noaa.gov)>, Lola Stith NOAA Affiliate <[lola.m.stith@noaa.gov](mailto:lola.m.stith@noaa.gov)>, "Toland, Michael" <[mtoland@doc.gov](mailto:mtoland@doc.gov)>, "Bogomolny, Michael (Federal)" <[MBogomolny@doc.gov](mailto:MBogomolny@doc.gov)>, Stacey Nathanson NOAA Federal <[stacey.nathanson@noaa.gov](mailto:stacey.nathanson@noaa.gov)>, Scott Smullen NOAA Federal <[scott.smullen@noaa.gov](mailto:scott.smullen@noaa.gov)>, Tanya Dobrzynski NOAA Federal <[tanya.dobrzynski@noaa.gov](mailto:tanya.dobrzynski@noaa.gov)>

Good Morning All,

Below is a new lawsuit from Ocean Conservancy, seeking the Red Snapper Season Extension records. (b)(5)

[REDACTED]

[REDACTED]

[REDACTED]

(b)(5)

Mark H. Graff

FOIA Officer/Bureau Chief Privacy Officer (BCPO)

National Oceanic and Atmospheric Administration

[\(301\) 628 5658](tel:3016285658) (O)

(b)(6) (C)

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Forwarded message

From: **Kristen Gustafson - NOAA Federal** <[kristen.l.gustafson@noaa.gov](mailto:kristen.l.gustafson@noaa.gov)>

Date: Tue, Jan 23, 2018 at 5:35 PM

Subject: New FOIA lawsuit over red snapper

To: Mark Graff NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)>

Hi Mark,

I wanted to make sure that you were aware of the new lawsuit filed by Ocean Conservancy in District Court in Maryland challenging NOAA's failure to produce documents in response to a FOIA request on the red snapper season reopening. I asked our SE Section attorneys about the status of the production, and here's the response I received:

(b)(5)

Kristen

Kristen L. Gustafson

Deputy General Counsel

General Counsel's Office

National Oceanic and Atmospheric Administration

U.S. Department of Commerce

[Kristen.L.Gustafson@noaa.gov](mailto:Kristen.L.Gustafson@noaa.gov)

Office: [202-482-1588](tel:202-482-1588)

Cell (b)(6)

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

OCEAN CONSERVANCY  
1300 19th Street, NW, Eighth Floor  
Washington, DC 20036

Plaintiff,

v.

NATIONAL MARINE FISHERIES SERVICE  
U.S. Department of Commerce  
Room 14555  
1315 East-West Highway  
Silver Spring, Montgomery County, MD 20910

NATIONAL OCEANIC AND ATMOSPHERIC  
ADMINISTRATION  
U.S. Department of Commerce  
Room 5128  
1401 Constitution Avenue, NW  
Washington, DC 20230

Defendants.

No. \_\_\_\_\_

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

**INTRODUCTION**

1. Plaintiff Ocean Conservancy brings this case to remedy violations of the Freedom of Information Act (FOIA), 5 U.S.C. § 552, by the National Marine Fisheries Service and National Oceanic and Atmospheric Administration (collectively, Defendants). The violations arise out of Defendants' continuing failure to respond to Ocean Conservancy's FOIA request.

2. In June 2017, Defendants issued a Temporary Rule reopening the Gulf of Mexico private angler red snapper fishing season and extending the fishing season from 3 to 42 days. 82 Fed. Reg. 27,777 (June 19, 2017). Defendants admitted that the action would cause the private recreational fishing sector to substantially exceed the annual catch limit set for that sector and delay rebuilding for the overfished population of red snapper, *id.* at 27,779, in violation of a

number of statutes.

3. Ocean Conservancy filed a FOIA request with the National Marine Fisheries Service (Fisheries Service), an agency of the National Oceanic and Atmospheric Administration (NOAA), on June 19, 2017, seeking pertinent records to enable Ocean Conservancy to analyze the basis for and impact of the Temporary Rule and disseminate the information to the public. The records sought in the FOIA request are essential to Ocean Conservancy's advocacy and public education missions to support protecting the red snapper population. Defendants failed to provide Ocean Conservancy a determination on its FOIA request within the time required under FOIA and have not to date provided Ocean Conservancy a determination on its request.

4. Although Defendants have provided Ocean Conservancy a small, partial release of responsive records, Defendants continue to unlawfully withhold the information sought by Ocean Conservancy. Defendants have provided Ocean Conservancy no information on additional responsive records in their possession. By failing to provide the requested records, Defendants are actively impeding Ocean Conservancy's access to government information and blocking its ability to carry out its organizational missions.

5. Having constructively exhausted its administrative remedies with Defendants, Ocean Conservancy now turns to this Court to enforce FOIA's guarantee of public access to agency records and to remedy Defendants' withholding of that access. Accordingly, Ocean Conservancy asks this Court to declare that Defendants have violated FOIA by failing to make a determination on Ocean Conservancy's FOIA request and by withholding the requested records, to order Defendants to immediately provide Ocean Conservancy with a legally compliant response to its outstanding record request, to order Defendants to promptly provide Ocean Conservancy all responsive records, and to grant other appropriate relief, including attorneys'

fees and costs.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1333 (federal question) and 5 U.S.C. § 552(a)(4)(B) (FOIA).

7. Venue properly vests in this District pursuant to 5 U.S.C. § 552(a)(4)(B) because, on information and belief, the requested agency records are situated in this District. Venue also properly vests in this District pursuant to 28 U.S.C. § 1391(b) and (e)(i) because: (1) the principal office of each Defendant is located in this District and (2) a substantial part of the events and omissions which gave rise to this action occurred in this District.

8. This Court has authority to grant the requested relief in this case pursuant to FOIA, 5 U.S.C. § 552(a)(4)(B), (E), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 2202.

### **PARTIES**

9. Plaintiff OCEAN CONSERVANCY is a nonprofit, science-based conservation organization dedicated to healthy oceans and the wildlife and communities that depend on them. Since 1972, Ocean Conservancy has sought to improve the health of our nation's marine wildlife and fish. To that end, and as part of its organizational goals, Ocean Conservancy seeks to prevent degradation of marine habitats and end overfishing (i.e., catching more fish than the remaining population can replace). Ocean Conservancy has over 125,000 members and supporters worldwide, including over 14,000 in the five Gulf of Mexico states. The organization publishes numerous reports, articles, newsletters, and other analyses on ocean and fishery sustainability topics each year. The organization is routinely called upon to brief and educate federal and state policymakers, and Ocean Conservancy staff are frequently quoted in the media



and invited to present and speak at various conferences and events. Ocean Conservancy's headquarters are located in Washington, DC. It also has offices in Alaska, California, Washington, Oregon, Florida, and Texas.

10. In the 1990s, Ocean Conservancy became involved in the conservation and management of the red snapper fishery. For the past three decades, Ocean Conservancy has worked to promote a healthy red snapper fishery for the benefit of the Gulf of Mexico's ecosystem and coastal communities. Ocean Conservancy staff have regularly attended meetings of the Gulf of Mexico Fishery Management Council and have been involved in public awareness events concerning fisheries for decades.

11. In 2005, Ocean Conservancy successfully challenged the Fisheries Service's rebuilding plan for red snapper. *Coastal Conservation Ass'n v. Gutierrez*, 512 F. Supp. 2d 896 (S.D. Tex. 2007). In 2015, Ocean Conservancy filed *amicus curiae* briefs in support of the federal government in two lawsuits challenging the Fisheries Service's red snapper management.

12. Defendant NATIONAL MARINE FISHERIES SERVICE is an agency of the U.S. Department of Commerce that has been delegated the responsibility to manage the Gulf of Mexico red snapper fishery under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. 16 U.S.C. §§ 1801 *et seq.* The Fisheries Service has authority to issue regulations governing the red snapper fishery seasons and other management measures. The principal office of the Fisheries Service is located in Silver Spring, Montgomery County, Maryland. The Fisheries Service is in possession and control of the records that Ocean Conservancy seeks, and therefore it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

13. Defendant NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION is an agency of the U.S. Department of Commerce with supervisory responsibility for the

Fisheries Service. The principal office of NOAA is located in Silver Spring, Montgomery County, Maryland. NOAA administers and oversees FOIA requests made to the Fisheries Service. NOAA's FOIA office is located in Silver Spring, Montgomery County, Maryland. NOAA is in possession and control of the records that Ocean Conservancy seeks, and therefore is subject to FOIA pursuant to 5 U.S.C. § 552(f).

### STATUTORY BACKGROUND

14. FOIA's basic purpose is to ensure government transparency and the expeditious disclosure of government records. FOIA creates a statutory right of public access to agency records by requiring that federal agencies make records available to any person upon request. 5 U.S.C. § 552(a)(3)(A).

15. FOIA imposes strict deadlines on federal agencies to respond to requests. FOIA requires an agency to issue a final determination resolving an information request within 20 business days from the date of its receipt and to immediately notify the requester of its determination and the reasons therefore. *Id.* § 552(a)(6)(A)(i). This provision requires the agency to "(i) gather and review the documents; (ii) determine and communicate the scope of the agency's documents it intends to produce and withhold, and the reasons for withholding any documents; and (iii) inform the requester that it can appeal whatever portion of the 'determination' is adverse." *Citizens for Responsibility & Ethics in Wash. v. Fed. Election Comm'n*, 711 F.3d 180, 188 (D.C. Cir. 2013); *see* 5 U.S.C. § 552(a)(6)(A)(i).

16. An agency may extend this 20-day period only in "unusual circumstances," as defined by 5 U.S.C. § 552(a)(6)(B)(iii), and only for a maximum of ten working days. *Id.* § 552(a)(6)(B)(i); *see also* 15 C.F.R. § 4.6(b), (d).

17. Agencies are required to provide "an estimated date on which the agency will

complete action on the request” whenever a request will take more than ten days to resolve.

5 U.S.C. § 552(a)(7)(B). Agencies extending the period for unusual circumstances must, when providing notice of the extension, provide “the date on which a determination is expected to be dispatched.” *Id.* § 552(a)(6)(B)(i); *see also* 15 C.F.R. § 4.6(d)(1).

18. The agency must then make the requested records “promptly” available. 5 U.S.C. § 552(a)(3)(A). In so doing, the agency must make reasonable efforts to search for records in a manner that is reasonably calculated to locate all records responsive to the FOIA request. *Id.* § 552(a)(3)(C), (D).

19. The agency may withhold from production the limited classes of records exempted under 5 U.S.C. § 552(b). For any record withheld, the agency bears the burden of proving that one of the statutory exemptions applies. *Id.* § 552(a)(4)(B). Even if some information is exempt from disclosure, “[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt.” *Id.* § 552(b).

20. An agency’s failure to comply with FOIA’s deadlines constitutes a constructive denial of the request, and the requester’s administrative remedies are deemed exhausted for purposes of litigation. *Id.* § 552(a)(6)(C)(i).

#### **STATEMENT OF FACTS**

21. On June 19, 2017, Defendants issued a Temporary Rule reopening the Gulf of Mexico private angler red snapper fishing season and extending that fishing season from 3 to 42 days. 82 Fed. Reg. 27,777 (June 19, 2017).

22. The same day, June 19, 2017, Ocean Conservancy submitted a FOIA request to the Fisheries Service seeking records related to the reopening of the private angler red snapper

fishing season. The request sought all documents relating to the reopening of the red snapper season within the date range of January 20, 2017, through June 19, 2017.

23. Ocean Conservancy's FOIA request furthers the organization's objectives to end overfishing and inform its members and the public about conservation and management of the red snapper fishery to benefit the Gulf of Mexico's ecosystem and coastal communities.

24. On June 20, 2017, Ocean Conservancy received a form email from Defendants acknowledging receipt of the request and assigning the request a tracking number, DOC-NOAA-2017-001394. The acknowledgement did not indicate the scope of the documents Defendants would produce, nor did it indicate any planned withholdings or exemptions.

25. The due date for Defendants to issue a determination on Ocean Conservancy's FOIA request was July 18, 2017, under 5 U.S.C. § 552(a)(6)(A)(i).

26. On July 6, 2017, NOAA notified Ocean Conservancy that the agency had granted Ocean Conservancy's fee waiver request. *See id.* 552(a)(4)(A)(i); 15 C.F.R. § 4.11(l).

27. On July 11, 2017, Ocean Conservancy clarified the scope of its request on a phone call with the Fisheries Service's Southeast Region FOIA Coordinator.

28. On July 17, 2017 the day before FOIA required the Fisheries Service to respond to Ocean Conservancy's request the Fisheries Service requested to extend the due date from July 18, 2017, to August 11, 2017 more than the ten working days allowed for unusual circumstances under 5 U.S.C. § 552(a)(6)(B)(i) and 15 C.F.R. § 4.6(b), (d). Ocean Conservancy agreed to the request.

29. On July 17, 2017, Ocean Conservancy and another organization filed a federal lawsuit challenging Defendants' unilateral decision to extend the private angler red snapper fishing season in the Gulf of Mexico. *Ocean Conservancy v. Ross*, No. 1:17-cv-01408-ABJ

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48. On January 5, 2018, Ocean Conservancy sent NOAA an email requesting an update on the status of its FOIA request.

49. Ocean Conservancy has received no further correspondence from the Fisheries Service or NOAA to date.

50. Ocean Conservancy has not received all the responsive records or the reasonably

segregable portion of non-exempt responsive records to date.

51. The due date for Defendants' FOIA determination remains August 11, 2017.

52. While Defendants acknowledged receipt of the FOIA request and granted the fee waiver twice, Defendants have failed to substantively respond to Ocean Conservancy's FOIA request. None of Defendants' responses indicated the scope of the documents they would produce. Nor did any response include information on planned withholdings or exemptions. Defendants thus never provided Ocean Conservancy with the determination required by FOIA and the governing regulations more than seven months after acknowledging receipt of the request, more than six months after initially granting the fee waiver, more than six months after the statutory due date for issuing a determination, and more than five months after the agreed-upon extended due date for issuing a determination.

#### **CLAIMS FOR RELIEF**

##### **Count I – Failure to Make a Determination on a FOIA Request, 5 U.S.C. § 552(a)(6), (7)**

53. The allegations made in all preceding paragraphs are realleged and incorporated by this reference.

54. NOAA and the Fisheries Service are "agencies" under FOIA. 5 U.S.C. § 552(f)(1). NOAA and the Fisheries Service have possession and control of the requested records.

55. Defendants were required to provide a determination within 20 working days on Ocean Conservancy's FOIA request, dated June 19, 2017. *Id.* § 552(a)(6).

56. Defendants were required to provide "an estimated date on which the agency [would] complete action on the request." *Id.* § 552(a)(7)(B); *accord id.* § 552(a)(6)(B)(i).

57. Ocean Conservancy agreed to extend Defendants' deadline to respond to Ocean Conservancy's FOIA request from July 18, 2017, to August 11, 2017. Even so, Defendants have



not issued a determination on Ocean Conservancy's FOIA request, more than six months after the statutory deadline and more than five months after the agreed-upon extended deadline.

58. Ocean Conservancy has constructively and fully exhausted all administrative remedies required by FOIA. *Id.* § 552(a)(6)(A), (C).

59. Defendants violated FOIA by failing to make the required determination within 20 working days in response to Ocean Conservancy's June 19, 2017 FOIA request. *Id.* § 552(a)(6).

60. Defendants violated FOIA by failing to provide an estimated date by which they would complete action on Ocean Conservancy's June 19, 2017 FOIA request. *Id.* § 552(a)(6)(B)(i), (7)(B).

**Count II – Failure to Respond to a FOIA Request, 5 U.S.C. § 552(a)(3), (b)**

61. The allegations made in all preceding paragraphs are realleged and incorporated by this reference.

62. FOIA requires Defendants to process records requests and promptly provide the requested records or the reasonably segregable portion of the requested records not subject to a FOIA exemption. 5 U.S.C. § 552(a)(3), (b).

63. Defendants have provided Ocean Conservancy only a subset of the requested records. Defendants have not claimed that any of the records they have not yet provided are exempt from disclosure. Therefore, the interim response does not constitute the reasonably segregable portion of the requested records not subject to a FOIA exemption.

64. Defendants have acknowledged they are in possession of additional responsive records they have not provided to Ocean Conservancy to date.

65. Defendants have not provided Ocean Conservancy all the requested records. Defendants have not provided Ocean Conservancy the reasonably segregable portion of the requested records not subject to a FOIA exemption.

66. Defendants have violated FOIA by failing to promptly provide the responsive records or the reasonably segregable portion of lawfully exempt responsive records to Ocean Conservancy. *Id.*

### **REQUEST FOR RELIEF**

WHEREFORE, Ocean Conservancy prays that this Court:

1. Declare that Defendants failed to make a timely determination on Ocean Conservancy's records request in violation of FOIA, 5 U.S.C. § 552(a)(6), (7);
2. Declare that Defendants failed to promptly provide records in response to Ocean Conservancy's information request in violation of 5 U.S.C. § 552(a)(3), (b);
3. Order Defendants to provide a determination on Ocean Conservancy's FOIA request, as required by FOIA;
4. Order Defendants to conduct searches that are reasonably calculated to locate all records responsive to Ocean Conservancy's FOIA request, as required by FOIA;
5. Order Defendants to provide Ocean Conservancy all responsive records or the reasonably segregable portions of lawfully exempt records, as required by FOIA, within 20 days of this Court's order;
6. Maintain jurisdiction over this action until Defendants are in compliance with FOIA and every order of this Court;
7. Award Ocean Conservancy its costs and reasonable attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(E) or 28 U.S.C. § 2412; and

8. Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted this 23rd day of January, 2018.

/s/ Khushi Desai

Khushi Desai (MD Bar 17444)

EARTHJUSTICE

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*Attorneys for Plaintiff Ocean Conservancy*

**Parsons, Bobbie (Federal)**

---

**From:** Parsons, Bobbie (Federal)  
**Sent:** Wednesday, January 24, 2018 9:57 AM  
**To:** Graff, Mark (Federal)  
**Cc:** Owens, Derrick (Federal); Uthmeier, James (Federal); Murnane, Barbara (Federal); Comstock, Earl (Federal)  
**Subject:** FW: New FOIA lawsuit over red snapper  
**Attachments:** 1\_OC\_Complaint\_1 23 18.pdf

Hi Mark,

Thanks for the email.

(b) (5)

Thanks,  
Bobbie

**From:** Mark Graff - NOAA Federal [mailto:mark.graff@noaa.gov]  
**Sent:** Wednesday, January 24, 2018 9:47 AM  
**To:** Parsons, Bobbie (Federal) <bParsons@doc.gov>  
**Cc:** Toland, Michael (Federal) <MToland@doc.gov>  
**Subject:** Fwd: New FOIA lawsuit over red snapper

Hi Bobbie--

The request below (Ocean Conservancy seeking Red Snapper season extension records) just went to litigation,

(b)(5)

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628-5658 (O)  
(b)(6) (C)

Confidentiality Notice: This e mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.

----- Forwarded message -----

From: **Mark Graff - NOAA Federal** <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)>

Date: Wed, Jan 24, 2018 at 9:44 AM

Subject: Fwd: New FOIA lawsuit over red snapper

To: Samuel Dixon - NOAA Affiliate <[samuel.dixon@noaa.gov](mailto:samuel.dixon@noaa.gov)>, Steven Goodman - NOAA Federal <[Steven.Goodman@noaa.gov](mailto:Steven.Goodman@noaa.gov)>, Velna Bullock - NOAA Federal <[velna.l.bullock@noaa.gov](mailto:velna.l.bullock@noaa.gov)>

Cc: Robert Hogan <[robert.j.hogan@noaa.gov](mailto:robert.j.hogan@noaa.gov)>, Robert Swisher - NOAA Federal <[robert.swisher@noaa.gov](mailto:robert.swisher@noaa.gov)>, Lola Stith - NOAA Affiliate <[lola.m.stith@noaa.gov](mailto:lola.m.stith@noaa.gov)>, "Toland, Michael" <[mtoland@doc.gov](mailto:mtoland@doc.gov)>, "Bogomolny, Michael (Federal)" <[MBogomolny@doc.gov](mailto:MBogomolny@doc.gov)>, Stacey Nathanson - NOAA Federal <[stacey.nathanson@noaa.gov](mailto:stacey.nathanson@noaa.gov)>, Scott Smullen - NOAA Federal <[scott.smullen@noaa.gov](mailto:scott.smullen@noaa.gov)>, Tanya Dobrzynski - NOAA Federal <[tanya.dobrzynski@noaa.gov](mailto:tanya.dobrzynski@noaa.gov)>

Good Morning All,

Below is a new lawsuit from Ocean Conservancy, seeking the Red Snapper Season Extension records. (b)(5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Thanks guys--

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
[\(301\) 628-5658](tel:3016285658) (O)  
(b)(6) (C)

Confidentiality Notice: This e mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.

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From: **Kristen Gustafson - NOAA Federal** <[kristen.l.gustafson@noaa.gov](mailto:kristen.l.gustafson@noaa.gov)>

Date: Tue, Jan 23, 2018 at 5:35 PM

Subject: New FOIA lawsuit over red snapper

To: Mark Graff - NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)>

Hi Mark,

I wanted to make sure that you were aware of the new lawsuit filed by Ocean Conservancy in District Court in Maryland challenging NOAA's failure to produce documents in response to a FOIA request on the red snapper season reopening. I asked our SE Section attorneys about the status of the production, and here's the response I received:

(b) (5)

Kristen

--

Kristen L. Gustafson  
Deputy General Counsel  
General Counsel's Office  
National Oceanic and Atmospheric Administration  
U.S. Department of Commerce

[Kristen.L.Gustafson@noaa.gov](mailto:Kristen.L.Gustafson@noaa.gov)

Office: [202-482-1588](tel:202-482-1588)

Cell (b)(6)

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

OCEAN CONSERVANCY  
1300 19th Street, NW, Eighth Floor  
Washington, DC 20036

Plaintiff,

v.

NATIONAL MARINE FISHERIES SERVICE  
U.S. Department of Commerce  
Room 14555  
1315 East-West Highway  
Silver Spring, Montgomery County, MD 20910

NATIONAL OCEANIC AND ATMOSPHERIC  
ADMINISTRATION  
U.S. Department of Commerce  
Room 5128  
1401 Constitution Avenue, NW  
Washington, DC 20230

Defendants.

No. \_\_\_\_\_

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

**INTRODUCTION**

1. Plaintiff Ocean Conservancy brings this case to remedy violations of the Freedom of Information Act (FOIA), 5 U.S.C. § 552, by the National Marine Fisheries Service and National Oceanic and Atmospheric Administration (collectively, Defendants). The violations arise out of Defendants' continuing failure to respond to Ocean Conservancy's FOIA request.

2. In June 2017, Defendants issued a Temporary Rule reopening the Gulf of Mexico private angler red snapper fishing season and extending the fishing season from 3 to 42 days. 82 Fed. Reg. 27,777 (June 19, 2017). Defendants admitted that the action would cause the private recreational fishing sector to substantially exceed the annual catch limit set for that sector and delay rebuilding for the overfished population of red snapper, *id.* at 27,779, in violation of a

number of statutes.

3. Ocean Conservancy filed a FOIA request with the National Marine Fisheries Service (Fisheries Service), an agency of the National Oceanic and Atmospheric Administration (NOAA), on June 19, 2017, seeking pertinent records to enable Ocean Conservancy to analyze the basis for and impact of the Temporary Rule and disseminate the information to the public. The records sought in the FOIA request are essential to Ocean Conservancy's advocacy and public education missions to support protecting the red snapper population. Defendants failed to provide Ocean Conservancy a determination on its FOIA request within the time required under FOIA and have not to date provided Ocean Conservancy a determination on its request.

4. Although Defendants have provided Ocean Conservancy a small, partial release of responsive records, Defendants continue to unlawfully withhold the information sought by Ocean Conservancy. Defendants have provided Ocean Conservancy no information on additional responsive records in their possession. By failing to provide the requested records, Defendants are actively impeding Ocean Conservancy's access to government information and blocking its ability to carry out its organizational missions.

5. Having constructively exhausted its administrative remedies with Defendants, Ocean Conservancy now turns to this Court to enforce FOIA's guarantee of public access to agency records and to remedy Defendants' withholding of that access. Accordingly, Ocean Conservancy asks this Court to declare that Defendants have violated FOIA by failing to make a determination on Ocean Conservancy's FOIA request and by withholding the requested records, to order Defendants to immediately provide Ocean Conservancy with a legally compliant response to its outstanding record request, to order Defendants to promptly provide Ocean Conservancy all responsive records, and to grant other appropriate relief, including attorneys'



fees and costs.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1333 (federal question) and 5 U.S.C. § 552(a)(4)(B) (FOIA).

7. Venue properly vests in this District pursuant to 5 U.S.C. § 552(a)(4)(B) because, on information and belief, the requested agency records are situated in this District. Venue also properly vests in this District pursuant to 28 U.S.C. § 1391(b) and (e)(i) because: (1) the principal office of each Defendant is located in this District and (2) a substantial part of the events and omissions which gave rise to this action occurred in this District.

8. This Court has authority to grant the requested relief in this case pursuant to FOIA, 5 U.S.C. § 552(a)(4)(B), (E), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 2202.

### **PARTIES**

9. Plaintiff OCEAN CONSERVANCY is a nonprofit, science-based conservation organization dedicated to healthy oceans and the wildlife and communities that depend on them. Since 1972, Ocean Conservancy has sought to improve the health of our nation's marine wildlife and fish. To that end, and as part of its organizational goals, Ocean Conservancy seeks to prevent degradation of marine habitats and end overfishing (i.e., catching more fish than the remaining population can replace). Ocean Conservancy has over 125,000 members and supporters worldwide, including over 14,000 in the five Gulf of Mexico states. The organization publishes numerous reports, articles, newsletters, and other analyses on ocean and fishery sustainability topics each year. The organization is routinely called upon to brief and educate federal and state policymakers, and Ocean Conservancy staff are frequently quoted in the media

and invited to present and speak at various conferences and events. Ocean Conservancy's headquarters are located in Washington, DC. It also has offices in Alaska, California, Washington, Oregon, Florida, and Texas.

10. In the 1990s, Ocean Conservancy became involved in the conservation and management of the red snapper fishery. For the past three decades, Ocean Conservancy has worked to promote a healthy red snapper fishery for the benefit of the Gulf of Mexico's ecosystem and coastal communities. Ocean Conservancy staff have regularly attended meetings of the Gulf of Mexico Fishery Management Council and have been involved in public awareness events concerning fisheries for decades.

11. In 2005, Ocean Conservancy successfully challenged the Fisheries Service's rebuilding plan for red snapper. *Coastal Conservation Ass'n v. Gutierrez*, 512 F. Supp. 2d 896 (S.D. Tex. 2007). In 2015, Ocean Conservancy filed *amicus curiae* briefs in support of the federal government in two lawsuits challenging the Fisheries Service's red snapper management.

12. Defendant NATIONAL MARINE FISHERIES SERVICE is an agency of the U.S. Department of Commerce that has been delegated the responsibility to manage the Gulf of Mexico red snapper fishery under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. 16 U.S.C. §§ 1801 *et seq.* The Fisheries Service has authority to issue regulations governing the red snapper fishery seasons and other management measures. The principal office of the Fisheries Service is located in Silver Spring, Montgomery County, Maryland. The Fisheries Service is in possession and control of the records that Ocean Conservancy seeks, and therefore it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

13. Defendant NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION is an agency of the U.S. Department of Commerce with supervisory responsibility for the

Fisheries Service. The principal office of NOAA is located in Silver Spring, Montgomery County, Maryland. NOAA administers and oversees FOIA requests made to the Fisheries Service. NOAA's FOIA office is located in Silver Spring, Montgomery County, Maryland. NOAA is in possession and control of the records that Ocean Conservancy seeks, and therefore is subject to FOIA pursuant to 5 U.S.C. § 552(f).

### STATUTORY BACKGROUND

14. FOIA's basic purpose is to ensure government transparency and the expeditious disclosure of government records. FOIA creates a statutory right of public access to agency records by requiring that federal agencies make records available to any person upon request. 5 U.S.C. § 552(a)(3)(A).

15. FOIA imposes strict deadlines on federal agencies to respond to requests. FOIA requires an agency to issue a final determination resolving an information request within 20 business days from the date of its receipt and to immediately notify the requester of its determination and the reasons therefore. *Id.* § 552(a)(6)(A)(i). This provision requires the agency to "(i) gather and review the documents; (ii) determine and communicate the scope of the agency's documents it intends to produce and withhold, and the reasons for withholding any documents; and (iii) inform the requester that it can appeal whatever portion of the 'determination' is adverse." *Citizens for Responsibility & Ethics in Wash. v. Fed. Election Comm'n*, 711 F.3d 180, 188 (D.C. Cir. 2013); *see* 5 U.S.C. § 552(a)(6)(A)(i).

16. An agency may extend this 20-day period only in "unusual circumstances," as defined by 5 U.S.C. § 552(a)(6)(B)(iii), and only for a maximum of ten working days. *Id.* § 552(a)(6)(B)(i); *see also* 15 C.F.R. § 4.6(b), (d).

17. Agencies are required to provide "an estimated date on which the agency will

complete action on the request” whenever a request will take more than ten days to resolve.

5 U.S.C. § 552(a)(7)(B). Agencies extending the period for unusual circumstances must, when providing notice of the extension, provide “the date on which a determination is expected to be dispatched.” *Id.* § 552(a)(6)(B)(i); *see also* 15 C.F.R. § 4.6(d)(1).

18. The agency must then make the requested records “promptly” available. 5 U.S.C. § 552(a)(3)(A). In so doing, the agency must make reasonable efforts to search for records in a manner that is reasonably calculated to locate all records responsive to the FOIA request. *Id.* § 552(a)(3)(C), (D).

19. The agency may withhold from production the limited classes of records exempted under 5 U.S.C. § 552(b). For any record withheld, the agency bears the burden of proving that one of the statutory exemptions applies. *Id.* § 552(a)(4)(B). Even if some information is exempt from disclosure, “[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt.” *Id.* § 552(b).

20. An agency’s failure to comply with FOIA’s deadlines constitutes a constructive denial of the request, and the requester’s administrative remedies are deemed exhausted for purposes of litigation. *Id.* § 552(a)(6)(C)(i).

#### **STATEMENT OF FACTS**

21. On June 19, 2017, Defendants issued a Temporary Rule reopening the Gulf of Mexico private angler red snapper fishing season and extending that fishing season from 3 to 42 days. 82 Fed. Reg. 27,777 (June 19, 2017).

22. The same day, June 19, 2017, Ocean Conservancy submitted a FOIA request to the Fisheries Service seeking records related to the reopening of the private angler red snapper

fishing season. The request sought all documents relating to the reopening of the red snapper season within the date range of January 20, 2017, through June 19, 2017.

23. Ocean Conservancy's FOIA request furthers the organization's objectives to end overfishing and inform its members and the public about conservation and management of the red snapper fishery to benefit the Gulf of Mexico's ecosystem and coastal communities.

24. On June 20, 2017, Ocean Conservancy received a form email from Defendants acknowledging receipt of the request and assigning the request a tracking number, DOC-NOAA-2017-001394. The acknowledgement did not indicate the scope of the documents Defendants would produce, nor did it indicate any planned withholdings or exemptions.

25. The due date for Defendants to issue a determination on Ocean Conservancy's FOIA request was July 18, 2017, under 5 U.S.C. § 552(a)(6)(A)(i).

26. On July 6, 2017, NOAA notified Ocean Conservancy that the agency had granted Ocean Conservancy's fee waiver request. *See id.* 552(a)(4)(A)(i); 15 C.F.R. § 4.11(l).

27. On July 11, 2017, Ocean Conservancy clarified the scope of its request on a phone call with the Fisheries Service's Southeast Region FOIA Coordinator.

28. On July 17, 2017 the day before FOIA required the Fisheries Service to respond to Ocean Conservancy's request the Fisheries Service requested to extend the due date from July 18, 2017, to August 11, 2017 more than the ten working days allowed for unusual circumstances under 5 U.S.C. § 552(a)(6)(B)(i) and 15 C.F.R. § 4.6(b), (d). Ocean Conservancy agreed to the request.

29. On July 17, 2017, Ocean Conservancy and another organization filed a federal lawsuit challenging Defendants' unilateral decision to extend the private angler red snapper fishing season in the Gulf of Mexico. *Ocean Conservancy v. Ross*, No. 1:17-cv-01408-ABJ

(D.D.C. filed July 17, 2017).

30. On July 25, 2017, NOAA's FOIA Officer emailed Ocean Conservancy requesting additional information in order to make a determination on Ocean Conservancy's eligibility for a waiver of fees. Although NOAA already had granted Ocean Conservancy's fee waiver request, NOAA's FOIA Officer asserted Ocean Conservancy might use the requested records in its lawsuit, which, according to the FOIA Officer, may constitute a "commercial interest" in the records that Ocean Conservancy had not previously disclosed. The FOIA Officer requested additional information on Ocean Conservancy's purported commercial interests in the records.

31. Ocean Conservancy responded via email on July 26, 2017, reiterating that it is a nonprofit organization that has no commercial interest in the requested records.

32. Defendants did not acknowledge or respond to Ocean Conservancy's July 26, 2017 email.

33. On August 2, 2017, Ocean Conservancy sent NOAA an email to inquire about the agency's determination whether Ocean Conservancy has a "commercial interest" in the requested records.

34. On August 3, 2017, Ocean Conservancy received an email from NOAA alleging that Ocean Conservancy had substantively failed to answer the underlying question regarding its commercial interest.

35. Ocean Conservancy emailed NOAA that same day August 3, 2017 recounting and further explaining the ways in which it would use the records.

36. NOAA did not provide any response.

37. Ocean Conservancy sent NOAA an email on August 28, 2017, to inquire as to the status of the request. NOAA responded that same day via email granting a full fee waiver for the

second time.

38. On August 31, 2017, NOAA telephoned Ocean Conservancy asking to further postpone the agency's response to Ocean Conservancy's FOIA request. Ocean Conservancy declined NOAA's request during that call.

39. On September 12, 2017, Ocean Conservancy received an email from the Fisheries Service stating the Fisheries Service's Southeast Regional Office would be closed due to Hurricane Irma. The email did not provide a timetable for responding to Ocean Conservancy's FOIA request.

40. On September 12, 2017, Ocean Conservancy sent NOAA an email narrowing the date range of its FOIA request to March 13, 2017, through June 19, 2017, to lessen the burden of its request on the agency. NOAA did not acknowledge that email or enter it into the agency's FOIA correspondence log.

41. On September 18, 2017, Ocean Conservancy received an email from the Fisheries Service stating that the Southeast Regional Office reopened on September 15, 2017. The Fisheries Service also stated that the server housing the agency's FOIA application and responsive records was not yet operating, but was anticipated to be running by the end of the day on September 18, 2017. The Fisheries Service stated that it had on September 5, 2017, provided the NOAA Office of General Counsel, Southeast Region with an interim records response for that office's legal review and clearance. The email did not provide any further timetable for responding to Ocean Conservancy's FOIA request, any statement on the scope of records that the agency had sent to the General Counsel or that the agency would produce, or any statement on the agency's planned withholdings or exemptions.

42. On October 12, 2017, having not received any interim records response, Ocean

Conservancy sent an email to NOAA requesting an update on the status of its FOIA request.

43. On October 17, 2017, Ocean Conservancy received an email from the Fisheries Service stating that “a records response has been provided to [the Fisheries Service] and NOAA FOIA for release approval.”

44. On November 14, 2017, Ocean Conservancy sent NOAA an email requesting that Defendants commit to providing the requested documents by a date certain.

45. Later that day, November 14, 2017, NOAA informed Ocean Conservancy it would provide a partial, interim release of 38 documents “shortly.”

46. On November 28, 2017, Ocean Conservancy received an “interim response” from Defendants transmitting 38 documents. The majority of the 38 documents consist of correspondence discussing how to set up an email account to accept public comments on the Temporary Rule. The response did not indicate how many or the scope of any other records Defendants were processing or would produce. Nor did the response provide any information on what documents Defendants planned to withhold or the reasons for any withholding.

47. On December 15, 2017, NOAA informed Ocean Conservancy that additional records were undergoing legal review and clearance and a response to the request would be provided “shortly.” This correspondence did not convey the number or scope of the records under review, or any statement on the agency’s planned withholdings or exemptions.

48. On January 5, 2018, Ocean Conservancy sent NOAA an email requesting an update on the status of its FOIA request.

49. Ocean Conservancy has received no further correspondence from the Fisheries Service or NOAA to date.

50. Ocean Conservancy has not received all the responsive records or the reasonably



segregable portion of non-exempt responsive records to date.

51. The due date for Defendants' FOIA determination remains August 11, 2017.

52. While Defendants acknowledged receipt of the FOIA request and granted the fee waiver twice, Defendants have failed to substantively respond to Ocean Conservancy's FOIA request. None of Defendants' responses indicated the scope of the documents they would produce. Nor did any response include information on planned withholdings or exemptions. Defendants thus never provided Ocean Conservancy with the determination required by FOIA and the governing regulations more than seven months after acknowledging receipt of the request, more than six months after initially granting the fee waiver, more than six months after the statutory due date for issuing a determination, and more than five months after the agreed-upon extended due date for issuing a determination.

#### **CLAIMS FOR RELIEF**

##### **Count I – Failure to Make a Determination on a FOIA Request, 5 U.S.C. § 552(a)(6), (7)**

53. The allegations made in all preceding paragraphs are realleged and incorporated by this reference.

54. NOAA and the Fisheries Service are "agencies" under FOIA. 5 U.S.C. § 552(f)(1). NOAA and the Fisheries Service have possession and control of the requested records.

55. Defendants were required to provide a determination within 20 working days on Ocean Conservancy's FOIA request, dated June 19, 2017. *Id.* § 552(a)(6).

56. Defendants were required to provide "an estimated date on which the agency [would] complete action on the request." *Id.* § 552(a)(7)(B); *accord id.* § 552(a)(6)(B)(i).

57. Ocean Conservancy agreed to extend Defendants' deadline to respond to Ocean Conservancy's FOIA request from July 18, 2017, to August 11, 2017. Even so, Defendants have

not issued a determination on Ocean Conservancy's FOIA request, more than six months after the statutory deadline and more than five months after the agreed-upon extended deadline.

58. Ocean Conservancy has constructively and fully exhausted all administrative remedies required by FOIA. *Id.* § 552(a)(6)(A), (C).

59. Defendants violated FOIA by failing to make the required determination within 20 working days in response to Ocean Conservancy's June 19, 2017 FOIA request. *Id.* § 552(a)(6).

60. Defendants violated FOIA by failing to provide an estimated date by which they would complete action on Ocean Conservancy's June 19, 2017 FOIA request. *Id.* § 552(a)(6)(B)(i), (7)(B).

**Count II – Failure to Respond to a FOIA Request, 5 U.S.C. § 552(a)(3), (b)**

61. The allegations made in all preceding paragraphs are realleged and incorporated by this reference.

62. FOIA requires Defendants to process records requests and promptly provide the requested records or the reasonably segregable portion of the requested records not subject to a FOIA exemption. 5 U.S.C. § 552(a)(3), (b).

63. Defendants have provided Ocean Conservancy only a subset of the requested records. Defendants have not claimed that any of the records they have not yet provided are exempt from disclosure. Therefore, the interim response does not constitute the reasonably segregable portion of the requested records not subject to a FOIA exemption.

64. Defendants have acknowledged they are in possession of additional responsive records they have not provided to Ocean Conservancy to date.

65. Defendants have not provided Ocean Conservancy all the requested records. Defendants have not provided Ocean Conservancy the reasonably segregable portion of the requested records not subject to a FOIA exemption.

66. Defendants have violated FOIA by failing to promptly provide the responsive records or the reasonably segregable portion of lawfully exempt responsive records to Ocean Conservancy. *Id.*

### **REQUEST FOR RELIEF**

WHEREFORE, Ocean Conservancy prays that this Court:

1. Declare that Defendants failed to make a timely determination on Ocean Conservancy's records request in violation of FOIA, 5 U.S.C. § 552(a)(6), (7);
2. Declare that Defendants failed to promptly provide records in response to Ocean Conservancy's information request in violation of 5 U.S.C. § 552(a)(3), (b);
3. Order Defendants to provide a determination on Ocean Conservancy's FOIA request, as required by FOIA;
4. Order Defendants to conduct searches that are reasonably calculated to locate all records responsive to Ocean Conservancy's FOIA request, as required by FOIA;
5. Order Defendants to provide Ocean Conservancy all responsive records or the reasonably segregable portions of lawfully exempt records, as required by FOIA, within 20 days of this Court's order;
6. Maintain jurisdiction over this action until Defendants are in compliance with FOIA and every order of this Court;
7. Award Ocean Conservancy its costs and reasonable attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(E) or 28 U.S.C. § 2412; and

8. Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted this 23rd day of January, 2018.

/s/ Khushi Desai

Khushi Desai (MD Bar 17444)

EARTHJUSTICE

1625 Mass. Ave., NW, Ste. 702

Washington, DC 20036

202-667-4500 Telephone

202-667-2356 Fax

kdesai@earthjustice.org

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*Attorneys for Plaintiff Ocean Conservancy*

## Mark Graff - NOAA Federal

---

**From:** Mark Graff NOAA Federal  
**Sent:** Wednesday, January 24, 2018 9:59 AM  
**To:** Lola Stith NOAA Affiliate  
**Subject:** Re: ACTION REQUIRED: Task for Request DOC OS 2018 000203 (REVIEW/SIGN)  
**Attachments:** NOAA Response\_Dept Wide Records Request Memo DOC OS 2018 000203 mhg.pdf

Great! Signed and attached

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628 5658 (O)  
(b)(6) (C)

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On Tue, Jan 23, 2018 at 3:17 PM, Lola Stith NOAA Affiliate <[lola.m.stith@noaa.gov](mailto:lola.m.stith@noaa.gov)> wrote:

Hi Mark (b)(5).

Please sign/return the attached tasker.

R/  
Lola

Forwarded message

From: [foia@regulations.gov](mailto:foia@regulations.gov) <[foia@regulations.gov](mailto:foia@regulations.gov)>  
Date: Fri, Jan 19, 2018 at 11:35 AM  
Subject: FOIA Task Completed for DOC OS 2018 000203  
To: "[acrawford@doc.gov](mailto:acrawford@doc.gov)" <[acrawford@doc.gov](mailto:acrawford@doc.gov)>, "[lola.m.stith@noaa.gov](mailto:lola.m.stith@noaa.gov)" <[lola.m.stith@noaa.gov](mailto:lola.m.stith@noaa.gov)>

The FOIA Task for DOC OS 2018 000203 was completed. Additional details for this task are as follows:

Task Details:

- Tracking Number: DOC OS 2018 000203
- Task Type: Request Detail
- Outcome: No Records Found
- Task Description: See attached records search tasker in correspondence and submission details. Upload responsive records, if any and close out task. Please send Mark/Lola notice of final outcome.
- Task Comment: At this time there are no responsive documents to the FOIA request.
- Assigned To: Lawanda Fisher

- Assigned By: Lawanda Fisher
- Date Sent: 12/28/2017
- Due Date: 01/05/2018
- Closed Date: 01/19/2018

Lola Stith

Contractor - The Ambit Group, LLC  
NOAA Office of the Chief Information Officer (OCIO)

(c (b)(6) [REDACTED])

[lola.m.stith@noaa.gov](mailto:lola.m.stith@noaa.gov)



November 9, 2017

MEMORANDUM FOR:       Vernon E. Curry, CEN                   Pam Moulder, ESA  
                                  Stephen Kong, EDA                   Catherine Fletcher, NIST  
                                  Jennifer Kuo, BIS                   Victor Powers, ITA  
                                  Stacy Cheney, NTIA               **Mark Graff, NOAA**  
                                  Jamie Boston, PTO               Jennifer Piel, OIG  
                                  Bobbie Parsons, IOS              Lisa Casias, OS  
                                  Rhonda Hackley, OFEQ

FROM:                       Michael J. Toland, Ph.D.  
                                  Deputy Chief Freedom of Information Act (FOIA) Officer

SUBJECT:                   FOIA Request Austin Evers  
                                  DOC-OS-2018-000203

The U.S. Department of Commerce’s FOIA Office, Office of Privacy and Open Government, received a request seeking:

“All records relating to actual or potential renovations (including remodeling or changes to decor) of any part of the office suites (including foyers, waiting rooms, conference rooms, adjacent hallways, or other common areas) for any individuals in, or acting in, Senate-confirmed (PAS) positions at your agency.”

PAS Positions

Secretary of Commerce (IOS)  
Deputy Secretary (IOS)  
General Counsel (IOS)  
Assistant Secretary for Legislative and Intergovernmental Affairs (IOS)  
Chief Financial Officer and Assistant Secretary for Administration (OS)  
Inspector General (OIG)  
Under Secretary for Economic Affairs (ESA)  
Under Secretary of Commerce for Standards and Technology (NIST)  
Assistant Secretary for Economic Development (EDA)  
Director of the Census (CEN)  
Assistant Secretary for Communications and Information (NTIA)  
Under Sec. for Intellectual Property and Dir. of US Patent and Trademark Office (PTO)  
Under Secretary for Industry and Security (BIS)  
Assistant Secretary for Export Administration (BIS)  
Assistant Secretary for Export Enforcement (BIS)  
Under Secretary for International Trade (ITA)  
Dir. Gen. of US & Foreign Commercial Service and Asst. Sec. for Global Markets (ITA)  
Assistant Secretary for Enforcement and Compliance (ITA)  
Assistant Secretary for Industry and Analysis (ITA)  
Under Secretary for Oceans & Atmosphere and Admin. of NOAA (NOAA)  
Asst. Sec. for Env. Obsv. & Prediction/Dep. Admin. for Oceans & Atmosphere (NOAA)

Assistant Secretary for Conservation and Management (NOAA)

I am sending this FOIA request to you for your attention, since your office has been identified as possibly having records that may be responsive to the request. Please take the following actions:

- Please notify our office if you know of any other bureau/office that may also have responsive documents.
- Conduct a search for responsive records.
  - You must search every place that could reasonably be expected to have responsive documents.
  - The date range for records that may be responsive to this request is January 20, 2017 to November 8, 2017; records created after November 8 are not responsive to the request.
- If you identify any records:
  - Please provide electronic copies of the records to me within ten (10) business days of the date of this letter—on or before November 23, 2017.
    - Upload documents in FOIAonline following the instructions in the attachment entitled “Instructions for uploading documents into FOIAonline.”
  - Identify whether you believe the records, or any portions thereof, should be withheld from disclosure.
    - Attached is a copy of FOIA Exemptions to assist you with making withholding determinations.
    - Ayana Crawford is also available to answer any questions you may have about FOIA Exemptions or the FOIA request by phone at 202-482-9109, or by email at [acrawford@doc.gov](mailto:acrawford@doc.gov).
  - Sign and date the attached Certification of Search.
  - Return the completed Certification of Search along with the responsive records to my office.
- If you do not identify any responsive records:
  - Check the box “My Office has found no responsive document” on the attached Certification of Search.
  - Sign and date the Certification of Search.
  - Return the completed Certification of Search to my office.

Attachments

1. Instructions for uploading documents into FOIAonline
2. Certification of Search
3. FOIA Exemptions



## Instructions for uploading documents into FOIAonline

A signed Certification of Search should be uploaded separately in Case File/Correspondence/Other. Only the Certification of Search signed by the FOIA Officer/Senior Official from the Bureau should be uploaded. Please do not upload Sub-Agency Taskers.

Responsive documents are to be uploaded in Case File/Records. Please identify whether you believe the document, or any portion of it, should be withheld from disclosure. You must include the FOIA exemption next to any information you identify as protected from disclosure.

- A clean copy and redacted copy shall be uploaded on FOIAonline.
- The clean copy will be uploaded with an UU (Unredacted – Unreleaseable) Publish Option.
- Redacted copy will be uploaded and grouped by exemptions applied, i.e., RR (Redacted-Releaseable) - (b)6, (b)5 (please include the privilege used).
- The format to be used for “Title” of uploaded documents: ITA - 24 documents, RR, (b)4, (b)6. (Bureau [not sub agency] - number of documents - Publish Options – exemptions).
- For documents that are completely withheld UU-Unredacted – Unreleaseable; and RU-Redacted-Unreleaseable (you must apply an Exemption in the Action Column).
- For referred documents use the following format for “Title:” 15 documents refer to NTIA.

**Certification of Search for FOIA Request No. DOC-OS-2018-000203**

THIS RESPONSE MUST BE SIGNED BY A SENIOR OFFICIAL IN YOUR OFFICE.

Please contact me if you have any questions about the scope of this request or the FOIA exemptions, at 202-482-3842.

Please sign this sheet of paper and check all of the appropriate boxes

- Uploaded in FOIAonline are all documents in the possession of my office which are responsive and can be released in entirety.
- Uploaded in FOIAonline are all documents within the possession of my office which are responsive and we have found reason to partially withhold. One clean copy and one redacted copy have been uploaded.
- Uploaded in FOIAonline are all documents within the possession of my office which are responsive and we have found reason to withhold entirely, each document to be withheld entirely has been noted.
- Uploaded in FOIAonline are all documents within the possession of my office which are responsive and must be referred to the originating office, bureau, or federal agency for disclosure determinations.
- My office has found no responsive documents.
- All disclosure determinations have been made by the Commerce Office that originated or has control of the documents
- A foreseeable harm review and analysis has been completed for all withheld documents and portions of documents and it has been determined that disclosure of the withheld material would result in harm to an interest protected by the asserted exemption or that disclosure is prohibited by law. Name of person most knowledgeable with the issue of foreseeable harm:  
.

Interim response                       Final response

**GRAFF.MARK.HYR**  
**UM.1514447892**

Digitally signed by  
GRAFF.MARK.HYRUM.1514447892  
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI,  
ou=OTHER, cn=GRAFF.MARK.HYRUM.1514447892  
Date: 2018.01.24 09:58:15 -05'00'

Signature (Senior Official)

Date

## **FOIA Exemptions**

**Exemption 1:** classified national defense and foreign relations information;

**Exemption 2:** internal agency personnel rules and practices;

**Exemption 3:** information that is prohibited from disclosure by another federal law;

**Exemption 4:** trade secrets and other confidential or privileged commercial or financial information;

**Exemption 5:** inter-agency or intra-agency communications that are protected by legal privileges, including the deliberative process, attorney-client and attorney work-product privileges;

**Exemption 6:** information involving matters of personal privacy;

**Exemption 7:** records or information compiled for law enforcement purposes, to the extent that the production of those records:

Exemption (7)(A) could reasonably be expected to interfere with enforcement proceedings,

Exemption (7)(B) would deprive a person of a right to a fair trial or an impartial adjudication,

Exemption (7)(C) could reasonably be expected to constitute an unwarranted invasion of personal privacy,

Exemption (7)(D) could reasonably be expected to disclose the identity of and/or information provided by a confidential source,

Exemption (7)(E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or

Exemption (7)(F) could reasonably be expected to endanger the life or physical safety of any individual;

**Exemption 8:** information relating to the supervision of financial institutions; and

**Exemption 9:** geological information on wells.

## Mark Graff - NOAA Federal

---

**From:** Mark Graff NOAA Federal  
**Sent:** Wednesday, January 24, 2018 4:13 PM  
**To:** Stephen Lipps NOAA Federal; Holmes, Colin; Scott Smullen NOAA Federal; Jeff Dillen NOAA Federal; Kristen Gustafson NOAA Federal; Robert Hogan; \_DUS Staff; Tanya Dobrzynski NOAA Federal; Stuart Levenbach NOAA Federal; Kevin Wheeler NOAA Federal; Brandon Elsner NOAA Federal; Taylor Jordan NOAA Federal; Erik Noble NOAA Federal; Wendy Lewis NOAA Federal  
**Cc:** Tom Taylor; Kimberly Katzenbarger NOAA FEDERAL; Charles; Dennis Morgan NOAA Federal; Stacey Nathanson NOAA Federal; Robert Swisher NOAA Federal; Steven Goodman NOAA Federal; Samuel Dixon NOAA Affiliate; Lola Stith NOAA Affiliate; Zachary Goldstein NOAA Federal; Douglas Perry NOAA Federal; Nkolika Ndubisi NOAA Federal; Jeri Dockett NOAA Affiliate; Lawrence Charters NOAA Federal; Allison Soussi Tanani NOAA Federal; Bogomolny, Michael (Federal); Roxie Allison Holman NOAA Federal; John Almeida NOAA Federal; Michael Weiss NOAA Federal; Maria Williams NOAA Federal; Shawn Martin NOAA Federal; Kathryn Kempton NOAA Federal; Ed Kearns NOAA Federal; Cheryl Scannell NOAA Federal; Devin Brakob NOAA Federal; \_OCIO GPD; Darone Jones NOAA Federal  
**Subject:** Weekly FOIA Incoming and High Visibility Requests  
**Attachments:** Weekly FOIA Incoming and High Visibility Requests 01.17.18 01.24.18.xls; Ocean Conservancy Complaint\_1 23 18.pdf; Original Ocean Conservancy FOIA request.pdf

Good Afternoon,

Attached is the weekly report.

The one high visibility request received from Friends of Earth on January 17th seeking all records regarding Manna Fish Farms from January 1, 2016 to the present was reported in last week's report. (DOC NOAA 2017 000587).

One new litigation was received, from Ocean Conservancy, filed in District Court for the District of Maryland. The underlying request sought records regarding the decision to extend the Red Snapper Season (DOC NOAA 2017 001394) (b)(5)

[REDACTED] A copy of the underlying request and the District Court Complaint are both attached.

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628 5658 (O)  
(b)(6) (C)

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

OCEAN CONSERVANCY  
1300 19th Street, NW, Eighth Floor  
Washington, DC 20036

Plaintiff,

v.

NATIONAL MARINE FISHERIES SERVICE  
U.S. Department of Commerce  
Room 14555  
1315 East-West Highway  
Silver Spring, Montgomery County, MD 20910

NATIONAL OCEANIC AND ATMOSPHERIC  
ADMINISTRATION  
U.S. Department of Commerce  
Room 5128  
1401 Constitution Avenue, NW  
Washington, DC 20230

Defendants.

No. \_\_\_\_\_

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

**INTRODUCTION**

1. Plaintiff Ocean Conservancy brings this case to remedy violations of the Freedom of Information Act (FOIA), 5 U.S.C. § 552, by the National Marine Fisheries Service and National Oceanic and Atmospheric Administration (collectively, Defendants). The violations arise out of Defendants' continuing failure to respond to Ocean Conservancy's FOIA request.

2. In June 2017, Defendants issued a Temporary Rule reopening the Gulf of Mexico private angler red snapper fishing season and extending the fishing season from 3 to 42 days. 82 Fed. Reg. 27,777 (June 19, 2017). Defendants admitted that the action would cause the private recreational fishing sector to substantially exceed the annual catch limit set for that sector and delay rebuilding for the overfished population of red snapper, *id.* at 27,779, in violation of a

number of statutes.

3. Ocean Conservancy filed a FOIA request with the National Marine Fisheries Service (Fisheries Service), an agency of the National Oceanic and Atmospheric Administration (NOAA), on June 19, 2017, seeking pertinent records to enable Ocean Conservancy to analyze the basis for and impact of the Temporary Rule and disseminate the information to the public. The records sought in the FOIA request are essential to Ocean Conservancy's advocacy and public education missions to support protecting the red snapper population. Defendants failed to provide Ocean Conservancy a determination on its FOIA request within the time required under FOIA and have not to date provided Ocean Conservancy a determination on its request.

4. Although Defendants have provided Ocean Conservancy a small, partial release of responsive records, Defendants continue to unlawfully withhold the information sought by Ocean Conservancy. Defendants have provided Ocean Conservancy no information on additional responsive records in their possession. By failing to provide the requested records, Defendants are actively impeding Ocean Conservancy's access to government information and blocking its ability to carry out its organizational missions.

5. Having constructively exhausted its administrative remedies with Defendants, Ocean Conservancy now turns to this Court to enforce FOIA's guarantee of public access to agency records and to remedy Defendants' withholding of that access. Accordingly, Ocean Conservancy asks this Court to declare that Defendants have violated FOIA by failing to make a determination on Ocean Conservancy's FOIA request and by withholding the requested records, to order Defendants to immediately provide Ocean Conservancy with a legally compliant response to its outstanding record request, to order Defendants to promptly provide Ocean Conservancy all responsive records, and to grant other appropriate relief, including attorneys'

fees and costs.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1333 (federal question) and 5 U.S.C. § 552(a)(4)(B) (FOIA).

7. Venue properly vests in this District pursuant to 5 U.S.C. § 552(a)(4)(B) because, on information and belief, the requested agency records are situated in this District. Venue also properly vests in this District pursuant to 28 U.S.C. § 1391(b) and (e)(i) because: (1) the principal office of each Defendant is located in this District and (2) a substantial part of the events and omissions which gave rise to this action occurred in this District.

8. This Court has authority to grant the requested relief in this case pursuant to FOIA, 5 U.S.C. § 552(a)(4)(B), (E), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 2202.

### **PARTIES**

9. Plaintiff OCEAN CONSERVANCY is a nonprofit, science-based conservation organization dedicated to healthy oceans and the wildlife and communities that depend on them. Since 1972, Ocean Conservancy has sought to improve the health of our nation's marine wildlife and fish. To that end, and as part of its organizational goals, Ocean Conservancy seeks to prevent degradation of marine habitats and end overfishing (i.e., catching more fish than the remaining population can replace). Ocean Conservancy has over 125,000 members and supporters worldwide, including over 14,000 in the five Gulf of Mexico states. The organization publishes numerous reports, articles, newsletters, and other analyses on ocean and fishery sustainability topics each year. The organization is routinely called upon to brief and educate federal and state policymakers, and Ocean Conservancy staff are frequently quoted in the media



and invited to present and speak at various conferences and events. Ocean Conservancy's headquarters are located in Washington, DC. It also has offices in Alaska, California, Washington, Oregon, Florida, and Texas.

10. In the 1990s, Ocean Conservancy became involved in the conservation and management of the red snapper fishery. For the past three decades, Ocean Conservancy has worked to promote a healthy red snapper fishery for the benefit of the Gulf of Mexico's ecosystem and coastal communities. Ocean Conservancy staff have regularly attended meetings of the Gulf of Mexico Fishery Management Council and have been involved in public awareness events concerning fisheries for decades.

11. In 2005, Ocean Conservancy successfully challenged the Fisheries Service's rebuilding plan for red snapper. *Coastal Conservation Ass'n v. Gutierrez*, 512 F. Supp. 2d 896 (S.D. Tex. 2007). In 2015, Ocean Conservancy filed *amicus curiae* briefs in support of the federal government in two lawsuits challenging the Fisheries Service's red snapper management.

12. Defendant NATIONAL MARINE FISHERIES SERVICE is an agency of the U.S. Department of Commerce that has been delegated the responsibility to manage the Gulf of Mexico red snapper fishery under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. 16 U.S.C. §§ 1801 *et seq.* The Fisheries Service has authority to issue regulations governing the red snapper fishery seasons and other management measures. The principal office of the Fisheries Service is located in Silver Spring, Montgomery County, Maryland. The Fisheries Service is in possession and control of the records that Ocean Conservancy seeks, and therefore it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

13. Defendant NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION is an agency of the U.S. Department of Commerce with supervisory responsibility for the

Fisheries Service. The principal office of NOAA is located in Silver Spring, Montgomery County, Maryland. NOAA administers and oversees FOIA requests made to the Fisheries Service. NOAA's FOIA office is located in Silver Spring, Montgomery County, Maryland. NOAA is in possession and control of the records that Ocean Conservancy seeks, and therefore is subject to FOIA pursuant to 5 U.S.C. § 552(f).

### STATUTORY BACKGROUND

14. FOIA's basic purpose is to ensure government transparency and the expeditious disclosure of government records. FOIA creates a statutory right of public access to agency records by requiring that federal agencies make records available to any person upon request. 5 U.S.C. § 552(a)(3)(A).

15. FOIA imposes strict deadlines on federal agencies to respond to requests. FOIA requires an agency to issue a final determination resolving an information request within 20 business days from the date of its receipt and to immediately notify the requester of its determination and the reasons therefore. *Id.* § 552(a)(6)(A)(i). This provision requires the agency to "(i) gather and review the documents; (ii) determine and communicate the scope of the agency's documents it intends to produce and withhold, and the reasons for withholding any documents; and (iii) inform the requester that it can appeal whatever portion of the 'determination' is adverse." *Citizens for Responsibility & Ethics in Wash. v. Fed. Election Comm'n*, 711 F.3d 180, 188 (D.C. Cir. 2013); *see* 5 U.S.C. § 552(a)(6)(A)(i).

16. An agency may extend this 20-day period only in "unusual circumstances," as defined by 5 U.S.C. § 552(a)(6)(B)(iii), and only for a maximum of ten working days. *Id.* § 552(a)(6)(B)(i); *see also* 15 C.F.R. § 4.6(b), (d).

17. Agencies are required to provide "an estimated date on which the agency will

complete action on the request” whenever a request will take more than ten days to resolve.

5 U.S.C. § 552(a)(7)(B). Agencies extending the period for unusual circumstances must, when providing notice of the extension, provide “the date on which a determination is expected to be dispatched.” *Id.* § 552(a)(6)(B)(i); *see also* 15 C.F.R. § 4.6(d)(1).

18. The agency must then make the requested records “promptly” available. 5 U.S.C. § 552(a)(3)(A). In so doing, the agency must make reasonable efforts to search for records in a manner that is reasonably calculated to locate all records responsive to the FOIA request. *Id.* § 552(a)(3)(C), (D).

19. The agency may withhold from production the limited classes of records exempted under 5 U.S.C. § 552(b). For any record withheld, the agency bears the burden of proving that one of the statutory exemptions applies. *Id.* § 552(a)(4)(B). Even if some information is exempt from disclosure, “[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt.” *Id.* § 552(b).

20. An agency’s failure to comply with FOIA’s deadlines constitutes a constructive denial of the request, and the requester’s administrative remedies are deemed exhausted for purposes of litigation. *Id.* § 552(a)(6)(C)(i).

#### **STATEMENT OF FACTS**

21. On June 19, 2017, Defendants issued a Temporary Rule reopening the Gulf of Mexico private angler red snapper fishing season and extending that fishing season from 3 to 42 days. 82 Fed. Reg. 27,777 (June 19, 2017).

22. The same day, June 19, 2017, Ocean Conservancy submitted a FOIA request to the Fisheries Service seeking records related to the reopening of the private angler red snapper

fishing season. The request sought all documents relating to the reopening of the red snapper season within the date range of January 20, 2017, through June 19, 2017.

23. Ocean Conservancy's FOIA request furthers the organization's objectives to end overfishing and inform its members and the public about conservation and management of the red snapper fishery to benefit the Gulf of Mexico's ecosystem and coastal communities.

24. On June 20, 2017, Ocean Conservancy received a form email from Defendants acknowledging receipt of the request and assigning the request a tracking number, DOC-NOAA-2017-001394. The acknowledgement did not indicate the scope of the documents Defendants would produce, nor did it indicate any planned withholdings or exemptions.

25. The due date for Defendants to issue a determination on Ocean Conservancy's FOIA request was July 18, 2017, under 5 U.S.C. § 552(a)(6)(A)(i).

26. On July 6, 2017, NOAA notified Ocean Conservancy that the agency had granted Ocean Conservancy's fee waiver request. *See id.* 552(a)(4)(A)(i); 15 C.F.R. § 4.11(l).

27. On July 11, 2017, Ocean Conservancy clarified the scope of its request on a phone call with the Fisheries Service's Southeast Region FOIA Coordinator.

28. On July 17, 2017 the day before FOIA required the Fisheries Service to respond to Ocean Conservancy's request the Fisheries Service requested to extend the due date from July 18, 2017, to August 11, 2017 more than the ten working days allowed for unusual circumstances under 5 U.S.C. § 552(a)(6)(B)(i) and 15 C.F.R. § 4.6(b), (d). Ocean Conservancy agreed to the request.

29. On July 17, 2017, Ocean Conservancy and another organization filed a federal lawsuit challenging Defendants' unilateral decision to extend the private angler red snapper fishing season in the Gulf of Mexico. *Ocean Conservancy v. Ross*, No. 1:17-cv-01408-ABJ

(D.D.C. filed July 17, 2017).

30. On July 25, 2017, NOAA's FOIA Officer emailed Ocean Conservancy requesting additional information in order to make a determination on Ocean Conservancy's eligibility for a waiver of fees. Although NOAA already had granted Ocean Conservancy's fee waiver request, NOAA's FOIA Officer asserted Ocean Conservancy might use the requested records in its lawsuit, which, according to the FOIA Officer, may constitute a "commercial interest" in the records that Ocean Conservancy had not previously disclosed. The FOIA Officer requested additional information on Ocean Conservancy's purported commercial interests in the records.

31. Ocean Conservancy responded via email on July 26, 2017, reiterating that it is a nonprofit organization that has no commercial interest in the requested records.

32. Defendants did not acknowledge or respond to Ocean Conservancy's July 26, 2017 email.

33. On August 2, 2017, Ocean Conservancy sent NOAA an email to inquire about the agency's determination whether Ocean Conservancy has a "commercial interest" in the requested records.

34. On August 3, 2017, Ocean Conservancy received an email from NOAA alleging that Ocean Conservancy had substantively failed to answer the underlying question regarding its commercial interest.

35. Ocean Conservancy emailed NOAA that same day August 3, 2017 recounting and further explaining the ways in which it would use the records.

36. NOAA did not provide any response.

37. Ocean Conservancy sent NOAA an email on August 28, 2017, to inquire as to the status of the request. NOAA responded that same day via email granting a full fee waiver for the

second time.

38. On August 31, 2017, NOAA telephoned Ocean Conservancy asking to further postpone the agency's response to Ocean Conservancy's FOIA request. Ocean Conservancy declined NOAA's request during that call.

39. On September 12, 2017, Ocean Conservancy received an email from the Fisheries Service stating the Fisheries Service's Southeast Regional Office would be closed due to Hurricane Irma. The email did not provide a timetable for responding to Ocean Conservancy's FOIA request.

40. On September 12, 2017, Ocean Conservancy sent NOAA an email narrowing the date range of its FOIA request to March 13, 2017, through June 19, 2017, to lessen the burden of its request on the agency. NOAA did not acknowledge that email or enter it into the agency's FOIA correspondence log.

41. On September 18, 2017, Ocean Conservancy received an email from the Fisheries Service stating that the Southeast Regional Office reopened on September 15, 2017. The Fisheries Service also stated that the server housing the agency's FOIA application and responsive records was not yet operating, but was anticipated to be running by the end of the day on September 18, 2017. The Fisheries Service stated that it had on September 5, 2017, provided the NOAA Office of General Counsel, Southeast Region with an interim records response for that office's legal review and clearance. The email did not provide any further timetable for responding to Ocean Conservancy's FOIA request, any statement on the scope of records that the agency had sent to the General Counsel or that the agency would produce, or any statement on the agency's planned withholdings or exemptions.

42. On October 12, 2017, having not received any interim records response, Ocean

Conservancy sent an email to NOAA requesting an update on the status of its FOIA request.

43. On October 17, 2017, Ocean Conservancy received an email from the Fisheries Service stating that “a records response has been provided to [the Fisheries Service] and NOAA FOIA for release approval.”

44. On November 14, 2017, Ocean Conservancy sent NOAA an email requesting that Defendants commit to providing the requested documents by a date certain.

45. Later that day, November 14, 2017, NOAA informed Ocean Conservancy it would provide a partial, interim release of 38 documents “shortly.”

46. On November 28, 2017, Ocean Conservancy received an “interim response” from Defendants transmitting 38 documents. The majority of the 38 documents consist of correspondence discussing how to set up an email account to accept public comments on the Temporary Rule. The response did not indicate how many or the scope of any other records Defendants were processing or would produce. Nor did the response provide any information on what documents Defendants planned to withhold or the reasons for any withholding.

47. On December 15, 2017, NOAA informed Ocean Conservancy that additional records were undergoing legal review and clearance and a response to the request would be provided “shortly.” This correspondence did not convey the number or scope of the records under review, or any statement on the agency’s planned withholdings or exemptions.

48. On January 5, 2018, Ocean Conservancy sent NOAA an email requesting an update on the status of its FOIA request.

49. Ocean Conservancy has received no further correspondence from the Fisheries Service or NOAA to date.

50. Ocean Conservancy has not received all the responsive records or the reasonably

segregable portion of non-exempt responsive records to date.

51. The due date for Defendants' FOIA determination remains August 11, 2017.

52. While Defendants acknowledged receipt of the FOIA request and granted the fee waiver twice, Defendants have failed to substantively respond to Ocean Conservancy's FOIA request. None of Defendants' responses indicated the scope of the documents they would produce. Nor did any response include information on planned withholdings or exemptions. Defendants thus never provided Ocean Conservancy with the determination required by FOIA and the governing regulations more than seven months after acknowledging receipt of the request, more than six months after initially granting the fee waiver, more than six months after the statutory due date for issuing a determination, and more than five months after the agreed-upon extended due date for issuing a determination.

#### **CLAIMS FOR RELIEF**

##### **Count I – Failure to Make a Determination on a FOIA Request, 5 U.S.C. § 552(a)(6), (7)**

53. The allegations made in all preceding paragraphs are realleged and incorporated by this reference.

54. NOAA and the Fisheries Service are "agencies" under FOIA. 5 U.S.C. § 552(f)(1). NOAA and the Fisheries Service have possession and control of the requested records.

55. Defendants were required to provide a determination within 20 working days on Ocean Conservancy's FOIA request, dated June 19, 2017. *Id.* § 552(a)(6).

56. Defendants were required to provide "an estimated date on which the agency [would] complete action on the request." *Id.* § 552(a)(7)(B); *accord id.* § 552(a)(6)(B)(i).

57. Ocean Conservancy agreed to extend Defendants' deadline to respond to Ocean Conservancy's FOIA request from July 18, 2017, to August 11, 2017. Even so, Defendants have



not issued a determination on Ocean Conservancy's FOIA request, more than six months after the statutory deadline and more than five months after the agreed-upon extended deadline.

58. Ocean Conservancy has constructively and fully exhausted all administrative remedies required by FOIA. *Id.* § 552(a)(6)(A), (C).

59. Defendants violated FOIA by failing to make the required determination within 20 working days in response to Ocean Conservancy's June 19, 2017 FOIA request. *Id.* § 552(a)(6).

60. Defendants violated FOIA by failing to provide an estimated date by which they would complete action on Ocean Conservancy's June 19, 2017 FOIA request. *Id.* § 552(a)(6)(B)(i), (7)(B).

**Count II – Failure to Respond to a FOIA Request, 5 U.S.C. § 552(a)(3), (b)**

61. The allegations made in all preceding paragraphs are realleged and incorporated by this reference.

62. FOIA requires Defendants to process records requests and promptly provide the requested records or the reasonably segregable portion of the requested records not subject to a FOIA exemption. 5 U.S.C. § 552(a)(3), (b).

63. Defendants have provided Ocean Conservancy only a subset of the requested records. Defendants have not claimed that any of the records they have not yet provided are exempt from disclosure. Therefore, the interim response does not constitute the reasonably segregable portion of the requested records not subject to a FOIA exemption.

64. Defendants have acknowledged they are in possession of additional responsive records they have not provided to Ocean Conservancy to date.

65. Defendants have not provided Ocean Conservancy all the requested records. Defendants have not provided Ocean Conservancy the reasonably segregable portion of the requested records not subject to a FOIA exemption.

66. Defendants have violated FOIA by failing to promptly provide the responsive records or the reasonably segregable portion of lawfully exempt responsive records to Ocean Conservancy. *Id.*

### **REQUEST FOR RELIEF**

WHEREFORE, Ocean Conservancy prays that this Court:

1. Declare that Defendants failed to make a timely determination on Ocean Conservancy's records request in violation of FOIA, 5 U.S.C. § 552(a)(6), (7);
2. Declare that Defendants failed to promptly provide records in response to Ocean Conservancy's information request in violation of 5 U.S.C. § 552(a)(3), (b);
3. Order Defendants to provide a determination on Ocean Conservancy's FOIA request, as required by FOIA;
4. Order Defendants to conduct searches that are reasonably calculated to locate all records responsive to Ocean Conservancy's FOIA request, as required by FOIA;
5. Order Defendants to provide Ocean Conservancy all responsive records or the reasonably segregable portions of lawfully exempt records, as required by FOIA, within 20 days of this Court's order;
6. Maintain jurisdiction over this action until Defendants are in compliance with FOIA and every order of this Court;
7. Award Ocean Conservancy its costs and reasonable attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(E) or 28 U.S.C. § 2412; and

8. Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted this 23rd day of January, 2018.

/s/ Khushi Desai

Khushi Desai (MD Bar 17444)

EARTHJUSTICE

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Washington, DC 20036

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*Attorneys for Plaintiff Ocean Conservancy*

1300 19th Street NW  
8th Floor  
Washington DC 20036



202.429.5609 Telephone  
202.872.0619 Facsimile  
www.oceanconservancy.org

June 19, 2017

**SENT VIA FOIA ONLINE**

National Oceanic and Atmospheric Administration  
National Marine Fisheries Service  
Public Reference Facility (SOU1000)  
1315 East-West Highway (SSMC3), Room 9719  
Silver Spring, Maryland 20910  
E: FOIA@noaa.gov

**Re: Freedom of Information Act Request for Documents, Records, and Materials**

Dear FOIA Officer(s):

Ocean Conservancy submits this request for records pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, et seq., for which I also request expedited processing.

**Documents Requested**

On June 19, 2017, the Department of Commerce (DoC), the National Oceanic and Atmospheric Administration (NOAA), and the National Marine Fisheries Service (NMFS) (collectively "NMFS") published a rule in the Federal Register titled, "Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Revised 2017 Recreational Fishing Season for Red Snapper Private Angling Component in the Gulf of Mexico (RIN 0648-XF499)." This rule reopens the private angling component for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico.

**We request copies of all memoranda, studies, reports, data, correspondence, comments, conversation records, files, electronic mail records, or other documents, which were generated, received, kept, and/or considered by NMFS relating to the reopening of the red snapper season, between the dates of January 20, 2017 and June 19, 2017. This includes documents, records, and materials regarding:**

- 1. extension or reopening of the private recreational red snapper season;**
- 2. how or whether this action would affect progress toward rebuilding under the red snapper rebuilding plan;**
- 3. how or whether this action may cause or contribute to overfishing; and**
- 4. data, computations, or any other analysis used to determine the number of days the season would be open.**

**We request documents, records, and materials pertaining to the above enumerated subjects involving, but not limited to, the following people:**

- 1. Wilbur Ross**
- 2. Samuel Rauch**
- 3. Alan Risenhoover**

4. Roy Crabtree
5. Andy Strelcheck
6. George Kelly
7. Earl Comstock
8. Bonnie Ponwith
9. Patrick Lynch
10. Emily Menashes
11. Benjamin Friedman
12. Lindsey Kraatz

For purposes of this request, “documents, records, and materials” should be interpreted to include copies of all correspondence, including, but not limited to, internal memoranda, memoranda and correspondence with any other federal, state or foreign agencies or individuals, papers, maps, data, scientific (clinical and nonclinical) studies, samples, schematics, field notes/reports, telephone logs, briefing/application documents, electronic mail, and notes documenting any communication (regardless of physical form or characteristics). “NMFS” should be interpreted to include the U.S. Department of Commerce, the National Oceanic and Atmospheric Administration, and the National Marine Fisheries Service/NOAA Fisheries.

#### **Expedited Processing**

I respectfully submit that this request meets the criteria for expedited processing under applicable regulations (15 C.F.R. § 4.6(f)) because the requestor is primarily engaged in disseminating information and has established below that the request is urgently needed to inform the public concerning some actual or alleged government activity. As explained in the following section, Ocean Conservancy is a public interest organization and will disseminate the information to the public and our members via media channels such as our website, blog, and newsletters. The matter in question is of widespread and exceptional media interest and involves questions about the government’s integrity which affects public confidence.

This information will allow the public to gain a complete understanding of the government’s rationale and data upon which it has based its management decisions. This request is urgent because the temporary rule is only in effect for a matter of months and is not subject to any form of public comment. Delay will be detrimental to the public resource and to the public’s understanding of this decision by the agency.

#### **Fee Waiver Requested**

Ocean Conservancy is willing to pay up to \$500 to fulfill this records request. However, we request a waiver of any fees associated with this request that exceed \$500. FOIA mandates that agencies waive or reduce search and copying fees where the disclosure is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii).

In addition to the statutory direction, the U.S. Department of Commerce has issued regulations outlining factors that it considers in deciding whether a fee waiver is warranted: (1) the request concerns the operations or activities of the government; (2) the disclosure will have value to the public and will likely contribute to public understanding of government operations or activities; (3) the disclosure will

contribute significantly to public understanding; (4) the disclosure is not primarily in the requester's commercial interest. See 15 C.F.R. § 4.11(k).

As one court explained, if a non-profit organization has "identified why they wanted the administrative record, what they intended to do with it, to whom they planned on distributing it, and the [relevant] expertise of their membership," then a waiver is appropriate. *Ctr. for Biological Diversity v. Office of Mgmt. & Budget*, 546 F. Supp. 2d 722, 727 (N.D. Cal. 2008) (internal quotation omitted). The information provided below demonstrates that Ocean Conservancy meets the required criteria and are entitled to a full fee waiver.

### **1. The Request Concerns the Operations and Activities of the Government.**

This FOIA request seeks information relevant to NMFS's management of red snapper in the Gulf of Mexico reef fish fisheries. Accordingly, the FOIA request directly concerns the operations and activities of the government in managing and protecting public resources managed by NMFS. This request will enable Ocean Conservancy to evaluate the strength of and basis for the agency's decisions regarding red snapper management. Accordingly, the FOIA request directly implicates the operations and activities of the government in managing public resources in the Gulf of Mexico.

### **2. The Requested Information Has Value to the Public and Will Likely Contribute to Public Understanding of Government Operations or Activities.**

There is a direct connection between the requested records and NMFS's operations and activities in managing red snapper. The requested records relate to the government's evaluation of red snapper catch, the private recreational season, annual catch limits, and accountability measures. Access to these records will allow Ocean Conservancy to evaluate NMFS's red snapper catch estimations for the private recreational fishery. Consequently, the requested documents are critical to a meaningful assessment of the agency's actions and a thorough public understanding of the government's operations and activities in regulating the recreational fishery.

While the final and temporary rules regarding red snapper are available to the public, the data, documents, and communications requested by Ocean Conservancy are not. The requested documents are necessary for the public to gain a complete understanding of the government's rationale and data upon which it has based its management decisions. This information is critical to assessing the government's actions in protecting this public resource. Accordingly, disclosure of the requested information will contribute significantly to public understanding of the government's operations and activities with respect to this fishery.

Ocean Conservancy is a public-interest organization whose core mission involves using science, law, and policy to protect the world's oceans by, among other mechanisms, monitoring government management of public resources, encouraging public participation in government processes, and ensuring enforcement of applicable public laws. Ocean Conservancy's experts will scrutinize the scientific underpinnings of the requested documents; these analyses will form the basis for responding to NMFS's management decisions and educating the public. See *Friends of the Coast Fork v. U.S. Dep't of the Interior*, 110 F.3d 53, 55 (9th Cir. 1997).

Ocean Conservancy also intends to disseminate information that may be available in the requested records through various means, including newsletters, reports, newspaper and magazine articles,

electronic action alerts, web sites, and through other formal and informal communications. These types of public outreach are sufficient to warrant a fee waiver. *See W. Watersheds Proj. v. Brown*, 318 F. Supp. 2d 1036, 1041 (D. Idaho 2004) (noting cases holding “statements of intent to disseminate requested information through newsletters, popular news outlets, and presentations to public interest groups, government agencies, and the general public sufficient to entitle an organization to a fee waiver”).

Ocean Conservancy possesses the experience and expertise necessary to evaluate the requested information and provide it to the public in a useful form. *Cf. W. Watersheds Proj.*, 318 F. Supp. 2d at 1040-41. Ocean Conservancy is highly qualified to extract, synthesize, analyze, and convey the requested information to its members, other organizations, and the public at large in a way that will increase understanding of government actions affecting red snapper and fisheries in the Gulf of Mexico. Ocean Conservancy has a long history of evaluating information similar to that requested here and distributing it to help inform the public and encourage participation in future planning processes.

Since 1972, Ocean Conservancy has sought to improve the health of our nation’s marine wildlife and fish. To that end, and as part of its organizational goals, Ocean Conservancy seeks to prevent degradation of marine habitats and end overfishing – catching more fish than the remaining population can replace. Ocean Conservancy aims to help restore and sustain fisheries by restoring depleted fish populations and supporting sustainable long-term management.

Ocean Conservancy has gained a detailed understanding of the issues surrounding the management of Gulf red snapper. In the 1990s, Ocean Conservancy became involved in the red snapper fishery. For the past three decades, Ocean Conservancy has worked to promote a healthy red snapper stock so that the resource can be used for generations to come. Ocean Conservancy staff has attended meetings of the Gulf of Mexico Fishery Management Council meeting for decades and has been thoroughly engaged in red snapper management in recent years.

Moreover, Ocean Conservancy staff and members have participated extensively in the relevant public processes involving red snapper management over the last decade, by, among other things, submitting comments to NMFS and the Gulf of Mexico Fishery Management Council concerning the management of red snapper and the protection of marine life in the Gulf ecosystem.

### **3. The Disclosure Will Contribute Significantly to Public Understanding.**

Disclosure of these records will further the understanding of the public at large and is likely to be of interest to a broad audience. Ocean Conservancy is a public-interest organization whose core mission is to protect the environment, public resources, and human health by, among other mechanisms, monitoring government management of marine waters, encouraging public participation in government processes, and ensuring enforcement of applicable public laws. The records will further both the organization’s and members’ understanding of red snapper catch, abundance, and management in the Gulf of Mexico.

Issues involving red snapper season length in the Gulf of Mexico are of significant public interest and have been the subject of significant public discourse as well as NMFS and Gulf of Mexico Fishery Management Council processes. The requested disclosure will significantly increase public understanding of NOAA’s operations and activities pertaining to this public resource.

Ocean Conservancy's headquarters is located in Washington, D.C., and Ocean Conservancy has additional offices in key U.S. coastal areas. Ocean Conservancy's website and publications educate its over 130,000 members and supporters and the public regarding marine conservation and fishery management.

These records will provide information underlying the agency's decision-making, afford insight into the agency's decision-making processes, and highlight any competing viewpoints. These records will allow the requester to evaluate the agency's decision-making and the adequacy of the analyses, thereby facilitating public oversight of agency operations.

Ocean Conservancy and other members of the public have participated actively in efforts to rebuild red snapper and address fishery overages. Ocean Conservancy will use information gained through this FOIA request to inform its participation in fishery management council meetings, comments to the agency, and as a basis for evaluating the analyses and conclusions of the agency's red snapper management decisions.

#### **4. Ocean Conservancy Has No Commercial Interest in the Disclosure of the Information.**

Ocean Conservancy is a § 501(c)(3) tax-exempt nonprofit advocacy organization dedicated to protecting the ocean from today's greatest global challenges. Together with our partners, we create science-based solutions for a healthy ocean and the wildlife and communities that depend on it. The requester is a nonprofit organization that has no commercial interest in the requested records. *See McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (noting that FOIA's fee waiver provision is to be "liberally construed in favor of waivers for noncommercial requestors" (quoting legislative history)).

#### **5. Ocean Conservancy Is a Media Representative.**

Members of the news media are entitled to waivers of search fees. 5 U.S.C. § 552(a)(4)(A)(ii)(II); 43 C.F.R. § 2.39(a). A representative of the news media includes "publishers of periodicals . . . who make their products available for purchase by or subscription by or free distribution to the general public." 5 U.S.C. § 552(a)(4)(A)(ii)(III); 43 C.F.R. § 2.70. News media broadly disseminate "information that is about current events or that would be of current interest to the public." *Id.* The waiver extends to a nonprofit organization that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." *Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (quoting 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986)); *Cause of Action v. FTC*, 799 F.3d 1108, 1115-17 (D.C. Cir. 2015); *Elec. Privacy Info. Ctr. V. Dep't of Def.*, 241 F. Supp.2d 5, 12 (D.D.C. 2003).

Ocean Conservancy functions as a member of the news media because it regularly gathers, publishes, and disseminates information to the public. Ocean Conservancy has 130,000 members. Ocean Conservancy gathers, synthesizes, and publishes information and news concerning marine conservation which it broadly disseminates to its membership and the press through its website and blog, press releases, quarterly print publication which it distributes to 115,000 households, and regular email newsletter which it distributes to its over 800,000 members and supporters. *Cause of Action*, 799 F.3d at 1124 (for the news-media provision, an organization's website, newsletter, press releases, and press contacts will be considered in combination); *Judicial Watch v. U.S. Dept. of Justice*, 133 F. Supp. 2d 52, 53-4 (D.D.C. 2000) (website that disseminated information and radio show were sufficient to establish



status of representative of media) 22 880 F.2d at 1387 (quoting 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986)); 241 F. Supp. 2d at 14 n.6 (noting that newsletter that was "published regularly, over a period of time, and . . . disseminate[d] actual 'news' to the public" was evidence that nonprofit organization was a member of the news media).

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As provided by 5 U.S.C. § 552(a)(6)(D), we look forward to a reply within ten (10) working days. If the agency chooses to withhold certain documents from disclosure pursuant to FOIA exemptions, we request that it: (i) identify each such document with particularity (including title, subject, date, author, recipient, and parties copied); (ii) explain in full the basis on which non-disclosure is justified; and (iii) provide us with any segregable portions of the documents for which a specific exemption is not claimed.

Please contact me if you have any questions, or if I can clarify this request in any way. I can be reached at 503-896-1171. Thank you in advance for your assistance.

Sincerely,

s/ Ivy Fredrickson  
Staff Attorney  
Ocean Conservancy  
1300 19<sup>th</sup> St., NW, 8<sup>th</sup> Floor  
Washington, DC 20036  
ifredrickson@oceanconservancy.org

Tracking Number	Type	Requester	Requester Organization	Submitted	Received
DOC-NOAA-2018-000621	Request	stephen j. franklin		01/24/2018	01/24/2018
DOC-NOAA-2018-000615	Request	Gary M. Crothers	Small-Medium	01/24/2018	01/24/2018
DOC-NOAA-2018-000614	Request	Bruce D. Kuyper		01/23/2018	01/23/2018
DOC-NOAA-2018-000607	Request	David E. Holcomb		01/23/2018	01/23/2018
DOC-NOAA-2018-000604	Request	Mary McCullough		01/20/2018	01/22/2018
DOC-NOAA-2018-000598	Request	Brian C. Eiler		01/18/2018	01/18/2018
DOC-NOAA-2018-000596	Request	Daniel B. Harwood		01/18/2018	01/18/2018
DOC-NOAA-2018-000590	Request	Rose Santos	FOIA GROUP INC	01/17/2018	01/17/2018
DOC-NOAA-2018-000589	Request	Rose Santos	FOIA GROUP INC	01/17/2018	01/17/2018
DOC-NOAA-2018-000587	Request	Hallie G. Templeton	Friends of the Earth	01/17/2018	01/17/2018
DOC-NOAA-2018-000582	Request	Joel P. Angeles		01/17/2018	01/17/2018

### Custom Report - 01/24/2018 03:28:51

Assigned To	Case File Assigned To	Perfected?	Due	Closed Date	Status
NOAA	NOAA	No	TBD	TBD	Submitted
OCAO	OCAO	Yes	02/22/2018	TBD	Assignment Determination
NWS	NWS	Yes	02/22/2018	TBD	Assignment Determination
OAR	OAR	Yes	02/22/2018	TBD	Assignment Determination
AGO	AGO	Yes	02/22/2018	TBD	Assignment Determination
USEC	USEC	Yes	02/21/2018	TBD	Assignment Determination
Annie Thomson	Annie Thomson	Yes	02/21/2018	TBD	Assignment Determination
AGO	AGO	Yes	02/21/2018	TBD	Assignment Determination
AGO	AGO	Yes	02/21/2018	TBD	Assignment Determination
Clete Otoshi	Clete Otoshi	Yes	02/21/2018	TBD	Assignment Determination
AGO	AGO	Yes	02/21/2018	TBD	Assignment Determination

## Dispositions

## Detail

Requesting digital (online) copies of Approved Special Use Permits for Scientific Scuba Diving Activities on the US  
I am requesting the Inspector General Report composed as a result of DOC OIG Referral 17-0688-N. I filed the all  
All Zone Area Forecasts for Western Montgomery County, Pennsylvania (Zone ID PAZ103) that were valid for any  
All radar data captured by the National Weather Radar Testbed (Phased Array Site, Norman, OK) on May 20, 2013  
Any and all records, files, notes, personnel actions, contracts regarding my contract and temporary employment at  
A letter from Deputy Under Secretary for Operations Ben Friedman to the Government Accountability Office regard  
Summary spreadsheet (or equivalent) of completed NOAA Form 17-4 (Initial Report On Weather Modification Activ  
[FGI 18- 55919] Relevant to DOCAB133018CN0002, we seek copy of the contract SOW/PWS; and attachments  
[FGI 18- 55918] Relevant to DOCAB133018CN0003, we seek copy of the contract SOW/PWS; and attachments  
Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. &sect; 552, Friends of the Earth requests all records  
Hello, Hope this message finds you well. I worked on the NPOESS NPP/JPSS (VIIRS) program from 2005-2008. I

S Monitor, issued by NOAA's Office of National Marine Sanctuaries. The time frame is from 2007 through investigations that triggered this IG report process under the Whistleblower Act, I am the Whistleblower in this times on February 14, 2016 between 12:00 p.m. noon and 11:59 p.m. EST, presumably issued by the N3 from 2:00PM CDT until 4:00PM CDT. (Essentially the EF-5 tornado event) This data requested would include NOAA's CPO, NOS and other departments within NOAA. Location: Silver Spring, Maryland. (1)Sole Sourcing National Weather Service staffing vacancies. This letter should have been transmitted in the second (cities), in effect during 2017. For a similar request for the 2014 data, which was fully granted, please see

pertaining to Manna Fish Farms or its Chief Executive Officer, Donna Lanzetta, from January 1, 2016 to would like to request any contract pertaining to this program for this time period. This was also under NC

ie end of 2017 (in essence 10 years looking back from current date). I only wish for permits that are for s  
s matter under federal law, and my allegations included allegations that NOAA consciously and with mal  
lational Weather Service Forecast Office for Philadelphia, PA located in Mount Holly, NJ.  
include (but not be limited to) Base Reflectivity, Base Velocity, Storm Relative Velocity and correlation cc  
urce Contract in my name Mary McCullough, Company: Hometown Events and Management. (2) Temp  
d half of 2016, most likely through NOAA's GAO liaison. If this letter is difficult to locate, perhaps ask the  
DOC-NOAA-2015-000750.

present.

DOA Contract No. 50-SPNA-9-00010 <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.201.280>

scuba diving activities only, and only those permits that have been approved. I do not request any permission of forethought, sought to abuse its jurisdiction to deprive me of my federally recognized property right

efficient radar products at all angles scanned for that two hour window of time.

rary worker through a temporary service, I cannot recall the name of the temp agency. (3) Copy of IBS  
GAO liaison to search his email for internal correspondence to/or from Brian Eiler (myself) who helped I

5&rep=rep1&type=pdf



ts that have been denied. These permits are specifically for the USS Monitor National Marine Sanctuary  
its in the matter of Kohala Coast Enterprises v. Unidentified Shipwrecked Vessel, as such, I believe the

S contract with NOAA for my services as a temporary/contract worker at NOAA, including rate of pay, re  
pull the letter together.

w

law entitles me to see all the information and repor

ason for my removal from support position. Any and all records or reports fr



**From:** postmaster@DOCGOV.onmicrosoft.com  
**Sent:** Wednesday, January 24, 2018 4:14 PM  
**To:** Mark.Graff@noaa.gov  
**Subject:** Undeliverable: Weekly FOIA Incoming and High Visibility Requests  
**Attachments:** details.txt; Weekly FOIA Incoming and High Visibility Requests



Your message to [cholmes@doc.gov](mailto:cholmes@doc.gov) couldn't be delivered.

**cholmes** wasn't found at **doc.gov**.

Mark.Graff	Office 365	cholmes
<b>Action Required</b>		Recipient
Unknown To address		

### How to Fix It

The address may be misspelled or may not exist. Try one or more of the following:

- Send the message again following these steps: In Outlook, open this non-delivery report (NDR) and choose **Send Again** from the Report ribbon. In Outlook on the web, select this NDR, then select the link "**To send this message again, click here.**" Then delete and retype the entire recipient address. If prompted with an Auto-Complete List suggestion don't select it. After typing the complete address, click **Send**.
- Contact the recipient (by phone, for example) to check that the address exists and is correct.
- The recipient may have set up email forwarding to an incorrect address. Ask them to check that any forwarding they've set up is working correctly.
- Clear the recipient Auto-Complete List in Outlook or Outlook on the web by following the steps in this article: [Fix email delivery issues for error code 5.1.10 in Office 365](#), and then send the message again. Retype the entire recipient address before selecting **Send**.

If the problem continues, forward this message to your email admin. If you're an email admin, refer to the **More Info for Email Admins** section below.

Was this helpful? [Send feedback to Microsoft.](#)

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## More Info for Email Admins

Status code: 550 5.1.10

This error occurs because the sender sent a message to an email address hosted by Office 365 but the address is incorrect or doesn't exist at the destination domain. The error is reported by the recipient domain's email server, but most often it must be fixed by the person who sent the message. If the steps in the **How to Fix It** section above don't fix the problem, and you're the email admin for the recipient, try one or more of the following:

**The email address exists and is correct** Confirm that the recipient address exists, is correct, and is accepting messages.

**Synchronize your directories** If you have a hybrid environment and are using directory synchronization make sure the recipient's email address is synced correctly in both Office 365 and in your on premises directory.

**Errant forwarding rule** Check for forwarding rules that aren't behaving as expected.

Forwarding can be set up by an admin via mail flow rules or mailbox forwarding address settings, or by the recipient via the Inbox Rules feature.

**Recipient has a valid license** Make sure the recipient has an Office 365 license assigned to them. The recipient's email admin can use the Office 365 admin center to assign a license (Users > Active Users > select the recipient > Assigned License > Edit).

**Mail flow settings and MX records are not correct** Misconfigured mail flow or MX record settings can cause this error. Check your Office 365 mail flow settings to make sure your domain and any mail flow connectors are set up correctly. Also, work with your domain registrar to make sure the MX records for your domain are configured correctly.

For more information and additional tips to fix this issue, see [Fix email delivery issues for error code 5.1.10 in Office 365](#).

### Original Message Details

Created Date: 1/24/2018 9:13:22 PM  
Sender Address: Mark.Graff@noaa.gov  
Recipient Address: cholmes@doc.gov  
Subject: Weekly FOIA Incoming and High Visibility Requests

### Error Details

Reported error: 550 5.1.10 RESOLVER.ADR.RecipientNotFound; Recipient cholmes@doc.gov not found by SMTP address lookup  
DSN generated by: DM2PR09MB0589.namprd09.prod.outlook.com

### Message Hops

HOP	TIME (UTC)	FROM	TO	WITH	RELAY TIME
1	1/24/2018 9:13:22 PM		10.200.39.179	HTTP	*
2	1/24/2018 9:14:04 PM		mail qt0 x243.google.com	SMTP	42 sec
3	1/24/2018 9:14:04 PM	mail qt0 x243.google.com	CY1GCC01FT008.mail.protection.outlook.com	Microsoft SMTP Server (version=TLS1_2, cipher=TLS_ECDHE_RSA_WITH_AES_256_CBC_SHA_P384)	*
4	1/24/2018 9:14:05 PM	CY1GCC01FT008.eop gcc01.prod.protection.outlook.com	BN6PR09CA0050.outlook.office365.com	Microsoft SMTP Server (version=TLS1_2, cipher=TLS_ECDHE_RSA_WITH_AES_256_CBC_SHA384)	1 sec
5	1/24/2018 9:14:05 PM	BN6PR09CA0050.namprd09.prod.outlook.com	DM2PR09MB0589.namprd09.prod.outlook.com	Microsoft SMTP Server (version=TLS1_2, cipher=TLS_ECDHE_RSA_WITH_AES_256_CBC_SHA384_P256)	*

### Original Message Headers

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Authentication Results: spf=pass (sender IP is 2607:f8b0:400d:c0d::243) smtp.mailfrom=noaa.gov; doc.gov; dkim=pass (signature was verified) header.d=noaa.gov.20150623.gappssmtp.com;doc.gov; dmarc=bestguesspass action=none header.from=noaa.gov;  
Received SPF: Pass (protection.outlook.com: domain of noaa.gov designates 2607:f8b0:400d:c0d::243 as permitted sender) receiver=protection.outlook.com; client ip=2607:f8b0:400d:c0d::243; helo=mail qt0 x243.google.com;  
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Received: by mail qt0 x243.google.com with SMTP id x27sol4047091qtm.12 for <cholmes@doc.gov>; Wed, 24 Jan 2018 13:14:04 0800 (PST)  
DKIM Signature: v=1; a=rsa sha256; c=relaxed/relaxed; d=noaa.gov.20150623.gappssmtp.com; s=20150623; h=mime version:from:date:message id:subject:to:cc; bh=NJs0nbtvBmKvYJKr4usBPxqzyB7HONeub6OjMyHtCU=; b=Nl/+hyMjTGo7FSDSngHGucUY+JH0t55I+p33BacyCNYwAxDdQQNYeFB8j5RQ3PmOuGw4SP1VqHc0b/Rm1ShJ73U7wH0GqqUc4+vazYlJvN6P4w0NX3ICBAiCALuM9MwV7/32YmVxjL+ncZSesF6V41eJ0sR87G/T9S1uVMNZH/co3EUDcmiuePPZ1KIcE44MuA76V33gd7MrzowIhM0cDwXWkoSE6geAkOckhpF8eEs5UQNUAJhTRRazCZJ6HYOS3U3AHRAtYr8Z9

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hc6w==

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X Received: by 10.200.57.162 with SMTP id v31mr3562935qte.128.1516828443454;  
Wed, 24 Jan 2018 13:14:03 0800 (PST)

MIME Version: 1.0

Received: by 10.200.39.179 with HTTP; Wed, 24 Jan 2018 13:13:22 0800 (PST)

From: Mark Graff NOAA Federal <mark.graff@noaa.gov> Date: Wed, 24 Jan 2018 16:13:22 0500

Message ID: <CAFWH6A9ZzNxmSQXohqJPMFwCtUxgu0KE1iBUeCkmB5 v8to2Q@mail.gmail.com> Subject: Weekly FOIA Incoming and High Visibility Requests

To: Stephen Lipps NOAA Federal <stephen.lipps@noaa.gov>, "Holmes, Colin" <cholmes@doc.gov>, Scott Smullen NOAA Federal <scott.smullen@noaa.gov>, Jeff Dillen NOAA Federal <jeff.dillen@noaa.gov>, Kristen Gustafson NOAA Federal <kristen.l.gustafson@noaa.gov>, Robert Hogan <robert.j.hogan@noaa.gov>, DUS Staff <duso.staff@noaa.gov>, Tanya Dobrzynski NOAA Federal <tanya.dobrzynski@noaa.gov>, Stuart Levenbach NOAA Federal <Stuart.levenbach@noaa.gov>, Kevin Wheeler NOAA Federal <Kevin.Wheeler@noaa.gov>, Brandon Elsner NOAA Federal <Brandon.Elsner@noaa.gov>, Taylor Jordan NOAA Federal <Taylor.Jordan@noaa.gov>, Erik Noble NOAA Federal <erik.noble@noaa.gov>, Wendy Lewis NOAA Federal <Wendy.Lewis@noaa.gov> CC: Tom Taylor <tom.taylor@noaa.gov>, Kimberly Katzenbarger NOAA FEDERAL <kimberly.katzenbarger@noaa.gov>, Charles <charles.green@noaa.gov>, Dennis Morgan NOAA Federal <dennis.morgan@noaa.gov>, Stacey Nathanson NOAA Federal <stacey.nathanson@noaa.gov>, Robert Swisher NOAA Federal <robert.swisher@noaa.gov>, Steven Goodman NOAA Federal <Steven.Goodman@noaa.gov>, Samuel Dixon NOAA Affiliate <samuel.dixon@noaa.gov>, Lola Stith NOAA Affiliate <lola.m.stith@noaa.gov>, Zachary Goldstein NOAA Federal <Zachary.Goldstein@noaa.gov>, Douglas Perry NOAA Federal <Douglas.A.Perry@noaa.gov>, Nkolika Ndubisi NOAA Federal <nkolika.ndubisi@noaa.gov>, Jeri Dockett NOAA Affiliate <jeri.dockett@noaa.gov>, Lawrence Charters NOAA Federal <lawrence.charters@noaa.gov>, Allison Soussi Tanani NOAA Federal <Allison.Soussi Tanani@noaa.gov>, "Bogomolny, Michael (Federal)" <MBogomolny@doc.gov>, Roxie Allison Holman NOAA Federal <roxie.allison.holman@noaa.gov>, John Almeida NOAA Federal <john.almeida@noaa.gov>, Michael Weiss NOAA Federal <michael.weiss@noaa.gov>, Maria Williams NOAA Federal <Maria.Williams@noaa.gov>, Shawn Martin NOAA Federal <shawn.martin@noaa.gov>, Kathryn Kempton NOAA Federal <kathryn.kempton@noaa.gov>, Ed Kearns NOAA Federal <ed.kearns@noaa.gov>, Cheryl Scannell NOAA Federal <cheryl.scannell@noaa.gov>, Devin Brakob NOAA Federal <devin.r.brakob@noaa.gov>, OCIO GPD <ocio.gpd@noaa.gov>, Darone Jones NOAA Federal <darone.jones@noaa.gov> Content Type: multipart/mixed; boundary="94eb2c0bf9968f1fdb05638c2449"

Return Path: mark.graff@noaa.gov

X EOPAttributedMessage: 0

X EOPTenantAttributedMessage: 44cf3ec3 840c 4086 b7de e3bc9a6c2db4:0

X MS Office365 Filtering HT: Tenant

X Forefront Antispam Report: CIP:2607:f8b0:400d:c0d::243;IPV:NLI;CTRY:;EFV:NLI;

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Arrival-Date: Wed, 24 Jan 2018 21:14:05 +0000

Final-Recipient: rfc822;cholmes@doc.gov

Action: failed

Status: 5.1.10

Diagnostic-Code: smtp;550 5.1.10 RESOLVER.ADR.RecipientNotFound; Recipient cholmes@doc.gov  
not found by SMTP address lookup

X-Display-Name: Holmes, Colin

**From:** Mark Graff - NOAA Federal <mark.graff@noaa.gov>  
**Sent:** Wed, 24 Jan 2018 16:13:22 -0500  
**Subject:** Weekly FOIA Incoming and High Visibility Requests  
**To:** Stephen Lipps - NOAA Federal <stephen.lipps@noaa.gov>, "Holmes, Colin" <cholmes@doc.gov>, Scott Smullen - NOAA Federal <scott.smullen@noaa.gov>, Jeff Dillen - NOAA Federal <jeff.dillen@noaa.gov>, Kristen Gustafson - NOAA Federal <kristen.l.gustafson@noaa.gov>, Robert Hogan <robert.j.hogan@noaa.gov>, \_DUS Staff <duso.staff@noaa.gov>, Tanya Dobrzynski - NOAA Federal <tanya.dobrzynski@noaa.gov>, Stuart Levenbach - NOAA Federal <Stuart.levenbach@noaa.gov>, Kevin Wheeler - NOAA Federal <Kevin.Wheeler@noaa.gov>, Brandon Elsner - NOAA Federal <Brandon.Elsner@noaa.gov>, Taylor Jordan - NOAA Federal <Taylor.Jordan@noaa.gov>, Erik Noble - NOAA Federal <erik.noble@noaa.gov>, Wendy Lewis - NOAA Federal <Wendy.Lewis@noaa.gov>  
**Cc:** Tom Taylor <tom.taylor@noaa.gov>, Kimberly Katzenbarger - NOAA FEDERAL <kimberly.katzenbarger@noaa.gov>, Charles <charles.green@noaa.gov>, Dennis Morgan - NOAA Federal <dennis.morgan@noaa.gov>, Stacey Nathanson - NOAA Federal <stacey.nathanson@noaa.gov>, Robert Swisher - NOAA Federal <robert.swisher@noaa.gov>, Steven Goodman - NOAA Federal <Steven.Goodman@noaa.gov>, Samuel Dixon - NOAA Affiliate <samuel.dixon@noaa.gov>, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>, Zachary Goldstein - NOAA Federal <Zachary.Goldstein@noaa.gov>, Douglas Perry - NOAA Federal <Douglas.A.Perry@noaa.gov>, Nkolika Ndubisi - NOAA Federal <nkolika.ndubisi@noaa.gov>, Jeri Dockett - NOAA Affiliate <jeri.dockett@noaa.gov>, Lawrence Charters - NOAA Federal <lawrence.charters@noaa.gov>, Allison Soussi-Tanani - NOAA Federal <Allison.Soussi-Tanani@noaa.gov>, "Bogomolny, Michael (Federal)" <MBogomolny@doc.gov>, Roxie Allison-Holman - NOAA Federal <roxie.allison-holman@noaa.gov>, John Almeida - NOAA Federal <john.almeida@noaa.gov>, Michael Weiss - NOAA Federal <michael.weiss@noaa.gov>, Maria Williams - NOAA Federal <Maria.Williams@noaa.gov>, Shawn Martin - NOAA Federal <shawn.martin@noaa.gov>, Kathryn Kempton - NOAA Federal <kathryn.kempton@noaa.gov>, Ed Kearns - NOAA Federal <ed.kearns@noaa.gov>, Cheryl Scannell - NOAA Federal <cheryl.scannell@noaa.gov>, Devin Brakob - NOAA Federal <devin.r.brakob@noaa.gov>, \_OCIO GPD <ocio.gpd@noaa.gov>, Darone Jones - NOAA Federal <darone.jones@noaa.gov>  
[Weekly FOIA Incoming and High Visibility Requests 01.17.18 - 01.24.18.xls](#)  
[Ocean Conservancy Complaint 1-23-18.pdf](#)  
[Original Ocean Conservancy FOIA request.pdf](#)

Good Afternoon,

Attached is the weekly report.

The one high visibility request received from Friends of Earth on January 17th seeking all records regarding Manna Fish Farms from January 1, 2016 to the present was reported in last week's report. (DOC-NOAA-2017-000587).

One new litigation was received, from Ocean Conservancy, filed in District Court for the District of Maryland. The underlying request sought records regarding the decision to extend the Red Snapper Season (DOC-NOAA-2017-001394).

(b)(5) . A copy of the underlying request and the District Court Complaint are both attached.

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628-5658 (O)  
(b)(6) (C)

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Tracking Number	Type	Requester	Requester Organization	Submitted	Received
DOC-NOAA-2018-000621	Request	stephen j. franklin		01/24/2018	01/24/2018
DOC-NOAA-2018-000615	Request	Gary M. Crothers	Small-Medium	01/24/2018	01/24/2018
DOC-NOAA-2018-000614	Request	Bruce D. Kuyper		01/23/2018	01/23/2018
DOC-NOAA-2018-000607	Request	David E. Holcomb		01/23/2018	01/23/2018
DOC-NOAA-2018-000604	Request	Mary McCullough		01/20/2018	01/22/2018
DOC-NOAA-2018-000598	Request	Brian C. Eiler		01/18/2018	01/18/2018
DOC-NOAA-2018-000596	Request	Daniel B. Harwood		01/18/2018	01/18/2018
DOC-NOAA-2018-000590	Request	Rose Santos	FOIA GROUP INC	01/17/2018	01/17/2018
DOC-NOAA-2018-000589	Request	Rose Santos	FOIA GROUP INC	01/17/2018	01/17/2018
DOC-NOAA-2018-000587	Request	Hallie G. Templeton	Friends of the Earth	01/17/2018	01/17/2018
DOC-NOAA-2018-000582	Request	Joel P. Angeles		01/17/2018	01/17/2018

### Custom Report - 01/24/2018 03:28:51

Assigned To	Case File Assigned To	Perfected?	Due	Closed Date	Status
NOAA	NOAA	No	TBD	TBD	Submitted
OCAO	OCAO	Yes	02/22/2018	TBD	Assignment Determination
NWS	NWS	Yes	02/22/2018	TBD	Assignment Determination
OAR	OAR	Yes	02/22/2018	TBD	Assignment Determination
AGO	AGO	Yes	02/22/2018	TBD	Assignment Determination
USEC	USEC	Yes	02/21/2018	TBD	Assignment Determination
Annie Thomson	Annie Thomson	Yes	02/21/2018	TBD	Assignment Determination
AGO	AGO	Yes	02/21/2018	TBD	Assignment Determination
AGO	AGO	Yes	02/21/2018	TBD	Assignment Determination
Clete Otoshi	Clete Otoshi	Yes	02/21/2018	TBD	Assignment Determination
AGO	AGO	Yes	02/21/2018	TBD	Assignment Determination

## Dispositions

## Detail

Requesting digital (online) copies of Approved Special Use Permits for Scientific Scuba Diving Activities on the US  
I am requesting the Inspector General Report composed as a result of DOC OIG Referral 17-0688-N. I filed the all  
All Zone Area Forecasts for Western Montgomery County, Pennsylvania (Zone ID PAZ103) that were valid for any  
All radar data captured by the National Weather Radar Testbed (Phased Array Site, Norman, OK) on May 20, 2013  
Any and all records, files, notes, personnel actions, contracts regarding my contract and temporary employment at  
A letter from Deputy Under Secretary for Operations Ben Friedman to the Government Accountability Office regard  
Summary spreadsheet (or equivalent) of completed NOAA Form 17-4 (Initial Report On Weather Modification Activ  
[FGI 18- 55919] Relevant to DOCAB133018CN0002, we seek copy of the contract SOW/PWS; and attachments  
[FGI 18- 55918] Relevant to DOCAB133018CN0003, we seek copy of the contract SOW/PWS; and attachments  
Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Friends of the Earth requests all records  
Hello, Hope this message finds you well. I worked on the NPOESS NPP/JPSS (VIIRS) program from 2005-2008. I

S Monitor, issued by NOAA's Office of National Marine Sanctuaries. The time frame is from 2007 through investigations that triggered this IG report process under the Whistleblower Act, I am the Whistleblower in this times on February 14, 2016 between 12:00 p.m. noon and 11:59 p.m. EST, presumably issued by the N3 from 2:00PM CDT until 4:00PM CDT. (Essentially the EF-5 tornado event) This data requested would include NOAA's CPO, NOS and other departments within NOAA. Location: Silver Spring, Maryland. (1)Sole Sourcing National Weather Service staffing vacancies. This letter should have been transmitted in the second (cities), in effect during 2017. For a similar request for the 2014 data, which was fully granted, please see

pertaining to Manna Fish Farms or its Chief Executive Officer, Donna Lanzetta, from January 1, 2016 to would like to request any contract pertaining to this program for this time period. This was also under NC

ie end of 2017 (in essence 10 years looking back from current date). I only wish for permits that are for s  
s matter under federal law, and my allegations included allegations that NOAA consciously and with mal  
lational Weather Service Forecast Office for Philadelphia, PA located in Mount Holly, NJ.  
include (but not be limited to) Base Reflectivity, Base Velocity, Storm Relative Velocity and correlation cc  
urce Contract in my name Mary McCullough, Company: Hometown Events and Management. (2) Temp  
d half of 2016, most likely through NOAA's GAO liaison. If this letter is difficult to locate, perhaps ask the  
DOC-NOAA-2015-000750.

present.

DOA Contract No. 50-SPNA-9-00010 <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.201.280>

scuba diving activities only, and only those permits that have been approved. I do not request any permission of forethought, sought to abuse it's jurisdiction to deprive me of my federally recognized property right

efficient radar products at all angles scanned for that two hour window of time.

rary worker through a temporary service, I cannot recall the name of the temp agency. (3) Copy of IBS  
GAO liaison to search his email for internal correspondence to/or from Brian Eiler (myself) who helped

5&rep=rep1&type=pdf

ts that have been denied. These permits are specifically for the USS Monitor National Marine Sanctuary  
its in the matter of Kohala Coast Enterprises v. Unidentified Shipwrecked Vessel, as such, I believe the

S contract with NOAA for my services as a temporary/contract worker at NOAA, including rate of pay, re  
pull the letter together.



w

law entitles me to see all the information and repor

ason for my removal from support position. Any and all records or reports fr



**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

OCEAN CONSERVANCY  
1300 19th Street, NW, Eighth Floor  
Washington, DC 20036

Plaintiff,

v.

NATIONAL MARINE FISHERIES SERVICE  
U.S. Department of Commerce  
Room 14555  
1315 East-West Highway  
Silver Spring, Montgomery County, MD 20910

NATIONAL OCEANIC AND ATMOSPHERIC  
ADMINISTRATION  
U.S. Department of Commerce  
Room 5128  
1401 Constitution Avenue, NW  
Washington, DC 20230

Defendants.

No. \_\_\_\_\_

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

**INTRODUCTION**

1. Plaintiff Ocean Conservancy brings this case to remedy violations of the Freedom of Information Act (FOIA), 5 U.S.C. § 552, by the National Marine Fisheries Service and National Oceanic and Atmospheric Administration (collectively, Defendants). The violations arise out of Defendants' continuing failure to respond to Ocean Conservancy's FOIA request.

2. In June 2017, Defendants issued a Temporary Rule reopening the Gulf of Mexico private angler red snapper fishing season and extending the fishing season from 3 to 42 days. 82 Fed. Reg. 27,777 (June 19, 2017). Defendants admitted that the action would cause the private recreational fishing sector to substantially exceed the annual catch limit set for that sector and delay rebuilding for the overfished population of red snapper, *id.* at 27,779, in violation of a

number of statutes.

3. Ocean Conservancy filed a FOIA request with the National Marine Fisheries Service (Fisheries Service), an agency of the National Oceanic and Atmospheric Administration (NOAA), on June 19, 2017, seeking pertinent records to enable Ocean Conservancy to analyze the basis for and impact of the Temporary Rule and disseminate the information to the public. The records sought in the FOIA request are essential to Ocean Conservancy's advocacy and public education missions to support protecting the red snapper population. Defendants failed to provide Ocean Conservancy a determination on its FOIA request within the time required under FOIA and have not to date provided Ocean Conservancy a determination on its request.

4. Although Defendants have provided Ocean Conservancy a small, partial release of responsive records, Defendants continue to unlawfully withhold the information sought by Ocean Conservancy. Defendants have provided Ocean Conservancy no information on additional responsive records in their possession. By failing to provide the requested records, Defendants are actively impeding Ocean Conservancy's access to government information and blocking its ability to carry out its organizational missions.

5. Having constructively exhausted its administrative remedies with Defendants, Ocean Conservancy now turns to this Court to enforce FOIA's guarantee of public access to agency records and to remedy Defendants' withholding of that access. Accordingly, Ocean Conservancy asks this Court to declare that Defendants have violated FOIA by failing to make a determination on Ocean Conservancy's FOIA request and by withholding the requested records, to order Defendants to immediately provide Ocean Conservancy with a legally compliant response to its outstanding record request, to order Defendants to promptly provide Ocean Conservancy all responsive records, and to grant other appropriate relief, including attorneys'

fees and costs.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1333 (federal question) and 5 U.S.C. § 552(a)(4)(B) (FOIA).

7. Venue properly vests in this District pursuant to 5 U.S.C. § 552(a)(4)(B) because, on information and belief, the requested agency records are situated in this District. Venue also properly vests in this District pursuant to 28 U.S.C. § 1391(b) and (e)(i) because: (1) the principal office of each Defendant is located in this District and (2) a substantial part of the events and omissions which gave rise to this action occurred in this District.

8. This Court has authority to grant the requested relief in this case pursuant to FOIA, 5 U.S.C. § 552(a)(4)(B), (E), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 2202.

### **PARTIES**

9. Plaintiff OCEAN CONSERVANCY is a nonprofit, science-based conservation organization dedicated to healthy oceans and the wildlife and communities that depend on them. Since 1972, Ocean Conservancy has sought to improve the health of our nation's marine wildlife and fish. To that end, and as part of its organizational goals, Ocean Conservancy seeks to prevent degradation of marine habitats and end overfishing (i.e., catching more fish than the remaining population can replace). Ocean Conservancy has over 125,000 members and supporters worldwide, including over 14,000 in the five Gulf of Mexico states. The organization publishes numerous reports, articles, newsletters, and other analyses on ocean and fishery sustainability topics each year. The organization is routinely called upon to brief and educate federal and state policymakers, and Ocean Conservancy staff are frequently quoted in the media

and invited to present and speak at various conferences and events. Ocean Conservancy's headquarters are located in Washington, DC. It also has offices in Alaska, California, Washington, Oregon, Florida, and Texas.

10. In the 1990s, Ocean Conservancy became involved in the conservation and management of the red snapper fishery. For the past three decades, Ocean Conservancy has worked to promote a healthy red snapper fishery for the benefit of the Gulf of Mexico's ecosystem and coastal communities. Ocean Conservancy staff have regularly attended meetings of the Gulf of Mexico Fishery Management Council and have been involved in public awareness events concerning fisheries for decades.

11. In 2005, Ocean Conservancy successfully challenged the Fisheries Service's rebuilding plan for red snapper. *Coastal Conservation Ass'n v. Gutierrez*, 512 F. Supp. 2d 896 (S.D. Tex. 2007). In 2015, Ocean Conservancy filed *amicus curiae* briefs in support of the federal government in two lawsuits challenging the Fisheries Service's red snapper management.

12. Defendant NATIONAL MARINE FISHERIES SERVICE is an agency of the U.S. Department of Commerce that has been delegated the responsibility to manage the Gulf of Mexico red snapper fishery under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. 16 U.S.C. §§ 1801 *et seq.* The Fisheries Service has authority to issue regulations governing the red snapper fishery seasons and other management measures. The principal office of the Fisheries Service is located in Silver Spring, Montgomery County, Maryland. The Fisheries Service is in possession and control of the records that Ocean Conservancy seeks, and therefore it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

13. Defendant NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION is an agency of the U.S. Department of Commerce with supervisory responsibility for the

Fisheries Service. The principal office of NOAA is located in Silver Spring, Montgomery County, Maryland. NOAA administers and oversees FOIA requests made to the Fisheries Service. NOAA's FOIA office is located in Silver Spring, Montgomery County, Maryland. NOAA is in possession and control of the records that Ocean Conservancy seeks, and therefore is subject to FOIA pursuant to 5 U.S.C. § 552(f).

### STATUTORY BACKGROUND

14. FOIA's basic purpose is to ensure government transparency and the expeditious disclosure of government records. FOIA creates a statutory right of public access to agency records by requiring that federal agencies make records available to any person upon request. 5 U.S.C. § 552(a)(3)(A).

15. FOIA imposes strict deadlines on federal agencies to respond to requests. FOIA requires an agency to issue a final determination resolving an information request within 20 business days from the date of its receipt and to immediately notify the requester of its determination and the reasons therefore. *Id.* § 552(a)(6)(A)(i). This provision requires the agency to "(i) gather and review the documents; (ii) determine and communicate the scope of the agency's documents it intends to produce and withhold, and the reasons for withholding any documents; and (iii) inform the requester that it can appeal whatever portion of the 'determination' is adverse." *Citizens for Responsibility & Ethics in Wash. v. Fed. Election Comm'n*, 711 F.3d 180, 188 (D.C. Cir. 2013); *see* 5 U.S.C. § 552(a)(6)(A)(i).

16. An agency may extend this 20-day period only in "unusual circumstances," as defined by 5 U.S.C. § 552(a)(6)(B)(iii), and only for a maximum of ten working days. *Id.* § 552(a)(6)(B)(i); *see also* 15 C.F.R. § 4.6(b), (d).

17. Agencies are required to provide "an estimated date on which the agency will

complete action on the request” whenever a request will take more than ten days to resolve.

5 U.S.C. § 552(a)(7)(B). Agencies extending the period for unusual circumstances must, when providing notice of the extension, provide “the date on which a determination is expected to be dispatched.” *Id.* § 552(a)(6)(B)(i); *see also* 15 C.F.R. § 4.6(d)(1).

18. The agency must then make the requested records “promptly” available. 5 U.S.C. § 552(a)(3)(A). In so doing, the agency must make reasonable efforts to search for records in a manner that is reasonably calculated to locate all records responsive to the FOIA request. *Id.* § 552(a)(3)(C), (D).

19. The agency may withhold from production the limited classes of records exempted under 5 U.S.C. § 552(b). For any record withheld, the agency bears the burden of proving that one of the statutory exemptions applies. *Id.* § 552(a)(4)(B). Even if some information is exempt from disclosure, “[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt.” *Id.* § 552(b).

20. An agency’s failure to comply with FOIA’s deadlines constitutes a constructive denial of the request, and the requester’s administrative remedies are deemed exhausted for purposes of litigation. *Id.* § 552(a)(6)(C)(i).

#### **STATEMENT OF FACTS**

21. On June 19, 2017, Defendants issued a Temporary Rule reopening the Gulf of Mexico private angler red snapper fishing season and extending that fishing season from 3 to 42 days. 82 Fed. Reg. 27,777 (June 19, 2017).

22. The same day, June 19, 2017, Ocean Conservancy submitted a FOIA request to the Fisheries Service seeking records related to the reopening of the private angler red snapper



fishing season. The request sought all documents relating to the reopening of the red snapper season within the date range of January 20, 2017, through June 19, 2017.

23. Ocean Conservancy's FOIA request furthers the organization's objectives to end overfishing and inform its members and the public about conservation and management of the red snapper fishery to benefit the Gulf of Mexico's ecosystem and coastal communities.

24. On June 20, 2017, Ocean Conservancy received a form email from Defendants acknowledging receipt of the request and assigning the request a tracking number, DOC-NOAA-2017-001394. The acknowledgement did not indicate the scope of the documents Defendants would produce, nor did it indicate any planned withholdings or exemptions.

25. The due date for Defendants to issue a determination on Ocean Conservancy's FOIA request was July 18, 2017, under 5 U.S.C. § 552(a)(6)(A)(i).

26. On July 6, 2017, NOAA notified Ocean Conservancy that the agency had granted Ocean Conservancy's fee waiver request. *See id.* 552(a)(4)(A)(i); 15 C.F.R. § 4.11(l).

27. On July 11, 2017, Ocean Conservancy clarified the scope of its request on a phone call with the Fisheries Service's Southeast Region FOIA Coordinator.

28. On July 17, 2017 the day before FOIA required the Fisheries Service to respond to Ocean Conservancy's request the Fisheries Service requested to extend the due date from July 18, 2017, to August 11, 2017 more than the ten working days allowed for unusual circumstances under 5 U.S.C. § 552(a)(6)(B)(i) and 15 C.F.R. § 4.6(b), (d). Ocean Conservancy agreed to the request.

29. On July 17, 2017, Ocean Conservancy and another organization filed a federal lawsuit challenging Defendants' unilateral decision to extend the private angler red snapper fishing season in the Gulf of Mexico. *Ocean Conservancy v. Ross*, No. 1:17-cv-01408-ABJ

(D.D.C. filed July 17, 2017).

30. On July 25, 2017, NOAA's FOIA Officer emailed Ocean Conservancy requesting additional information in order to make a determination on Ocean Conservancy's eligibility for a waiver of fees. Although NOAA already had granted Ocean Conservancy's fee waiver request, NOAA's FOIA Officer asserted Ocean Conservancy might use the requested records in its lawsuit, which, according to the FOIA Officer, may constitute a "commercial interest" in the records that Ocean Conservancy had not previously disclosed. The FOIA Officer requested additional information on Ocean Conservancy's purported commercial interests in the records.

31. Ocean Conservancy responded via email on July 26, 2017, reiterating that it is a nonprofit organization that has no commercial interest in the requested records.

32. Defendants did not acknowledge or respond to Ocean Conservancy's July 26, 2017 email.

33. On August 2, 2017, Ocean Conservancy sent NOAA an email to inquire about the agency's determination whether Ocean Conservancy has a "commercial interest" in the requested records.

34. On August 3, 2017, Ocean Conservancy received an email from NOAA alleging that Ocean Conservancy had substantively failed to answer the underlying question regarding its commercial interest.

35. Ocean Conservancy emailed NOAA that same day August 3, 2017 recounting and further explaining the ways in which it would use the records.

36. NOAA did not provide any response.

37. Ocean Conservancy sent NOAA an email on August 28, 2017, to inquire as to the status of the request. NOAA responded that same day via email granting a full fee waiver for the

second time.

38. On August 31, 2017, NOAA telephoned Ocean Conservancy asking to further postpone the agency's response to Ocean Conservancy's FOIA request. Ocean Conservancy declined NOAA's request during that call.

39. On September 12, 2017, Ocean Conservancy received an email from the Fisheries Service stating the Fisheries Service's Southeast Regional Office would be closed due to Hurricane Irma. The email did not provide a timetable for responding to Ocean Conservancy's FOIA request.

40. On September 12, 2017, Ocean Conservancy sent NOAA an email narrowing the date range of its FOIA request to March 13, 2017, through June 19, 2017, to lessen the burden of its request on the agency. NOAA did not acknowledge that email or enter it into the agency's FOIA correspondence log.

41. On September 18, 2017, Ocean Conservancy received an email from the Fisheries Service stating that the Southeast Regional Office reopened on September 15, 2017. The Fisheries Service also stated that the server housing the agency's FOIA application and responsive records was not yet operating, but was anticipated to be running by the end of the day on September 18, 2017. The Fisheries Service stated that it had on September 5, 2017, provided the NOAA Office of General Counsel, Southeast Region with an interim records response for that office's legal review and clearance. The email did not provide any further timetable for responding to Ocean Conservancy's FOIA request, any statement on the scope of records that the agency had sent to the General Counsel or that the agency would produce, or any statement on the agency's planned withholdings or exemptions.

42. On October 12, 2017, having not received any interim records response, Ocean

Conservancy sent an email to NOAA requesting an update on the status of its FOIA request.

43. On October 17, 2017, Ocean Conservancy received an email from the Fisheries Service stating that “a records response has been provided to [the Fisheries Service] and NOAA FOIA for release approval.”

44. On November 14, 2017, Ocean Conservancy sent NOAA an email requesting that Defendants commit to providing the requested documents by a date certain.

45. Later that day, November 14, 2017, NOAA informed Ocean Conservancy it would provide a partial, interim release of 38 documents “shortly.”

46. On November 28, 2017, Ocean Conservancy received an “interim response” from Defendants transmitting 38 documents. The majority of the 38 documents consist of correspondence discussing how to set up an email account to accept public comments on the Temporary Rule. The response did not indicate how many or the scope of any other records Defendants were processing or would produce. Nor did the response provide any information on what documents Defendants planned to withhold or the reasons for any withholding.

47. On December 15, 2017, NOAA informed Ocean Conservancy that additional records were undergoing legal review and clearance and a response to the request would be provided “shortly.” This correspondence did not convey the number or scope of the records under review, or any statement on the agency’s planned withholdings or exemptions.

48. On January 5, 2018, Ocean Conservancy sent NOAA an email requesting an update on the status of its FOIA request.

49. Ocean Conservancy has received no further correspondence from the Fisheries Service or NOAA to date.

50. Ocean Conservancy has not received all the responsive records or the reasonably

segregable portion of non-exempt responsive records to date.

51. The due date for Defendants' FOIA determination remains August 11, 2017.

52. While Defendants acknowledged receipt of the FOIA request and granted the fee waiver twice, Defendants have failed to substantively respond to Ocean Conservancy's FOIA request. None of Defendants' responses indicated the scope of the documents they would produce. Nor did any response include information on planned withholdings or exemptions. Defendants thus never provided Ocean Conservancy with the determination required by FOIA and the governing regulations more than seven months after acknowledging receipt of the request, more than six months after initially granting the fee waiver, more than six months after the statutory due date for issuing a determination, and more than five months after the agreed-upon extended due date for issuing a determination.

#### **CLAIMS FOR RELIEF**

##### **Count I – Failure to Make a Determination on a FOIA Request, 5 U.S.C. § 552(a)(6), (7)**

53. The allegations made in all preceding paragraphs are realleged and incorporated by this reference.

54. NOAA and the Fisheries Service are "agencies" under FOIA. 5 U.S.C. § 552(f)(1). NOAA and the Fisheries Service have possession and control of the requested records.

55. Defendants were required to provide a determination within 20 working days on Ocean Conservancy's FOIA request, dated June 19, 2017. *Id.* § 552(a)(6).

56. Defendants were required to provide "an estimated date on which the agency [would] complete action on the request." *Id.* § 552(a)(7)(B); *accord id.* § 552(a)(6)(B)(i).

57. Ocean Conservancy agreed to extend Defendants' deadline to respond to Ocean Conservancy's FOIA request from July 18, 2017, to August 11, 2017. Even so, Defendants have

not issued a determination on Ocean Conservancy's FOIA request, more than six months after the statutory deadline and more than five months after the agreed-upon extended deadline.

58. Ocean Conservancy has constructively and fully exhausted all administrative remedies required by FOIA. *Id.* § 552(a)(6)(A), (C).

59. Defendants violated FOIA by failing to make the required determination within 20 working days in response to Ocean Conservancy's June 19, 2017 FOIA request. *Id.* § 552(a)(6).

60. Defendants violated FOIA by failing to provide an estimated date by which they would complete action on Ocean Conservancy's June 19, 2017 FOIA request. *Id.* § 552(a)(6)(B)(i), (7)(B).

**Count II – Failure to Respond to a FOIA Request, 5 U.S.C. § 552(a)(3), (b)**

61. The allegations made in all preceding paragraphs are realleged and incorporated by this reference.

62. FOIA requires Defendants to process records requests and promptly provide the requested records or the reasonably segregable portion of the requested records not subject to a FOIA exemption. 5 U.S.C. § 552(a)(3), (b).

63. Defendants have provided Ocean Conservancy only a subset of the requested records. Defendants have not claimed that any of the records they have not yet provided are exempt from disclosure. Therefore, the interim response does not constitute the reasonably segregable portion of the requested records not subject to a FOIA exemption.

64. Defendants have acknowledged they are in possession of additional responsive records they have not provided to Ocean Conservancy to date.

65. Defendants have not provided Ocean Conservancy all the requested records. Defendants have not provided Ocean Conservancy the reasonably segregable portion of the requested records not subject to a FOIA exemption.

66. Defendants have violated FOIA by failing to promptly provide the responsive records or the reasonably segregable portion of lawfully exempt responsive records to Ocean Conservancy. *Id.*

### **REQUEST FOR RELIEF**

WHEREFORE, Ocean Conservancy prays that this Court:

1. Declare that Defendants failed to make a timely determination on Ocean Conservancy's records request in violation of FOIA, 5 U.S.C. § 552(a)(6), (7);
2. Declare that Defendants failed to promptly provide records in response to Ocean Conservancy's information request in violation of 5 U.S.C. § 552(a)(3), (b);
3. Order Defendants to provide a determination on Ocean Conservancy's FOIA request, as required by FOIA;
4. Order Defendants to conduct searches that are reasonably calculated to locate all records responsive to Ocean Conservancy's FOIA request, as required by FOIA;
5. Order Defendants to provide Ocean Conservancy all responsive records or the reasonably segregable portions of lawfully exempt records, as required by FOIA, within 20 days of this Court's order;
6. Maintain jurisdiction over this action until Defendants are in compliance with FOIA and every order of this Court;
7. Award Ocean Conservancy its costs and reasonable attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(E) or 28 U.S.C. § 2412; and

8. Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted this 23rd day of January, 2018.

/s/ Khushi Desai

Khushi Desai (MD Bar 17444)

EARTHJUSTICE

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June 19, 2017

**SENT VIA FOIA ONLINE**

National Oceanic and Atmospheric Administration  
National Marine Fisheries Service  
Public Reference Facility (SOU1000)  
1315 East-West Highway (SSMC3), Room 9719  
Silver Spring, Maryland 20910  
E: FOIA@noaa.gov

**Re: Freedom of Information Act Request for Documents, Records, and Materials**

Dear FOIA Officer(s):

Ocean Conservancy submits this request for records pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, et seq., for which I also request expedited processing.

**Documents Requested**

On June 19, 2017, the Department of Commerce (DoC), the National Oceanic and Atmospheric Administration (NOAA), and the National Marine Fisheries Service (NMFS) (collectively "NMFS") published a rule in the Federal Register titled, "Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Revised 2017 Recreational Fishing Season for Red Snapper Private Angling Component in the Gulf of Mexico (RIN 0648-XF499)." This rule reopens the private angling component for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico.

**We request copies of all memoranda, studies, reports, data, correspondence, comments, conversation records, files, electronic mail records, or other documents, which were generated, received, kept, and/or considered by NMFS relating to the reopening of the red snapper season, between the dates of January 20, 2017 and June 19, 2017. This includes documents, records, and materials regarding:**

- 1. extension or reopening of the private recreational red snapper season;**
- 2. how or whether this action would affect progress toward rebuilding under the red snapper rebuilding plan;**
- 3. how or whether this action may cause or contribute to overfishing; and**
- 4. data, computations, or any other analysis used to determine the number of days the season would be open.**

**We request documents, records, and materials pertaining to the above enumerated subjects involving, but not limited to, the following people:**

- 1. Wilbur Ross**
- 2. Samuel Rauch**
- 3. Alan Risenhoover**

4. Roy Crabtree
5. Andy Strelcheck
6. George Kelly
7. Earl Comstock
8. Bonnie Ponwith
9. Patrick Lynch
10. Emily Menashes
11. Benjamin Friedman
12. Lindsey Kraatz

For purposes of this request, “documents, records, and materials” should be interpreted to include copies of all correspondence, including, but not limited to, internal memoranda, memoranda and correspondence with any other federal, state or foreign agencies or individuals, papers, maps, data, scientific (clinical and nonclinical) studies, samples, schematics, field notes/reports, telephone logs, briefing/application documents, electronic mail, and notes documenting any communication (regardless of physical form or characteristics). “NMFS” should be interpreted to include the U.S. Department of Commerce, the National Oceanic and Atmospheric Administration, and the National Marine Fisheries Service/NOAA Fisheries.

#### **Expedited Processing**

I respectfully submit that this request meets the criteria for expedited processing under applicable regulations (15 C.F.R. § 4.6(f)) because the requestor is primarily engaged in disseminating information and has established below that the request is urgently needed to inform the public concerning some actual or alleged government activity. As explained in the following section, Ocean Conservancy is a public interest organization and will disseminate the information to the public and our members via media channels such as our website, blog, and newsletters. The matter in question is of widespread and exceptional media interest and involves questions about the government’s integrity which affects public confidence.

This information will allow the public to gain a complete understanding of the government’s rationale and data upon which it has based its management decisions. This request is urgent because the temporary rule is only in effect for a matter of months and is not subject to any form of public comment. Delay will be detrimental to the public resource and to the public’s understanding of this decision by the agency.

#### **Fee Waiver Requested**

Ocean Conservancy is willing to pay up to \$500 to fulfill this records request. However, we request a waiver of any fees associated with this request that exceed \$500. FOIA mandates that agencies waive or reduce search and copying fees where the disclosure is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii).

In addition to the statutory direction, the U.S. Department of Commerce has issued regulations outlining factors that it considers in deciding whether a fee waiver is warranted: (1) the request concerns the operations or activities of the government; (2) the disclosure will have value to the public and will likely contribute to public understanding of government operations or activities; (3) the disclosure will

contribute significantly to public understanding; (4) the disclosure is not primarily in the requester's commercial interest. See 15 C.F.R. § 4.11(k).

As one court explained, if a non-profit organization has "identified why they wanted the administrative record, what they intended to do with it, to whom they planned on distributing it, and the [relevant] expertise of their membership," then a waiver is appropriate. *Ctr. for Biological Diversity v. Office of Mgmt. & Budget*, 546 F. Supp. 2d 722, 727 (N.D. Cal. 2008) (internal quotation omitted). The information provided below demonstrates that Ocean Conservancy meets the required criteria and are entitled to a full fee waiver.

### **1. The Request Concerns the Operations and Activities of the Government.**

This FOIA request seeks information relevant to NMFS's management of red snapper in the Gulf of Mexico reef fish fisheries. Accordingly, the FOIA request directly concerns the operations and activities of the government in managing and protecting public resources managed by NMFS. This request will enable Ocean Conservancy to evaluate the strength of and basis for the agency's decisions regarding red snapper management. Accordingly, the FOIA request directly implicates the operations and activities of the government in managing public resources in the Gulf of Mexico.

### **2. The Requested Information Has Value to the Public and Will Likely Contribute to Public Understanding of Government Operations or Activities.**

There is a direct connection between the requested records and NMFS's operations and activities in managing red snapper. The requested records relate to the government's evaluation of red snapper catch, the private recreational season, annual catch limits, and accountability measures. Access to these records will allow Ocean Conservancy to evaluate NMFS's red snapper catch estimations for the private recreational fishery. Consequently, the requested documents are critical to a meaningful assessment of the agency's actions and a thorough public understanding of the government's operations and activities in regulating the recreational fishery.

While the final and temporary rules regarding red snapper are available to the public, the data, documents, and communications requested by Ocean Conservancy are not. The requested documents are necessary for the public to gain a complete understanding of the government's rationale and data upon which it has based its management decisions. This information is critical to assessing the government's actions in protecting this public resource. Accordingly, disclosure of the requested information will contribute significantly to public understanding of the government's operations and activities with respect to this fishery.

Ocean Conservancy is a public-interest organization whose core mission involves using science, law, and policy to protect the world's oceans by, among other mechanisms, monitoring government management of public resources, encouraging public participation in government processes, and ensuring enforcement of applicable public laws. Ocean Conservancy's experts will scrutinize the scientific underpinnings of the requested documents; these analyses will form the basis for responding to NMFS's management decisions and educating the public. See *Friends of the Coast Fork v. U.S. Dep't of the Interior*, 110 F.3d 53, 55 (9th Cir. 1997).

Ocean Conservancy also intends to disseminate information that may be available in the requested records through various means, including newsletters, reports, newspaper and magazine articles,

electronic action alerts, web sites, and through other formal and informal communications. These types of public outreach are sufficient to warrant a fee waiver. *See W. Watersheds Proj. v. Brown*, 318 F. Supp. 2d 1036, 1041 (D. Idaho 2004) (noting cases holding “statements of intent to disseminate requested information through newsletters, popular news outlets, and presentations to public interest groups, government agencies, and the general public sufficient to entitle an organization to a fee waiver”).

Ocean Conservancy possesses the experience and expertise necessary to evaluate the requested information and provide it to the public in a useful form. *Cf. W. Watersheds Proj.*, 318 F. Supp. 2d at 1040-41. Ocean Conservancy is highly qualified to extract, synthesize, analyze, and convey the requested information to its members, other organizations, and the public at large in a way that will increase understanding of government actions affecting red snapper and fisheries in the Gulf of Mexico. Ocean Conservancy has a long history of evaluating information similar to that requested here and distributing it to help inform the public and encourage participation in future planning processes.

Since 1972, Ocean Conservancy has sought to improve the health of our nation’s marine wildlife and fish. To that end, and as part of its organizational goals, Ocean Conservancy seeks to prevent degradation of marine habitats and end overfishing – catching more fish than the remaining population can replace. Ocean Conservancy aims to help restore and sustain fisheries by restoring depleted fish populations and supporting sustainable long-term management.

Ocean Conservancy has gained a detailed understanding of the issues surrounding the management of Gulf red snapper. In the 1990s, Ocean Conservancy became involved in the red snapper fishery. For the past three decades, Ocean Conservancy has worked to promote a healthy red snapper stock so that the resource can be used for generations to come. Ocean Conservancy staff has attended meetings of the Gulf of Mexico Fishery Management Council meeting for decades and has been thoroughly engaged in red snapper management in recent years.

Moreover, Ocean Conservancy staff and members have participated extensively in the relevant public processes involving red snapper management over the last decade, by, among other things, submitting comments to NMFS and the Gulf of Mexico Fishery Management Council concerning the management of red snapper and the protection of marine life in the Gulf ecosystem.

### **3. The Disclosure Will Contribute Significantly to Public Understanding.**

Disclosure of these records will further the understanding of the public at large and is likely to be of interest to a broad audience. Ocean Conservancy is a public-interest organization whose core mission is to protect the environment, public resources, and human health by, among other mechanisms, monitoring government management of marine waters, encouraging public participation in government processes, and ensuring enforcement of applicable public laws. The records will further both the organization’s and members’ understanding of red snapper catch, abundance, and management in the Gulf of Mexico.

Issues involving red snapper season length in the Gulf of Mexico are of significant public interest and have been the subject of significant public discourse as well as NMFS and Gulf of Mexico Fishery Management Council processes. The requested disclosure will significantly increase public understanding of NOAA’s operations and activities pertaining to this public resource.

Ocean Conservancy's headquarters is located in Washington, D.C., and Ocean Conservancy has additional offices in key U.S. coastal areas. Ocean Conservancy's website and publications educate its over 130,000 members and supporters and the public regarding marine conservation and fishery management.

These records will provide information underlying the agency's decision-making, afford insight into the agency's decision-making processes, and highlight any competing viewpoints. These records will allow the requester to evaluate the agency's decision-making and the adequacy of the analyses, thereby facilitating public oversight of agency operations.

Ocean Conservancy and other members of the public have participated actively in efforts to rebuild red snapper and address fishery overages. Ocean Conservancy will use information gained through this FOIA request to inform its participation in fishery management council meetings, comments to the agency, and as a basis for evaluating the analyses and conclusions of the agency's red snapper management decisions.

#### **4. Ocean Conservancy Has No Commercial Interest in the Disclosure of the Information.**

Ocean Conservancy is a § 501(c)(3) tax-exempt nonprofit advocacy organization dedicated to protecting the ocean from today's greatest global challenges. Together with our partners, we create science-based solutions for a healthy ocean and the wildlife and communities that depend on it. The requester is a nonprofit organization that has no commercial interest in the requested records. *See McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (noting that FOIA's fee waiver provision is to be "liberally construed in favor of waivers for noncommercial requestors" (quoting legislative history)).

#### **5. Ocean Conservancy Is a Media Representative.**

Members of the news media are entitled to waivers of search fees. 5 U.S.C. § 552(a)(4)(A)(ii)(II); 43 C.F.R. § 2.39(a). A representative of the news media includes "publishers of periodicals . . . who make their products available for purchase by or subscription by or free distribution to the general public." 5 U.S.C. § 552(a)(4)(A)(ii)(III); 43 C.F.R. § 2.70. News media broadly disseminate "information that is about current events or that would be of current interest to the public." *Id.* The waiver extends to a nonprofit organization that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." *Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (quoting 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986)); *Cause of Action v. FTC*, 799 F.3d 1108, 1115-17 (D.C. Cir. 2015); *Elec. Privacy Info. Ctr. V. Dep't of Def.*, 241 F. Supp.2d 5, 12 (D.D.C. 2003).

Ocean Conservancy functions as a member of the news media because it regularly gathers, publishes, and disseminates information to the public. Ocean Conservancy has 130,000 members. Ocean Conservancy gathers, synthesizes, and publishes information and news concerning marine conservation which it broadly disseminates to its membership and the press through its website and blog, press releases, quarterly print publication which it distributes to 115,000 households, and regular email newsletter which it distributes to its over 800,000 members and supporters. *Cause of Action*, 799 F.3d at 1124 (for the news-media provision, an organization's website, newsletter, press releases, and press contacts will be considered in combination); *Judicial Watch v. U.S. Dept. of Justice*, 133 F. Supp. 2d 52, 53-4 (D.D.C. 2000) (website that disseminated information and radio show were sufficient to establish

status of representative of media) 22 880 F.2d at 1387 (quoting 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986)); 241 F. Supp. 2d at 14 n.6 (noting that newsletter that was "published regularly, over a period of time, and . . . disseminate[d] actual 'news' to the public" was evidence that nonprofit organization was a member of the news media).

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As provided by 5 U.S.C. § 552(a)(6)(D), we look forward to a reply within ten (10) working days. If the agency chooses to withhold certain documents from disclosure pursuant to FOIA exemptions, we request that it: (i) identify each such document with particularity (including title, subject, date, author, recipient, and parties copied); (ii) explain in full the basis on which non-disclosure is justified; and (iii) provide us with any segregable portions of the documents for which a specific exemption is not claimed.

Please contact me if you have any questions, or if I can clarify this request in any way. I can be reached at 503-896-1171. Thank you in advance for your assistance.

Sincerely,

s/ Ivy Fredrickson  
Staff Attorney  
Ocean Conservancy  
1300 19<sup>th</sup> St., NW, 8<sup>th</sup> Floor  
Washington, DC 20036  
ifredrickson@oceanconservancy.org

**From:** Mark Graff NOAA Federal  
**Sent:** Thursday, January 25, 2018 2:08 PM  
**To:** Scott Smullen NOAA Federal; Robert Hogan  
**Subject:** Re: NOAA Lawsuit accuses agency of concealing red snapper records

(Looping in Bob Hogan with GC)

Thanks Scott,

Has this been picked up anywhere other than the E&E News Reporter?

Bob (b)(5) ?

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628 5658 (O)  
(b)(6) (C)

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On Thu, Jan 25, 2018 at 1:55 PM, Scott Smullen NOAA Federal <[scott.smullen@noaa.gov](mailto:scott.smullen@noaa.gov)> wrote:  
<https://www.eenews.net/greenwire/2018/01/25/stories/1060071957>

## NOAA

### Lawsuit accuses agency of concealing red snapper records

**Rob Hotakainen**, E&E News reporter  
*Published: Thursday, January 25, 2018*

A new lawsuit accuses NOAA Fisheries of concealing public documents linked to its controversial decision last year to extend the federal season for Gulf of Mexico red snapper by 39 days.

"NOAA is withholding documents from the public that they are legally obligated to provide. The American people deserve to know what they're hiding," said Meredith Moore, director of the fish conservation program for the Ocean Conservancy, a nonprofit environmental group that filed the lawsuit.

Filed Tuesday in U.S. District Court in Maryland, the lawsuit said NOAA has refused to provide all records related to the decision and failed to comply with a request made in June under the federal Freedom of Information Act.

In its **complaint**, filed against both NOAA Fisheries and its parent NOAA, the Ocean Conservancy said it had received only 38 documents in November, most of them consisting of correspondence on how to set up an email account to accept public comments.

According to the complaint, NOAA told the Ocean Conservancy last month that other documents were still undergoing legal review and would be provided "shortly," but NOAA has yet to turn over the records and declined to provide an update this month.

"The government has an obligation to the citizens of this country to manage our shared public resources in a transparent way, and it is unacceptable for them to withhold that information from us," Moore said. "By all indications, the red snapper decision was a politically motivated action that ignored science, contrary to the law."

NOAA Fisheries declined to respond. "NOAA does not comment on litigation matters," said John Ewald, a NOAA Fisheries spokesman.

Last July, the Ocean Conservancy and the Environmental Defense Fund sued Commerce Secretary Wilbur Ross, NOAA and NOAA Fisheries after Ross lengthened the fishing season from three days to 42 days for recreational anglers in Florida, Texas, Louisiana, Mississippi and Alabama ([Greenwire](#), Sept. 20, 2017).

That suit accused Ross of violating the Magnuson Stevens Fishery Conservation and Management Act, a 1976 law that sets quotas as a way to rebuild overfished stocks, including the red snapper.

Scott Smullen  
Deputy Director  
NOAA Communications [202 482 1097](tel:202-482-1097) o / [20 2 494 6515](tel:202-494-6515) c

Red snapper. Photo credit: Distraction Charters/NOAA



A lawsuit accuses NOAA Fisheries of concealing public records linked to its decision last year to extend the red snapper fishing season in Gulf of Mexico states. [Distraction Charters/NOAA Fisheries](#)

Internal memos made public as part of the lawsuit showed that Ross and a top adviser, Earl Comstock, may have knowingly violated the law in June, hoping the move would pressure Congress to liberalize the law ([Greenwire](#), Dec. 19, 2017).

In December, Judge Amy Berman Jackson of the U.S. District Court for the District of Columbia put the case "in abeyance" after government attorneys elected not to defend the case on its merits, calling it a "one time action." The two parties have until Dec. 31 to agree to dismiss all claims or to advise the court of a plan on how they propose to resolve any further differences ([E&E News PM](#), Dec. 20, 2017).

Chris Eaton, associate attorney with the oceans program for Earthjustice, an environmental law organization, said NOAA now is "stonewalling" by refusing to release all documents linked to the red snapper case.

"This administration has not been particularly transparent when it comes to taking actions that disregard basic science, like reopening the red snapper season," Eaton said. "It is unfortunate that the public is forced to resort to the courts to obtain basic information on NOAA's decisionmaking process."



**From:** Scott Smullen NOAA Federal  
**Sent:** Thursday, January 25, 2018 2:10 PM  
**To:** Mark Graff NOAA Federal  
**Cc:** Robert Hogan  
**Subject:** Re: NOAA Lawsuit accuses agency of concealing red snapper records

No pick up from other news orgs. that I have seen. Could be a small, inside the beltway bounce tomorrow.

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Thanks Scott,

Has this been picked up anywhere other than the E&E News Reporter?

Bob (b)(5) [REDACTED] ?

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
[\(301\) 628 5658](tel:(301)6285658) (O)  
(b)(6) [REDACTED] (C)

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Scott Smullen  
Deputy Director  
NOAA Communications [202 482 1097](tel:2024821097) o / [20 2 494 6515](tel:2024946515) c

Red snapper. Photo credit: Distraction Charters/NOAA



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**From:** Mark Graff NOAA Federal  
**Sent:** Thursday, January 25, 2018 2:15 PM  
**To:** Robert Swisher NOAA Federal; Ed Kearns NOAA Federal; Bogomolny, Michael (Federal)  
**Cc:** Lola Stith NOAA Affiliate; Dennis Morgan NOAA Federal; Stacey Nathanson NOAA Federal  
**Subject:** Fwd: NOAA Lawsuit accuses agency of concealing red snapper records

Hey Guys,

As we'd anticipated, there has been a bit of news on the new Ocean Conservancy FOIA lawsuit regarding the red snapper season extension records request (below). Just for awareness

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628 5658 (O)  
(b)(6) (C)

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Forwarded message

**From:** Scott Smullen - NOAA Federal <[scott.smullen@noaa.gov](mailto:scott.smullen@noaa.gov)>  
**Date:** Thu, Jan 25, 2018 at 2:10 PM  
**Subject:** Re: NOAA Lawsuit accuses agency of concealing red snapper records  
**To:** Mark Graff NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)>  
**Cc:** Robert Hogan <[robert.j.hogan@noaa.gov](mailto:robert.j.hogan@noaa.gov)>

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**NOAA**  
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**Rob Hotakainen**, E&E News reporter  
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Scott Smullen  
Deputy Director  
NOAA Communications [202 482 1097](tel:202-482-1097) o / [20](#)



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Scott Smullen  
Deputy Director  
NOAA Communications [202 482 1097](tel:202-482-1097) o / (b)(6) c

**Nkolika Ndubisi - NOAA Federal**

---

**From:** Nkolika Ndubisi NOAA Federal  
**Sent:** Thursday, January 25, 2018 4:56 PM  
**To:** Jonelle Dilley NOAA Federal  
**Cc:** colleen.roche@noaa.gov; Laura Cesario NOAA Federal; Symone Stone NOAA Affiliate; Mark Graff NOAA Affiliate  
**Subject:** Re: ACTION: RESPONSIVE RECORD RELEASE DETERMINATION 2018 000580

Hi Jonelle

Thanks for the update (b)(5)

With regards,  
Nikki

On Thursday, January 25, 2018, Jonelle Dilley NOAA Federal <[jonelle.dilley@noaa.gov](mailto:jonelle.dilley@noaa.gov)> wrote:

(b)(5)

Thanks,

Jonelle

Sent from my iPhone

On Jan 25, 2018, at 2:34 PM, Nkolika Ndubisi NOAA Federal <[nkolika.ndubisi@noaa.gov](mailto:nkolika.ndubisi@noaa.gov)> wrote:

Hi Todd,

Thanks for the update.

Nkolika Ndubisi (Nikki)  
Administration Division  
Management and Budget  
National Ocean Service  
(240) 533 0937

On Thu, Jan 25, 2018 at 2:32 PM, Todd Ehret NOAA Federal <[todd.ehret@noaa.gov](mailto:todd.ehret@noaa.gov)> wrote:  
Nikki,

(b)(5)

I have cc'd Jonelle on this message.

Todd Ehret  
Physical Oceanographer  
Center for Operational Oceanographic Products and Services

On Tue, Jan 23, 2018 at 2:51 PM, Nkolika Ndubisi NOAA Federal  
<[nkolika.ndubisi@noaa.gov](mailto:nkolika.ndubisi@noaa.gov)> wrote:

**FOIA 2018-000580**

**Requester:** Allan Blutstein

**Description:** Please accept this email as a request pursuant to the Freedom of Information Act for access to any email sent by Kathleen Hibbard from June 14, 2017, through June 27, 2017 that mentions or refers to the Climate Science Special Report (CSSR).

(b)(5)

Let me know if you have any questions, I can be reached via email or [\(240\) 533-0937](tel:2405330937).

Nkolika Ndubisi (Nikki)  
Administration Division  
Management and Budget  
National Ocean Service  
[\(240\) 533 0937](tel:2405330937)

Nkolika Ndubisi (Nikki)  
Administration Division  
Management and Budget  
National Ocean Service  
(240) 533 0937

**Jonelle Dilley - NOAA Federal**

---

**From:** Jonelle Dilley NOAA Federal  
**Sent:** Friday, January 26, 2018 9:38 AM  
**To:** Mark Graff NOAA Affiliate; Symone Stone NOAA Affiliate  
**Cc:** Colleen Roche NOAA Federal  
**Subject:** Re: ACTION: RESPONSIVE RECORD RELEASE DETERMINATION 2018 000580

Mark/Symone,

(b)(5) [Redacted]  
[Redacted]  
[Redacted]  
[Redacted].

Thanks much,  
Jonelle

Jonelle Dilley  
Attorney Advisor  
Oceans and Coasts Section  
NOAA, Office of General Counsel  
1305 East West Highway  
SSMC 4, Room 6111  
Silver Spring, MD 20910  
Tel: (301) 713 7383 (direct line)  
Cel (b)(6) [Redacted]  
Fax: (301) 713 4408

On Thu, Jan 25, 2018 at 4:55 PM, Nkolika Ndubisi NOAA Federal <[nkolika.ndubisi@noaa.gov](mailto:nkolika.ndubisi@noaa.gov)> wrote:  
Hi Jonelle

Thanks for the update (b)(5) [Redacted]  
[Redacted]  
[Redacted]  
[Redacted].

With regards,  
Nikki

On Thursday, January 25, 2018, Jonelle Dilley NOAA Federal <[jonelle.dilley@noaa.gov](mailto:jonelle.dilley@noaa.gov)> wrote:

(b)(5) [Redacted]  
[Redacted]  
[Redacted] I'm happy to reach out if you  
could please give me the contact information.



Thanks,

Jonelle

Sent from my iPhone

On Jan 25, 2018, at 2:34 PM, Nkolika Ndubisi NOAA Federal <[nkolika.ndubisi@noaa.gov](mailto:nkolika.ndubisi@noaa.gov)> wrote:

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Management and Budget  
National Ocean Service  
[\(240\) 533 0937](tel:(240)533-0937)

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Physical Oceanographer  
Center for Operational Oceanographic Products and Services

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Administration Division  
Management and Budget  
National Ocean Service  
[\(240\) 533 0937](tel:(240)533-0937)

Nkolika Ndubisi (Nikki)  
Administration Division  
**Management and Budget**  
National Ocean Service  
[\(240\) 533 0937](tel:(240)5330937)

**From:** Cybersecurity & Privacy Law360  
**Sent:** Friday, January 26, 2018 4:58 AM  
**To:** mark.graff@noaa.gov  
**Subject:** DC Circ. Questions Privacy Org's Standing On FAA Drone Rule



### CYBERSECURITY & PRIVACY

Friday, January 26, 2018



#### TOP NEWS

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##### **DC Circ. Questions Privacy Org's Standing On FAA Drone Rule**

A D.C. Circuit panel pushed back Thursday as the Electronic Privacy Information Center challenged the Federal Aviation Administration's omission of privacy safeguards in its small commercial drone rule, with the judges questioning the group's standing to contest regulations that cover all Americans. [Read more »](#)

##### **Analysis**

##### **Intel, AMD Chip Flaw Backlash Exposes New Liability Risks**

The discovery late last year of the Spectre and Meltdown vulnerabilities that make nearly every computer chip susceptible to hacking highlights the expanding risks for companies in an increasingly connected world, while at the same time reprising data security practices that could help to reduce exposure, experts say. [Read more »](#)

##### **EU High Court Axes Class Claims In Facebook Privacy Row**

Europe's highest court ruled Thursday that a prominent activist could not bring claims on behalf of thousands of other consumers in an Austrian action accusing Facebook of disregarding users' privacy rights and promoting policies that enabled government spying, but did clear the way for him to move forward with the dispute on his own. [Read more »](#)

##### **Crypto Execs Hit With Derivative Suit After Trading Halt**

Top brass of The Crypto Co., a digital currency-oriented tech firm whose stock was temporarily suspended from trading last month by the U.S. Securities and Exchange Commission, were hit with a derivative suit in California federal court on Wednesday alleging that they concealed a stock promotion scheme from shareholders. [Read more »](#)

#### POLICY & REGULATION

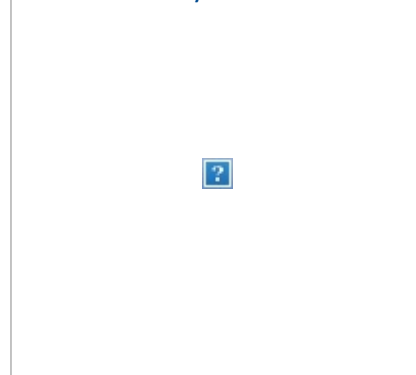
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##### **Trump Names Two More For FTC Posts**

President Donald Trump on Thursday nominated a senior vice president for Delta Airlines and the chief counsel of the Senate majority whip to serve as members of the Federal Trade Commission, leaving just one open commissioner spot if all of Trump's four nominees are confirmed. [Read more »](#)

##### **UK Watchdog Losing Key Staff Before GDPR, Chief Warns**

#### Law360 Pro Say Podcast



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#### LAW FIRMS

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Bryan Cave  
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Dentons  
Drinker Biddle  
Faegre Baker  
Herbert Smith Freehills  
Hogan Lovells  
Hueston Hennigan  
Jackson Lewis  
Jones Day  
Kirkland & Ellis  
Maclay Murray  
McDermott Will  
Morgan & Morgan  
Norton Rose Fulbright

The U.K. data regulator has lost vital employees to the private sector as the clock ticks down to the introduction of the European Union's information protection regime in four months, a senior official warned Thursday.

[Read more »](#)

## No Wells Fargo-Style Sales Practices At Other Banks: OCC

A review conducted by the Office of the Comptroller of the Currency in the wake of the Wells Fargo & Co. fake account scandal has so far not found similar problems at other large banks, the new chief of the national bank regulator said last week in a letter to Senate Democrats. [Read more »](#)

## ENFORCEMENT

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### Engineer Ducks Prison For Trying To Poach Trading Software

A Russian-born software engineer avoided prison Thursday after he was busted trying to steal software from his former employer, Susquehanna Financial Group LLP, but a Manhattan federal judge told him he will have to repay the quantitative trading firm for the cost of investigating the wrongdoing. [Read more »](#)

## LITIGATION

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### Grindr Not Responsible For Offensive Profiles, Court Says

A New York federal judge on Thursday tossed the bulk of a lawsuit accusing the online dating app Grindr LLC of lacking safety features that would have prevented a "malicious" impersonation scheme by an ex-boyfriend, saying Grindr isn't responsible for users' behavior. [Read more »](#)

### Allscripts Hit With Class Action After Ransomware Attack

Electronic health record software giant Allscripts Healthcare Solutions Inc. was hit with a putative class action in Illinois federal court on Thursday, alleging a ransomware attack on the company last week disrupted service to tens of thousands of doctors and hospitals, and put patients' lives at risk. [Read more »](#)

### DHS Bid To Reveal Anti-Trump Twitter User Prompts FOIA Suit

A reporters committee launched a Freedom of Information Act suit in D.C. federal court Wednesday seeking documents related to an incident in which the government sought to unmask an anonymous Twitter account critical of the Trump administration's immigration policies. [Read more »](#)

### Intel Hit With Another Stock-Drop Suit Over Security Flaws

Investors hit Intel Corp. with another stock-drop putative class action in California federal court on Tuesday, alleging that the computer chip manufacturer knew but failed to disclose the existence of two previously unreported security flaws, prompting share prices to tumble more than 5 percent in two days. [Read more »](#)

## PEOPLE

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### Clifford Chance Nabs Ex-NY Prosecutor, Cyber Pro

The former criminal chief at the Manhattan U.S. Attorney's office who later helped New York's financial regulator draft first-of-their-kind cybersecurity regulations for banks and insurers has joined Clifford Chance LLP. [Read more »](#)

## EXPERT ANALYSIS

---

### CFTC Reasserts Its Role In Virtual Currency Regulation

Virtual currency market participants should be mindful of the U.S.

Orrick Herrington  
Paul Weiss  
Pomerantz LLP  
Rhine Law Firm  
Robinson Bradshaw  
Ropes & Gray  
Sher Tremonte LLP  
Steptoe & Johnson LLP  
Tor Ekeland PC  
VLP Law Group  
Williams & Connolly  
WilmerHale

## COMPANIES

Advanced Micro Devices, Inc.  
Allscripts Healthcare Solutions Inc.  
AngioDynamics, Inc.  
Cargill Inc.  
Consumer Federation of America  
Delta Air Lines Inc.  
Electronic Privacy Information Center  
Equifax Inc.  
Facebook  
Fiat Chrysler Automobiles NV  
Google Inc.  
Intel Corporation  
International Business Machines Corporation  
LexShares Inc.  
MasterCard Incorporated  
Medco Health Solutions Inc.  
Miami Dolphins  
Microsoft Corporation  
National Association of Insurance Commissioners  
Pfizer Inc.  
PricewaterhouseCoopers  
R.J. Reynolds Tobacco Co. Inc.  
Twitter Inc.  
Wells Fargo & Co.

## GOVERNMENT AGENCIES

Commodity Futures Trading Commission  
Consumer Financial Protection Bureau  
European Commission  
European Union  
Federal Aviation Administration  
Federal Trade Commission  
House of Commons of the United Kingdom

Commodity Futures Trading Commission, which announced three enforcement actions in the past week. The CFTC is arguably better positioned to fight virtual currency fraud than the U.S. Securities and Exchange Commission, say attorneys with Ropes & Gray LLP. [Read more »](#)

### **Do I Need New Trial Counsel? 9 Questions To Ask**

Initial selection of defense counsel is usually made at the outset of litigation, long before it is known whether the case may actually proceed to trial. Former prosecutors Russell Hayman and Jon Dean, now partners of McDermott Will & Emery LLP, discuss questions in-house lawyers should consider when deciding whether their litigation counsel should remain lead trial counsel in a case proceeding to trial. [Read more »](#)

## **LEGAL INDUSTRY**

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### **Analysis**

#### **Build Versus Buy: 5 Ways BigLaw Is Tackling Legal Tech**

As they look to adopt new technologies, law firms are facing the question of whether to develop tools of their own or buy something already on the market. Here, the second in a two-part series looking at law firms' "build versus buy" dilemma. [Read more »](#)

#### **Del. Gov. Backs Strine's Proposal To Expand Chancery Bench**

Delaware Democratic Gov. John Carney on Thursday unveiled a \$4.2 billion budget proposal that backs an ambitious proposal from the state Supreme Court's Chief Justice Leo E. Strine Jr. to expand the Chancery Court's bench from five to seven judges, recommending that the Legislature approve the two additional jurists and eight new support staff. [Read more »](#)

#### **Litigation Finance Platform Closes \$25M Fund**

Commercial litigation finance platform LexShares Inc. has closed the firm's first multiclient fund, which was capped at \$25 million, the company said Thursday. [Read more »](#)

#### **Law360's Weekly Verdict: Legal Lions & Lambs**

DLA Piper LLP and Williams & Connolly LLP clinched the title of Law360's top legal lions this week when the Seventh Circuit affirmed the dismissal of more than 1,000 lawsuits against Pfizer Inc., while ex-Dentons associate Michael Potere landed at the top of the legal lambs list after a judge sentenced him to five months in prison. [Read more »](#)

### **JOBS**

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Office of the Comptroller of the Currency  
Securities and Exchange Commission  
U.S. Attorney's Office  
U.S. Customs and Border Protection  
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U.S. Department of Justice  
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**Bogomolny, Michael (Federal)**

---

**From:** Bogomolny, Michael (Federal)  
**Sent:** Friday, January 26, 2018 12:48 PM  
**To:** Graff, Mark (Federal); Swisher, Robert (Federal); Kearns, Ed (Federal)  
**Cc:** Stith, Lola (Contractor); Morgan, Dennis (Federal); Nathanson, Stacey (Federal)  
**Subject:** RE: NOAA Lawsuit accuses agency of concealing red snapper records

(b)(5)

[Redacted content]

**From:** Mark Graff - NOAA Federal [mailto:mark.graff@noaa.gov]  
**Sent:** Thursday, January 25, 2018 2:15 PM  
**To:** Swisher, Robert (Federal) <Robert.Swisher@noaa.gov>; Kearns, Ed (Federal) <Ed.Kearns@noaa.gov>; Bogomolny, Michael (Federal) <MBogomolny@doc.gov>  
**Cc:** Stith, Lola (Contractor) <Lola.M.Stith@noaa.gov>; Morgan, Dennis (Federal) <Dennis.Morgan@noaa.gov>; Nathanson, Stacey (Federal) <Stacey.Nathanson@noaa.gov>  
**Subject:** Fwd: NOAA - Lawsuit accuses agency of concealing red snapper records

Hey Guys,

As we'd anticipated, there has been a bit of news on the new Ocean Conservancy FOIA lawsuit regarding the red snapper season extension records request (below). Just for awareness--

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628-5658 (O)  
(b)(6) (C)

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----- Forwarded message -----

**From:** Scott Smullen - NOAA Federal <[scott.smullen@noaa.gov](mailto:scott.smullen@noaa.gov)>  
**Date:** Thu, Jan 25, 2018 at 2:10 PM  
**Subject:** Re: NOAA - Lawsuit accuses agency of concealing red snapper records  
**To:** Mark Graff - NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)>  
**Cc:** Robert Hogan <[robert.j.hogan@noaa.gov](mailto:robert.j.hogan@noaa.gov)>

No pick up from other news orgs. that I have seen. Could be a small, inside the beltway bounce tomorrow.

On Thu, Jan 25, 2018 at 2:07 PM, Mark Graff - NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)> wrote:

(Looping in Bob Hogan with GC)

Thanks Scott,

Has this been picked up anywhere other than the E&E News Reporter?

Bob (b)(5) [REDACTED] ?

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628-5658 (O)  
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**NOAA**

## **Lawsuit accuses agency of concealing red snapper records**

[Rob Hotakainen](#), E&E News reporter

Published: Thursday, January 25, 2018



A lawsuit accuses NOAA Fisheries of concealing public records linked to its decision last year to extend the red snapper fishing season in Gulf of Mexico states. [Distraction Charters/NOAA Fisheries](#)

A new lawsuit accuses NOAA Fisheries of concealing public documents linked to its controversial decision last year to extend the federal season for Gulf of Mexico red snapper by 39 days.

"NOAA is withholding documents from the public that they are legally obligated to provide. The American people deserve to know what they're hiding," said Meredith Moore, director of the fish conservation program for the Ocean Conservancy, a nonprofit environmental group that filed the lawsuit.

Filed Tuesday in U.S. District Court in Maryland, the lawsuit said NOAA has refused to provide all records related to the decision and failed to comply with a request made in June under the federal Freedom of Information Act.

In its **complaint**, filed against both NOAA Fisheries and its parent NOAA, the Ocean Conservancy said it had received only 38 documents in November, most of them consisting of correspondence on how to set up an email account to accept public comments.

According to the complaint, NOAA told the Ocean Conservancy last month that other documents were still undergoing legal review and would be provided "shortly," but NOAA has yet to turn over the

records and declined to provide an update this month.

"The government has an obligation to the citizens of this country to manage our shared public resources in a transparent way, and it is unacceptable for them to withhold that information from us," Moore said. "By all indications, the red snapper decision was a politically motivated action that ignored science, contrary to the law."

NOAA Fisheries declined to respond. "NOAA does not comment on litigation matters," said John Ewald, a NOAA Fisheries spokesman.

Last July, the Ocean Conservancy and the Environmental Defense Fund sued Commerce Secretary Wilbur Ross, NOAA and NOAA Fisheries after Ross lengthened the fishing season from three days to 42 days for recreational anglers in Florida, Texas, Louisiana, Mississippi and Alabama ([Greenwire](#), Sept. 20, 2017).

That suit accused Ross of violating the Magnuson Stevens Fishery Conservation and Management Act, a 1976 law that sets quotas as a way to rebuild overfished stocks, including the red snapper.

Internal memos made public as part of the lawsuit showed that Ross and a top adviser, Earl Comstock, may have knowingly violated the law in June, hoping the move would pressure Congress to liberalize the law ([Greenwire](#), Dec. 19, 2017).

In December, Judge Amy Berman Jackson of the U.S. District Court for the District of Columbia put the case "in abeyance" after government attorneys elected not to defend the case on its merits, calling it a "one time action." The two parties have until Dec. 31 to agree to dismiss all claims or to advise the court of a plan on how they propose to resolve any further differences ([E&E News PM](#), Dec. 20, 2017). Chris Eaton, associate attorney with the oceans program for Earthjustice, an environmental law organization, said NOAA now is "stonewalling" by refusing to release all documents linked to the red snapper case.

"This administration has not been particularly transparent when it comes to taking actions that disregard basic science, like reopening the red snapper season," Eaton said. "It is unfortunate that the public is forced to resort to the courts to obtain basic information on NOAA's decisionmaking process."

--

Scott Smullen  
Deputy Director  
NOAA Communications  
[202-482-1097](tel:202-482-1097) o / (b)(6) c

--

Scott Smullen  
Deputy Director  
NOAA Communications  
[202-482-1097](tel:202-482-1097) o / (b)(6) c



**Mark Graff - NOAA Federal**

---

**From:** Mark Graff NOAA Federal  
**Sent:** Monday, January 29, 2018 7:54 AM  
**To:** Bogomolny, Michael (Federal)  
**Cc:** Swisher, Robert (Federal); Kearns, Ed (Federal); Stith, Lola (Contractor); Morgan, Dennis (Federal); Nathanson, Stacey (Federal)  
**Subject:** Re: NOAA Lawsuit accuses agency of concealing red snapper records

Understood thanks Bogo.

**(b)(5)**

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
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**(b)(6)** (C)

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**Cc:** Stith, Lola (Contractor) <[Lola.M.Stith@noaa.gov](mailto:Lola.M.Stith@noaa.gov)>; Morgan, Dennis (Federal) <[Dennis.Morgan@noaa.gov](mailto:Dennis.Morgan@noaa.gov)>; Nathanson, Stacey (Federal) <[Stacey.Nathanson@noaa.gov](mailto:Stacey.Nathanson@noaa.gov)>

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National Oceanic and Atmospheric Administration

(301) 628 5658 (O)

(b)(6) (C)

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Cc: Robert Hogan <[robert.j.hogan@noaa.gov](mailto:robert.j.hogan@noaa.gov)>

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Bob (b)(5) [REDACTED] ?

Mark H. Graff

FOIA Officer/Bureau Chief Privacy Officer (BCPO)

National Oceanic and Atmospheric Administration

[\(301\) 628 5658](tel:3016285658) (O)

(b)(6) [REDACTED] (C)

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**NOAA**

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Published: Thursday, January 25, 2018



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Scott Smullen

Deputy Director

NOAA Communications

[202-482-1097](tel:202-482-1097) o / (b)(6) c

Scott Smullen

Deputy Director

NOAA Communications

[202-482-1097](tel:202-482-1097) o / (b)(6) c

## Lola Stith - NOAA Affiliate

---

**From:** Lola Stith NOAA Affiliate  
**Sent:** Monday, January 29, 2018 6:09 AM  
**To:** Parsons, Bobbie; [sgitelman@doc.gov](mailto:sgitelman@doc.gov)  
**Cc:** Mark Graff NOAA Affiliate  
**Subject:** Fwd: Referred documents for FOIA Request 2017 001495  
**Attachments:** referral document to NOAA doc 3.pdf; Referral document to NOAA doc 4.pdf; Referral document to NOAA doc 1.pdf; Referral document to NOAA doc 2.pdf; NOAA Referral 2017 001495.1 16 18.docx

Good morning (b)(5)

R/  
Lola

Forwarded message

**From:** Mark Graff - NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)>  
**Date:** Wed, Jan 17, 2018 at 9:35 AM  
**Subject:** Fwd: Referred documents for FOIA Request 2017 001495  
**To:** Lola Stith NOAA Affiliate <[lola.m.stith@noaa.gov](mailto:lola.m.stith@noaa.gov)>

Hey Lola,

For intake and routing

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
[\(301\) 628 5658](tel:3016285658) (O)  
(b)(6) (C)

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Forwarded message

**From:** Gitelman, Steve (Contractor) <[SGitelman@doc.gov](mailto:SGitelman@doc.gov)>  
**Date:** Wed, Jan 17, 2018 at 8:22 AM  
**Subject:** Referred documents for FOIA Request 2017 001495  
**To:** "Graff, Mark (Federal)" <[Mark.Graff@noaa.gov](mailto:Mark.Graff@noaa.gov)>  
**Cc:** "Parsons, Bobbie (Federal)" <[bParsons@doc.gov](mailto:bParsons@doc.gov)>

Mr. Graff:

I am sending this email on behalf of Bobbie Parsons regarding the above referenced FOIA request. Please see the attached referral memorandum, along with the attached Certification of Referral Document Disclosure Review and list of FOIA Exemptions.

Please be mindful of the due date, Wednesday, January 24, 2018.

If you have any questions, Bobbie can be reached at x23257 or [BParsons@doc.gov](mailto:BParsons@doc.gov).

Thank you,

**Steven Gitelman**

**FOIA/PA Analyst (Contractor)**

**U.S. Department of Commerce**

**Office of Privacy and Open Government**

**Phone Number: [\(202\) 482-8294](tel:(202)482-8294)**

**Email: [sgitelman@doc.gov](mailto:sgitelman@doc.gov)**

Lola Stith

Contractor - The Ambit Group, LLC

NOAA Office of the Chief Information Officer (OCIO)

(c (b)(6) [REDACTED]  
[lola.m.stith@noaa.gov](mailto:lola.m.stith@noaa.gov)



January 17, 2018

MEMORANDUM FOR: Mark Graff  
FOIA Officer

FROM: Bobbie Parsons  
FOIA Officer, Immediate Office of the Secretary

SUBJECT: Referred documents for FOIA Request  
2017-001495

In processing a Freedom of Information Act (FOIA) request from Mr. Michael Ravnitzky, a noncommercial individual requester, the Immediate Office of the Secretary located ten pages which are believed to have originated in and/or contains equity of the Economic Development Administration. The request is seeking

**“each e-mail since March 1, 2017 in the Commerce Department Office of Legislative and Intergovernmental Affairs (OLIA) that contains any of the following words: autocrat - autocratic - blowhard - bombastic - buffoon - crazy - dangerous - egomaniac - egotistical - immature - Infantile - insane - Irresponsible - laughingstock - lunatic - misogynist - narcissism - narcissist - narcissistic - opportunist - sociopath - sociopathic - unbecoming - undignified - unhinged - vulgar - vulgarian - whack”**

I am sending this FOIA request and documents to you for your attention since your office has been identified as possibly having originated or having equity. Please take the following actions:

- Conduct the review of the attached record(s).
- Make determination of the record:
  - it is not an agency record,
  - outside the scope of the request,
  - privileged,
  - confidential,
  - an invasion of personal privacy,
  - or for any other legitimate reason recognized by FOIA.
- If you determine the record(s) to be responsive:
  - Identify whether you believe the records, or any portions thereof, should be withheld from disclosure.
  - Attached is a copy of FOIA Exemptions to assist you with making withholding determinations.
  - Redact/Black out the withheld portion/portions.
  - Mark with the FOIA exemption.
  - Check the box coordinating box(es) on the attached Certification of Disclosure Review.
  - Fill in the name of which office(s) originated the documents.
  - Fill in the name of who made disclosure determinations, showing that the originating office is the office that made the disclosure determinations.

- Check the corresponding box(es) pertaining to the record(s).
- Sign and date the Certification of Disclosure Review.
- Return the completed Certification of Disclosure Review to my office with the referred document(s).

Please provide electronic clean and redacted copies of the ten pages to me within 5 (five) business days of the date of this letter — on or before Wednesday, January 24, 2018.

I am also available to answer any questions you may have about FOIA Exemptions or the FOIA request by phone at 202-482-3257 or by email at [BParsons@doc.gov](mailto:BParsons@doc.gov).

Attachments:

- 1) Certification of Referral Disclosure Determination
- 2) FOIA Exemptions

CERTIFICATION of REFERRAL DOCUMENT DISCLOSURE REVIEW

Name of Bureau that originated the document(s)

THIS RESPONSE MUST BE SIGNED BY A SENIOR OFFICIAL IN YOUR OFFICE.

Please contact me if you have any questions about the scope of this request or the FOIA exemptions, at 202-482-3842.

Please sign this sheet of paper and check all of the appropriate boxes

- I have uploaded the referred documents to FOIAonline. NOAA has reviewed the referred documents for disclosure and found that one or more of the documents and/or portions of the documents are responsive and can be released in entirety.
  - I have uploaded the referred documents to FOIAonline. NOAA has reviewed the referred documents for disclosure and found that one or more of the documents and/or portions of the documents are responsive and should be withheld in part, the exemption(s) is/are noted.
  - I have uploaded the referred documents to FOIAonline. NOAA has reviewed the referred documents for disclosure and found that one or more of the documents and/or portions of the documents are responsive and should be withheld in entirety, the exemption(s) is/are noted.
  - NOAA has reviewed the referred documents for disclosure and found that one or more of the documents and/or portions of the documents are NON-RESPONSIVE to the FOIA request.
  - NOAA has reviewed the referred documents for disclosure and found that one or more of the documents and/or portions of the documents are responsive and should be referred to the following named originating office, bureau, or federal agency for disclosure determination:
- 

- All disclosure determination(s) have been made by the Commerce office in the NOAA that originated the document(s) and/or portion(s) of the document(s).

(Name of Person and Office that reviewed the document(s))

- A foreseeable harm review and analysis has been completed for all withheld document(s) and portion(s) of the document(s) and it has been determined that disclosure of the withheld material would result in harm to an interest protected by the asserted exemption or that disclosure is prohibited by law.

(Name of person most knowledgeable with the issue of foreseeable harm.

- Interim response
- Final response

Signature (Senior Official)

Bureau

(Date)

## **FOIA Exemptions**

**Exemption 1:** classified national defense and foreign relations information;

**Exemption 2:** internal agency personnel rules and practices;

**Exemption 3:** information that is prohibited from disclosure by another federal law;

**Exemption 4:** trade secrets and other confidential or privileged commercial or financial information;

**Exemption 5:** inter-agency or intra-agency communications that are protected by legal privileges, including the deliberative process, attorney-client and attorney work-product privileges;

**Exemption 6:** information involving matters of personal privacy;

**Exemption 7:** records or information compiled for law enforcement purposes, to the extent that the production of those records:

Exemption (7)(A) could reasonably be expected to interfere with enforcement proceedings,

Exemption (7)(B) would deprive a person of a right to a fair trial or an impartial adjudication,

Exemption (7)(C) could reasonably be expected to constitute an unwarranted invasion of personal privacy,

Exemption (7)(D) could reasonably be expected to disclose the identity of and/or information provided by a confidential source,

Exemption (7)(E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or

Exemption (7)(F) could reasonably be expected to endanger the life or physical safety of any individual;

**Exemption 8:** information relating to the supervision of financial institutions; and

**Exemption 9:** geological information on wells.

**Belton, Linda (Federal)**

---

**From:** Belton, Linda (Federal)  
**Sent:** Wednesday, April 26, 2017 3:58 PM  
**To:** Schufreider, Jim (Federal); Lenihan, Brian (Federal); Burston, Jocelyn (Federal)  
**Cc:** Branson, Ross (Federal)  
**Subject:** Senate Commerce Hearing on Marine Sanctuaries

The Senate Commerce Committee Subcommittee on Oceans will hold a hearing on May 4 on marine sanctuaries. The Office of Marine Sanctuaries Director, John Armor, will testify. A formal invite will be sent today.

----- Forwarded message -----

**From:** Makeda Okolo - NOAA Federal <makeda.okolo@noaa.gov>  
**Date:** Wed, Apr 26, 2017 at 3:13 PM  
**Subject:** Update on upcoming Senate Commerce Sanctuaries Hearing on 5/4  
**To:** Robert Moller - NOAA Federal <robert.moller@noaa.gov>, Hannah Mellman - NOAA Federal <hannah.mellman@noaa.gov>, Linda Belton - NOAA Federal <linda.belton@noaa.gov>

Hi Everyone,

Additional details about the hearing are in...

(b)(5)

Topics to be discussed include the following -

(b)(5)

Other witnesses tentatively are as follows -

(b)(5)

**Branson, Ross (Federal)**

---

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**Date:** Wed, Apr 26, 2017 at 3:13 PM  
**Subject:** Update on upcoming Senate Commerce Sanctuaries Hearing on 5/4  
**To:** Robert Moller - NOAA Federal <robert.moller@noaa.gov>, Hannah Mellman - NOAA Federal <hannah.mellman@noaa.gov>, Linda Belton - NOAA Federal <linda.belton@noaa.gov>

Hi Everyone,

Additional details about the hearing are in...

(b)(5)

Topics to be discussed include the following -

(b)(5)

Other witnesses tentatively are as follows -

(b)(5)

**Branson, Ross (Federal)**

---

**From:** Neill, Andrew <Andrew.Neill@mail.house.gov>  
**Sent:** Friday, April 21, 2017 3:27 PM  
**To:** Kelly, George (Federal); Branson, Ross (Federal); Noble, Erik (Federal)  
**Cc:** Evich, Jordan  
**Subject:** FW: Cong. Cathy McMorris-Rodgers

Hey George,

I was hoping to follow up on these two issues. I understand things are crazy but let me know if you have a second to talk.

Best,

-Andrew

**From:** Neill, Andrew  
**Sent:** Tuesday, April 11, 2017 4:05 PM  
**To:** 'George Kelly - NOAA Federal'; Branson, Ross (Federal)  
**Cc:** erik.noble@noaa.gov; Evich, Jordan  
**Subject:** RE: Cong. Cathy McMorris-Rodgers

George,

Thank you so much for reaching out. Jordan in Jamie Herrera Beutler's office (cc'd) and I were hoping we may be able to discuss two issues with you.

(b)(5)

We would greatly appreciate the opportunity. Please let me know if there is anything else I can provide in the meantime.

Best,



-Andrew

**From:** George Kelly - NOAA Federal [<mailto:george.kelly@noaa.gov>]  
**Sent:** Thursday, April 06, 2017 6:09 PM  
**To:** Branson, Ross (Federal)  
**Cc:** Neill, Andrew; [erik.noble@noaa.gov](mailto:erik.noble@noaa.gov)  
**Subject:** Re: Cong. Cathy McMorris-Rodgers

Andrew:

Following up on this. Please feel free to give me call: (b)(6)

Best,  
George

Sent from my iPhone

On Apr 4, 2017, at 5:06 PM, Branson, Ross (Federal) <[RBranson@doc.gov](mailto:RBranson@doc.gov)> wrote:

Andrew,

I have CCed here the two gentlemen who recently arrived in NOAA. I spoke to them very briefly regarding the Congresswoman's issue but coordinate with them regarding the specifics. If you need anything else please let me know.

Ross Branson  
Associate Director of Legislative Affairs  
United States Department of Commerce  
202-482-0757-Office  
(b)(6) Cell

## Lenihan, Brian (Federal)

---

**From:** Robert Moller - NOAA Federal <robert.moller@noaa.gov>  
**Sent:** Friday, June 30, 2017 2:51 PM  
**To:** Lenihan, Brian (Federal); Branson, Ross (Federal); Schufreider, Jim (Federal)  
**Subject:** Fwd: Independence Day Holiday Travel and Hazards Outlook

Just FYI...

----- Forwarded message -----

**From:** NOAA Significant Weather <[noaa.significant.weather@noaa.gov](mailto:noaa.significant.weather@noaa.gov)>  
**Date:** Fri, Jun 30, 2017 at 2:48 PM  
**Subject:** Independence Day Holiday Travel and Hazards Outlook  
**To:** "NOAA Significant.Weather" <[noaa.significant.weather@noaa.gov](mailto:noaa.significant.weather@noaa.gov)>

Colleagues:

The following report is sent to you as a courtesy of NOAA's National Weather Service (NWS) & NOAA's Office of Legislative and Intergovernmental Affairs.

Sincerely,  
NOAA/NWS Congressional Affairs Team







Matt Borgia | [matthew.borgia@noaa.gov](mailto:matthew.borgia@noaa.gov) | 202-482-1939  
John Sokich | [john.sokich@noaa.gov](mailto:john.sokich@noaa.gov) | 301-332-4680  
Mike Bilder | [michael.bilder@noaa.gov](mailto:michael.bilder@noaa.gov) | 607-857-7789

# Independence Day Holiday Travel and Hazards Outlook

## Forecast Overview and Weather Hazards

- **Eastern U.S.**
  - Scattered showers and thunderstorms are expected from the Ohio Valley through Pennsylvania and western New York into New England at the start of the holiday weekend.
  - The threat spreads across the entire region Saturday. Widespread severe storms are not expected at this time.
  - There should be a lull in activity on Sunday with a chance for thunderstorms across much of the region again on Monday.
- **Central U.S.**
  - Severe storms possible on Friday over Oklahoma along with locally heavy rainfall and isolated flash flooding.
  - Several periods of showers and thunderstorms will result in locally heavy rainfall across the Mid-Mississippi River Valley and portions of the Ozark Plateau on Friday.

**immediate Washington, DC area and is subject to change. For the most recent forecast or a forecast for another area, please visit [www.weather.gov](http://www.weather.gov).**

This Afternoon	Tonight	Saturday	Saturday Night	Sunday	Sunday Night
					
Mostly Sunny	Mostly Cloudy	30% → 60% Chance T-storms then T-storms Likely	70% T-storms Likely	Mostly Sunny	Partly Cloudy
High: 94 °F	Low: 76 °F	High: 89 °F	Low: 73 °F	High: 91 °F	Low: 71 °F

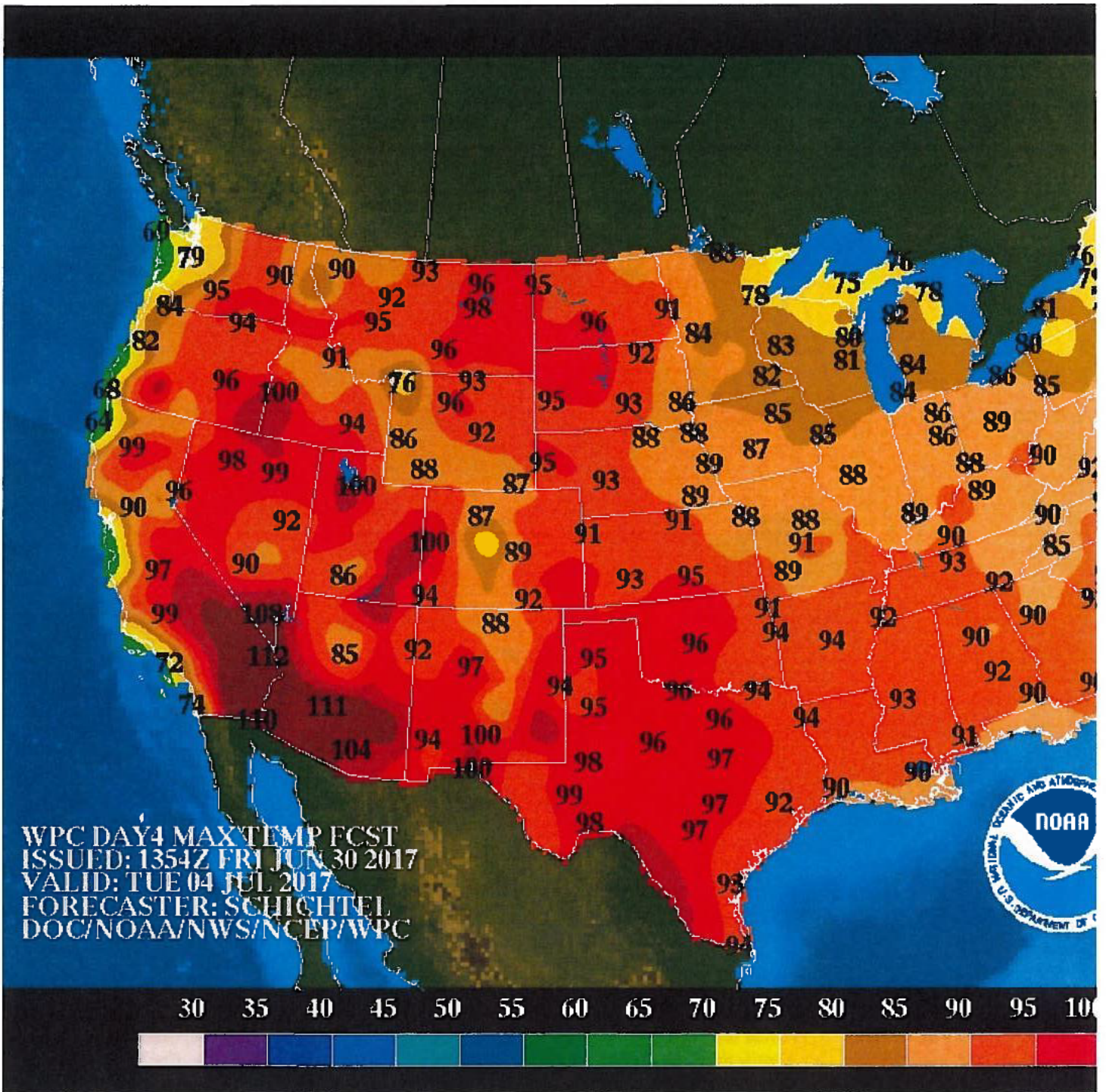
<b>This Afternoon</b>	Mostly sunny, with a high near 94. South wind around 15 mph, with gusts as high as 23 mph.	<a href="#">Link</a>
<b>Tonight</b>	Mostly cloudy, with a low around 76. South wind 9 to 13 mph.	
<b>Saturday</b>	A slight chance of showers, then showers and thunderstorms likely after 11am. Mostly cloudy, with a high near 89. South wind 10 to 13 mph, with gusts as high as 20 mph. Chance of precipitation is 60%. New rainfall amounts less than a tenth of an inch, except higher amounts possible in thunderstorms.	<a href="#">View Weather Details</a>
<b>Saturday Night</b>	Showers and thunderstorms likely, mainly before 11pm. Mostly cloudy, with a low around 73. Southwest wind 5 mph becoming light and variable after midnight. Chance of precipitation is 70%. New rainfall amounts between a tenth and quarter of an inch, except higher amounts possible in thunderstorms.	<a href="#">View Weather Details</a>
<b>Sunday</b>	Mostly sunny, with a high near 91. Northwest wind 5 to 7 mph.	<a href="#">View Weather Details</a>
<b>Sunday Night</b>	Partly cloudy, with a low around 71.	
<b>Monday</b>	Sunny, with a high near 91.	<a href="#">View Weather Details</a>
<b>Monday Night</b>	Partly cloudy, with a low around 71.	
<b>Independence Day</b>	Mostly sunny, with a high near 91.	<a href="#">View Weather Details</a>
<b>Tuesday Night</b>	Partly cloudy, with a low around 72.	

## Potential Impacts to Air Travel

The following airports may experience travel delays due to weather conditions during the holiday period:

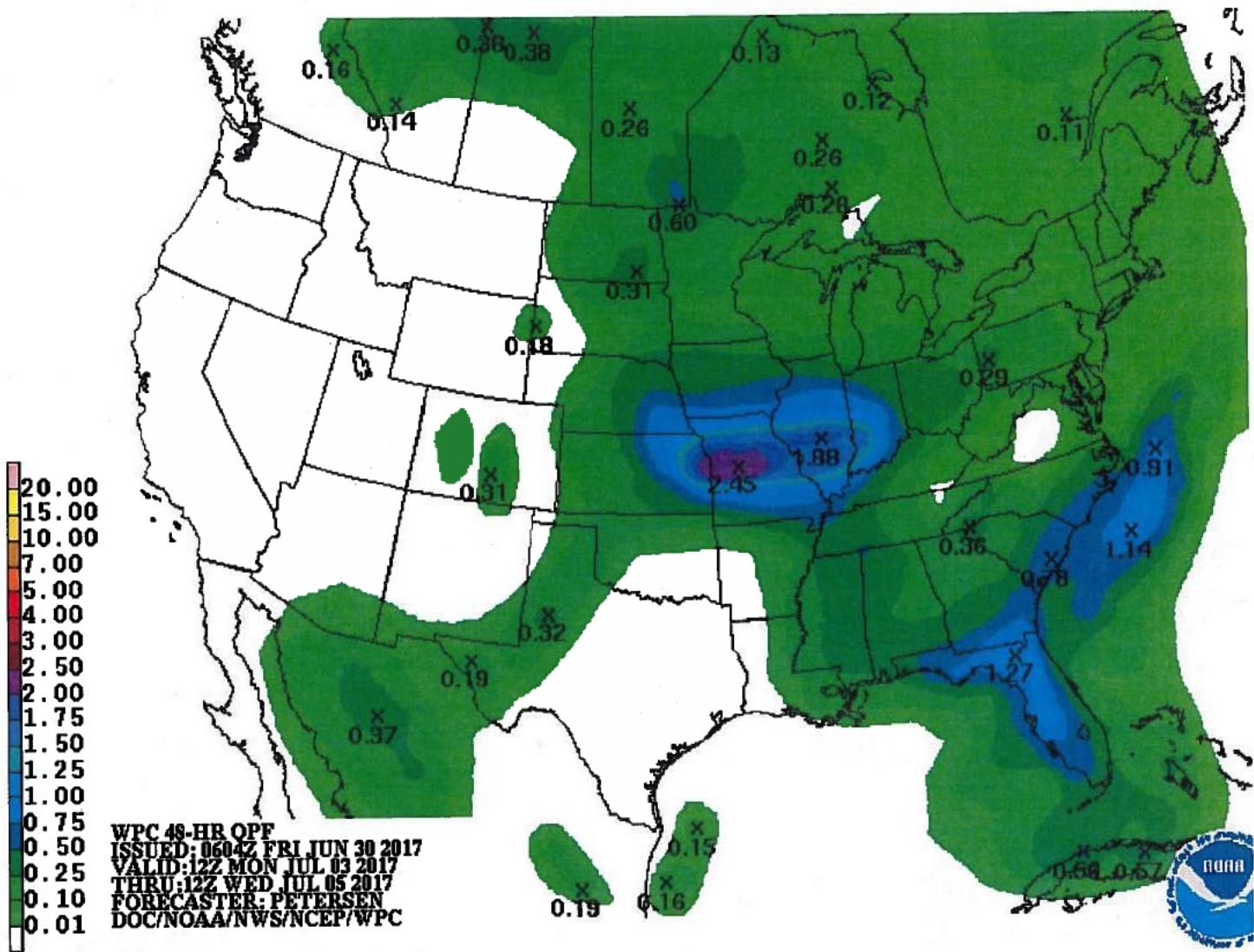
- **Fri 6/30**
  - Low ceilings are forecast at San Francisco and Los Angeles. Thunderstorms impacts are possible at central and eastern U.S. Airports, including Boston, Chicago, Minneapolis, Detroit, Charlotte, Atlanta and all Florida terminals. Impacts are probable at New York due to thunderstorms west of the metro area.
- **Sat 7/1**





*48-hour Precipitation Forecast, starting the morning of Mon., July 3 through the morning of Wed., July 5, issued by the WPC*





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As a way to keep you and your Member informed of unusual weather situations potentially impacting your state or district, NOAA will periodically send you this type of "heads-up" message to alert you to the potential of a significant weather event. The state of the science will not always permit us to provide alerts too far in advance, but some weather circumstances have the potential to cause a significant impact, and when we can identify those conditions, we plan on sending you these email notifications. For latest information and local forecasts, please consult the forecast from your local NWS office on the web at: [www.weather.gov](http://www.weather.gov)

--

Robert Moller  
 Deputy Director  
 Office of Legislative and Intergovernmental Affairs  
 National Oceanic and Atmospheric Administration  
 U.S. Department of Commerce  
 1401 Constitution Ave., NW

- Low ceilings are forecast at San Francisco and Los Angeles. Thunderstorms impacts are possible at central and eastern U.S. Airports, including New York, Philadelphia, Washington DC, Charlotte, Atlanta Dallas and all Florida terminals.
- **Sun 7/2**
  - Low ceilings are forecast at San Francisco and Los Angeles. Thunderstorms impacts are possible at eastern U.S. Airports, including Boston, New York, Philadelphia, Washington DC, Charlotte, Atlanta and all Florida terminals.
- **Mon 7/3**
  - Low ceilings are forecast at San Francisco and Los Angeles. Thunderstorms impacts are possible at Chicago and all Florida terminals.
- **Tue 7/4**
  - Low ceilings are possible at San Francisco. Thunderstorm impacts are possible at all Florida terminals.
- **Wed 7/5 - Fri 7/7**
  - Low ceilings are possible at San Francisco. Thunderstorm impacts are possible at central and eastern US terminals.

## Links

- [NWS Watches, Warnings, and Advisories in Effect](#)
- [NWS Weather Forecast Office Washington/Baltimore](#)
- [NWS Weather Prediction Center -- Days 1-3 National Forecast Charts](#)
- [NWS National Forecast Maps](#)
- [NWS Storm Prediction Center](#)
- [NWS Weather Prediction Center](#)
- [NWS Summer Safety Page](#)
- [NWS Social Media Hub](#)
- [NWS Weather-Ready Nation](#)

## Graphics

*High Temperatures Forecast for Tues., July 4, issued by the NWS Weather Prediction Center (WPC)*

- Generally quiet weather will prevail across the region Saturday and much of Sunday before storms return to the Lower Missouri River Valley late Sunday and continue through Tuesday.
- Temperatures will be seasonable through Sunday, when above normal highs are expected across the Central High Plains.
- A lack of precipitation across the Northern Plains will result in a continued worsening of ongoing drought conditions.
- **Southern U.S.**
  - Severe storms possible on Friday over northern Arkansas along with locally heavy rainfall and isolated flash flooding.
  - A few strong to severe storms expected from the Texas Panhandle into Arkansas and Tennessee on Saturday with widely scattered thunderstorms over much of the Southeast.
  - Typical summertime regime with scattered thunderstorms possible over much of the South on Sunday through Tuesday, but widespread impacts are not expected.
  - Temperatures will be close to average for this time of the year.
- **Western U.S.**
  - Warmer than normal temperatures, low relative humidity, and little to no expected precipitation across much of the West will continue to impact ongoing large wildfire incidents in several western states this weekend.
  - Cold and fast moving water continues to create dangers for those recreating in some western streams and rivers, mainly due to increased reservoir releases as a result of the continued mountain snowmelt.
- **Alaska:**
  - Slightly above normal temperatures and periods of rain along the south coast and panhandle with scattered showers across the interior. Trend of decreasing shower activity statewide on Tuesday, July 4.
- **Hawaii, Guam, Northern Marianas & American Samoa:**
  - No significant impacts are anticipated for Hawaii and Guam with isolated to scattered trade wind showers through Tuesday, July 4.
  - Numerous showers are anticipated for American Samoa on Friday with isolated showers on Saturday and Sunday becoming more scattered to start the week. High surf and dangerous rip currents are anticipated until Monday night.
- **Puerto Rico & U.S. Virgin Islands**
  - On Friday, there is a chance of isolated thunderstorms with brief heavy rainfall and gusty winds today across Puerto Rico and the adjacent islands. Heavy rains could lead to urban and small stream flooding mainly over the northern half of Puerto Rico with minor ponding of water on roadways and poor drainage area.
  - There is a moderate risk of rip currents for most of the beaches of Puerto Rico except along the west coast on Friday.
  - Moisture trailing the tropical wave will support the chance of an isolated thunderstorm on Saturday.
  - Another tropical wave will approach the local islands Monday through Tuesday and increase the chance for isolated thunderstorms once again.

## **June 30 - July 4 Forecast for Washington, DC**

***Forecast provided by the NWS Weather Forecast Office for the Washington/Baltimore area (located in Sterling, Virginia) as of 2:39pm ET on Friday, June 30. This forecast is for the***

**Jonelle Dilley - NOAA Federal**

---

**From:** Jonelle Dilley NOAA Federal  
**Sent:** Monday, January 29, 2018 9:20 AM  
**To:** Mark Graff NOAA Affiliate; Symone Stone NOAA Affiliate  
**Cc:** Colleen Roche NOAA Federal  
**Subject:** Re: ACTION: RESPONSIVE RECORD RELEASE DETERMINATION 2018 000580

Mark/Symone,

(b)(5)

Thanks,  
Jonelle

Jonelle Dilley  
Attorney Advisor  
Oceans and Coasts Section  
NOAA, Office of General Counsel  
1305 East West Highway  
SSMC 4, Room 6111  
Silver Spring, MD 20910  
Tel: (301) 713 7383 (direct line)  
Cel (b)(6)  
Fax: (301) 713 4408

On Fri, Jan 26, 2018 at 9:37 AM, Jonelle Dilley NOAA Federal <[jonelle.dilley@noaa.gov](mailto:jonelle.dilley@noaa.gov)> wrote:  
Mark/Symone,

(b)(5)

Thanks much,  
Jonelle

Jonelle Dilley  
Attorney Advisor  
Oceans and Coasts Section  
NOAA, Office of General Counsel  
1305 East West Highway  
SSMC 4, Room 6111  
Silver Spring, MD 20910  
Tel: (301) 713 7383 (direct line)  
Cel (b)(6)



Fax: [\(301\) 713 4408](tel:3017134408)

On Thu, Jan 25, 2018 at 4:55 PM, Nkolika Ndubisi NOAA Federal <[nkolika.ndubisi@noaa.gov](mailto:nkolika.ndubisi@noaa.gov)> wrote:  
Hi Jonelle

Thanks for the update (b)(5)

With regards,  
Nikki

On Thursday, January 25, 2018, Jonelle Dilley NOAA Federal <[jonelle.dilley@noaa.gov](mailto:jonelle.dilley@noaa.gov)> wrote:

(b)(5)

I'm happy to reach out if you could please give me the contact information.

Thanks,

Jonelle

Sent from my iPhone

On Jan 25, 2018, at 2:34 PM, Nkolika Ndubisi NOAA Federal <[nkolika.ndubisi@noaa.gov](mailto:nkolika.ndubisi@noaa.gov)> wrote:

Hi Todd,

Thanks for the update.

Nkolika Ndubisi (Nikki)  
Administration Division  
Management and Budget  
National Ocean Service  
[\(240\) 533 0937](tel:2405330937)

On Thu, Jan 25, 2018 at 2:32 PM, Todd Ehret NOAA Federal <[todd.ehret@noaa.gov](mailto:todd.ehret@noaa.gov)> wrote:

Nikki,

(b)(5)

I have cc'd Jonelle on this message.

Todd Ehret  
Physical Oceanographer  
Center for Operational Oceanographic Products and Services

On Tue, Jan 23, 2018 at 2:51 PM, Nkolika Ndubisi NOAA Federal  
<[nkolika.ndubisi@noaa.gov](mailto:nkolika.ndubisi@noaa.gov)> wrote:

**FOIA 2018-000580**

**Requester:** Allan Blutstein

**Description:** Please accept this email as a request pursuant to the Freedom of Information Act for access to any email sent by Kathleen Hibbard from June 14, 2017, through June 27, 2017 that mentions or refers to the Climate Science Special Report (CSSR).

**(b)(5)**

**(b)(5)** Let me know if you have any questions, I can be reached via email or [\(240\) 533-0937](tel:2405330937).

Nkolika Ndubisi (Nikki)  
Administration Division  
Management and Budget  
National Ocean Service  
[\(240\) 533 0937](tel:2405330937)

Nkolika Ndubisi (Nikki)  
Administration Division  
Management and Budget  
National Ocean Service  
[\(240\) 533 0937](tel:2405330937)

**Kimberly Katzenbarger - NOAA Federal**

---

**From:** Kimberly Katzenbarger NOAA Federal  
**Sent:** Monday, January 29, 2018 5:46 PM  
**To:** Mark Graff; Kate Barfield NOAA Federal; Britta Hinrichsen  
**Subject:** Fwd: FOIA Exemption 4 and Settlement Negotiations  
**Attachments:** FOIA\_Settlement Confidential memo.docx

FYI re further discussions on protecting settlement confidential materials...

Forwarded message

From: **Kimberly Katzenbarger - NOAA Federal** <[kimberly.katzenbarger@noaa.gov](mailto:kimberly.katzenbarger@noaa.gov)>  
Date: Fri, Jan 26, 2018 at 4:26 PM  
Subject: Fwd: FOIA Exemption 4 and Settlement Negotiations  
To: Christina Storz NOAA Federal <[christina.storz@noaa.gov](mailto:christina.storz@noaa.gov)>  
Cc: Laurie Lee <[Laurie.Lee@noaa.gov](mailto:Laurie.Lee@noaa.gov)>, "Chauncey Kelly," <[chauncey.kelly@noaa.gov](mailto:chauncey.kelly@noaa.gov)>, Christopher Plaisted NOAA Federal <[christopher.plaisted@noaa.gov](mailto:christopher.plaisted@noaa.gov)>, Robert A Taylor NOAA Federal <[robert.a.taylor@noaa.gov](mailto:robert.a.taylor@noaa.gov)>

Hi Christina (b)(5)

[Redacted]

[Redacted]

(b)(5)  
[Redacted]

Kim

Forwarded message

From: **Josh Fortenbery - NOAA Federal** <[joshua.fortenbery@noaa.gov](mailto:joshua.fortenbery@noaa.gov)>  
Date: Thu, Jan 19, 2017 at 2:30 PM  
Subject: Re: FOIA Exemption 4 and Settlement Negotiations  
To: Mark Graff NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)>  
Cc: Kimberly Katzenbarger NOAA Federal <[kimberly.katzenbarger@noaa.gov](mailto:kimberly.katzenbarger@noaa.gov)>

Thanks Mark! (b)(5) [Redacted]

On Thu, Jan 19, 2017 at 1:16 PM, Mark Graff NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)> wrote:

(b)(5) [Redacted]

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628 5658 (O)  
(b)(6) (C)

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On Thu, Jan 19, 2017 at 1:11 PM, Kimberly Katzenbarger NOAA Federal <[kimberly.katzenbarger@noaa.gov](mailto:kimberly.katzenbarger@noaa.gov)> wrote:

So, (b)(5) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted] ?

On Thu, Jan 19, 2017 at 12:16 PM, Mark Graff NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)> wrote:

Hi Kim

(b)(5) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Hope this helps!

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration

[\(301\) 628 5658](tel:3016285658) (O)

(b)(6) [Redacted] (C)

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On Wed, Jan 18, 2017 at 8:05 PM, Kimberly Katzenbarger NOAA Federal

<[kimberly.katzenbarger@noaa.gov](mailto:kimberly.katzenbarger@noaa.gov)> wrote:

Thanks Josh, this is a good memo (b)(5)  
[Redacted text block]

Mark, any thoughts?

Notes from October 2016 Legal Experts Call:

(b)(5)  
[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

(b)(5)

On Tue, Jan 10, 2017 at 4:04 PM, Josh Fortenbery NOAA Federal <[joshua.fortenbery@noaa.gov](mailto:joshua.fortenbery@noaa.gov)> wrote:

ATTORNEY WORK PRODUCT

Hey Mark,

My name is Josh Fortenbery, and I'm an Honors Attorney with NOAA. We spoke briefly when you gave us a FOIA presentation over the phone (b)(5)

(b)(5)

Best,

Josh

Josh Fortenbery  
NOAA Office of General Counsel  
U.S. Department of Commerce  
Phone: [301 713 7447](tel:3017137447)

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Kimberly Katzenbarger, Attorney  
National Oceanic and Atmospheric Administration  
Office of General Counsel, Natural Resources Section  
1315 East West Hwy, Suite 15104  
Silver Spring, MD 20910 3282  
Desk: [301 713 7448](tel:3017137448)  
Cel (b)(6)

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Kimberly Katzenbarger, Attorney  
National Oceanic and Atmospheric Administration  
Office of General Counsel, Natural Resources Section  
1315 East West Hwy, Suite 15104  
Silver Spring, MD 20910 3282  
Desk: [301 713 7448](tel:3017137448)  
Cel: (b)(6)

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**Josh Fortenbery**  
NOAA Office of General Counsel  
U.S. Department of Commerce  
Phone: [301 713 7447](tel:3017137447)

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Kimberly Katzenbarger, Attorney  
National Oceanic and Atmospheric Administration  
Office of General Counsel, Natural Resources Section  
1315 East West Hwy, Suite 15104  
Silver Spring, MD 20910 3282  
(b)(6)

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Kimberly Katzenbarger, Attorney  
National Oceanic and Atmospheric Administration  
Office of General Counsel, Natural Resources Section  
1315 East West Hwy, Suite 15104  
Silver Spring, MD 20910 3282  
(b)(6)

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**MEMORANDUM**

**TO:** Laurie Lee, Deputy Section Chief, NOAA GC Natural Resources Section  
**FROM:** Josh Fortenbery, Attorney-Advisor, NOAA GC Natural Resources Section  
**DATE:** January 10, 2017  
**RE:** Settlement confidential disclosures under FOIA

---

**I. QUESTION PRESENTED AND SHORT ANSWERS**

(b)(5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)

**Mark Graff - NOAA Federal**

---

**From:** Mark Graff NOAA Federal  
**Sent:** Tuesday, January 30, 2018 12:48 PM  
**To:** Tanya Dobrzynski NOAA Federal; Scott Smullen NOAA Federal; Robert Hogan; Devin Brakob NOAA Federal  
**Cc:** Robert Swisher NOAA Federal; Ed Kearns NOAA Federal; Lola Stith NOAA Affiliate; Stacey Nathanson NOAA Federal; Samuel Dixon NOAA Affiliate; James LeDuc NOAA Federal  
**Subject:** Red Snapper Litigation (Ocean Conservancy) Interim Release  
**Attachments:** Ocean Conservancy Complaint\_1 23 18.pdf; Original Ocean Conservancy FOIA request.pdf

Good Afternoon,

(b)(5) [Redacted]  
[Redacted]  
[Redacted]

[Redacted]  
[Redacted]

[Redacted]  
[Redacted]

[Redacted]. A copy of the underlying FOIA request and Complaint are attached for your reference.

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628 5658 (O)

(b)(6) [Redacted] (C)

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

OCEAN CONSERVANCY  
1300 19th Street, NW, Eighth Floor  
Washington, DC 20036

Plaintiff,

v.

NATIONAL MARINE FISHERIES SERVICE  
U.S. Department of Commerce  
Room 14555  
1315 East-West Highway  
Silver Spring, Montgomery County, MD 20910

NATIONAL OCEANIC AND ATMOSPHERIC  
ADMINISTRATION  
U.S. Department of Commerce  
Room 5128  
1401 Constitution Avenue, NW  
Washington, DC 20230

Defendants.

No. \_\_\_\_\_

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

**INTRODUCTION**

1. Plaintiff Ocean Conservancy brings this case to remedy violations of the Freedom of Information Act (FOIA), 5 U.S.C. § 552, by the National Marine Fisheries Service and National Oceanic and Atmospheric Administration (collectively, Defendants). The violations arise out of Defendants' continuing failure to respond to Ocean Conservancy's FOIA request.

2. In June 2017, Defendants issued a Temporary Rule reopening the Gulf of Mexico private angler red snapper fishing season and extending the fishing season from 3 to 42 days. 82 Fed. Reg. 27,777 (June 19, 2017). Defendants admitted that the action would cause the private recreational fishing sector to substantially exceed the annual catch limit set for that sector and delay rebuilding for the overfished population of red snapper, *id.* at 27,779, in violation of a

number of statutes.

3. Ocean Conservancy filed a FOIA request with the National Marine Fisheries Service (Fisheries Service), an agency of the National Oceanic and Atmospheric Administration (NOAA), on June 19, 2017, seeking pertinent records to enable Ocean Conservancy to analyze the basis for and impact of the Temporary Rule and disseminate the information to the public. The records sought in the FOIA request are essential to Ocean Conservancy's advocacy and public education missions to support protecting the red snapper population. Defendants failed to provide Ocean Conservancy a determination on its FOIA request within the time required under FOIA and have not to date provided Ocean Conservancy a determination on its request.

4. Although Defendants have provided Ocean Conservancy a small, partial release of responsive records, Defendants continue to unlawfully withhold the information sought by Ocean Conservancy. Defendants have provided Ocean Conservancy no information on additional responsive records in their possession. By failing to provide the requested records, Defendants are actively impeding Ocean Conservancy's access to government information and blocking its ability to carry out its organizational missions.

5. Having constructively exhausted its administrative remedies with Defendants, Ocean Conservancy now turns to this Court to enforce FOIA's guarantee of public access to agency records and to remedy Defendants' withholding of that access. Accordingly, Ocean Conservancy asks this Court to declare that Defendants have violated FOIA by failing to make a determination on Ocean Conservancy's FOIA request and by withholding the requested records, to order Defendants to immediately provide Ocean Conservancy with a legally compliant response to its outstanding record request, to order Defendants to promptly provide Ocean Conservancy all responsive records, and to grant other appropriate relief, including attorneys'



fees and costs.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1333 (federal question) and 5 U.S.C. § 552(a)(4)(B) (FOIA).

7. Venue properly vests in this District pursuant to 5 U.S.C. § 552(a)(4)(B) because, on information and belief, the requested agency records are situated in this District. Venue also properly vests in this District pursuant to 28 U.S.C. § 1391(b) and (e)(i) because: (1) the principal office of each Defendant is located in this District and (2) a substantial part of the events and omissions which gave rise to this action occurred in this District.

8. This Court has authority to grant the requested relief in this case pursuant to FOIA, 5 U.S.C. § 552(a)(4)(B), (E), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 2202.

### **PARTIES**

9. Plaintiff OCEAN CONSERVANCY is a nonprofit, science-based conservation organization dedicated to healthy oceans and the wildlife and communities that depend on them. Since 1972, Ocean Conservancy has sought to improve the health of our nation's marine wildlife and fish. To that end, and as part of its organizational goals, Ocean Conservancy seeks to prevent degradation of marine habitats and end overfishing (i.e., catching more fish than the remaining population can replace). Ocean Conservancy has over 125,000 members and supporters worldwide, including over 14,000 in the five Gulf of Mexico states. The organization publishes numerous reports, articles, newsletters, and other analyses on ocean and fishery sustainability topics each year. The organization is routinely called upon to brief and educate federal and state policymakers, and Ocean Conservancy staff are frequently quoted in the media

and invited to present and speak at various conferences and events. Ocean Conservancy's headquarters are located in Washington, DC. It also has offices in Alaska, California, Washington, Oregon, Florida, and Texas.

10. In the 1990s, Ocean Conservancy became involved in the conservation and management of the red snapper fishery. For the past three decades, Ocean Conservancy has worked to promote a healthy red snapper fishery for the benefit of the Gulf of Mexico's ecosystem and coastal communities. Ocean Conservancy staff have regularly attended meetings of the Gulf of Mexico Fishery Management Council and have been involved in public awareness events concerning fisheries for decades.

11. In 2005, Ocean Conservancy successfully challenged the Fisheries Service's rebuilding plan for red snapper. *Coastal Conservation Ass'n v. Gutierrez*, 512 F. Supp. 2d 896 (S.D. Tex. 2007). In 2015, Ocean Conservancy filed *amicus curiae* briefs in support of the federal government in two lawsuits challenging the Fisheries Service's red snapper management.

12. Defendant NATIONAL MARINE FISHERIES SERVICE is an agency of the U.S. Department of Commerce that has been delegated the responsibility to manage the Gulf of Mexico red snapper fishery under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. 16 U.S.C. §§ 1801 *et seq.* The Fisheries Service has authority to issue regulations governing the red snapper fishery seasons and other management measures. The principal office of the Fisheries Service is located in Silver Spring, Montgomery County, Maryland. The Fisheries Service is in possession and control of the records that Ocean Conservancy seeks, and therefore it is subject to FOIA pursuant to 5 U.S.C. § 552(f).

13. Defendant NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION is an agency of the U.S. Department of Commerce with supervisory responsibility for the

Fisheries Service. The principal office of NOAA is located in Silver Spring, Montgomery County, Maryland. NOAA administers and oversees FOIA requests made to the Fisheries Service. NOAA's FOIA office is located in Silver Spring, Montgomery County, Maryland. NOAA is in possession and control of the records that Ocean Conservancy seeks, and therefore is subject to FOIA pursuant to 5 U.S.C. § 552(f).

### STATUTORY BACKGROUND

14. FOIA's basic purpose is to ensure government transparency and the expeditious disclosure of government records. FOIA creates a statutory right of public access to agency records by requiring that federal agencies make records available to any person upon request. 5 U.S.C. § 552(a)(3)(A).

15. FOIA imposes strict deadlines on federal agencies to respond to requests. FOIA requires an agency to issue a final determination resolving an information request within 20 business days from the date of its receipt and to immediately notify the requester of its determination and the reasons therefore. *Id.* § 552(a)(6)(A)(i). This provision requires the agency to "(i) gather and review the documents; (ii) determine and communicate the scope of the agency's documents it intends to produce and withhold, and the reasons for withholding any documents; and (iii) inform the requester that it can appeal whatever portion of the 'determination' is adverse." *Citizens for Responsibility & Ethics in Wash. v. Fed. Election Comm'n*, 711 F.3d 180, 188 (D.C. Cir. 2013); *see* 5 U.S.C. § 552(a)(6)(A)(i).

16. An agency may extend this 20-day period only in "unusual circumstances," as defined by 5 U.S.C. § 552(a)(6)(B)(iii), and only for a maximum of ten working days. *Id.* § 552(a)(6)(B)(i); *see also* 15 C.F.R. § 4.6(b), (d).

17. Agencies are required to provide "an estimated date on which the agency will

complete action on the request” whenever a request will take more than ten days to resolve.

5 U.S.C. § 552(a)(7)(B). Agencies extending the period for unusual circumstances must, when providing notice of the extension, provide “the date on which a determination is expected to be dispatched.” *Id.* § 552(a)(6)(B)(i); *see also* 15 C.F.R. § 4.6(d)(1).

18. The agency must then make the requested records “promptly” available. 5 U.S.C. § 552(a)(3)(A). In so doing, the agency must make reasonable efforts to search for records in a manner that is reasonably calculated to locate all records responsive to the FOIA request. *Id.* § 552(a)(3)(C), (D).

19. The agency may withhold from production the limited classes of records exempted under 5 U.S.C. § 552(b). For any record withheld, the agency bears the burden of proving that one of the statutory exemptions applies. *Id.* § 552(a)(4)(B). Even if some information is exempt from disclosure, “[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt.” *Id.* § 552(b).

20. An agency’s failure to comply with FOIA’s deadlines constitutes a constructive denial of the request, and the requester’s administrative remedies are deemed exhausted for purposes of litigation. *Id.* § 552(a)(6)(C)(i).

#### **STATEMENT OF FACTS**

21. On June 19, 2017, Defendants issued a Temporary Rule reopening the Gulf of Mexico private angler red snapper fishing season and extending that fishing season from 3 to 42 days. 82 Fed. Reg. 27,777 (June 19, 2017).

22. The same day, June 19, 2017, Ocean Conservancy submitted a FOIA request to the Fisheries Service seeking records related to the reopening of the private angler red snapper

fishing season. The request sought all documents relating to the reopening of the red snapper season within the date range of January 20, 2017, through June 19, 2017.

23. Ocean Conservancy's FOIA request furthers the organization's objectives to end overfishing and inform its members and the public about conservation and management of the red snapper fishery to benefit the Gulf of Mexico's ecosystem and coastal communities.

24. On June 20, 2017, Ocean Conservancy received a form email from Defendants acknowledging receipt of the request and assigning the request a tracking number, DOC-NOAA-2017-001394. The acknowledgement did not indicate the scope of the documents Defendants would produce, nor did it indicate any planned withholdings or exemptions.

25. The due date for Defendants to issue a determination on Ocean Conservancy's FOIA request was July 18, 2017, under 5 U.S.C. § 552(a)(6)(A)(i).

26. On July 6, 2017, NOAA notified Ocean Conservancy that the agency had granted Ocean Conservancy's fee waiver request. *See id.* 552(a)(4)(A)(i); 15 C.F.R. § 4.11(l).

27. On July 11, 2017, Ocean Conservancy clarified the scope of its request on a phone call with the Fisheries Service's Southeast Region FOIA Coordinator.

28. On July 17, 2017 the day before FOIA required the Fisheries Service to respond to Ocean Conservancy's request the Fisheries Service requested to extend the due date from July 18, 2017, to August 11, 2017 more than the ten working days allowed for unusual circumstances under 5 U.S.C. § 552(a)(6)(B)(i) and 15 C.F.R. § 4.6(b), (d). Ocean Conservancy agreed to the request.

29. On July 17, 2017, Ocean Conservancy and another organization filed a federal lawsuit challenging Defendants' unilateral decision to extend the private angler red snapper fishing season in the Gulf of Mexico. *Ocean Conservancy v. Ross*, No. 1:17-cv-01408-ABJ

(D.D.C. filed July 17, 2017).

30. On July 25, 2017, NOAA's FOIA Officer emailed Ocean Conservancy requesting additional information in order to make a determination on Ocean Conservancy's eligibility for a waiver of fees. Although NOAA already had granted Ocean Conservancy's fee waiver request, NOAA's FOIA Officer asserted Ocean Conservancy might use the requested records in its lawsuit, which, according to the FOIA Officer, may constitute a "commercial interest" in the records that Ocean Conservancy had not previously disclosed. The FOIA Officer requested additional information on Ocean Conservancy's purported commercial interests in the records.

31. Ocean Conservancy responded via email on July 26, 2017, reiterating that it is a nonprofit organization that has no commercial interest in the requested records.

32. Defendants did not acknowledge or respond to Ocean Conservancy's July 26, 2017 email.

33. On August 2, 2017, Ocean Conservancy sent NOAA an email to inquire about the agency's determination whether Ocean Conservancy has a "commercial interest" in the requested records.

34. On August 3, 2017, Ocean Conservancy received an email from NOAA alleging that Ocean Conservancy had substantively failed to answer the underlying question regarding its commercial interest.

35. Ocean Conservancy emailed NOAA that same day August 3, 2017 recounting and further explaining the ways in which it would use the records.

36. NOAA did not provide any response.

37. Ocean Conservancy sent NOAA an email on August 28, 2017, to inquire as to the status of the request. NOAA responded that same day via email granting a full fee waiver for the

second time.

38. On August 31, 2017, NOAA telephoned Ocean Conservancy asking to further postpone the agency's response to Ocean Conservancy's FOIA request. Ocean Conservancy declined NOAA's request during that call.

39. On September 12, 2017, Ocean Conservancy received an email from the Fisheries Service stating the Fisheries Service's Southeast Regional Office would be closed due to Hurricane Irma. The email did not provide a timetable for responding to Ocean Conservancy's FOIA request.

40. On September 12, 2017, Ocean Conservancy sent NOAA an email narrowing the date range of its FOIA request to March 13, 2017, through June 19, 2017, to lessen the burden of its request on the agency. NOAA did not acknowledge that email or enter it into the agency's FOIA correspondence log.

41. On September 18, 2017, Ocean Conservancy received an email from the Fisheries Service stating that the Southeast Regional Office reopened on September 15, 2017. The Fisheries Service also stated that the server housing the agency's FOIA application and responsive records was not yet operating, but was anticipated to be running by the end of the day on September 18, 2017. The Fisheries Service stated that it had on September 5, 2017, provided the NOAA Office of General Counsel, Southeast Region with an interim records response for that office's legal review and clearance. The email did not provide any further timetable for responding to Ocean Conservancy's FOIA request, any statement on the scope of records that the agency had sent to the General Counsel or that the agency would produce, or any statement on the agency's planned withholdings or exemptions.

42. On October 12, 2017, having not received any interim records response, Ocean

Conservancy sent an email to NOAA requesting an update on the status of its FOIA request.

43. On October 17, 2017, Ocean Conservancy received an email from the Fisheries Service stating that “a records response has been provided to [the Fisheries Service] and NOAA FOIA for release approval.”

44. On November 14, 2017, Ocean Conservancy sent NOAA an email requesting that Defendants commit to providing the requested documents by a date certain.

45. Later that day, November 14, 2017, NOAA informed Ocean Conservancy it would provide a partial, interim release of 38 documents “shortly.”

46. On November 28, 2017, Ocean Conservancy received an “interim response” from Defendants transmitting 38 documents. The majority of the 38 documents consist of correspondence discussing how to set up an email account to accept public comments on the Temporary Rule. The response did not indicate how many or the scope of any other records Defendants were processing or would produce. Nor did the response provide any information on what documents Defendants planned to withhold or the reasons for any withholding.

47. On December 15, 2017, NOAA informed Ocean Conservancy that additional records were undergoing legal review and clearance and a response to the request would be provided “shortly.” This correspondence did not convey the number or scope of the records under review, or any statement on the agency’s planned withholdings or exemptions.

48. On January 5, 2018, Ocean Conservancy sent NOAA an email requesting an update on the status of its FOIA request.

49. Ocean Conservancy has received no further correspondence from the Fisheries Service or NOAA to date.

50. Ocean Conservancy has not received all the responsive records or the reasonably



segregable portion of non-exempt responsive records to date.

51. The due date for Defendants' FOIA determination remains August 11, 2017.

52. While Defendants acknowledged receipt of the FOIA request and granted the fee waiver twice, Defendants have failed to substantively respond to Ocean Conservancy's FOIA request. None of Defendants' responses indicated the scope of the documents they would produce. Nor did any response include information on planned withholdings or exemptions. Defendants thus never provided Ocean Conservancy with the determination required by FOIA and the governing regulations more than seven months after acknowledging receipt of the request, more than six months after initially granting the fee waiver, more than six months after the statutory due date for issuing a determination, and more than five months after the agreed-upon extended due date for issuing a determination.

#### **CLAIMS FOR RELIEF**

##### **Count I – Failure to Make a Determination on a FOIA Request, 5 U.S.C. § 552(a)(6), (7)**

53. The allegations made in all preceding paragraphs are realleged and incorporated by this reference.

54. NOAA and the Fisheries Service are "agencies" under FOIA. 5 U.S.C. § 552(f)(1). NOAA and the Fisheries Service have possession and control of the requested records.

55. Defendants were required to provide a determination within 20 working days on Ocean Conservancy's FOIA request, dated June 19, 2017. *Id.* § 552(a)(6).

56. Defendants were required to provide "an estimated date on which the agency [would] complete action on the request." *Id.* § 552(a)(7)(B); *accord id.* § 552(a)(6)(B)(i).

57. Ocean Conservancy agreed to extend Defendants' deadline to respond to Ocean Conservancy's FOIA request from July 18, 2017, to August 11, 2017. Even so, Defendants have

not issued a determination on Ocean Conservancy's FOIA request, more than six months after the statutory deadline and more than five months after the agreed-upon extended deadline.

58. Ocean Conservancy has constructively and fully exhausted all administrative remedies required by FOIA. *Id.* § 552(a)(6)(A), (C).

59. Defendants violated FOIA by failing to make the required determination within 20 working days in response to Ocean Conservancy's June 19, 2017 FOIA request. *Id.* § 552(a)(6).

60. Defendants violated FOIA by failing to provide an estimated date by which they would complete action on Ocean Conservancy's June 19, 2017 FOIA request. *Id.* § 552(a)(6)(B)(i), (7)(B).

**Count II – Failure to Respond to a FOIA Request, 5 U.S.C. § 552(a)(3), (b)**

61. The allegations made in all preceding paragraphs are realleged and incorporated by this reference.

62. FOIA requires Defendants to process records requests and promptly provide the requested records or the reasonably segregable portion of the requested records not subject to a FOIA exemption. 5 U.S.C. § 552(a)(3), (b).

63. Defendants have provided Ocean Conservancy only a subset of the requested records. Defendants have not claimed that any of the records they have not yet provided are exempt from disclosure. Therefore, the interim response does not constitute the reasonably segregable portion of the requested records not subject to a FOIA exemption.

64. Defendants have acknowledged they are in possession of additional responsive records they have not provided to Ocean Conservancy to date.

65. Defendants have not provided Ocean Conservancy all the requested records. Defendants have not provided Ocean Conservancy the reasonably segregable portion of the requested records not subject to a FOIA exemption.

66. Defendants have violated FOIA by failing to promptly provide the responsive records or the reasonably segregable portion of lawfully exempt responsive records to Ocean Conservancy. *Id.*

### **REQUEST FOR RELIEF**

WHEREFORE, Ocean Conservancy prays that this Court:

1. Declare that Defendants failed to make a timely determination on Ocean Conservancy's records request in violation of FOIA, 5 U.S.C. § 552(a)(6), (7);
2. Declare that Defendants failed to promptly provide records in response to Ocean Conservancy's information request in violation of 5 U.S.C. § 552(a)(3), (b);
3. Order Defendants to provide a determination on Ocean Conservancy's FOIA request, as required by FOIA;
4. Order Defendants to conduct searches that are reasonably calculated to locate all records responsive to Ocean Conservancy's FOIA request, as required by FOIA;
5. Order Defendants to provide Ocean Conservancy all responsive records or the reasonably segregable portions of lawfully exempt records, as required by FOIA, within 20 days of this Court's order;
6. Maintain jurisdiction over this action until Defendants are in compliance with FOIA and every order of this Court;
7. Award Ocean Conservancy its costs and reasonable attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(E) or 28 U.S.C. § 2412; and

8. Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted this 23rd day of January, 2018.

/s/ Khushi Desai

Khushi Desai (MD Bar 17444)

EARTHJUSTICE

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June 19, 2017

**SENT VIA FOIA ONLINE**

National Oceanic and Atmospheric Administration  
National Marine Fisheries Service  
Public Reference Facility (SOU1000)  
1315 East-West Highway (SSMC3), Room 9719  
Silver Spring, Maryland 20910  
E: FOIA@noaa.gov

**Re: Freedom of Information Act Request for Documents, Records, and Materials**

Dear FOIA Officer(s):

Ocean Conservancy submits this request for records pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, et seq., for which I also request expedited processing.

**Documents Requested**

On June 19, 2017, the Department of Commerce (DoC), the National Oceanic and Atmospheric Administration (NOAA), and the National Marine Fisheries Service (NMFS) (collectively "NMFS") published a rule in the Federal Register titled, "Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Revised 2017 Recreational Fishing Season for Red Snapper Private Angling Component in the Gulf of Mexico (RIN 0648-XF499)." This rule reopens the private angling component for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico.

**We request copies of all memoranda, studies, reports, data, correspondence, comments, conversation records, files, electronic mail records, or other documents, which were generated, received, kept, and/or considered by NMFS relating to the reopening of the red snapper season, between the dates of January 20, 2017 and June 19, 2017. This includes documents, records, and materials regarding:**

- 1. extension or reopening of the private recreational red snapper season;**
- 2. how or whether this action would affect progress toward rebuilding under the red snapper rebuilding plan;**
- 3. how or whether this action may cause or contribute to overfishing; and**
- 4. data, computations, or any other analysis used to determine the number of days the season would be open.**

**We request documents, records, and materials pertaining to the above enumerated subjects involving, but not limited to, the following people:**

- 1. Wilbur Ross**
- 2. Samuel Rauch**
- 3. Alan Risenhoover**

4. Roy Crabtree
5. Andy Strelcheck
6. George Kelly
7. Earl Comstock
8. Bonnie Ponwith
9. Patrick Lynch
10. Emily Menashes
11. Benjamin Friedman
12. Lindsey Kraatz

For purposes of this request, “documents, records, and materials” should be interpreted to include copies of all correspondence, including, but not limited to, internal memoranda, memoranda and correspondence with any other federal, state or foreign agencies or individuals, papers, maps, data, scientific (clinical and nonclinical) studies, samples, schematics, field notes/reports, telephone logs, briefing/application documents, electronic mail, and notes documenting any communication (regardless of physical form or characteristics). “NMFS” should be interpreted to include the U.S. Department of Commerce, the National Oceanic and Atmospheric Administration, and the National Marine Fisheries Service/NOAA Fisheries.

#### **Expedited Processing**

I respectfully submit that this request meets the criteria for expedited processing under applicable regulations (15 C.F.R. § 4.6(f)) because the requestor is primarily engaged in disseminating information and has established below that the request is urgently needed to inform the public concerning some actual or alleged government activity. As explained in the following section, Ocean Conservancy is a public interest organization and will disseminate the information to the public and our members via media channels such as our website, blog, and newsletters. The matter in question is of widespread and exceptional media interest and involves questions about the government’s integrity which affects public confidence.

This information will allow the public to gain a complete understanding of the government’s rationale and data upon which it has based its management decisions. This request is urgent because the temporary rule is only in effect for a matter of months and is not subject to any form of public comment. Delay will be detrimental to the public resource and to the public’s understanding of this decision by the agency.

#### **Fee Waiver Requested**

Ocean Conservancy is willing to pay up to \$500 to fulfill this records request. However, we request a waiver of any fees associated with this request that exceed \$500. FOIA mandates that agencies waive or reduce search and copying fees where the disclosure is “in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii).

In addition to the statutory direction, the U.S. Department of Commerce has issued regulations outlining factors that it considers in deciding whether a fee waiver is warranted: (1) the request concerns the operations or activities of the government; (2) the disclosure will have value to the public and will likely contribute to public understanding of government operations or activities; (3) the disclosure will

contribute significantly to public understanding; (4) the disclosure is not primarily in the requester's commercial interest. See 15 C.F.R. § 4.11(k).

As one court explained, if a non-profit organization has "identified why they wanted the administrative record, what they intended to do with it, to whom they planned on distributing it, and the [relevant] expertise of their membership," then a waiver is appropriate. *Ctr. for Biological Diversity v. Office of Mgmt. & Budget*, 546 F. Supp. 2d 722, 727 (N.D. Cal. 2008) (internal quotation omitted). The information provided below demonstrates that Ocean Conservancy meets the required criteria and are entitled to a full fee waiver.

### **1. The Request Concerns the Operations and Activities of the Government.**

This FOIA request seeks information relevant to NMFS's management of red snapper in the Gulf of Mexico reef fish fisheries. Accordingly, the FOIA request directly concerns the operations and activities of the government in managing and protecting public resources managed by NMFS. This request will enable Ocean Conservancy to evaluate the strength of and basis for the agency's decisions regarding red snapper management. Accordingly, the FOIA request directly implicates the operations and activities of the government in managing public resources in the Gulf of Mexico.

### **2. The Requested Information Has Value to the Public and Will Likely Contribute to Public Understanding of Government Operations or Activities.**

There is a direct connection between the requested records and NMFS's operations and activities in managing red snapper. The requested records relate to the government's evaluation of red snapper catch, the private recreational season, annual catch limits, and accountability measures. Access to these records will allow Ocean Conservancy to evaluate NMFS's red snapper catch estimations for the private recreational fishery. Consequently, the requested documents are critical to a meaningful assessment of the agency's actions and a thorough public understanding of the government's operations and activities in regulating the recreational fishery.

While the final and temporary rules regarding red snapper are available to the public, the data, documents, and communications requested by Ocean Conservancy are not. The requested documents are necessary for the public to gain a complete understanding of the government's rationale and data upon which it has based its management decisions. This information is critical to assessing the government's actions in protecting this public resource. Accordingly, disclosure of the requested information will contribute significantly to public understanding of the government's operations and activities with respect to this fishery.

Ocean Conservancy is a public-interest organization whose core mission involves using science, law, and policy to protect the world's oceans by, among other mechanisms, monitoring government management of public resources, encouraging public participation in government processes, and ensuring enforcement of applicable public laws. Ocean Conservancy's experts will scrutinize the scientific underpinnings of the requested documents; these analyses will form the basis for responding to NMFS's management decisions and educating the public. See *Friends of the Coast Fork v. U.S. Dep't of the Interior*, 110 F.3d 53, 55 (9th Cir. 1997).

Ocean Conservancy also intends to disseminate information that may be available in the requested records through various means, including newsletters, reports, newspaper and magazine articles,

electronic action alerts, web sites, and through other formal and informal communications. These types of public outreach are sufficient to warrant a fee waiver. *See W. Watersheds Proj. v. Brown*, 318 F. Supp. 2d 1036, 1041 (D. Idaho 2004) (noting cases holding “statements of intent to disseminate requested information through newsletters, popular news outlets, and presentations to public interest groups, government agencies, and the general public sufficient to entitle an organization to a fee waiver”).

Ocean Conservancy possesses the experience and expertise necessary to evaluate the requested information and provide it to the public in a useful form. *Cf. W. Watersheds Proj.*, 318 F. Supp. 2d at 1040-41. Ocean Conservancy is highly qualified to extract, synthesize, analyze, and convey the requested information to its members, other organizations, and the public at large in a way that will increase understanding of government actions affecting red snapper and fisheries in the Gulf of Mexico. Ocean Conservancy has a long history of evaluating information similar to that requested here and distributing it to help inform the public and encourage participation in future planning processes.

Since 1972, Ocean Conservancy has sought to improve the health of our nation’s marine wildlife and fish. To that end, and as part of its organizational goals, Ocean Conservancy seeks to prevent degradation of marine habitats and end overfishing – catching more fish than the remaining population can replace. Ocean Conservancy aims to help restore and sustain fisheries by restoring depleted fish populations and supporting sustainable long-term management.

Ocean Conservancy has gained a detailed understanding of the issues surrounding the management of Gulf red snapper. In the 1990s, Ocean Conservancy became involved in the red snapper fishery. For the past three decades, Ocean Conservancy has worked to promote a healthy red snapper stock so that the resource can be used for generations to come. Ocean Conservancy staff has attended meetings of the Gulf of Mexico Fishery Management Council meeting for decades and has been thoroughly engaged in red snapper management in recent years.

Moreover, Ocean Conservancy staff and members have participated extensively in the relevant public processes involving red snapper management over the last decade, by, among other things, submitting comments to NMFS and the Gulf of Mexico Fishery Management Council concerning the management of red snapper and the protection of marine life in the Gulf ecosystem.

### **3. The Disclosure Will Contribute Significantly to Public Understanding.**

Disclosure of these records will further the understanding of the public at large and is likely to be of interest to a broad audience. Ocean Conservancy is a public-interest organization whose core mission is to protect the environment, public resources, and human health by, among other mechanisms, monitoring government management of marine waters, encouraging public participation in government processes, and ensuring enforcement of applicable public laws. The records will further both the organization’s and members’ understanding of red snapper catch, abundance, and management in the Gulf of Mexico.

Issues involving red snapper season length in the Gulf of Mexico are of significant public interest and have been the subject of significant public discourse as well as NMFS and Gulf of Mexico Fishery Management Council processes. The requested disclosure will significantly increase public understanding of NOAA’s operations and activities pertaining to this public resource.



Ocean Conservancy's headquarters is located in Washington, D.C., and Ocean Conservancy has additional offices in key U.S. coastal areas. Ocean Conservancy's website and publications educate its over 130,000 members and supporters and the public regarding marine conservation and fishery management.

These records will provide information underlying the agency's decision-making, afford insight into the agency's decision-making processes, and highlight any competing viewpoints. These records will allow the requester to evaluate the agency's decision-making and the adequacy of the analyses, thereby facilitating public oversight of agency operations.

Ocean Conservancy and other members of the public have participated actively in efforts to rebuild red snapper and address fishery overages. Ocean Conservancy will use information gained through this FOIA request to inform its participation in fishery management council meetings, comments to the agency, and as a basis for evaluating the analyses and conclusions of the agency's red snapper management decisions.

#### **4. Ocean Conservancy Has No Commercial Interest in the Disclosure of the Information.**

Ocean Conservancy is a § 501(c)(3) tax-exempt nonprofit advocacy organization dedicated to protecting the ocean from today's greatest global challenges. Together with our partners, we create science-based solutions for a healthy ocean and the wildlife and communities that depend on it. The requester is a nonprofit organization that has no commercial interest in the requested records. *See McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (noting that FOIA's fee waiver provision is to be "liberally construed in favor of waivers for noncommercial requestors" (quoting legislative history)).

#### **5. Ocean Conservancy Is a Media Representative.**

Members of the news media are entitled to waivers of search fees. 5 U.S.C. § 552(a)(4)(A)(ii)(II); 43 C.F.R. § 2.39(a). A representative of the news media includes "publishers of periodicals . . . who make their products available for purchase by or subscription by or free distribution to the general public." 5 U.S.C. § 552(a)(4)(A)(ii)(III); 43 C.F.R. § 2.70. News media broadly disseminate "information that is about current events or that would be of current interest to the public." *Id.* The waiver extends to a nonprofit organization that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." *Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (quoting 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986)); *Cause of Action v. FTC*, 799 F.3d 1108, 1115-17 (D.C. Cir. 2015); *Elec. Privacy Info. Ctr. V. Dep't of Def.*, 241 F. Supp.2d 5, 12 (D.D.C. 2003).

Ocean Conservancy functions as a member of the news media because it regularly gathers, publishes, and disseminates information to the public. Ocean Conservancy has 130,000 members. Ocean Conservancy gathers, synthesizes, and publishes information and news concerning marine conservation which it broadly disseminates to its membership and the press through its website and blog, press releases, quarterly print publication which it distributes to 115,000 households, and regular email newsletter which it distributes to its over 800,000 members and supporters. *Cause of Action*, 799 F.3d at 1124 (for the news-media provision, an organization's website, newsletter, press releases, and press contacts will be considered in combination); *Judicial Watch v. U.S. Dept. of Justice*, 133 F. Supp. 2d 52, 53-4 (D.D.C. 2000) (website that disseminated information and radio show were sufficient to establish

status of representative of media) 22 880 F.2d at 1387 (quoting 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986)); 241 F. Supp. 2d at 14 n.6 (noting that newsletter that was "published regularly, over a period of time, and . . . disseminate[d] actual 'news' to the public" was evidence that nonprofit organization was a member of the news media).

\*\*\*

As provided by 5 U.S.C. § 552(a)(6)(D), we look forward to a reply within ten (10) working days. If the agency chooses to withhold certain documents from disclosure pursuant to FOIA exemptions, we request that it: (i) identify each such document with particularity (including title, subject, date, author, recipient, and parties copied); (ii) explain in full the basis on which non-disclosure is justified; and (iii) provide us with any segregable portions of the documents for which a specific exemption is not claimed.

Please contact me if you have any questions, or if I can clarify this request in any way. I can be reached at 503-896-1171. Thank you in advance for your assistance.

Sincerely,

s/ Ivy Fredrickson  
Staff Attorney  
Ocean Conservancy  
1300 19<sup>th</sup> St., NW, 8<sup>th</sup> Floor  
Washington, DC 20036  
ifredrickson@oceanconservancy.org

**Jonelle Dilley - NOAA Federal**

---

**From:** Jonelle Dilley NOAA Federal  
**Sent:** Tuesday, January 30, 2018 12:50 PM  
**To:** Nkolika Ndubisi NOAA Federal  
**Cc:** colleen.roche@noaa.gov; Laura Cesario NOAA Federal; Symone Stone NOAA Affiliate; Mark Graff NOAA Affiliate  
**Subject:** Re: ACTION: RESPONSIVE RECORD RELEASE DETERMINATION 2018 000580

(b)(5)

Nikki/Mark, could you please provide?

Thanks,  
Jonelle

Jonelle Dilley  
Attorney Advisor  
Oceans and Coasts Section  
NOAA, Office of General Counsel  
1305 East West Highway  
SSMC 4, Room 6111  
Silver Spring, MD 20910  
Tel: [\(301\) 713 7383](tel:3017137383) (direct line)  
Cel: (b)(6)  
Fax: [\(301\) 713 4408](tel:3017134408)

On Thu, Jan 25, 2018 at 4:55 PM, Nkolika Ndubisi NOAA Federal <[nkolika.ndubisi@noaa.gov](mailto:nkolika.ndubisi@noaa.gov)> wrote:  
Hi Jonelle

Thanks for the update (b)(5)

With regards,  
Nikki

On Thursday, January 25, 2018, Jonelle Dilley NOAA Federal <[jonelle.dilley@noaa.gov](mailto:jonelle.dilley@noaa.gov)> wrote:

(b)(5)

. I'm happy to reach out if you could please give me the contact information.

Thanks,

Jonelle

Sent from my iPhone

On Jan 25, 2018, at 2:34 PM, Nkolika Ndubisi NOAA Federal <[nkolika.ndubisi@noaa.gov](mailto:nkolika.ndubisi@noaa.gov)> wrote:

Hi Todd,

Thanks for the update.

Nkolika Ndubisi (Nikki)  
Administration Division  
Management and Budget  
National Ocean Service  
[\(240\) 533 0937](tel:(240)533-0937)

On Thu, Jan 25, 2018 at 2:32 PM, Todd Ehret NOAA Federal <[todd.ehret@noaa.gov](mailto:todd.ehret@noaa.gov)> wrote:

Nikki,

(b)(5)

I have cc'd Jonelle on this message.

Todd Ehret  
Physical Oceanographer  
Center for Operational Oceanographic Products and Services

On Tue, Jan 23, 2018 at 2:51 PM, Nkolika Ndubisi NOAA Federal <[nkolika.ndubisi@noaa.gov](mailto:nkolika.ndubisi@noaa.gov)> wrote:

**FOIA 2018-000580**

**Requester:** Allan Blutstein

**Description:** Please accept this email as a request pursuant to the Freedom of Information Act for access to any email sent by Kathleen Hibbard from June 14, 2017, through June 27, 2017 that mentions or refers to the Climate Science Special Report (CSSR).

(b)(5)

(b)(5) Let me know if you have any questions, I can be reached via email or [\(240\) 533-0937](tel:(240)533-0937).

Nkolika Ndubisi (Nikki)  
Administration Division  
Management and Budget  
National Ocean Service  
[\(240\) 533 0937](tel:(240)533-0937)

Nkolika Ndubisi (Nikki)  
Administration Division  
**Management and Budget**  
National Ocean Service  
[\(240\) 533 0937](tel:(240)5330937)

**Mark Graff - NOAA Federal**

---

**From:** Mark Graff NOAA Federal  
**Sent:** Tuesday, January 30, 2018 12:53 PM  
**To:** Jonelle Dilley NOAA Federal  
**Cc:** Nkolika Ndubisi NOAA Federal; colleen.roche@noaa.gov; Laura Cesario NOAA Federal; Symone Stone NOAA Affiliate  
**Subject:** Re: ACTION: RESPONSIVE RECORD RELEASE DETERMINATION 2018 000580  
**Attachments:** NASA Referral from Blutstein 12.22 (3).pdf

Hi Jonelle,

(b)(5)

Let me know if you need anything else

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628 5658 (O)  
(b)(6) (C)

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(b)(5)

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Thanks,  
Jonelle

Jonelle Dilley  
Attorney Advisor  
Oceans and Coasts Section  
NOAA, Office of General Counsel  
[1305 East West Highway](#)  
SSMC 4, Room 6111  
Silver Spring, MD 20910  
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National Ocean Service  
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Todd Ehret  
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Center for Operational Oceanographic Products and Services

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**(b)(5)**

**(b)(5)** Let me know if you have any questions, I can be reached via email or [\(240\) 533-0937](tel:2405330937).

Nkolika Ndubisi (Nikki)  
Administration Division  
Management and Budget  
National Ocean Service  
[\(240\) 533 0937](tel:2405330937)

Nkolika Ndubisi (Nikki)  
Administration Division  
Management and Budget  
National Ocean Service  
[\(240\) 533 0937](tel:2405330937)



National Aeronautics and Space Administration



**Headquarters**

Washington, DC 20546-0001

December 22, 2017

Office of Communications

TO: National Oceanic and Atmospheric Administration  
Public Reference Facility (SOU1000)  
1315 East-West Highway (SSMC3)  
Room 9719  
Silver Spring, Maryland 20910  
[FOIA@noaa.gov](mailto:FOIA@noaa.gov)

FROM: Robert Young,  
FOIA Officer

Subject: FOIA Referral for Direct Reply

(b) (5)

**Jonelle Dilley - NOAA Federal**

---

**From:** Jonelle Dilley NOAA Federal  
**Sent:** Tuesday, January 30, 2018 1:29 PM  
**To:** Mark Graff NOAA Federal  
**Cc:** Nkolika Ndubisi NOAA Federal; colleen.roche@noaa.gov; Laura Cesario NOAA Federal; Symone Stone NOAA Affiliate  
**Subject:** Re: ACTION: RESPONSIVE RECORD RELEASE DETERMINATION 2018 000580

Thank you!

Jonelle Dilley  
Attorney Advisor  
Oceans and Coasts Section  
NOAA, Office of General Counsel  
1305 East West Highway  
SSMC 4, Room 6111  
Silver Spring, MD 20910  
Tel: [\(301\) 713 7383](tel:3017137383) (direct line)  
Cel: [\(b\)\(6\)](tel:(b)(6))  
Fax: [\(301\) 713 4408](tel:3017134408)

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Hi Jonelle,

[\(b\)\(5\)](#)

. Let me know if you need anything else

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
[\(301\) 628 5658](tel:3016285658) (O)  
[\(b\)\(6\)](tel:(b)(6)) (C)

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[\(b\)\(5\)](#)

Nikki/Mark, could you please provide?

Thanks,  
Jonelle

Jonelle Dilley  
Attorney Advisor  
Oceans and Coasts Section  
NOAA, Office of General Counsel  
[1305 East West Highway](#)  
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[Redacted]  
[Redacted]  
[Redacted].

With regards,  
Nikki

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you could please give me the contact information.

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Jonelle

Sent from my iPhone

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Nkolika Ndubisi (Nikki)  
Administration Division

Management and Budget

National Ocean Service

[\(240\) 533 0937](tel:(240)533-0937)

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(b)(5)

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Todd Ehret

Physical Oceanographer

Center for Operational Oceanographic Products and Services

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**FOIA 2018-000580**

**Requester:** Allan Blutstein

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(b)(5)

Let me know if you have any questions, I can be reached via email or [\(240\) 533-0937](tel:(240)533-0937).

Nkolika Ndubisi (Nikki)

Administration Division

Management and Budget

National Ocean Service

[\(240\) 533 0937](tel:(240)533-0937)

Nkolika Ndubisi (Nikki)

Administration Division

Management and Budget

National Ocean Service

[\(240\) 533 0937](tel:(240)533-0937)



**Mark Graff - NOAA Federal**

---

**From:** Mark Graff NOAA Federal  
**Sent:** Wednesday, January 31, 2018 7:36 AM  
**To:** Lawanda Fisher NOAA Federal  
**Cc:** Lola Stith NOAA Affiliate  
**Subject:** Re: DOC NOAA 2018 000555 needing your Assistance

Hello Lawanda

Thanks for reaching out (b)(5)

Thanks and let me know if you have any other questions or issues on this one

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628 5658 (O)  
(b)(6) (C)

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On Tue, Jan 30, 2018 at 4:24 PM, Lawanda Fisher NOAA Federal <[lawanda.fisher@noaa.gov](mailto:lawanda.fisher@noaa.gov)> wrote:  
Greetings Respectfully and Good Afternoon Mr. Graff and/or Ms. Stith:

As I am working a request that has come to me:

" This is a request under the Freedom of Information Act. I hereby request the following records: Any records and communications regarding the "NOAA Withdrawal Land" outside of Fairbanks, AK. Here is a link to the land I am referring to [https://eplanning.blm.gov/epl\\_front\\_office/projects/nepa/77455/104562/128131/Withdrawal\\_Land\\_Status\\_Map.pdf](https://eplanning.blm.gov/epl_front_office/projects/nepa/77455/104562/128131/Withdrawal_Land_Status_Map.pdf) Of particular interest is communication surrounding "Parcel G," the land that NOAA may be relinquishing to Kinross. I am interested in any agency communications that have any of the following keywords: "Kinross", "Fairbanks Gold Mining", "Parcel G", "Fort Knox Gold Mine", "Fort Knox", "NOAA withdrawal". I am also interested in any communication between agency officials and the following email domain: "@[kinross.com](mailto:kinross.com)".

Document Search Response to me:

(b)(5)

Before we go further, please advise:

(b) (5)

Please advise at your earliest convenience.

In advance, Thank you for your Assistance!

*"Yesterday is already history, tomorrow is still a mystery, and today is a gift, that's why it's called the present."*

*Have a great Day!*

*Very Respectfully*

*Lawanda Fisher*

*Executive Assistant for NOAA's Chief Administrative Officer*

[301-713-0836](tel:301-713-0836)

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**Mark Graff - NOAA Federal**

---

**From:** Mark Graff NOAA Federal  
**Sent:** Wednesday, January 31, 2018 8:31 AM  
**To:** Michael Weiss NOAA Federal  
**Subject:** Re: Weekly FOIA Incoming and High Visibility Requests  
**Attachments:** National Monuments and EO 13795 FOIAOnline pull.xls

Hello Michael,

(b)(5) [Redacted]

[Redacted]

Please let me know anything else you need on my end.

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628 5658 (O)  
(b)(6) (C)

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On Wed, Jan 31, 2018 at 8:17 AM, Michael Weiss NOAA Federal <[michael.weiss@noaa.gov](mailto:michael.weiss@noaa.gov)> wrote:

Good morning Mark, Hope you are well.

(b)(5) [Redacted]

Thank you,

Michael

On Wed, Jan 31, 2018 at 8:15 AM, Mark Graff NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)> wrote:

Good Morning,

Attached is the weekly report.

Three requests were received from Wiley Rein, LLP, each of which are seeking various records related to a NMFS Biological Opinion issued in December, 2017, for chlorpyrifos, diazinon, and malathion. (DOC NOAA 2018 000659, DOC NOAA 2018 000660, and DOC NOAA 2018 000661).



In litigation, NOAA is finalizing a Vaughn index, explaining our withholding justifications for our use of Exemption (b)(5), to provide to Judicial Watch in the *Judicial Watch v. DOC* litigation. We anticipate that Vaughn index will be provided today. The original request sought records regarding communications between NOAA scientist Tom Karl and former OSTP Director John Holdren.

A copy of the original request and complaint filed in DDC are attached.

NOAA also has prepared another release in the *Cause of Action v. NOAA* litigation which is currently pending review. The original request sought records regarding NOAA's policy on the retention of Chat, IM, Hangout, and similar records (b)(5)

[REDACTED]

A copy of the original request, and the Complaint filed in DDC, are both attached.

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
[\(301\) 628 5658](tel:3016285658) (O)  
(b)(6) (C)

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Michael Weiss  
Office of the Under Secretary  
National Oceanic and Atmospheric Administration  
[202 482 5958](tel:2024825958) (w)  
(b)(6) (c)

Tracking Number	Type	Status	Requester
DOC-IOS-2018-000166	Request	Assignment Determination	Margaret Townsend
DOC-IOS-2018-000170	Request	Assignment Determination	Chris Saeger
DOC-IOS-2018-000172	Request	Assignment Determination	Kellie M. Lunney
DOC-IOS-2018-000178	Request	Assignment Determination	Katherine Desormeau
DOC-NOAA-2017-000170	Request	Research Records	Kara McKenna
DOC-NOAA-2017-000361	Request	Initial Evaluation	Peter Shelley
DOC-NOAA-2017-001316	Request	Research Records	Chris Saeger
DOC-OS-2017-001522	Request	Evaluation of Records	Yule Kim
DOC-OS-2017-001150	Request	Research Records	Sean Smith
DOC-OS-2017-000435	Request	Research Records	R. Rosenbaum
DOC-NOAA-2017-001958	Request	Closed	Lauren Dillon
DOC-IOS-2018-000380	Request	Assignment Determination	Laura Shields

<b>Requester Organization</b>	<b>Submitted</b>	<b>Assigned To</b>	<b>Due</b>
	10/26/2017	Bobbie Parsons	12/05/2017
Western Values Project	10/27/2017	Bobbie Parsons	12/07/2017
E&E News	10/27/2017	Bobbie Parsons	12/05/2017
Natural Resources Defense Council	10/29/2017	Bobbie Parsons	12/13/2017
Cause of Action	11/09/2016	Samuel B. Dixon	01/05/2017
Conservation Law Foundation	12/22/2016	NOAA	N/A
Western Values Project	06/07/2017	Samuel B. Dixon	07/21/2017
	07/14/2017	Nkolika Ndubisi	08/14/2017
	05/03/2017	Ayana Crawford	06/08/2017
Sen. Schatz	12/6/2017	NOS	1/17/2017
DNC	9/29/2017	USEC	NA
Santa Cruz Sentinel	12/3/2017	NOS	1/23/2017

### Description/Basis for Appeal

DOC's report reviewing marine sanctuaries and monuments mandated by Executive Order 13795, "Implementing all documents created for the purpose of informing the Department of Justice regarding the views of the Office of the To Whom It May Concern: I am seeking a copy of an October 2017 report to the White House from Commerce as well as any and all records in the possession, custody, or control of the Department of Commerce ("the Department") that CoA Institute hereby requests access to the following records for the time period of January 1, 2014, to the present. Expedited Review is sought pursuant to 15 CFR section 4.6(f) Re: Freedom of Information Act Request – Northeast Coastal SCOPE REVISION 6/20 - To exclude the following information: out-of-office replies, duplicates of the same emails. In NOAA's notice published 6/26/2017, entitled "Review of National Marine Sanctuaries and Marine National Monuments", the materials requested relate to presidential designations of national monuments. As such, I request all records related to 1. Documents relating to the expansion of PRIMNM ultimately effectuated by Presidential Proclamation 9173, including I request from the National Oceanic and Atmospheric Administration the following records: □ All correspondence, e-mails, and "...all documents related to the National Marine Sanctuaries review as requested from Secretary Wilbur Ross by any

an America-First Offshore Energy Strategy,” dated April 28, 2017 (“EO 13795”) requiring: The Secretary  
ne General Counsel for the Department of Commerce with respect to the President’s authority to revoke  
essing the offshore oil and drilling potential in areas containing 11 protected marine monuments and sa  
pertain to meetings on or after January 20, 2017, attended by Secretary Wilbur Ross and/or Earl Comst  
:4 1. All records or communications (including emails, text messages, and voicemails) referring or relatir  
Canyons and Seamounts Marine National Monument and any other marine national monument records  
; and duplicate attachments disseminated to large volumes of recipients. ¶request access to and copie  
ments Designated or Expanded Since April 28, 2007; Notice of Opportunity for Public Comment” NOAA  
relating to, or consisting of, communications — in any format — generated or received by the Departme  
ding, by way of illustration and not limitation, • communications, other than through public comments, wi  
emails, faxes, memoranda, briefing documents, notes, legal opinions or other guidance, studies, or estir  
1 executive order on April 28, 2017, including but not limited to emails, studies, reviews, and data. A fina

of Commerce, in consultation with the Secretary of Defense, the Secretary of the Interior, and the Secretary of the Environment, or modify National Monuments.

The report is required by the April 28, 2017 Executive Order 13795 – “Implementing an Agenda for the 21st Century”, relating to any national marine sanctuary or marine national monument and/or to the Department’s actions regarding a NOAA Town Hall meeting held on or about September 15, 2015, in Providence, Rhode Island, and actions for the Atlantic Ocean. Supporting documents attached to this report include:

1. A copy of any information used to inform the development of the following national monument proclamations (as stated in the report):

- a. The Department of Commerce will receive a copy of and consider all public comments submitted to the Department of Commerce related to: a. Any public communication to the Department of Commerce and/or its Bureau of Ocean Energy Management, Office of Marine and Coastal Resources, or any person outside each of your agencies or offices concerning what land, waters or other objects shall be designated, sent, received or created by NOAA staff which reference Secretary of the Interior Ryan Zinke’s report submitted to the White House on October 25, 2017. I am asking for the final report, as well

Secretary of Homeland Security, shall conduct a review of all designations and expansions of National Marine

America-First Offshore Energy Strategy." The Commerce report includes a review of all designations and  
review of national marine sanctuaries and monuments under Executive Order No. 13795, including (1) a  
and publicized on NOAA's website on or about September 3, 2015 (attached as Exhibit 1 to this FOIA request).

or expansions during the specified time periods: Northeast Canyons and Seamounts Marine National Monument  
and during the Department of the Interior's public comment period for Executive Order 13792 for Marine National  
Monuments on or since January 20, 2017 requesting a review of the national monuments identified in President  
Trump's memorandum on or since January 20, 2017 requesting a review of the national monuments identified in President  
Trump's memorandum. The review shall determine whether any national monuments should be included or excluded from the expansion of PRIMNM and/or the uses which should be permitted  
within the boundaries of the expanded PRIMNM. The review shall also determine whether any national monument designations for Northeast Canyons and Seamounts Marine National Monument  
should be included or excluded from the expansion of PRIMNM and/or the uses which should be permitted within the boundaries of the expanded PRIMNM. The review shall also determine whether any documents that were involved in the production of that final report."

Sanctuaries, and of all designations and expansions of Marine National Monuments under the Antiquities Act.

and expansions of National Marine Sanctuaries and Marine National Monuments since April 28, 2009. (1) any calendar entries, invitations, itineraries, or communications referencing such meetings; (2) any agency comments (including but not limited to all written comments, as well as all communications with non-agency stakeholders), including but not limited to all written comments, as well as all communications with non-agency stakeholders.

Monument (01/01/14 – 12/31/16) Papahānaumokuākea Marine National Monument Expansion (01/01/14 - 12/31/16) National Monuments that are affected by Executive Orders 13792 and 13795." 82 Fed. Reg. 28827. Pursuant to Trump's Executive Order dated April 26, 2017. A list of the monuments at issue is found in the DOI fact sheet for that expansion, including but not limited to Western Pacific Regional Fishery Management Area and Papahānaumokuākea Marine National Monument in accordance with Executive Order 13795,



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- 12/31/16) Pacific Remote Islands Marine National Mo  
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ent Council, the Hawaii

"Presidential Executive Order on the Review of Designations Under the Antiquities Act," dated April 26, :

2017. The time frame of my request is April 26, 2017 to August 31, 2017. Records requested are to incli

ude, but not be limited to, correspondence, emails, faxes, memoranda, briefing documents, notes, legal

opinions or other guidance, studies, or estimates sent, received, or created by NOAA which reference: (

o The “smallest area compatible” requirement; the scientific and rational basis for monument boundaries

3, 1

**Lawanda Fisher - NOAA Federal**

---

**From:** Lawanda Fisher NOAA Federal  
**Sent:** Wednesday, January 31, 2018 8:54 AM  
**To:** Mark Graff NOAA Federal  
**Subject:** Re: DOC NOAA 2018 000555 needing your Assistance

Greetings Respectfully and Good Morning: "Thank you and consider done!"

*"Yesterday is already history, tomorrow is still a mystery, and today is a gift, that's why it's called the present."*

*Have a great Day!  
Very Respectfully  
Lawanda Fisher  
Executive Assistant for NOAA's Chief Administrative Officer  
301-713-0836*

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On Wed, Jan 31, 2018 at 7:35 AM, Mark Graff NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)> wrote:

Hello Lawanda

Thanks for reaching out. (b)(5)  
[Redacted]  
[Redacted]  
[Redacted]

[Redacted] Thanks and let me know if you have any other questions or issues on this one

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
[\(301\) 628 5658](tel:3016285658) (O)  
(b)(6) (C)

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On Tue, Jan 30, 2018 at 4:24 PM, Lawanda Fisher NOAA Federal <[lawanda.fisher@noaa.gov](mailto:lawanda.fisher@noaa.gov)> wrote:  
Greetings Respectfully and Good Afternoon Mr. Graff and/or Ms. Stith:

As I am working a request that has come to me:

" This is a request under the Freedom of Information Act. I hereby request the following records: Any records and communications regarding the "NOAA Withdrawal Land" outside of Fairbanks, AK. Here is a link to the land I am referring to [https://eplanning.blm.gov/epl front office/projects/nepa/77455/104562/128131/Withdrawal\\_Land\\_Status\\_Map.pdf](https://eplanning.blm.gov/epl_front_office/projects/nepa/77455/104562/128131/Withdrawal_Land_Status_Map.pdf) Of particular interest is communication surrounding "Parcel G," the land that NOAA may be relinquishing to Kinross. I am interested in any agency communications that have any of the following keywords: "Kinross", "Fairbanks Gold Mining", "Parcel G", "Fort Knox Gold Mine", "Fort Knox", "NOAA withdrawal". I am also interested in any communication between agency officials and the following email domain: "@[kinross.com](mailto:kinross.com)".

Document Search Response to me:

(b)(5) [Redacted]

Before we go further, please advise:

(b)(5) [Redacted]

My question to you (b)(5) [Redacted]

Please advise at your earliest convenience.

In advance, Thank you for your Assistance!

*"Yesterday is already history, tomorrow is still a mystery, and today is a gift, that's why it's called the present."*

*Have a great Day!*  
*Very Respectfully*  
*Lawanda Fisher*  
*Executive Assistant for NOAA's Chief Administrative Officer*  
[301-713-0836](tel:301-713-0836)

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**Mark Graff - NOAA Federal**

---

**From:** Mark Graff NOAA Federal  
**Sent:** Wednesday, January 31, 2018 5:42 PM  
**To:** Adam Dilts NOAA Federal; Jackie Rolleri NOAA Federal; Nkolika Ndubisi NOAA Federal; Lola Stith NOAA Affiliate; Laura Cesario NOAA Federal  
**Cc:** Stephanie Altman NOAA Federal; Bogomolny, Michael (Federal); Robert Swisher NOAA Federal; Stacey Nathanson NOAA Federal; Devin Brakob NOAA Federal; James LeDuc NOAA Federal; Velna Bullock NOAA Federal; Samuel Dixon NOAA Affiliate; Scott Smullen NOAA Federal  
**Subject:** EO 13795 related requests proposed search  
**Attachments:** National Monuments and EO 13795 FOIAOnline pull.xls; Cascade Searches.pdf

Hello All,

In follow up to our prior discussion, (b)(5) [Redacted]  
[Redacted]  
[Redacted]

[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

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- [Redacted]  
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[Redacted]
- [Redacted]  
[Redacted]

- (b)(5) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] Thanks guys,

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628 5658 (O)  
(b)(6) [REDACTED] (C)

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Cascade searches help eliminate duplicative emails.

- The SME (often but not always the project lead) should include all of their records located in their INBOX ONLY.
- Everyone else tasked with searching should only provide records the SME is NOT included on in the “To” or “CC” lines
- [Search operators you can use with Gmail](#)

### Example:

- Lance (SME or lead on project/action) saves everything in his INBOX responsive to this FOIA request (received emails)
  - Chelsea saves every email that Lance is not on the “to” or “cc” line;
    - Lisa saves everything that Chelsea or Lance are not on the “to” or “cc” lines;
      - Jerry saves everything that Lisa, Chelsea, or Lance are not on the “to” or “cc” lines;

Hypothetical example of a cascade style search query which removes the project lead, limits the date range, and uses two search terms:

- `-{from: ProjectLead@noaa.gov to: ProjectLead@noaa.gov cc: ProjectLead@noaa.gov} after:2017/02/02 before:2017/07/26 ("summer flounder" "New Jersey")`
  - The minus sign “ - “ will remove everything within the curly brackets { } which performs an “or” search in Gmail.
  - Using the terms “to:”, “from:” and “cc:” will remove the Project Lead’s emails allowing you to exclude emails they are already producing.
  - Using “after:” and “before:” searches between those dates.
  - The terms in quotes within the parentheses ( ) are keyword phrases that you wish to find together.

Tracking Number	Type	Status	Requester
DOC-IOS-2018-000166	Request	Assignment Determination	Margaret Townsend
DOC-IOS-2018-000170	Request	Assignment Determination	Chris Saeger
DOC-IOS-2018-000172	Request	Assignment Determination	Kellie M. Lunney
DOC-IOS-2018-000178	Request	Assignment Determination	Katherine Desormeau
DOC-NOAA-2017-000170	Request	Research Records	Kara McKenna
DOC-NOAA-2017-000361	Request	Initial Evaluation	Peter Shelley
DOC-NOAA-2017-001316	Request	Research Records	Chris Saeger
DOC-OS-2017-001522	Request	Evaluation of Records	Yule Kim
DOC-OS-2017-001150	Request	Research Records	Sean Smith
DOC-OS-2017-000435	Request	Research Records	R. Rosenbaum
DOC-NOAA-2017-001958	Request	Closed	Lauren Dillon
DOC-IOS-2018-000380	Request	Assignment Determination	Laura Shields

<b>Requester Organization</b>	<b>Submitted</b>	<b>Assigned To</b>	<b>Due</b>
	10/26/2017	Bobbie Parsons	12/05/2017
Western Values Project	10/27/2017	Bobbie Parsons	12/07/2017
E&E News	10/27/2017	Bobbie Parsons	12/05/2017
Natural Resources Defense Council	10/29/2017	Bobbie Parsons	12/13/2017
Cause of Action	11/09/2016	Samuel B. Dixon	01/05/2017
Conservation Law Foundation	12/22/2016	NOAA	N/A
Western Values Project	06/07/2017	Samuel B. Dixon	07/21/2017
	07/14/2017	Nkolika Ndubisi	08/14/2017
	05/03/2017	Ayana Crawford	06/08/2017
Sen. Schatz	12/6/2017	NOS	1/17/2017
DNC	9/29/2017	USEC	NA
Santa Cruz Sentinel	12/3/2017	NOS	1/23/2017

## Description/Basis for Appeal

DOC's report reviewing marine sanctuaries and monuments mandated by Executive Order 13795, "Implementing all documents created for the purpose of informing the Department of Justice regarding the views of the Office of the To Whom It May Concern: I am seeking a copy of an October 2017 report to the White House from Commerce as well as any and all records in the possession, custody, or control of the Department of Commerce ("the Department") that CoA Institute hereby requests access to the following records for the time period of January 1, 2014, to the present. Expedited Review is sought pursuant to 15 CFR section 4.6(f) Re: Freedom of Information Act Request – Northeast Coastal

**SCOPE REVISION 6/20 - To exclude the following information: out-of-office replies, duplicates of the same emails**

In NOAA's notice published 6/26/2017, entitled "Review of National Marine Sanctuaries and Marine National Monuments", the materials requested relate to presidential designations of national monuments. As such, I request all records related to the expansion of PRIMNM ultimately effectuated by Presidential Proclamation 9173, including documents from the National Oceanic and Atmospheric Administration the following records: □ All correspondence, e-mails, and other documents related to the National Marine Sanctuaries review as requested from Secretary Wilbur Ross by any

an America-First Offshore Energy Strategy,” dated April 28, 2017 (“EO 13795”) requiring: The Secretary  
ne General Counsel for the Department of Commerce with respect to the President’s authority to revoke  
essing the offshore oil and drilling potential in areas containing 11 protected marine monuments and sa  
pertain to meetings on or after January 20, 2017, attended by Secretary Wilbur Ross and/or Earl Comst  
:4 1. All records or communications (including emails, text messages, and voicemails) referring or relatir  
Canyons and Seamounts Marine National Monument and any other marine national monument records  
; and duplicate attachments disseminated to large volumes of recipients. ¶request access to and copie  
ments Designated or Expanded Since April 28, 2007; Notice of Opportunity for Public Comment” NOAA  
relating to, or consisting of, communications — in any format — generated or received by the Departme  
ding, by way of illustration and not limitation, • communications, other than through public comments, wi  
emails, faxes, memoranda, briefing documents, notes, legal opinions or other guidance, studies, or estir  
1 executive order on April 28, 2017, including but not limited to emails, studies, reviews, and data. A fina



of Commerce, in consultation with the Secretary of Defense, the Secretary of the Interior, and the Secretary of the Department of the Interior, or modify National Monuments.

The report is required by the April 28, 2017 Executive Order 13795 – “Implementing an

Executive Order, relating to any national marine sanctuary or marine national monument and/or to the Department's

report to a NOAA Town Hall meeting held on or about September 15, 2015, in Providence, Rhode Island, and

for the Atlantic Ocean. Supporting documents attached

to any information used to inform the development of the following national monument proclamations (

as stated: “The Department of Commerce will receive a copy of and consider all public comments submitted

to the Department of Commerce related to: a. Any public communication to the Department of Commerce and/or its Bureau

or any person outside each of your agencies or offices concerning what land, waters or other objects shall

be designated, sent, received or created by NOAA staff which reference Secretary of the Interior Ryan Zinke's report

which was submitted to the White House on October 25, 2017. I am asking for the final report, as well

Secretary of Homeland Security, shall conduct a review of all designations and expansions of National Marine

America-First Offshore Energy Strategy." The Commerce report includes a review of all designations and expansions of national marine sanctuaries and monuments under Executive Order No. 13795, including (1) designations and expansions publicized on NOAA's website on or about September 3, 2015 (attached as Exhibit 1 to this FOIA request)

designations and expansions during the specified time periods: Northeast Canyons and Seamounts Marine National Monument and during the Department of the Interior's public comment period for Executive Order 13792 for Marine National Monuments on or since January 20, 2017 requesting a review of the national monuments identified in President Trump's Executive Order. The review could be included or excluded from the expansion of PRIMNM and/or the uses which should be permitted. The review of national monument designations for Northeast Canyons and Seamounts Marine National Monument shall be completed as any documents that were involved in the production of that final report."

Sanctuaries, and of all designations and expansions of Marine National Monuments under the Antiquities Act.

and expansions of National Marine Sanctuaries and Marine National Monuments since April 28, 2009. (1) any calendar entries, invitations, itineraries, or communications referencing such meetings; (2) any agency comments (including but not limited to all written comments, as well as all communications with non-agency entities), including but not limited to all written comments, as well as all communications with non-agency entities.

Monument (01/01/14 – 12/31/16) Papahānaumokuākea Marine National Monument Expansion (01/01/14 - 12/31/16) National Monuments that are affected by Executive Orders 13792 and 13795." 82 Fed. Reg. 28827. Pursuant to Trump's Executive Order dated April 26, 2017. A list of the monuments at issue is found in the DOI fact sheet for that expansion, including but not limited to Western Pacific Regional Fishery Management Area and Papahānaumokuākea Marine National Monument in accordance with Executive Order 13795,

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- 12/31/16) Pacific Remote Islands Marine National Mo  
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ent Council, the Hawaii

"Presidential Executive Order on the Review of Designations Under the Antiquities Act," dated April 26, :

2017. The time frame of my request is April 26, 2017 to August 31, 2017. Records requested are to incli

ude, but not be limited to, correspondence, emails, faxes, memoranda, briefing documents, notes, legal

opinions or other guidance, studies, or estimates sent, received, or created by NOAA which reference: (

o The “smallest area compatible” requirement; the scientific and rational basis for monument boundaries



3, 1

**Kimberly Katzenbarger - NOAA Federal**

---

**From:** Kimberly Katzenbarger NOAA Federal  
**Sent:** Thursday, February 1, 2018 1:52 PM  
**To:** Mark Graff  
**Cc:** Nkolika Ndubisi NOAA Federal; Jeri Dockett NOAA Affiliate; Lola Stith NOAA Affiliate  
**Subject:** Fwd: Direct Cost Retention  
**Attachments:** Request to Retain Direct Costs Recovered Associated with FOIA Processing FINAL.docx

Hi Mar (b)(5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Please advise. And, of course, please call if you have any questions.

Thanks, Kim

Forwarded message

**From:** Mark Graff - NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)>  
**Date:** Wed, Jun 28, 2017 at 10:23 AM  
**Subject:** Direct Cost Retention  
**To:** "Toland, Michael" <[mtoland@doc.gov](mailto:mtoland@doc.gov)>  
**Cc:** Douglas Perry NOAA Federal <[Douglas.A.Perry@noaa.gov](mailto:Douglas.A.Perry@noaa.gov)>, Robert Swisher NOAA Federal <[robert.swisher@noaa.gov](mailto:robert.swisher@noaa.gov)>, Robert Hogan <[robert.j.hogan@noaa.gov](mailto:robert.j.hogan@noaa.gov)>, Lola Stith NOAA Affiliate <[lola.m.stith@noaa.gov](mailto:lola.m.stith@noaa.gov)>, Kimberly Katzenbarger NOAA FEDERAL <[kimberly.katzenbarger@noaa.gov](mailto:kimberly.katzenbarger@noaa.gov)>

Good Morning Mike,

As discussed during the FOIA Council (b)(5)

[REDACTED]

[REDACTED]

[REDACTED]

We appreciate DOC's consideration of this proposed policy action, and please let us know if you need any additional documentation in evaluating this request.

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)

(b)(6)

National Oceanic and Atmospheric Administration

[\(301\) 628 5658](tel:(301)6285658) (O)

(b)(6) (C)

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Kimberly Katzenbarger, Attorney  
National Oceanic and Atmospheric Administration  
Office of General Counsel, Natural Resources Section  
1315 East West Hwy, Suite 15104  
Silver Spring, MD 20910 3282

(b)(6)

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

June 28, 2017

MEMORANDUM FOR: Michael Toland, Deputy Chief FOIA Officer  
Office of Privacy and Open Government  
Department of Commerce

FROM: Mark Graff, FOIA Officer

THROUGH: Robert Swisher, Director  
Governance and Portfolio Division  
Office of the Chief Information Officer  
National Oceanic and Atmospheric  
Administration

SUBJECT: Retention of Direct Contractor-Related  
Costs Recovered Associated with  
Processing FOIA Requests

(b)(5)  
[Redacted]

[Redacted]

[Redacted]

[Redacted]

(b)(5)

[Redacted text block]

[Redacted text block]

Cc: Mark Graff, FOIA Officer  
Rob Swisher, Director, Governance and Portfolio  
Robert Hogan, NOAA Office of the General Counsel



## Mark Graff - NOAA Federal

---

**From:** Mark Graff NOAA Federal  
**Sent:** Thursday, February 1, 2018 4:17 PM  
**To:** Bogomolny, Michael (Federal)  
**Subject:** Re: new NRDC lawsuit  
**Attachments:** NRDC v. DOC Summer Flounder FOIA Complaint Final 1.23.18 (Needs ECF Number).pdf; Initial Conference Scheduling.pdf

Nevermind (b)(5)

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628 5658 (O)  
(b)(6) (C)

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On Thu, Feb 1, 2018 at 3:55 PM, Mark Graff NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)> wrote:

No, I haven't seen it (b)(5)

Do you have a copy of the Complaint?

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
[\(301\) 628 5658](tel:(301)6285658) (O)  
(b)(6) (C)

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On Thu, Feb 1, 2018 at 3:53 PM, Bogomolny, Michael (Federal) <[MBogomolny@doc.gov](mailto:MBogomolny@doc.gov)> wrote:

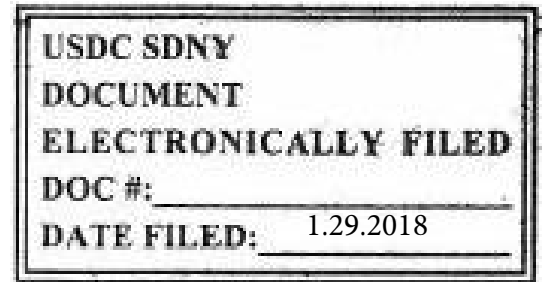
Mark,

I received today a lawsuit regarding the recreational summer flounder fishing season. Have you received it yet?

bogo



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



Natural Resources Defense Council, Inc.,

Plaintiff,

v

United States Department of Commerce,

Defendants.

18 Civ. 00583 (AJN)

NOTICE OF INITIAL  
PRETRIAL CONFERENCE

ALISON J. NATHAN, District Judge:

This case has been assigned to me for all purposes. It is hereby ORDERED that counsel for all parties appear for an initial pretrial conference with the Court on **Friday, June 11, 2018 at 3:00pm in Courtroom 906** of the United States District Court for the Southern District of New York, Thurgood Marshall U.S. Courthouse at **40 Foley Square**, New York, New York.

Counsel are directed to confer with each other prior to the conference regarding settlement and each of the other subjects to be considered at a Fed. R. Civ. P. 16 conference. Additionally, in accordance with the Court's Individual Rules, the parties are hereby ORDERED to ECF file a Proposed Civil Case Management Plan and Scheduling Order **no later than seven days prior to the Initial Pretrial Conference**. The parties shall use this Court's form Proposed Case Management Plan and Scheduling Order available at the Court's website (<http://nysd.uscourts.gov/judge/Nathan>).

IT IS FURTHER ORDERED that included with the Proposed Civil Case Management Plan, the parties jointly submit a letter, not to exceed five (5) pages, providing the following information in separate paragraphs:

- (1) A brief statement of the nature of the action and the principal defenses thereto;
- (2) A brief explanation of why jurisdiction and venue lie in this Court;
- (3) A brief description of all outstanding motions and/or all outstanding requests to file motions;
- (4) A brief description of any discovery that has already taken place, and that which

will be necessary for the parties to engage in meaningful settlement negotiations;

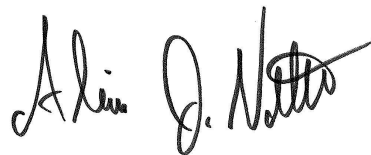
- (5) A list of all prior settlement discussions, including the date, the parties involved, and the approximate duration of such discussions, if any;
- (6) The estimated length of trial; and
- (7) Any other information that the parties believe may assist this Court in resolving the action.

If this case has been settled or otherwise terminated, counsel are not required to appear, provided that a stipulation of discontinuance, voluntary dismissal, or other proof of termination is sent prior to the date of the conference via e-mail to the Orders and Judgment Clerk at the following e-mail address: [orders\\_and\\_judgments@nysd.uscourts.gov](mailto:orders_and_judgments@nysd.uscourts.gov).

**All pretrial conferences must be attended by the attorney who will serve as principal trial counsel.** Any request for adjournment must be ECF filed and submitted pursuant to the Court's Individual Practices; the Court will not entertain requests made less than two business days before the conference. The written submission must (a) specify the reasons for the adjournment, (b) state whether the other parties have consented, and (c) indicate times and dates on succeeding Fridays when all counsel are available. Unless counsel are notified that the conference has been adjourned, it will be held as scheduled.

**Counsel who have noticed an appearance as of the issuance of this order are directed to notify all other parties' attorneys in this action by serving upon each of them a copy of this order and the Court's Individual Rules (available at the Court's website, <http://nysd.uscourts.gov/judge/Nathan>) forthwith.** If unaware of the identity of counsel for any of the parties, counsel receiving this order must forthwith send a copy of this order and Individual Rules to that party personally.

Dated: Jan 29, 2018  
New York, New York



---

ALISON J. NATHAN  
United States District Judge

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

NATURAL RESOURCES DEFENSE	)	
COUNCIL, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
UNITED STATES DEPARTMENT OF	)	18-cv-583
COMMERCE,	)	ECF Case
	)	
Defendant.	)	
	)	

---

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**INTRODUCTION**

1. Defendant United States Department of Commerce (Commerce) has violated the Freedom of Information Act (FOIA), 5 U.S.C. § 552, by failing to fully disclose records relating to a July 2017 determination by the Secretary of Commerce that New Jersey had complied with its obligation to implement management measures aimed at conserving summer flounder. Plaintiff Natural Resources Defense Council (NRDC) requested these records from Commerce six months ago.

2. Commerce's National Oceanic and Atmospheric Administration (NOAA), regional fishery management councils, and the interstate Atlantic States Marine Fisheries Commission (the Fisheries Commission or Commission) work together to conserve and manage various fish populations along the Atlantic coast. As part of these efforts, the Fisheries Commission adopts management plans to protect certain fish species against depletion. Under Federal law, the Commission

identifies Atlantic coastal states to be included in its various management plans and then works to ensure that those states implement and enforce the plans.

3. In June 2017, the Fisheries Commission determined that New Jersey was out of compliance with the Commission's management plan for summer flounder, a fish species that is currently subject to overfishing. In July 2017, contrary to the Commission's determination, the Secretary of Commerce found that the summer flounder management measures New Jersey had failed to implement were not necessary for the conservation of summer flounder. The Secretary's determination allowed New Jersey's recreational summer flounder fishing season to proceed.

4. On July 26, 2017, NRDC submitted a FOIA request to Commerce for documents related to the Secretary's finding that the summer flounder management plan measures New Jersey had failed to implement were unnecessary for conserving summer flounder.

5. In October and November, Commerce via NOAA (a component of Commerce) provided NRDC with two "interim" releases of responsive documents. These interim releases consisted solely of documents from NOAA's files, and nothing from other Commerce components or the Office of the Secretary.

6. After the most recent interim release, Commerce informed NRDC that there were no more responsive documents in NOAA's files. Commerce further informed NRDC that it was unable to provide an update regarding the status of its

search for additional responsive documents outside of NOAA, other than noting a “significant logjam” due to the volume of Commerce FOIA requests.

7. Although Commerce has had six months to search for and produce responsive documents, it has not provided NRDC with any records from components of Commerce other than NOAA. Nor has Commerce provided NRDC with a final determination as to whether it will comply with NRDC’s request. The statutory deadline for such a final determination was, at the latest, September 11, 2017, with the final production of documents due promptly thereafter.

8. It is important that NRDC receives these documents in a timely manner. The Commission has already begun setting management measures for the 2018 summer flounder recreational fishing season, and the Commission and individual states will make key management decisions over the next four months prior to the opening of the season in May 2018. Particularly if New Jersey or other states choose not to comply with the relevant management plan for the 2018 fishing season, the requested documents could provide critical information to NRDC and the public in making advocacy decisions.

9. NRDC seeks a declaration that Commerce has violated FOIA by failing to provide a final determination as to whether it will comply with NRDC’s request, and by failing to produce all non-exempt responsive records, by the statutory deadline. NRDC seeks an injunction ordering Commerce to disclose at no cost and without further delay all non-exempt, responsive records to NRDC.

## THE PARTIES

10. Plaintiff NRDC is a national, non-profit environmental and public health membership organization with hundreds of thousands of members nationwide. NRDC engages in research, advocacy, public education, and litigation related to protecting public health and the environment. The organization's work includes efforts to end overfishing and promote the long-term sustainability of fishing practices in the United States.

11. Defendant Commerce is a federal agency within the meaning of FOIA, 5 U.S.C. § 551(1), and has possession or control of the records that NRDC seeks.

## JURISDICTION AND VENUE

12. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

13. Venue is proper in this court because plaintiff NRDC resides and has its principal place of business in this judicial district. 5 U.S.C. § 552(a)(4)(B).

## STATUTORY AND REGULATORY FRAMEWORK

14. FOIA requires that federal agencies release, upon request, information to the public, 5 U.S.C. § 552(a)(3), unless one of nine statutory exemptions applies, *id.* § 552(b).

15. Within 20 business days of an agency's receipt of a FOIA request, the agency must "determine . . . whether to comply with such request," *id.* § 552(a)(6)(A)(i); *see also* 15 C.F.R. § 4.6(b) (Commerce FOIA regulation), and "immediately notify the person making such request of . . . such determination and

the reasons therefor,” 5 U.S.C. § 552(a)(6)(A)(i). If the agency determines that it will comply with the request, it must “promptly” release responsive, non-exempt records to the requester. *Id.* § 552(a)(6)(C)(i); *see also* 15 C.F.R. § 4.7(c).

16. In “unusual circumstances,” an agency may extend the time limit for responding to a FOIA request by up to 10 business days. 5 U.S.C. § 552(a)(6)(B)(i).

17. If the agency fails to comply with the statutory time limits, the requester is deemed to have exhausted her administrative remedies and may immediately file suit “to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld.” 5 U.S.C. §§ 552(a)(4)(B), 552(a)(6)(C)(i).

### **FACTUAL BACKGROUND**

18. Summer flounder is an important fish for commercial and recreational fishing industries along the Mid-Atlantic coast, and is found in waters from Nova Scotia, Canada, to the east coast of Florida. Despite conservation efforts, the summer flounder population is below target levels and is currently subject to overfishing.

19. Summer flounder and the fishing of summer flounder collectively known as the summer flounder fishery are jointly managed by NOAA (a component of Commerce), the Mid-Atlantic Fishery Management Council, and the Fisheries Commission. Together, these entities seek to conserve summer flounder and prevent depletion of the species.

20. Under the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act), 16 U.S.C. §§ 5101-5108, the Fisheries Commission is tasked with developing management plans to conserve summer flounder (as well as other fish species in the Atlantic coastal region), *see id.* § 5104(a). The Atlantic Coastal Act provides that, for each management plan, the Commission must identify the states that are required to implement and enforce the plan. *Id.* § 5104(a)(1). Under some management plans, the Commission allows states to implement their own management measures, so long as the state's measures achieve the same level of conservation as the Commission's plan.

21. If the Fisheries Commission finds that a state has failed to implement or enforce measures in compliance with the Commission's management plan for a particular fish species, the Atlantic Coastal Act requires the Commission to make a formal non-compliance determination. *Id.* § 5105(a). This determination is subject to review by the Secretary of Commerce, who makes an independent compliance determination. *Id.* § 5106(a)(1). If the Secretary agrees that the state has failed to implement and enforce the measures contained in the management plan, and also that such measures are "necessary for the conservation of the fishery," the Secretary must declare a moratorium on fishing that species in the waters of the non-complying state. *Id.* § 5106(a), (c)(1).

22. In February 2017, in response to new science indicating the declining population status of summer flounder, the Fisheries Commission tightened measures in its summer flounder management plan applicable to recreational



fishing. These stricter measures included increased minimum size requirements and a reduction in the maximum number of summer flounder allowed to be caught and kept by any one person.

23. State officials from New Jersey—one of several states required to implement and enforce the Commission’s summer flounder management plan—vocally opposed these stricter measures. Soon after the Fisheries Commission voted on the new restrictions, the New Jersey Department of Environmental Protection Commissioner wrote a letter to the Secretary of Commerce, asking the Secretary to stop them from going into effect, claiming the restrictions would lead to the “destruction of” New Jersey’s recreational summer flounder industry.

24. New Jersey ultimately proposed its own summer flounder recreational management measures, instead of implementing the new measures adopted by the Commission. Although the Commission’s summer flounder management plan allowed New Jersey to do so if the measures would achieve the same level of conservation as the Commission’s plan, after reviewing the measures proposed by New Jersey, the Commission found that the measures would not sufficiently protect summer flounder and were therefore inconsistent with the Commission’s plan.

25. New Jersey nonetheless implemented its own measures, prompting a formal non-compliance determination by the Fisheries Commission on June 1, 2017.

26. In July 2017, for the first time in the twenty-four-year history of the Atlantic Coastal Act, the Secretary of Commerce made a finding contrary to the Commission’s non-compliance determination, allowing New Jersey’s recreational

summer flounder season to proceed. Specifically, the Secretary found that the measures New Jersey failed to implement were “not necessary for the conservation of summer flounder.” 82 Fed. Reg. 33,481 (July 20, 2017). The notice announcing the Secretary’s compliance determination was brief and devoid of any substantive explanation. *See id.*

27. On July 26, 2017, NRDC served a FOIA request on Commerce, seeking records supporting, explaining, or otherwise relating to the Secretary’s finding that the summer flounder management measures New Jersey failed to implement were not necessary for the conservation of summer flounder. NRDC also requested a fee waiver.

28. NRDC received an email notification indicating that the request would be processed by NOAA, a component of Commerce. NRDC also received a letter from NOAA on August 4, 2017, acknowledging receipt of the request and stating that the agency was invoking the statutory ten-day extension applicable in “unusual circumstances.” In its letter, NOAA stated that it anticipated completing NRDC’s request by September 7, 2017.

29. On August 23, NRDC received a letter from NOAA recommending that NRDC narrow the scope of its request. After a phone call with NRDC on August 24 and an additional email from NRDC on August 25, NOAA agreed to move forward with the request. Around the same time, Commerce granted NRDC’s fee waiver request.

30. NOAA provided NRDC with two “interim releases” of responsive documents in October and November, but did not provide a final date for Commerce’s completion of NRDC’s request. The interim releases consisted solely of documents from NOAA’s files, and a NOAA representative confirmed that NOAA itself has no other responsive documents. NOAA further informed NRDC that it was unable to provide more information regarding the status of Commerce’s search for additional responsive documents, other than noting a “significant logjam” due to the volume of Commerce FOIA requests.

31. It has been six months since NRDC served its FOIA request on Commerce, and more than four months since the statutory deadline passed, yet Commerce has failed to provide NRDC with a final response to its request.

#### **CLAIM FOR RELIEF**

32. Plaintiff incorporates by reference all preceding paragraphs.

33. NRDC has a statutory right under FOIA to obtain without further delay all records responsive to its request that are not exempt from disclosure.

34. Commerce violated its duty under FOIA, 5 U.S.C. § 552(a), to release by the statutory deadline all non-exempt, responsive records to NRDC.

#### **REQUEST FOR RELIEF**

Plaintiff respectfully requests that this Court enter judgment against Commerce as follows:

A. Declaring that Commerce has violated FOIA by failing to produce all non-exempt records responsive to NRDC’s FOIA request by the statutory deadline;

- B. Ordering that Commerce disclose the remaining requested records to NRDC at no cost and without further delay;
- C. Ordering that Commerce produce an index identifying any documents or parts thereof that it withholds and the basis for the withholdings, in the event Commerce determines that certain responsive records are exempt from disclosure;
- D. Retaining jurisdiction over this case to rule on any challenged assertions by Commerce that certain responsive records are exempt from disclosure;
- E. Awarding NRDC its costs and reasonable attorneys' fees; and
- F. Granting such other relief that the Court considers just and proper.

Respectfully submitted,

/s/ Catherine Marlantes Rahm  
Catherine Marlantes Rahm  
Natural Resources Defense Council  
40 West 20th Street, 11th Floor  
New York, NY 10011  
(212) 727-4628  
crahm@nrdc.org

*Counsel for Plaintiff*

Dated: January 23, 2018

**Mark Graff - NOAA Federal**

---

**From:** Mark Graff NOAA Federal  
**Sent:** Thursday, February 1, 2018 4:32 PM  
**To:** Robert Hogan; Samuel Dixon NOAA Affiliate; Robert Swisher NOAA Federal; Steven Goodman NOAA Federal  
**Cc:** Lola Stith NOAA Affiliate; Ed Kearns NOAA Federal; Jeff Lonergan NOAA Federal  
**Subject:** New FOIA Lawsuit NRDC v. NOAA (Summer Flounder)  
**Attachments:** Initial Conference Scheduling.pdf; NRDC FOIA Request\_7 26 2017\_Dept. of Commerce (1).pdf; NRDC v. DOC Summer Flounder FOIA Complaint Final 1.23.18 (Needs ECF Number).pdf; DOC NOAA 2017 001606 Signed Interim 2 Letter.pdf

Hey Guys,

It looks like we have another FOIA Lawsuit. This one is the NRDC Summer Flounder request (DOC NOAA 2017 001606).

(b)(5) [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted].

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628 5658 (O)

(b)(6) [Redacted] (C)

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UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
Silver Spring, MD 20910

Molly Masterson  
Natural Resources Defense Council  
40 W. 20<sup>th</sup> St.  
New York, NY 10011

NOV 28 2017

Re: FOIA Request DOC-NOAA-2017-001606

Dear Ms. Masterson:

This letter is in response to your Freedom of Information Act (FOIA) request, which was received by our office on July 26, 2017, in which you requested:

"...records regarding the Secretary of Commerce's decision determining that the state of New Jersey was in compliance with regard to management of its recreational summer flounder fishery under the Atlantic Coastal Fisheries Cooperative Management Act.

1. Decision memoranda, letters, emails, situation summaries, discussion documents, or briefing documents that discuss summer flounder and New Jersey's 2017 recreational season;
  2. Communications pertaining to New Jersey's recreational management of summer flounder during the 2017 season, including communications within the Department or any of its subdivisions, and communications between Department staff (or staff of any Department subdivision) and any outside entity;
  3. Proposals, recommendations, or factual information submitted to the Department or any of its subdivisions regarding New Jersey's recreational management of summer flounder during the 2017 season;
  4. Technical analysis, including projections or estimates of harvest, discard mortality, overages, and "conservation equivalency," submitted to or produced by the Department or any of its subdivisions, regarding New Jersey's recreational management of summer flounder during the 2017 season; and
  5. Scientific research or studies that support or explain the Secretary's decision.
- The temporal scope of this request is limited to records created or obtained on or after February 2, 2017."

On August 25, 2016, you further clarified the scope to include:

Decision documents, decision memoranda, letters, discussion or briefing documents, technical analyses (including projections or estimates of harvest, discard mortality, overages, and "conservation equivalency"), or scientific studies that were submitted to, considered by, or relied upon by the Secretary, or created for the purposes of the Secretary's compliance review; and





Communications that were created as the result of or for the purposes of the Secretary's compliance review, including communications within the Department or any of its subdivisions, and communications between Department staff (or staff of any Department subdivision) and any outside entity.

This is Interim Release Two.

We have located 40 records responsive to your request for this second interim release. (In the first interim release, we released 118 full release (or full grant) records.)

--39 records responsive to your request are fully releasable and are being released in their entirety.

--1 record is partially redacted under 5 U.S.C.552(b)(6), which prohibits from prohibits from disclosure "information that, if disclosed, would invade another individual's personal privacy."

You have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must be received within 90 calendar days of the date of this response letter at the following address:

Assistant General Counsel for Litigation, Employment, and Oversight  
U.S. Department of Commerce  
Office of General Counsel  
Room 5875  
14<sup>th</sup> and Constitution Avenue, N.W.  
Washington, D.C. 20230

An appeal may also be sent by e-mail to [FOIAAppeals@doc.gov](mailto:FOIAAppeals@doc.gov) or by FOIAonline at <https://foiaonline.regulations.gov/foia/action/public/home#>.

For your appeal to be complete, it must include the following items:

- a copy of the original request,
- our response to your request,
- a statement explaining why the withheld records should be made available, and why the denial of the records was in error.
- "Freedom of Information Act Appeal" must appear on your appeal letter. It should also be written on your envelope, e-mail subject line, or your fax cover sheet.

FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

FOIA grants requesters the right to challenge an agency's final action in federal court. Before doing so, an adjudication of an administrative appeal is ordinarily required.

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

Office of Government Information Services  
National Archives and Records Administration  
Room 2510  
8601 Adelphi Road  
College Park, MD 20740-6001

Email: [ogis@nara.gov](mailto:ogis@nara.gov)

Phone: 301-837-1996

Fax: 301-837-0348

Toll-free: 1-877-684-6448

If you have questions regarding this correspondence please contact Jeff Lonergan at [jeff.lonergan@noaa.gov](mailto:jeff.lonergan@noaa.gov) or by phone at 301-427-8577, or the NOAA FOIA Public Liaison Robert Swisher at (301) 628-5755.

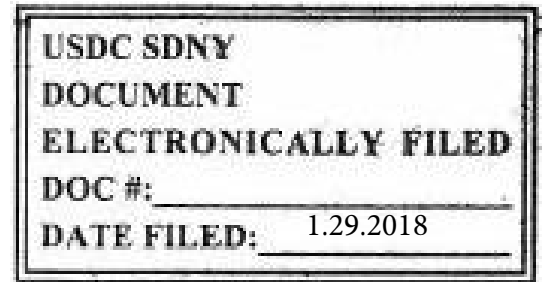
Sincerely,



Allan Risenhoover,  
Acting Deputy Assistant Administrator  
for Regulatory Programs



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



Natural Resources Defense Council, Inc.,

Plaintiff,

v

United States Department of Commerce,

Defendants.

18 Civ. 00583 (AJN)

NOTICE OF INITIAL  
PRETRIAL CONFERENCE

ALISON J. NATHAN, District Judge:

This case has been assigned to me for all purposes. It is hereby ORDERED that counsel for all parties appear for an initial pretrial conference with the Court on **Friday, June 11, 2018 at 3:00pm in Courtroom 906** of the United States District Court for the Southern District of New York, Thurgood Marshall U.S. Courthouse at **40 Foley Square**, New York, New York.

Counsel are directed to confer with each other prior to the conference regarding settlement and each of the other subjects to be considered at a Fed. R. Civ. P. 16 conference. Additionally, in accordance with the Court's Individual Rules, the parties are hereby ORDERED to ECF file a Proposed Civil Case Management Plan and Scheduling Order **no later than seven days prior to the Initial Pretrial Conference**. The parties shall use this Court's form Proposed Case Management Plan and Scheduling Order available at the Court's website (<http://nysd.uscourts.gov/judge/Nathan>).

IT IS FURTHER ORDERED that included with the Proposed Civil Case Management Plan, the parties jointly submit a letter, not to exceed five (5) pages, providing the following information in separate paragraphs:

- (1) A brief statement of the nature of the action and the principal defenses thereto;
- (2) A brief explanation of why jurisdiction and venue lie in this Court;
- (3) A brief description of all outstanding motions and/or all outstanding requests to file motions;
- (4) A brief description of any discovery that has already taken place, and that which

will be necessary for the parties to engage in meaningful settlement negotiations;

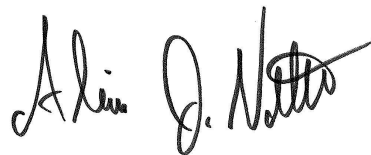
- (5) A list of all prior settlement discussions, including the date, the parties involved, and the approximate duration of such discussions, if any;
- (6) The estimated length of trial; and
- (7) Any other information that the parties believe may assist this Court in resolving the action.

If this case has been settled or otherwise terminated, counsel are not required to appear, provided that a stipulation of discontinuance, voluntary dismissal, or other proof of termination is sent prior to the date of the conference via e-mail to the Orders and Judgment Clerk at the following e-mail address: [orders\\_and\\_judgments@nysd.uscourts.gov](mailto:orders_and_judgments@nysd.uscourts.gov).

**All pretrial conferences must be attended by the attorney who will serve as principal trial counsel.** Any request for adjournment must be ECF filed and submitted pursuant to the Court's Individual Practices; the Court will not entertain requests made less than two business days before the conference. The written submission must (a) specify the reasons for the adjournment, (b) state whether the other parties have consented, and (c) indicate times and dates on succeeding Fridays when all counsel are available. Unless counsel are notified that the conference has been adjourned, it will be held as scheduled.

**Counsel who have noticed an appearance as of the issuance of this order are directed to notify all other parties' attorneys in this action by serving upon each of them a copy of this order and the Court's Individual Rules (available at the Court's website, <http://nysd.uscourts.gov/judge/Nathan>) forthwith.** If unaware of the identity of counsel for any of the parties, counsel receiving this order must forthwith send a copy of this order and Individual Rules to that party personally.

Dated: Jan 29, 2018  
New York, New York



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ALISON J. NATHAN  
United States District Judge



July 26, 2017

**Via Certified U.S. Mail (with enclosures) and Electronic Mail to:**

Michael Toland, Ph.D.  
Departmental FOIA Officer  
Office of Privacy and Open Government  
Department of Commerce  
14th and Constitution Avenue NW  
Mail Stop 52010FB  
Washington, DC 20230  
Email: mtoland@doc.gov

**Re: FOIA Request for Records Regarding Department of Commerce Determination of Compliance for New Jersey Summer Flounder Fishery**

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (2012), and applicable Department of Commerce (Department) regulations at 15 C.F.R. §§ 4.1-4.11 (2017).

**I. Description of Records Sought**

Please produce all records<sup>1</sup> in the Department's possession, custody, or control that support, explain, or otherwise relate to the Secretary of Commerce's (Secretary's) decision dated July 10, 2017, and final notice published on July 20, 2017,<sup>2</sup> determining that the state of New Jersey was in compliance with regard to management of its recreational summer flounder fishery under the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), 16 U.S.C. §§ 5101-5108 (2012). Requested records include, but are not limited to, any of the following:

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<sup>1</sup> "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any Department of Commerce office, including, but not limited to, Department of Commerce Headquarters offices, the Office of the Secretary, the Office of General Counsel, the National Oceanic and Atmospheric Administration ("NOAA"), and all of NOAA's subsidiary offices.

<sup>2</sup> National Marine Fisheries Service (NMFS), Dept. of Commerce, *Atlantic Coastal Fisheries Cooperative Management Act Provisions; Summer Flounder Fishery, Notice of Determination of Compliance for the State of New Jersey*, 82 Fed. Reg. 33,481 (July 20, 2017).

1. Decision memoranda, letters, emails, situation summaries, discussion documents, or briefing documents that discuss summer flounder and New Jersey's 2017 recreational season;
2. Communications pertaining to New Jersey's recreational management of summer flounder during the 2017 season, including communications within the Department or any of its subdivisions, and communications between Department staff (or staff of any Department subdivision) and any outside entity;
3. Proposals, recommendations, or factual information submitted to the Department or any of its subdivisions regarding New Jersey's recreational management of summer flounder during the 2017 season;
4. Technical analysis, including projections or estimates of harvest, discard mortality, overages, and "conservation equivalency," submitted to or produced by the Department or any of its subdivisions, regarding New Jersey's recreational management of summer flounder during the 2017 season; and
5. Scientific research or studies that support or explain the Secretary's decision.

The temporal scope of this request is limited to records created or obtained on or after February 2, 2017.

## **II. Request for a Fee Waiver**

NRDC requests that the Department waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 15 C.F.R. § 4.11(l)(1). The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 15 C.F.R. §§ 4.11 (b)(6), (d)(1).

### **A. NRDC Satisfies the First Fee Waiver Requirement**

The disclosure requested here would be "likely to contribute significantly to public understanding of the operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii); 15 C.F.R. § 4.11(l)(1)(i). Each of the four factors used by the Department to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 15 C.F.R. § 4.11(l)(2)(i)-(iv).

#### *1. Subject of the request*

The records requested here relate to an issue of regional and national impact: conservation and management of the summer flounder fishery, one of the most recreationally and commercially important fisheries along the Atlantic coast. Summer flounder is currently subject to overfishing and at risk of becoming overfished if effective catch limits are not implemented. The records also relate to the Department's understanding of what actions are needed to conserve summer flounder, and the Department's role in carrying out the cooperative management duties of the ACFCMA, *see* 16 U.S.C. § 5106. The Department of Commerce (including its subdivisions) is a government

agency. The requested records thus directly concern “the operations or activities of the [g]overnment.” 15 C.F.R. § 4.11(l)(2)(i).

2. *Informative value of the information to be disclosed*

The requested records are “likely to contribute to” the public’s understanding of government operations and activities, *id.* § 4.11(l)(2)(ii). The public does not currently possess comprehensive information regarding the Department’s evaluation of compliance for New Jersey’s management of summer flounder, or the Department’s ultimate decision that New Jersey was in compliance pursuant to the ACFCMA. As noted above, the Department’s decision has regional and national impacts. The issue of summer flounder management has been elevated to a point of broad public interest, as demonstrated by extensive media coverage in state, regional, and national media outlets. Thus, there is more than a reasonable likelihood that records regarding the Department’s decision have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

To the best of our knowledge, the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the Department’s actions and understanding of what actions are needed to conserve summer flounder, as further discussed below. However, if the Department were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

3. *Contribution to an understanding of the subject by the public is likely to result from disclosure.*

Because NRDC is a “representative of the news media,” as explained in Part II.C below, the Department must presume that this disclosure is likely to contribute to public understanding of its subject. *See* 15 C.F.R. § 4.11(l)(2)(iii). However, even if NRDC were not a media requester, NRDC’s expertise in fisheries management and marine conservation, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability and will to use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject matter. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC’s more than two million members and online activists are “a broad audience of persons interested in the subject[s]” of preventing overfishing and protecting marine resources, and when combined with NRDC’s communications to the public at large, the likely audience of interested persons to be reached is certainly “reasonably broad.” 15 C.F.R. § 4.11(l)(2)(iii). As NRDC’s long

history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.5 million members and online activists who receive regular communications on urgent environmental issues (sample email at Att. 2). This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, "The requirement to rebuild US fish stocks: Is it working?" *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, "The Untapped Potential of California's Water Supply: Efficiency, Reuse, and Stormwater," June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* "Saving Water in California," *N.Y. Times*, July 9, 2014 (discussing the report's estimates) (Att. 13);
- Article, "Waves of phony charges over new clean water safeguards," *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
- Article, "Don't Buy the Smear of the EPA," *L.A. Times*, June 3, 2014 (by NRDC President Frances Beinecke) (Att. 15);
- Transcript, "Conservationists Call For Quiet: The Ocean Is Too Loud!" Nat'l Pub. Radio, *All Things Considered*, July 28, 2013 (featuring NRDC Marine Mammal Protection Program Director Michael Jasny) (Att. 16);

- Testimony of David Doniger, NRDC Climate and Air Program Policy Director and Senior Attorney, before the United States House Subcommittee on Energy and Power, June 19, 2012 (Att. 17);
- Article, “Pollution Still a Hazard to U.S. Beaches,” CBS, *CBS NEWS*, July 29, 2009 (featuring former NRDC Water Program Co-Director Nancy Stoner) (Att. 18);
- Conference brochure, “World Business Summit on Climate Change,” May 24-26, 2009 (featuring former NRDC Director for Market Innovation Rick Duke at 9) (Att. 19);
- Article, “Is there a ‘proper level’ of compliance with environmental law?” *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall) (Att. 20);
- NRDC Document Bank, <http://docs.nrdc.org/> (Att. 21).

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 22). *See also* Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing NRDC’s report) (Att. 23).
- (2) NRDC obtained, through FOIA, FDA review documents on the nontherapeutic use of antibiotic additives in livestock and poultry feed. In January 2014, NRDC published a report, titled *Playing Chicken with Antibiotics*, which is based on the documents obtained, and reveals decades of hesitancy on FDA’s part to ensure the safety of these drug additives (Att. 24). *See also* P.J. Huffstutter and Brian Grow, “Drug critic slams FDA over antibiotic oversight in meat production,” *Reuters*, Jan. 27, 2014 (discussing NRDC’s report) (Att. 25).
- (3) NRDC has used White House documents obtained through FOIA and from other sources to inform the public about EPA’s decision not to protect wildlife and workers from the pesticide atrazine in the face of industry pressure to keep atrazine on the market. *See Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, <http://www.nrdc.org/health/atrazine/files/atrazine10.pdf> (Apr. 2010) (update to 2009 report) (Att. 26); *see also* William Souder, “It’s Not Easy Being Green: Are Weed-Killers Turning Frogs Into Hermaphrodites?” *Harper’s Bazaar*, Aug. 1, 2006 (referencing documents obtained and posted online by NRDC) (Att. 27).
- (4) NRDC incorporated information obtained through FOIA into a report, available at <http://www.nrdc.org/wildlife/marine/sound/contents.asp>, on the impacts of

military sonar and other industrial noise pollution on marine life. *See Sounding the Depths II: The Rising Toll of Sonar, Shipping and Industrial Ocean Noise on Marine Life* (Nov. 2005) (update to 1999 report) (Att. 28). The report also relied upon and synthesized information from other sources. Since the report's publication, the sonar issue has continued to attract widespread public attention. *See, e.g.*, "Protest Raised over New Tests of Naval Sonar," Nat'l Pub. Radio, *All Things Considered*, July 24, 2007 (transcript at Att. 29).

- (5) NRDC scientists have used information obtained through FOIA to publish analyses of the United States' and other nations' nuclear weapons programs. In 2004, for example, NRDC scientists incorporated information obtained through FOIA into a feature article on the United States' plans to deploy a ballistic missile system and the implications for global security. *See* Hans M. Kristensen, Matthew G. McKinzie, and Robert S. Norris, "The Protection Paradox," *Bulletin of Atomic Scientists*, Mar./Apr. 2004 (Att. 30).
- (6) NRDC obtained through FOIA, and made public, records of the operations of the Bush administration's Energy Task Force, along with analysis of selected excerpts and links to the administration's index of withheld documents (Att. 31). NRDC's efforts cast light on an issue of considerable public interest. *See, e.g.*, Elizabeth Shogren, "Bush Gets One-Two Punch on Energy," *L.A. Times*, Mar. 28, 2002, at A22 (Att. 32).
- (7) Through FOIA, NRDC obtained a memorandum by ExxonMobil, advocating the replacement of the sitting head of the Intergovernmental Panel on Climate Change, and used the document to help inform the public about what may have been behind the Bush administration's decision to replace Dr. Robert Watson. *See* NRDC Press Release and attached Exxon memorandum, "Confidential Papers Show Exxon Hand in White House Move to Oust Top Scientist from International Global Warming Panel," Apr. 3, 2002 (Att. 33); Elizabeth Shogren, "Charges Fly Over Science Panel Pick," *L.A. Times*, Apr. 4, 2002, at A19 (Att. 34).
- (8) Through FOIA and other sources, NRDC obtained information on nationwide levels of arsenic in drinking water and used it in a report, *Arsenic and Old Laws* (2000), available in print and online at <http://www.nrdc.org/water/drinking/arsenic/aolinx.asp> (Att. 35). The report guided interested members of the public on how to learn more about arsenic in their own drinking water supplies. *Id.*; *see also* Steve LaRue, "EPA Aims to Cut Levels of Arsenic in Well Water," *San Diego Union-Tribune*, June 5, 2000, at B1 (referencing NRDC report) (Att. 36).<sup>3</sup>

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<sup>3</sup> There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. *See, e.g.*, Felicity Barringer, "Science Panel Issues Report on Exposure to Pollutant," *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, "Draft of Air Rule is Said to Exempt Many Old Plants," *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., "E Mail Suggests Energy Official Encouraged Lobbyist on Policy," *N.Y. Times*, Apr. 27, 2002 (Att. 39).



As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public's understanding of the subject.

#### 4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: conservation and management of the summer flounder fishery, and agency views on what management measures are necessary to achieve conservation of this important species. Recent overfishing of the summer flounder stock, and subsequent coastwide catch reductions implemented by NOAA and the Department of Commerce have received significant media coverage in 2016 and 2017. In recent weeks, the Atlantic States Marine Fisheries Commission's (ASMFC) noncompliance finding for the State of New Jersey, and the Department's determination of compliance, have also received significant coverage regional and national media outlets and other public forums. Examples of recent media coverage on this issue include:

- (1) Staff Report, *Recreational summer flounder season runs through Sept. 5*, NJToday.Net (July 21, 2017) (Exhibit A).
- (2) Dave Monti, *Fishing Report: U.S., fisheries panel disagrees on flounder targets*, Providence Journal (July 20, 2017) (Exhibit B).
- (3) *ASMFC Blasts Secretary Ross Decision on Summer Flounder in Favor of New Jersey's Recreational Sector, Saving Seafood* (Republished from Seafood News) (July 18, 2017) (Exhibit C).
- (4) Blog: Charles Witek, *Commerce Department's Summer Flounder Decision Undermines ASMFC's Authority To Manage Fish Stocks*, Marine Fish Conservation Network (July 18, 2017) (Exhibit D).
- (5) Associated Press, *Group: Trump Official's Fish Ruling Could Harm Conservation*, New York Times (July 17, 2017) (Exhibit E).
- (6) Associated Press, *Fish fight: managers say NJ flounder flap harms conservation*, Washington Post (July 17, 2017) (Exhibit F).
- (7) David Madden, *NJ Prevails In Fish Fight with Federal Government*, CBS Philly (July 15, 2017) (Exhibit G).
- (8) Press Release, *Department of Commerce Decision May Impact ASMFC's Ability to Conserve Atlantic Coastal Fisheries*, Atlantic States Marine Fisheries Commission (July 14, 2017) (Exhibit H).
- (9) Kate King, *New Jersey Wins in Effort to Ease Summer Flounder Quotas*, Wall Street Journal (July 12, 2017) (Exhibit I).
- (10) Daniel Radel, *NJ's fluke season saved after US secretary approves regulations*, App.com (part of USA Today Network) (July 11, 2017) (Exhibit J).
- (11) Claire Lowe, *New Jersey ruled out of compliance on summer flounder, moratorium possible*, Press of Atlantic City (June 2, 2017) (Exhibit K).
- (12) Daniel Hampton, *Summer flounder season begins in N.J., but there's a catch this year*, NJ.com (May 25, 2017) (Exhibit L).
- (13) Blog: John McMurray, *The Hard Truth About Summer Flounder*, Marine Fish Conservation Network (Exhibit M).

Public understanding of the Department's opinion of what actions are needed to conserve summer flounder and its role in carrying out the cooperative management duties of the ACFCMA, would be significantly enhanced by disclosure of the requested records concerning the Secretary's compliance decision. *See* 15 C.F.R. § 4.11(l)(2)(iv). Disclosure would help the public to more effectively evaluate the Department's conclusion that the management measures New Jersey declined to implement are not necessary for conservation of the summer flounder fishery. Disclosure would also help the public to better understand and evaluate the Department's actions on summer flounder conservation and management, particularly with respect to its decision that a moratorium in New Jersey state waters was not warranted.

## **B. NRDC Satisfies the Second Fee Waiver Requirement**

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 15 C.F.R. § 4.11(l)(3). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. "Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters." *Rossotti*, 326 F.3d at 1312 (internal citation omitted); *see Natural Res. Def. Council v. United States Emvtl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about conservation and management of the summer flounder fishery. As noted at Part II.A, any work done by the Department on summer flounder management relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of summer flounder management and associated implications for marine conservation.

## **C. NRDC Is a Media Requester**

Even if the Department denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and the Department's FOIA regulations, 15 C.F.R. § 4.11(d)(1); *see also* 15 C.F.R. § 4.11(b)(6) (defining "[r]epresentative of the news media"). A representative of the news media is "any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii); *see also Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a "non-profit public interest organization" qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep't of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than

two million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. *See* 15 C.F.R. § 4.11(b)(6) (“Examples of news-media entities are . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. *See* 5 U.S.C. § 552(a)(4)(A)(ii) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (accorded media requester status to the American Civil Liberties Union).<sup>4</sup>

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

### **III. Request for Expedited Processing**

NRDC requests expedited processing of this request. FOIA and relevant Department regulations allow for an expedited response, of less than 20 days, in cases where the requester is “primarily engaged in disseminating information” and demonstrates that there is an “urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(I), (II); 15 C.F.R. § 4.6(f)(1)(iv). The following explains NRDC’s basis for requesting expedited processing, based on information that we certify to be true and correct, to the best of our knowledge and belief.

As explained in Part II.C above, NRDC is a “representative of the news media,” *see* 5 U.S.C. § 552(a)(4)(A)(ii); 15 C.F.R. § 4.11(b)(6), and a key purpose of the organization’s work is to gather

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<sup>4</sup> To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

and publish or transmit current and accurate news to the public. *See Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (holding that organization was “primarily engaged in disseminating information” where its mission involved serving as site of record for relevant and up-to-the minute civil rights news and information). Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. Further, as discussed in Part II.A.3 above, NRDC has the ability and will to use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. Dissemination of information need not be an organization’s “sole occupation” in order to meet this first requirement. 15 C.F.R. § 4.6(f)(1)(iv). Thus, it is appropriate to conclude that NRDC is “primarily engaged in disseminating information” with regard to this request.

This is also a case that presents an urgency to inform the public regarding activities of the Federal Government. *See* 15 C.F.R. § 4.6(f)(1)(iv). The Secretary’s July 2017 decision is unprecedented in that it is the first time in the existence of the ACFCMA that the Department of Commerce has rejected a noncompliance finding by the ASMFC. By allowing New Jersey to use management measures that are noncompliant with the coastal management plan, the decision is likely to result in the fishery exceeding its coastwide recreational harvest limit and increase the risk of the summer flounder stock becoming overfished. Importantly, the Secretary’s final decision was not accompanied with any publicly available technical analysis or projections that support the conclusion that the management measures New Jersey failed to implement were not necessary for the conservation of summer flounder. Given that the recreational summer flounder season is currently underway and will end in just over one month (on September 5, 2017), it is critical that the public be informed about the Department’s opinion of what actions are (or are not) needed to achieve conservation of summer flounder in the 2017 fishing season. This information has important implications for the conservation of the summer flounder stock and management approaches in other states. As discussed in Part II.A.4 above, significant public attention and media coverage of the initial noncompliance finding for New Jersey, and the Secretary’s determination of compliance, indicates the public is closely following this issue and wants to better understand the basis for the Secretary’s decision. *See infra* p. 7; Exhibits A-M.

#### **IV. Willingness to Pay Fees Under Protest**

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with the Department’s FOIA regulations at 15 C.F.R. § 4.11(c) for all or a portion of the requested records. *See* 15 C.F.R. §4.11(l)(4). Please contact me before doing anything that would cause the fee to exceed \$500. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

#### **IV. Conclusion**

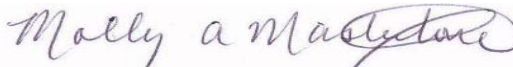
Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; the Department’s search for—or deliberations concerning—certain records should not delay the production of others that the

Department has already retrieved and elected to produce. *See generally* 15 C.F.R. § 4.6. If the Department concludes that any of the records requested here are publicly available, please let me know.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

A handwritten signature in purple ink that reads "Molly A. Masterton". The signature is written in a cursive style and is positioned above the typed name.

Molly A. Masterton  
Oceans Project Attorney  
Natural Resources Defense Council  
40 West 20th Street  
New York, NY 10011  
Tel.: 212-727-4451  
Fax: 212-727-1773  
Email: mmasterton@nrdc.org

**cc:** Mark H. Graff, FOIA Officer, National Oceanic and Atmospheric Administration;  
Bobbie Parsons, Immediate Office of the Secretary, Office of Privacy and Open  
Government, Department of Commerce

**Enclosures (sent via Certified U.S. Mail on CD):**

Attachments 1 through 40 (single .pdf file)

Exhibits A through M (single .pdf file)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

NATURAL RESOURCES DEFENSE	)	
COUNCIL, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
UNITED STATES DEPARTMENT OF	)	18-cv-583
COMMERCE,	)	ECF Case
	)	
Defendant.	)	
	)	

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**INTRODUCTION**

1. Defendant United States Department of Commerce (Commerce) has violated the Freedom of Information Act (FOIA), 5 U.S.C. § 552, by failing to fully disclose records relating to a July 2017 determination by the Secretary of Commerce that New Jersey had complied with its obligation to implement management measures aimed at conserving summer flounder. Plaintiff Natural Resources Defense Council (NRDC) requested these records from Commerce six months ago.

2. Commerce's National Oceanic and Atmospheric Administration (NOAA), regional fishery management councils, and the interstate Atlantic States Marine Fisheries Commission (the Fisheries Commission or Commission) work together to conserve and manage various fish populations along the Atlantic coast. As part of these efforts, the Fisheries Commission adopts management plans to protect certain fish species against depletion. Under Federal law, the Commission

identifies Atlantic coastal states to be included in its various management plans and then works to ensure that those states implement and enforce the plans.

3. In June 2017, the Fisheries Commission determined that New Jersey was out of compliance with the Commission's management plan for summer flounder, a fish species that is currently subject to overfishing. In July 2017, contrary to the Commission's determination, the Secretary of Commerce found that the summer flounder management measures New Jersey had failed to implement were not necessary for the conservation of summer flounder. The Secretary's determination allowed New Jersey's recreational summer flounder fishing season to proceed.

4. On July 26, 2017, NRDC submitted a FOIA request to Commerce for documents related to the Secretary's finding that the summer flounder management plan measures New Jersey had failed to implement were unnecessary for conserving summer flounder.

5. In October and November, Commerce via NOAA (a component of Commerce) provided NRDC with two "interim" releases of responsive documents. These interim releases consisted solely of documents from NOAA's files, and nothing from other Commerce components or the Office of the Secretary.

6. After the most recent interim release, Commerce informed NRDC that there were no more responsive documents in NOAA's files. Commerce further informed NRDC that it was unable to provide an update regarding the status of its

search for additional responsive documents outside of NOAA, other than noting a “significant logjam” due to the volume of Commerce FOIA requests.

7. Although Commerce has had six months to search for and produce responsive documents, it has not provided NRDC with any records from components of Commerce other than NOAA. Nor has Commerce provided NRDC with a final determination as to whether it will comply with NRDC’s request. The statutory deadline for such a final determination was, at the latest, September 11, 2017, with the final production of documents due promptly thereafter.

8. It is important that NRDC receives these documents in a timely manner. The Commission has already begun setting management measures for the 2018 summer flounder recreational fishing season, and the Commission and individual states will make key management decisions over the next four months prior to the opening of the season in May 2018. Particularly if New Jersey or other states choose not to comply with the relevant management plan for the 2018 fishing season, the requested documents could provide critical information to NRDC and the public in making advocacy decisions.

9. NRDC seeks a declaration that Commerce has violated FOIA by failing to provide a final determination as to whether it will comply with NRDC’s request, and by failing to produce all non-exempt responsive records, by the statutory deadline. NRDC seeks an injunction ordering Commerce to disclose at no cost and without further delay all non-exempt, responsive records to NRDC.



## THE PARTIES

10. Plaintiff NRDC is a national, non-profit environmental and public health membership organization with hundreds of thousands of members nationwide. NRDC engages in research, advocacy, public education, and litigation related to protecting public health and the environment. The organization's work includes efforts to end overfishing and promote the long-term sustainability of fishing practices in the United States.

11. Defendant Commerce is a federal agency within the meaning of FOIA, 5 U.S.C. § 551(1), and has possession or control of the records that NRDC seeks.

## JURISDICTION AND VENUE

12. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

13. Venue is proper in this court because plaintiff NRDC resides and has its principal place of business in this judicial district. 5 U.S.C. § 552(a)(4)(B).

## STATUTORY AND REGULATORY FRAMEWORK

14. FOIA requires that federal agencies release, upon request, information to the public, 5 U.S.C. § 552(a)(3), unless one of nine statutory exemptions applies, *id.* § 552(b).

15. Within 20 business days of an agency's receipt of a FOIA request, the agency must "determine . . . whether to comply with such request," *id.* § 552(a)(6)(A)(i); *see also* 15 C.F.R. § 4.6(b) (Commerce FOIA regulation), and "immediately notify the person making such request of . . . such determination and

the reasons therefor,” 5 U.S.C. § 552(a)(6)(A)(i). If the agency determines that it will comply with the request, it must “promptly” release responsive, non-exempt records to the requester. *Id.* § 552(a)(6)(C)(i); *see also* 15 C.F.R. § 4.7(c).

16. In “unusual circumstances,” an agency may extend the time limit for responding to a FOIA request by up to 10 business days. 5 U.S.C. § 552(a)(6)(B)(i).

17. If the agency fails to comply with the statutory time limits, the requester is deemed to have exhausted her administrative remedies and may immediately file suit “to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld.” 5 U.S.C. §§ 552(a)(4)(B), 552(a)(6)(C)(i).

### **FACTUAL BACKGROUND**

18. Summer flounder is an important fish for commercial and recreational fishing industries along the Mid-Atlantic coast, and is found in waters from Nova Scotia, Canada, to the east coast of Florida. Despite conservation efforts, the summer flounder population is below target levels and is currently subject to overfishing.

19. Summer flounder and the fishing of summer flounder collectively known as the summer flounder fishery are jointly managed by NOAA (a component of Commerce), the Mid-Atlantic Fishery Management Council, and the Fisheries Commission. Together, these entities seek to conserve summer flounder and prevent depletion of the species.

20. Under the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act), 16 U.S.C. §§ 5101-5108, the Fisheries Commission is tasked with developing management plans to conserve summer flounder (as well as other fish species in the Atlantic coastal region), *see id.* § 5104(a). The Atlantic Coastal Act provides that, for each management plan, the Commission must identify the states that are required to implement and enforce the plan. *Id.* § 5104(a)(1). Under some management plans, the Commission allows states to implement their own management measures, so long as the state's measures achieve the same level of conservation as the Commission's plan.

21. If the Fisheries Commission finds that a state has failed to implement or enforce measures in compliance with the Commission's management plan for a particular fish species, the Atlantic Coastal Act requires the Commission to make a formal non-compliance determination. *Id.* § 5105(a). This determination is subject to review by the Secretary of Commerce, who makes an independent compliance determination. *Id.* § 5106(a)(1). If the Secretary agrees that the state has failed to implement and enforce the measures contained in the management plan, and also that such measures are "necessary for the conservation of the fishery," the Secretary must declare a moratorium on fishing that species in the waters of the non-complying state. *Id.* § 5106(a), (c)(1).

22. In February 2017, in response to new science indicating the declining population status of summer flounder, the Fisheries Commission tightened measures in its summer flounder management plan applicable to recreational

fishing. These stricter measures included increased minimum size requirements and a reduction in the maximum number of summer flounder allowed to be caught and kept by any one person.

23. State officials from New Jersey—one of several states required to implement and enforce the Commission’s summer flounder management plan—vocally opposed these stricter measures. Soon after the Fisheries Commission voted on the new restrictions, the New Jersey Department of Environmental Protection Commissioner wrote a letter to the Secretary of Commerce, asking the Secretary to stop them from going into effect, claiming the restrictions would lead to the “destruction of” New Jersey’s recreational summer flounder industry.

24. New Jersey ultimately proposed its own summer flounder recreational management measures, instead of implementing the new measures adopted by the Commission. Although the Commission’s summer flounder management plan allowed New Jersey to do so if the measures would achieve the same level of conservation as the Commission’s plan, after reviewing the measures proposed by New Jersey, the Commission found that the measures would not sufficiently protect summer flounder and were therefore inconsistent with the Commission’s plan.

25. New Jersey nonetheless implemented its own measures, prompting a formal non-compliance determination by the Fisheries Commission on June 1, 2017.

26. In July 2017, for the first time in the twenty-four-year history of the Atlantic Coastal Act, the Secretary of Commerce made a finding contrary to the Commission’s non-compliance determination, allowing New Jersey’s recreational

summer flounder season to proceed. Specifically, the Secretary found that the measures New Jersey failed to implement were “not necessary for the conservation of summer flounder.” 82 Fed. Reg. 33,481 (July 20, 2017). The notice announcing the Secretary’s compliance determination was brief and devoid of any substantive explanation. *See id.*

27. On July 26, 2017, NRDC served a FOIA request on Commerce, seeking records supporting, explaining, or otherwise relating to the Secretary’s finding that the summer flounder management measures New Jersey failed to implement were not necessary for the conservation of summer flounder. NRDC also requested a fee waiver.

28. NRDC received an email notification indicating that the request would be processed by NOAA, a component of Commerce. NRDC also received a letter from NOAA on August 4, 2017, acknowledging receipt of the request and stating that the agency was invoking the statutory ten-day extension applicable in “unusual circumstances.” In its letter, NOAA stated that it anticipated completing NRDC’s request by September 7, 2017.

29. On August 23, NRDC received a letter from NOAA recommending that NRDC narrow the scope of its request. After a phone call with NRDC on August 24 and an additional email from NRDC on August 25, NOAA agreed to move forward with the request. Around the same time, Commerce granted NRDC’s fee waiver request.

30. NOAA provided NRDC with two “interim releases” of responsive documents in October and November, but did not provide a final date for Commerce’s completion of NRDC’s request. The interim releases consisted solely of documents from NOAA’s files, and a NOAA representative confirmed that NOAA itself has no other responsive documents. NOAA further informed NRDC that it was unable to provide more information regarding the status of Commerce’s search for additional responsive documents, other than noting a “significant logjam” due to the volume of Commerce FOIA requests.

31. It has been six months since NRDC served its FOIA request on Commerce, and more than four months since the statutory deadline passed, yet Commerce has failed to provide NRDC with a final response to its request.

#### **CLAIM FOR RELIEF**

32. Plaintiff incorporates by reference all preceding paragraphs.

33. NRDC has a statutory right under FOIA to obtain without further delay all records responsive to its request that are not exempt from disclosure.

34. Commerce violated its duty under FOIA, 5 U.S.C. § 552(a), to release by the statutory deadline all non-exempt, responsive records to NRDC.

#### **REQUEST FOR RELIEF**

Plaintiff respectfully requests that this Court enter judgment against Commerce as follows:

A. Declaring that Commerce has violated FOIA by failing to produce all non-exempt records responsive to NRDC’s FOIA request by the statutory deadline;

- B. Ordering that Commerce disclose the remaining requested records to NRDC at no cost and without further delay;
- C. Ordering that Commerce produce an index identifying any documents or parts thereof that it withholds and the basis for the withholdings, in the event Commerce determines that certain responsive records are exempt from disclosure;
- D. Retaining jurisdiction over this case to rule on any challenged assertions by Commerce that certain responsive records are exempt from disclosure;
- E. Awarding NRDC its costs and reasonable attorneys' fees; and
- F. Granting such other relief that the Court considers just and proper.

Respectfully submitted,

/s/ Catherine Marlantes Rahm  
Catherine Marlantes Rahm  
Natural Resources Defense Council  
40 West 20th Street, 11th Floor  
New York, NY 10011  
(212) 727-4628  
crahm@nrdc.org

*Counsel for Plaintiff*

Dated: January 23, 2018

**Mark Graff - NOAA Federal**

---

**From:** Mark Graff NOAA Federal  
**Sent:** Thursday, February 1, 2018 4:37 PM  
**To:** Toland, Michael  
**Subject:** Fwd: New FOIA Lawsuit NRDC v. NOAA (Summer Flounder)  
**Attachments:** Initial Conference Scheduling.pdf; NRDC FOIA Request\_7 26 2017\_Dept. of Commerce (1).pdf; NRDC v. DOC Summer Flounder FOIA Complaint Final 1.23.18 (Needs ECF Number).pdf; DOC NOAA 2017 001606 Signed Interim 2 Letter.pdf

Hi Mike,

Below is a new FOIA lawsuit (b)(5)

This one was filed in SDNY all the relevant documents are attached.

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628 5658 (O)  
(b)(6) (C)

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Forwarded message

**From:** Mark Graff - NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)>  
**Date:** Thu, Feb 1, 2018 at 4:31 PM  
**Subject:** New FOIA Lawsuit NRDC v. NOAA (Summer Flounder)  
**To:** Robert Hogan <[robert.j.hogan@noaa.gov](mailto:robert.j.hogan@noaa.gov)>, Samuel Dixon NOAA Affiliate <[samuel.dixon@noaa.gov](mailto:samuel.dixon@noaa.gov)>, Robert Swisher NOAA Federal <[robert.swisher@noaa.gov](mailto:robert.swisher@noaa.gov)>, Steven Goodman NOAA Federal <[Steven.Goodman@noaa.gov](mailto:Steven.Goodman@noaa.gov)>  
**Cc:** Lola Stith NOAA Affiliate <[lola.m.stith@noaa.gov](mailto:lola.m.stith@noaa.gov)>, Ed Kearns NOAA Federal <[ed.kearns@noaa.gov](mailto:ed.kearns@noaa.gov)>, Jeff Lonergan NOAA Federal <[jeff.lonergan@noaa.gov](mailto:jeff.lonergan@noaa.gov)>

Hey Guys,

It looks like we have another FOIA Lawsuit. This one is the NRDC Summer Flounder request (DOC NOAA 2017 001606).

(b)(5)



(b)(5)

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration

[\(301\) 628 5658](tel:3016285658) (O)

(b)(6) (C)

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UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
Silver Spring, MD 20910

Molly Masterson  
Natural Resources Defense Council  
40 W. 20<sup>th</sup> St.  
New York, NY 10011

NOV 28 2017

Re: FOIA Request DOC-NOAA-2017-001606

Dear Ms. Masterson:

This letter is in response to your Freedom of Information Act (FOIA) request, which was received by our office on July 26, 2017, in which you requested:

"...records regarding the Secretary of Commerce's decision determining that the state of New Jersey was in compliance with regard to management of its recreational summer flounder fishery under the Atlantic Coastal Fisheries Cooperative Management Act.

1. Decision memoranda, letters, emails, situation summaries, discussion documents, or briefing documents that discuss summer flounder and New Jersey's 2017 recreational season;
  2. Communications pertaining to New Jersey's recreational management of summer flounder during the 2017 season, including communications within the Department or any of its subdivisions, and communications between Department staff (or staff of any Department subdivision) and any outside entity;
  3. Proposals, recommendations, or factual information submitted to the Department or any of its subdivisions regarding New Jersey's recreational management of summer flounder during the 2017 season;
  4. Technical analysis, including projections or estimates of harvest, discard mortality, overages, and "conservation equivalency," submitted to or produced by the Department or any of its subdivisions, regarding New Jersey's recreational management of summer flounder during the 2017 season; and
  5. Scientific research or studies that support or explain the Secretary's decision.
- The temporal scope of this request is limited to records created or obtained on or after February 2, 2017."

On August 25, 2016, you further clarified the scope to include:

Decision documents, decision memoranda, letters, discussion or briefing documents, technical analyses (including projections or estimates of harvest, discard mortality, overages, and "conservation equivalency"), or scientific studies that were submitted to, considered by, or relied upon by the Secretary, or created for the purposes of the Secretary's compliance review; and



Communications that were created as the result of or for the purposes of the Secretary's compliance review, including communications within the Department or any of its subdivisions, and communications between Department staff (or staff of any Department subdivision) and any outside entity.

This is Interim Release Two.

We have located 40 records responsive to your request for this second interim release. (In the first interim release, we released 118 full release (or full grant) records.)

--39 records responsive to your request are fully releasable and are being released in their entirety.

--1 record is partially redacted under 5 U.S.C.552(b)(6), which prohibits from prohibits from disclosure "information that, if disclosed, would invade another individual's personal privacy."

You have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must be received within 90 calendar days of the date of this response letter at the following address:

Assistant General Counsel for Litigation, Employment, and Oversight  
U.S. Department of Commerce  
Office of General Counsel  
Room 5875  
14<sup>th</sup> and Constitution Avenue, N.W.  
Washington, D.C. 20230

An appeal may also be sent by e-mail to [FOIAAppeals@doc.gov](mailto:FOIAAppeals@doc.gov) or by FOIAonline at <https://foiaonline.regulations.gov/foia/action/public/home#>.

For your appeal to be complete, it must include the following items:

- a copy of the original request,
- our response to your request,
- a statement explaining why the withheld records should be made available, and why the denial of the records was in error.
- "Freedom of Information Act Appeal" must appear on your appeal letter. It should also be written on your envelope, e-mail subject line, or your fax cover sheet.

FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

FOIA grants requesters the right to challenge an agency's final action in federal court. Before doing so, an adjudication of an administrative appeal is ordinarily required.

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

Office of Government Information Services  
National Archives and Records Administration  
Room 2510  
8601 Adelphi Road  
College Park, MD 20740-6001

Email: [ogis@nara.gov](mailto:ogis@nara.gov)

Phone: 301-837-1996

Fax: 301-837-0348

Toll-free: 1-877-684-6448

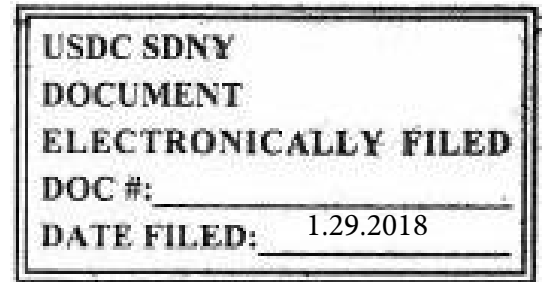
If you have questions regarding this correspondence please contact Jeff Lonergan at [jeff.lonergan@noaa.gov](mailto:jeff.lonergan@noaa.gov) or by phone at 301-427-8577, or the NOAA FOIA Public Liaison Robert Swisher at (301) 628-5755.

Sincerely,



Allan Risenhoover,  
Acting Deputy Assistant Administrator  
for Regulatory Programs

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



Natural Resources Defense Council, Inc.,

Plaintiff,

v

United States Department of Commerce,

Defendants.

18 Civ. 00583 (AJN)

NOTICE OF INITIAL  
PRETRIAL CONFERENCE

ALISON J. NATHAN, District Judge:

This case has been assigned to me for all purposes. It is hereby ORDERED that counsel for all parties appear for an initial pretrial conference with the Court on **Friday, June 11, 2018 at 3:00pm in Courtroom 906** of the United States District Court for the Southern District of New York, Thurgood Marshall U.S. Courthouse at **40 Foley Square**, New York, New York.

Counsel are directed to confer with each other prior to the conference regarding settlement and each of the other subjects to be considered at a Fed. R. Civ. P. 16 conference. Additionally, in accordance with the Court's Individual Rules, the parties are hereby ORDERED to ECF file a Proposed Civil Case Management Plan and Scheduling Order **no later than seven days prior to the Initial Pretrial Conference**. The parties shall use this Court's form Proposed Case Management Plan and Scheduling Order available at the Court's website (<http://nysd.uscourts.gov/judge/Nathan>).

IT IS FURTHER ORDERED that included with the Proposed Civil Case Management Plan, the parties jointly submit a letter, not to exceed five (5) pages, providing the following information in separate paragraphs:

- (1) A brief statement of the nature of the action and the principal defenses thereto;
- (2) A brief explanation of why jurisdiction and venue lie in this Court;
- (3) A brief description of all outstanding motions and/or all outstanding requests to file motions;
- (4) A brief description of any discovery that has already taken place, and that which



will be necessary for the parties to engage in meaningful settlement negotiations;

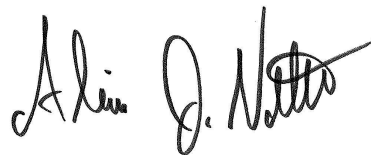
- (5) A list of all prior settlement discussions, including the date, the parties involved, and the approximate duration of such discussions, if any;
- (6) The estimated length of trial; and
- (7) Any other information that the parties believe may assist this Court in resolving the action.

If this case has been settled or otherwise terminated, counsel are not required to appear, provided that a stipulation of discontinuance, voluntary dismissal, or other proof of termination is sent prior to the date of the conference via e-mail to the Orders and Judgment Clerk at the following e-mail address: [orders\\_and\\_judgments@nysd.uscourts.gov](mailto:orders_and_judgments@nysd.uscourts.gov).

**All pretrial conferences must be attended by the attorney who will serve as principal trial counsel.** Any request for adjournment must be ECF filed and submitted pursuant to the Court's Individual Practices; the Court will not entertain requests made less than two business days before the conference. The written submission must (a) specify the reasons for the adjournment, (b) state whether the other parties have consented, and (c) indicate times and dates on succeeding Fridays when all counsel are available. Unless counsel are notified that the conference has been adjourned, it will be held as scheduled.

**Counsel who have noticed an appearance as of the issuance of this order are directed to notify all other parties' attorneys in this action by serving upon each of them a copy of this order and the Court's Individual Rules (available at the Court's website, <http://nysd.uscourts.gov/judge/Nathan>) forthwith.** If unaware of the identity of counsel for any of the parties, counsel receiving this order must forthwith send a copy of this order and Individual Rules to that party personally.

Dated: Jan 29, 2018  
New York, New York



---

ALISON J. NATHAN  
United States District Judge



July 26, 2017

**Via Certified U.S. Mail (with enclosures) and Electronic Mail to:**

Michael Toland, Ph.D.  
Departmental FOIA Officer  
Office of Privacy and Open Government  
Department of Commerce  
14th and Constitution Avenue NW  
Mail Stop 52010FB  
Washington, DC 20230  
Email: mtoland@doc.gov

**Re: FOIA Request for Records Regarding Department of Commerce Determination of Compliance for New Jersey Summer Flounder Fishery**

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (2012), and applicable Department of Commerce (Department) regulations at 15 C.F.R. §§ 4.1-4.11 (2017).

**I. Description of Records Sought**

Please produce all records<sup>1</sup> in the Department's possession, custody, or control that support, explain, or otherwise relate to the Secretary of Commerce's (Secretary's) decision dated July 10, 2017, and final notice published on July 20, 2017,<sup>2</sup> determining that the state of New Jersey was in compliance with regard to management of its recreational summer flounder fishery under the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), 16 U.S.C. §§ 5101-5108 (2012). Requested records include, but are not limited to, any of the following:

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<sup>1</sup> "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any Department of Commerce office, including, but not limited to, Department of Commerce Headquarters offices, the Office of the Secretary, the Office of General Counsel, the National Oceanic and Atmospheric Administration ("NOAA"), and all of NOAA's subsidiary offices.

<sup>2</sup> National Marine Fisheries Service (NMFS), Dept. of Commerce, *Atlantic Coastal Fisheries Cooperative Management Act Provisions; Summer Flounder Fishery, Notice of Determination of Compliance for the State of New Jersey*, 82 Fed. Reg. 33,481 (July 20, 2017).

1. Decision memoranda, letters, emails, situation summaries, discussion documents, or briefing documents that discuss summer flounder and New Jersey's 2017 recreational season;
2. Communications pertaining to New Jersey's recreational management of summer flounder during the 2017 season, including communications within the Department or any of its subdivisions, and communications between Department staff (or staff of any Department subdivision) and any outside entity;
3. Proposals, recommendations, or factual information submitted to the Department or any of its subdivisions regarding New Jersey's recreational management of summer flounder during the 2017 season;
4. Technical analysis, including projections or estimates of harvest, discard mortality, overages, and "conservation equivalency," submitted to or produced by the Department or any of its subdivisions, regarding New Jersey's recreational management of summer flounder during the 2017 season; and
5. Scientific research or studies that support or explain the Secretary's decision.

The temporal scope of this request is limited to records created or obtained on or after February 2, 2017.

## **II. Request for a Fee Waiver**

NRDC requests that the Department waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 15 C.F.R. § 4.11(l)(1). The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 15 C.F.R. §§ 4.11 (b)(6), (d)(1).

### **A. NRDC Satisfies the First Fee Waiver Requirement**

The disclosure requested here would be "likely to contribute significantly to public understanding of the operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii); 15 C.F.R. § 4.11(l)(1)(i). Each of the four factors used by the Department to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 15 C.F.R. § 4.11(l)(2)(i)-(iv).

#### *1. Subject of the request*

The records requested here relate to an issue of regional and national impact: conservation and management of the summer flounder fishery, one of the most recreationally and commercially important fisheries along the Atlantic coast. Summer flounder is currently subject to overfishing and at risk of becoming overfished if effective catch limits are not implemented. The records also relate to the Department's understanding of what actions are needed to conserve summer flounder, and the Department's role in carrying out the cooperative management duties of the ACFCMA, *see* 16 U.S.C. § 5106. The Department of Commerce (including its subdivisions) is a government



agency. The requested records thus directly concern “the operations or activities of the [g]overnment.” 15 C.F.R. § 4.11(l)(2)(i).

2. *Informative value of the information to be disclosed*

The requested records are “likely to contribute to” the public’s understanding of government operations and activities, *id.* § 4.11(l)(2)(ii). The public does not currently possess comprehensive information regarding the Department’s evaluation of compliance for New Jersey’s management of summer flounder, or the Department’s ultimate decision that New Jersey was in compliance pursuant to the ACFCMA. As noted above, the Department’s decision has regional and national impacts. The issue of summer flounder management has been elevated to a point of broad public interest, as demonstrated by extensive media coverage in state, regional, and national media outlets. Thus, there is more than a reasonable likelihood that records regarding the Department’s decision have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

To the best of our knowledge, the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the Department’s actions and understanding of what actions are needed to conserve summer flounder, as further discussed below. However, if the Department were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

3. *Contribution to an understanding of the subject by the public is likely to result from disclosure.*

Because NRDC is a “representative of the news media,” as explained in Part II.C below, the Department must presume that this disclosure is likely to contribute to public understanding of its subject. *See* 15 C.F.R. § 4.11(l)(2)(iii). However, even if NRDC were not a media requester, NRDC’s expertise in fisheries management and marine conservation, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability and will to use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject matter. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC’s more than two million members and online activists are “a broad audience of persons interested in the subject[s]” of preventing overfishing and protecting marine resources, and when combined with NRDC’s communications to the public at large, the likely audience of interested persons to be reached is certainly “reasonably broad.” 15 C.F.R. § 4.11(l)(2)(iii). As NRDC’s long

history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.5 million members and online activists who receive regular communications on urgent environmental issues (sample email at Att. 2). This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, "The requirement to rebuild US fish stocks: Is it working?" *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, "The Untapped Potential of California's Water Supply: Efficiency, Reuse, and Stormwater," June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* "Saving Water in California," *N.Y. Times*, July 9, 2014 (discussing the report's estimates) (Att. 13);
- Article, "Waves of phony charges over new clean water safeguards," *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
- Article, "Don't Buy the Smear of the EPA," *L.A. Times*, June 3, 2014 (by NRDC President Frances Beinecke) (Att. 15);
- Transcript, "Conservationists Call For Quiet: The Ocean Is Too Loud!" Nat'l Pub. Radio, *All Things Considered*, July 28, 2013 (featuring NRDC Marine Mammal Protection Program Director Michael Jasny) (Att. 16);

- Testimony of David Doniger, NRDC Climate and Air Program Policy Director and Senior Attorney, before the United States House Subcommittee on Energy and Power, June 19, 2012 (Att. 17);
- Article, “Pollution Still a Hazard to U.S. Beaches,” CBS, *CBS NEWS*, July 29, 2009 (featuring former NRDC Water Program Co-Director Nancy Stoner) (Att. 18);
- Conference brochure, “World Business Summit on Climate Change,” May 24-26, 2009 (featuring former NRDC Director for Market Innovation Rick Duke at 9) (Att. 19);
- Article, “Is there a ‘proper level’ of compliance with environmental law?” *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall) (Att. 20);
- NRDC Document Bank, <http://docs.nrdc.org/> (Att. 21).

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 22). *See also* Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing NRDC’s report) (Att. 23).
- (2) NRDC obtained, through FOIA, FDA review documents on the nontherapeutic use of antibiotic additives in livestock and poultry feed. In January 2014, NRDC published a report, titled *Playing Chicken with Antibiotics*, which is based on the documents obtained, and reveals decades of hesitancy on FDA’s part to ensure the safety of these drug additives (Att. 24). *See also* P.J. Huffstutter and Brian Grow, “Drug critic slams FDA over antibiotic oversight in meat production,” *Reuters*, Jan. 27, 2014 (discussing NRDC’s report) (Att. 25).
- (3) NRDC has used White House documents obtained through FOIA and from other sources to inform the public about EPA’s decision not to protect wildlife and workers from the pesticide atrazine in the face of industry pressure to keep atrazine on the market. *See Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, <http://www.nrdc.org/health/atrazine/files/atrazine10.pdf> (Apr. 2010) (update to 2009 report) (Att. 26); *see also* William Souder, “It’s Not Easy Being Green: Are Weed-Killers Turning Frogs Into Hermaphrodites?” *Harper’s Bazaar*, Aug. 1, 2006 (referencing documents obtained and posted online by NRDC) (Att. 27).
- (4) NRDC incorporated information obtained through FOIA into a report, available at <http://www.nrdc.org/wildlife/marine/sound/contents.asp>, on the impacts of

military sonar and other industrial noise pollution on marine life. *See Sounding the Depths II: The Rising Toll of Sonar, Shipping and Industrial Ocean Noise on Marine Life* (Nov. 2005) (update to 1999 report) (Att. 28). The report also relied upon and synthesized information from other sources. Since the report's publication, the sonar issue has continued to attract widespread public attention. *See, e.g.*, "Protest Raised over New Tests of Naval Sonar," Nat'l Pub. Radio, *All Things Considered*, July 24, 2007 (transcript at Att. 29).

- (5) NRDC scientists have used information obtained through FOIA to publish analyses of the United States' and other nations' nuclear weapons programs. In 2004, for example, NRDC scientists incorporated information obtained through FOIA into a feature article on the United States' plans to deploy a ballistic missile system and the implications for global security. *See* Hans M. Kristensen, Matthew G. McKinzie, and Robert S. Norris, "The Protection Paradox," *Bulletin of Atomic Scientists*, Mar./Apr. 2004 (Att. 30).
- (6) NRDC obtained through FOIA, and made public, records of the operations of the Bush administration's Energy Task Force, along with analysis of selected excerpts and links to the administration's index of withheld documents (Att. 31). NRDC's efforts cast light on an issue of considerable public interest. *See, e.g.*, Elizabeth Shogren, "Bush Gets One-Two Punch on Energy," *L.A. Times*, Mar. 28, 2002, at A22 (Att. 32).
- (7) Through FOIA, NRDC obtained a memorandum by ExxonMobil, advocating the replacement of the sitting head of the Intergovernmental Panel on Climate Change, and used the document to help inform the public about what may have been behind the Bush administration's decision to replace Dr. Robert Watson. *See* NRDC Press Release and attached Exxon memorandum, "Confidential Papers Show Exxon Hand in White House Move to Oust Top Scientist from International Global Warming Panel," Apr. 3, 2002 (Att. 33); Elizabeth Shogren, "Charges Fly Over Science Panel Pick," *L.A. Times*, Apr. 4, 2002, at A19 (Att. 34).
- (8) Through FOIA and other sources, NRDC obtained information on nationwide levels of arsenic in drinking water and used it in a report, *Arsenic and Old Laws* (2000), available in print and online at <http://www.nrdc.org/water/drinking/arsenic/aolinx.asp> (Att. 35). The report guided interested members of the public on how to learn more about arsenic in their own drinking water supplies. *Id.*; *see also* Steve LaRue, "EPA Aims to Cut Levels of Arsenic in Well Water," *San Diego Union-Tribune*, June 5, 2000, at B1 (referencing NRDC report) (Att. 36).<sup>3</sup>

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<sup>3</sup> There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. *See, e.g.*, Felicity Barringer, "Science Panel Issues Report on Exposure to Pollutant," *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, "Draft of Air Rule is Said to Exempt Many Old Plants," *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., "E Mail Suggests Energy Official Encouraged Lobbyist on Policy," *N.Y. Times*, Apr. 27, 2002 (Att. 39).

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public's understanding of the subject.

#### 4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: conservation and management of the summer flounder fishery, and agency views on what management measures are necessary to achieve conservation of this important species. Recent overfishing of the summer flounder stock, and subsequent coastwide catch reductions implemented by NOAA and the Department of Commerce have received significant media coverage in 2016 and 2017. In recent weeks, the Atlantic States Marine Fisheries Commission's (ASMFC) noncompliance finding for the State of New Jersey, and the Department's determination of compliance, have also received significant coverage regional and national media outlets and other public forums. Examples of recent media coverage on this issue include:

- (1) Staff Report, *Recreational summer flounder season runs through Sept. 5*, NJToday.Net (July 21, 2017) (Exhibit A).
- (2) Dave Monti, *Fishing Report: U.S., fisheries panel disagrees on flounder targets*, Providence Journal (July 20, 2017) (Exhibit B).
- (3) *ASMFC Blasts Secretary Ross Decision on Summer Flounder in Favor of New Jersey's Recreational Sector, Saving Seafood* (Republished from Seafood News) (July 18, 2017) (Exhibit C).
- (4) Blog: Charles Witek, *Commerce Department's Summer Flounder Decision Undermines ASMFC's Authority To Manage Fish Stocks*, Marine Fish Conservation Network (July 18, 2017) (Exhibit D).
- (5) Associated Press, *Group: Trump Official's Fish Ruling Could Harm Conservation*, New York Times (July 17, 2017) (Exhibit E).
- (6) Associated Press, *Fish fight: managers say NJ flounder flap harms conservation*, Washington Post (July 17, 2017) (Exhibit F).
- (7) David Madden, *NJ Prevails In Fish Fight with Federal Government*, CBS Philly (July 15, 2017) (Exhibit G).
- (8) Press Release, *Department of Commerce Decision May Impact ASMFC's Ability to Conserve Atlantic Coastal Fisheries*, Atlantic States Marine Fisheries Commission (July 14, 2017) (Exhibit H).
- (9) Kate King, *New Jersey Wins in Effort to Ease Summer Flounder Quotas*, Wall Street Journal (July 12, 2017) (Exhibit I).
- (10) Daniel Radel, *NJ's fluke season saved after US secretary approves regulations*, App.com (part of USA Today Network) (July 11, 2017) (Exhibit J).
- (11) Claire Lowe, *New Jersey ruled out of compliance on summer flounder, moratorium possible*, Press of Atlantic City (June 2, 2017) (Exhibit K).
- (12) Daniel Hampton, *Summer flounder season begins in N.J., but there's a catch this year*, NJ.com (May 25, 2017) (Exhibit L).
- (13) Blog: John McMurray, *The Hard Truth About Summer Flounder*, Marine Fish Conservation Network (Exhibit M).

Public understanding of the Department's opinion of what actions are needed to conserve summer flounder and its role in carrying out the cooperative management duties of the ACFCMA, would be significantly enhanced by disclosure of the requested records concerning the Secretary's compliance decision. *See* 15 C.F.R. § 4.11(l)(2)(iv). Disclosure would help the public to more effectively evaluate the Department's conclusion that the management measures New Jersey declined to implement are not necessary for conservation of the summer flounder fishery. Disclosure would also help the public to better understand and evaluate the Department's actions on summer flounder conservation and management, particularly with respect to its decision that a moratorium in New Jersey state waters was not warranted.

## **B. NRDC Satisfies the Second Fee Waiver Requirement**

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 15 C.F.R. § 4.11(l)(3). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. "Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters." *Rossotti*, 326 F.3d at 1312 (internal citation omitted); *see Natural Res. Def. Council v. United States Emvtl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about conservation and management of the summer flounder fishery. As noted at Part II.A, any work done by the Department on summer flounder management relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of summer flounder management and associated implications for marine conservation.

## **C. NRDC Is a Media Requester**

Even if the Department denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and the Department's FOIA regulations, 15 C.F.R. § 4.11(d)(1); *see also* 15 C.F.R. § 4.11(b)(6) (defining "[r]epresentative of the news media"). A representative of the news media is "any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii); *see also Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a "non-profit public interest organization" qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep't of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than

two million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. *See* 15 C.F.R. § 4.11(b)(6) (“Examples of news-media entities are . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. *See* 5 U.S.C. § 552(a)(4)(A)(ii) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (accorded media requester status to the American Civil Liberties Union).<sup>4</sup>

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

### **III. Request for Expedited Processing**

NRDC requests expedited processing of this request. FOIA and relevant Department regulations allow for an expedited response, of less than 20 days, in cases where the requester is “primarily engaged in disseminating information” and demonstrates that there is an “urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(I), (II); 15 C.F.R. § 4.6(f)(1)(iv). The following explains NRDC’s basis for requesting expedited processing, based on information that we certify to be true and correct, to the best of our knowledge and belief.

As explained in Part II.C above, NRDC is a “representative of the news media,” *see* 5 U.S.C. § 552(a)(4)(A)(ii); 15 C.F.R. § 4.11(b)(6), and a key purpose of the organization’s work is to gather

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<sup>4</sup> To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

and publish or transmit current and accurate news to the public. *See Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (holding that organization was “primarily engaged in disseminating information” where its mission involved serving as site of record for relevant and up-to-the minute civil rights news and information). Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. Further, as discussed in Part II.A.3 above, NRDC has the ability and will to use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. Dissemination of information need not be an organization’s “sole occupation” in order to meet this first requirement. 15 C.F.R. § 4.6(f)(1)(iv). Thus, it is appropriate to conclude that NRDC is “primarily engaged in disseminating information” with regard to this request.

This is also a case that presents an urgency to inform the public regarding activities of the Federal Government. *See* 15 C.F.R. § 4.6(f)(1)(iv). The Secretary’s July 2017 decision is unprecedented in that it is the first time in the existence of the ACFCMA that the Department of Commerce has rejected a noncompliance finding by the ASMFC. By allowing New Jersey to use management measures that are noncompliant with the coastal management plan, the decision is likely to result in the fishery exceeding its coastwide recreational harvest limit and increase the risk of the summer flounder stock becoming overfished. Importantly, the Secretary’s final decision was not accompanied with any publicly available technical analysis or projections that support the conclusion that the management measures New Jersey failed to implement were not necessary for the conservation of summer flounder. Given that the recreational summer flounder season is currently underway and will end in just over one month (on September 5, 2017), it is critical that the public be informed about the Department’s opinion of what actions are (or are not) needed to achieve conservation of summer flounder in the 2017 fishing season. This information has important implications for the conservation of the summer flounder stock and management approaches in other states. As discussed in Part II.A.4 above, significant public attention and media coverage of the initial noncompliance finding for New Jersey, and the Secretary’s determination of compliance, indicates the public is closely following this issue and wants to better understand the basis for the Secretary’s decision. *See infra* p. 7; Exhibits A-M.

#### **IV. Willingness to Pay Fees Under Protest**

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with the Department’s FOIA regulations at 15 C.F.R. § 4.11(c) for all or a portion of the requested records. *See* 15 C.F.R. §4.11(l)(4). Please contact me before doing anything that would cause the fee to exceed \$500. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

#### **IV. Conclusion**

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; the Department’s search for—or deliberations concerning—certain records should not delay the production of others that the

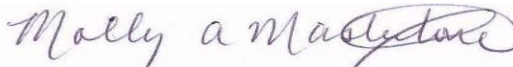


Department has already retrieved and elected to produce. *See generally* 15 C.F.R. § 4.6. If the Department concludes that any of the records requested here are publicly available, please let me know.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

A handwritten signature in purple ink that reads "Molly A. Masterton". The signature is written in a cursive style and is enclosed in a light purple rectangular box.

Molly A. Masterton  
Oceans Project Attorney  
Natural Resources Defense Council  
40 West 20th Street  
New York, NY 10011  
Tel.: 212-727-4451  
Fax: 212-727-1773  
Email: [mmasterton@nrdc.org](mailto:mmasterton@nrdc.org)

**cc:** Mark H. Graff, FOIA Officer, National Oceanic and Atmospheric Administration;  
Bobbie Parsons, Immediate Office of the Secretary, Office of Privacy and Open  
Government, Department of Commerce

**Enclosures (sent via Certified U.S. Mail on CD):**

Attachments 1 through 40 (single .pdf file)

Exhibits A through M (single .pdf file)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

NATURAL RESOURCES DEFENSE	)	
COUNCIL, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
UNITED STATES DEPARTMENT OF	)	18-cv-583
COMMERCE,	)	ECF Case
	)	
Defendant.	)	
	)	

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**INTRODUCTION**

1. Defendant United States Department of Commerce (Commerce) has violated the Freedom of Information Act (FOIA), 5 U.S.C. § 552, by failing to fully disclose records relating to a July 2017 determination by the Secretary of Commerce that New Jersey had complied with its obligation to implement management measures aimed at conserving summer flounder. Plaintiff Natural Resources Defense Council (NRDC) requested these records from Commerce six months ago.

2. Commerce's National Oceanic and Atmospheric Administration (NOAA), regional fishery management councils, and the interstate Atlantic States Marine Fisheries Commission (the Fisheries Commission or Commission) work together to conserve and manage various fish populations along the Atlantic coast. As part of these efforts, the Fisheries Commission adopts management plans to protect certain fish species against depletion. Under Federal law, the Commission

identifies Atlantic coastal states to be included in its various management plans and then works to ensure that those states implement and enforce the plans.

3. In June 2017, the Fisheries Commission determined that New Jersey was out of compliance with the Commission's management plan for summer flounder, a fish species that is currently subject to overfishing. In July 2017, contrary to the Commission's determination, the Secretary of Commerce found that the summer flounder management measures New Jersey had failed to implement were not necessary for the conservation of summer flounder. The Secretary's determination allowed New Jersey's recreational summer flounder fishing season to proceed.

4. On July 26, 2017, NRDC submitted a FOIA request to Commerce for documents related to the Secretary's finding that the summer flounder management plan measures New Jersey had failed to implement were unnecessary for conserving summer flounder.

5. In October and November, Commerce via NOAA (a component of Commerce) provided NRDC with two "interim" releases of responsive documents. These interim releases consisted solely of documents from NOAA's files, and nothing from other Commerce components or the Office of the Secretary.

6. After the most recent interim release, Commerce informed NRDC that there were no more responsive documents in NOAA's files. Commerce further informed NRDC that it was unable to provide an update regarding the status of its

search for additional responsive documents outside of NOAA, other than noting a “significant logjam” due to the volume of Commerce FOIA requests.

7. Although Commerce has had six months to search for and produce responsive documents, it has not provided NRDC with any records from components of Commerce other than NOAA. Nor has Commerce provided NRDC with a final determination as to whether it will comply with NRDC’s request. The statutory deadline for such a final determination was, at the latest, September 11, 2017, with the final production of documents due promptly thereafter.

8. It is important that NRDC receives these documents in a timely manner. The Commission has already begun setting management measures for the 2018 summer flounder recreational fishing season, and the Commission and individual states will make key management decisions over the next four months prior to the opening of the season in May 2018. Particularly if New Jersey or other states choose not to comply with the relevant management plan for the 2018 fishing season, the requested documents could provide critical information to NRDC and the public in making advocacy decisions.

9. NRDC seeks a declaration that Commerce has violated FOIA by failing to provide a final determination as to whether it will comply with NRDC’s request, and by failing to produce all non-exempt responsive records, by the statutory deadline. NRDC seeks an injunction ordering Commerce to disclose at no cost and without further delay all non-exempt, responsive records to NRDC.

## THE PARTIES

10. Plaintiff NRDC is a national, non-profit environmental and public health membership organization with hundreds of thousands of members nationwide. NRDC engages in research, advocacy, public education, and litigation related to protecting public health and the environment. The organization's work includes efforts to end overfishing and promote the long-term sustainability of fishing practices in the United States.

11. Defendant Commerce is a federal agency within the meaning of FOIA, 5 U.S.C. § 551(1), and has possession or control of the records that NRDC seeks.

## JURISDICTION AND VENUE

12. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

13. Venue is proper in this court because plaintiff NRDC resides and has its principal place of business in this judicial district. 5 U.S.C. § 552(a)(4)(B).

## STATUTORY AND REGULATORY FRAMEWORK

14. FOIA requires that federal agencies release, upon request, information to the public, 5 U.S.C. § 552(a)(3), unless one of nine statutory exemptions applies, *id.* § 552(b).

15. Within 20 business days of an agency's receipt of a FOIA request, the agency must "determine . . . whether to comply with such request," *id.* § 552(a)(6)(A)(i); *see also* 15 C.F.R. § 4.6(b) (Commerce FOIA regulation), and "immediately notify the person making such request of . . . such determination and

the reasons therefor,” 5 U.S.C. § 552(a)(6)(A)(i). If the agency determines that it will comply with the request, it must “promptly” release responsive, non-exempt records to the requester. *Id.* § 552(a)(6)(C)(i); *see also* 15 C.F.R. § 4.7(c).

16. In “unusual circumstances,” an agency may extend the time limit for responding to a FOIA request by up to 10 business days. 5 U.S.C. § 552(a)(6)(B)(i).

17. If the agency fails to comply with the statutory time limits, the requester is deemed to have exhausted her administrative remedies and may immediately file suit “to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld.” 5 U.S.C. §§ 552(a)(4)(B), 552(a)(6)(C)(i).

#### **FACTUAL BACKGROUND**

18. Summer flounder is an important fish for commercial and recreational fishing industries along the Mid-Atlantic coast, and is found in waters from Nova Scotia, Canada, to the east coast of Florida. Despite conservation efforts, the summer flounder population is below target levels and is currently subject to overfishing.

19. Summer flounder and the fishing of summer flounder collectively known as the summer flounder fishery are jointly managed by NOAA (a component of Commerce), the Mid-Atlantic Fishery Management Council, and the Fisheries Commission. Together, these entities seek to conserve summer flounder and prevent depletion of the species.

20. Under the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act), 16 U.S.C. §§ 5101-5108, the Fisheries Commission is tasked with developing management plans to conserve summer flounder (as well as other fish species in the Atlantic coastal region), *see id.* § 5104(a). The Atlantic Coastal Act provides that, for each management plan, the Commission must identify the states that are required to implement and enforce the plan. *Id.* § 5104(a)(1). Under some management plans, the Commission allows states to implement their own management measures, so long as the state's measures achieve the same level of conservation as the Commission's plan.

21. If the Fisheries Commission finds that a state has failed to implement or enforce measures in compliance with the Commission's management plan for a particular fish species, the Atlantic Coastal Act requires the Commission to make a formal non-compliance determination. *Id.* § 5105(a). This determination is subject to review by the Secretary of Commerce, who makes an independent compliance determination. *Id.* § 5106(a)(1). If the Secretary agrees that the state has failed to implement and enforce the measures contained in the management plan, and also that such measures are "necessary for the conservation of the fishery," the Secretary must declare a moratorium on fishing that species in the waters of the non-complying state. *Id.* § 5106(a), (c)(1).

22. In February 2017, in response to new science indicating the declining population status of summer flounder, the Fisheries Commission tightened measures in its summer flounder management plan applicable to recreational

fishing. These stricter measures included increased minimum size requirements and a reduction in the maximum number of summer flounder allowed to be caught and kept by any one person.

23. State officials from New Jersey—one of several states required to implement and enforce the Commission’s summer flounder management plan—vocally opposed these stricter measures. Soon after the Fisheries Commission voted on the new restrictions, the New Jersey Department of Environmental Protection Commissioner wrote a letter to the Secretary of Commerce, asking the Secretary to stop them from going into effect, claiming the restrictions would lead to the “destruction of” New Jersey’s recreational summer flounder industry.

24. New Jersey ultimately proposed its own summer flounder recreational management measures, instead of implementing the new measures adopted by the Commission. Although the Commission’s summer flounder management plan allowed New Jersey to do so if the measures would achieve the same level of conservation as the Commission’s plan, after reviewing the measures proposed by New Jersey, the Commission found that the measures would not sufficiently protect summer flounder and were therefore inconsistent with the Commission’s plan.

25. New Jersey nonetheless implemented its own measures, prompting a formal non-compliance determination by the Fisheries Commission on June 1, 2017.

26. In July 2017, for the first time in the twenty-four-year history of the Atlantic Coastal Act, the Secretary of Commerce made a finding contrary to the Commission’s non-compliance determination, allowing New Jersey’s recreational



summer flounder season to proceed. Specifically, the Secretary found that the measures New Jersey failed to implement were “not necessary for the conservation of summer flounder.” 82 Fed. Reg. 33,481 (July 20, 2017). The notice announcing the Secretary’s compliance determination was brief and devoid of any substantive explanation. *See id.*

27. On July 26, 2017, NRDC served a FOIA request on Commerce, seeking records supporting, explaining, or otherwise relating to the Secretary’s finding that the summer flounder management measures New Jersey failed to implement were not necessary for the conservation of summer flounder. NRDC also requested a fee waiver.

28. NRDC received an email notification indicating that the request would be processed by NOAA, a component of Commerce. NRDC also received a letter from NOAA on August 4, 2017, acknowledging receipt of the request and stating that the agency was invoking the statutory ten-day extension applicable in “unusual circumstances.” In its letter, NOAA stated that it anticipated completing NRDC’s request by September 7, 2017.

29. On August 23, NRDC received a letter from NOAA recommending that NRDC narrow the scope of its request. After a phone call with NRDC on August 24 and an additional email from NRDC on August 25, NOAA agreed to move forward with the request. Around the same time, Commerce granted NRDC’s fee waiver request.

30. NOAA provided NRDC with two “interim releases” of responsive documents in October and November, but did not provide a final date for Commerce’s completion of NRDC’s request. The interim releases consisted solely of documents from NOAA’s files, and a NOAA representative confirmed that NOAA itself has no other responsive documents. NOAA further informed NRDC that it was unable to provide more information regarding the status of Commerce’s search for additional responsive documents, other than noting a “significant logjam” due to the volume of Commerce FOIA requests.

31. It has been six months since NRDC served its FOIA request on Commerce, and more than four months since the statutory deadline passed, yet Commerce has failed to provide NRDC with a final response to its request.

#### **CLAIM FOR RELIEF**

32. Plaintiff incorporates by reference all preceding paragraphs.

33. NRDC has a statutory right under FOIA to obtain without further delay all records responsive to its request that are not exempt from disclosure.

34. Commerce violated its duty under FOIA, 5 U.S.C. § 552(a), to release by the statutory deadline all non-exempt, responsive records to NRDC.

#### **REQUEST FOR RELIEF**

Plaintiff respectfully requests that this Court enter judgment against Commerce as follows:

A. Declaring that Commerce has violated FOIA by failing to produce all non-exempt records responsive to NRDC’s FOIA request by the statutory deadline;

- B. Ordering that Commerce disclose the remaining requested records to NRDC at no cost and without further delay;
- C. Ordering that Commerce produce an index identifying any documents or parts thereof that it withholds and the basis for the withholdings, in the event Commerce determines that certain responsive records are exempt from disclosure;
- D. Retaining jurisdiction over this case to rule on any challenged assertions by Commerce that certain responsive records are exempt from disclosure;
- E. Awarding NRDC its costs and reasonable attorneys' fees; and
- F. Granting such other relief that the Court considers just and proper.

Respectfully submitted,

/s/ Catherine Marlantes Rahm  
Catherine Marlantes Rahm  
Natural Resources Defense Council  
40 West 20th Street, 11th Floor  
New York, NY 10011  
(212) 727-4628  
crahm@nrdc.org

*Counsel for Plaintiff*

Dated: January 23, 2018

**Mark Graff - NOAA Federal**

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**From:** Mark Graff NOAA Federal  
**Sent:** Thursday, February 1, 2018 4:42 PM  
**To:** Parsons, Bobbie  
**Cc:** Robert Hogan  
**Subject:** DOC NOAA 2017 001606  
**Attachments:** NRDC v. DOC Summer Flounder FOIA Complaint Final 1.23.18 (Needs ECF Number).pdf; NRDC FOIA Request\_7 26 2017\_Dept. of Commerce (1).pdf

Hi Bobbie,

(b)(5)  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628 5658 (O)  
(b)(6) (C)

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July 26, 2017

**Via Certified U.S. Mail (with enclosures) and Electronic Mail to:**

Michael Toland, Ph.D.  
Departmental FOIA Officer  
Office of Privacy and Open Government  
Department of Commerce  
14th and Constitution Avenue NW  
Mail Stop 52010FB  
Washington, DC 20230  
Email: mtoland@doc.gov

**Re: FOIA Request for Records Regarding Department of Commerce Determination of Compliance for New Jersey Summer Flounder Fishery**

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (2012), and applicable Department of Commerce (Department) regulations at 15 C.F.R. §§ 4.1-4.11 (2017).

**I. Description of Records Sought**

Please produce all records<sup>1</sup> in the Department's possession, custody, or control that support, explain, or otherwise relate to the Secretary of Commerce's (Secretary's) decision dated July 10, 2017, and final notice published on July 20, 2017,<sup>2</sup> determining that the state of New Jersey was in compliance with regard to management of its recreational summer flounder fishery under the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), 16 U.S.C. §§ 5101-5108 (2012). Requested records include, but are not limited to, any of the following:

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<sup>1</sup> "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any Department of Commerce office, including, but not limited to, Department of Commerce Headquarters offices, the Office of the Secretary, the Office of General Counsel, the National Oceanic and Atmospheric Administration ("NOAA"), and all of NOAA's subsidiary offices.

<sup>2</sup> National Marine Fisheries Service (NMFS), Dept. of Commerce, *Atlantic Coastal Fisheries Cooperative Management Act Provisions; Summer Flounder Fishery, Notice of Determination of Compliance for the State of New Jersey*, 82 Fed. Reg. 33,481 (July 20, 2017).

1. Decision memoranda, letters, emails, situation summaries, discussion documents, or briefing documents that discuss summer flounder and New Jersey's 2017 recreational season;
2. Communications pertaining to New Jersey's recreational management of summer flounder during the 2017 season, including communications within the Department or any of its subdivisions, and communications between Department staff (or staff of any Department subdivision) and any outside entity;
3. Proposals, recommendations, or factual information submitted to the Department or any of its subdivisions regarding New Jersey's recreational management of summer flounder during the 2017 season;
4. Technical analysis, including projections or estimates of harvest, discard mortality, overages, and "conservation equivalency," submitted to or produced by the Department or any of its subdivisions, regarding New Jersey's recreational management of summer flounder during the 2017 season; and
5. Scientific research or studies that support or explain the Secretary's decision.

The temporal scope of this request is limited to records created or obtained on or after February 2, 2017.

## **II. Request for a Fee Waiver**

NRDC requests that the Department waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 15 C.F.R. § 4.11(l)(1). The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 15 C.F.R. §§ 4.11 (b)(6), (d)(1).

### **A. NRDC Satisfies the First Fee Waiver Requirement**

The disclosure requested here would be "likely to contribute significantly to public understanding of the operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii); 15 C.F.R. § 4.11(l)(1)(i). Each of the four factors used by the Department to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 15 C.F.R. § 4.11(l)(2)(i)-(iv).

#### *1. Subject of the request*

The records requested here relate to an issue of regional and national impact: conservation and management of the summer flounder fishery, one of the most recreationally and commercially important fisheries along the Atlantic coast. Summer flounder is currently subject to overfishing and at risk of becoming overfished if effective catch limits are not implemented. The records also relate to the Department's understanding of what actions are needed to conserve summer flounder, and the Department's role in carrying out the cooperative management duties of the ACFCMA, *see* 16 U.S.C. § 5106. The Department of Commerce (including its subdivisions) is a government

agency. The requested records thus directly concern “the operations or activities of the [g]overnment.” 15 C.F.R. § 4.11(l)(2)(i).

2. *Informative value of the information to be disclosed*

The requested records are “likely to contribute to” the public’s understanding of government operations and activities, *id.* § 4.11(l)(2)(ii). The public does not currently possess comprehensive information regarding the Department’s evaluation of compliance for New Jersey’s management of summer flounder, or the Department’s ultimate decision that New Jersey was in compliance pursuant to the ACFCMA. As noted above, the Department’s decision has regional and national impacts. The issue of summer flounder management has been elevated to a point of broad public interest, as demonstrated by extensive media coverage in state, regional, and national media outlets. Thus, there is more than a reasonable likelihood that records regarding the Department’s decision have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

To the best of our knowledge, the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the Department’s actions and understanding of what actions are needed to conserve summer flounder, as further discussed below. However, if the Department were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

3. *Contribution to an understanding of the subject by the public is likely to result from disclosure.*

Because NRDC is a “representative of the news media,” as explained in Part II.C below, the Department must presume that this disclosure is likely to contribute to public understanding of its subject. *See* 15 C.F.R. § 4.11(l)(2)(iii). However, even if NRDC were not a media requester, NRDC’s expertise in fisheries management and marine conservation, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability and will to use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject matter. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC’s more than two million members and online activists are “a broad audience of persons interested in the subject[s]” of preventing overfishing and protecting marine resources, and when combined with NRDC’s communications to the public at large, the likely audience of interested persons to be reached is certainly “reasonably broad.” 15 C.F.R. § 4.11(l)(2)(iii). As NRDC’s long

history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.5 million members and online activists who receive regular communications on urgent environmental issues (sample email at Att. 2). This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, "The requirement to rebuild US fish stocks: Is it working?" *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, "The Untapped Potential of California's Water Supply: Efficiency, Reuse, and Stormwater," June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* "Saving Water in California," *N.Y. Times*, July 9, 2014 (discussing the report's estimates) (Att. 13);
- Article, "Waves of phony charges over new clean water safeguards," *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
- Article, "Don't Buy the Smear of the EPA," *L.A. Times*, June 3, 2014 (by NRDC President Frances Beinecke) (Att. 15);
- Transcript, "Conservationists Call For Quiet: The Ocean Is Too Loud!" Nat'l Pub. Radio, *All Things Considered*, July 28, 2013 (featuring NRDC Marine Mammal Protection Program Director Michael Jasny) (Att. 16);



- Testimony of David Doniger, NRDC Climate and Air Program Policy Director and Senior Attorney, before the United States House Subcommittee on Energy and Power, June 19, 2012 (Att. 17);
- Article, “Pollution Still a Hazard to U.S. Beaches,” CBS, *CBS NEWS*, July 29, 2009 (featuring former NRDC Water Program Co-Director Nancy Stoner) (Att. 18);
- Conference brochure, “World Business Summit on Climate Change,” May 24-26, 2009 (featuring former NRDC Director for Market Innovation Rick Duke at 9) (Att. 19);
- Article, “Is there a ‘proper level’ of compliance with environmental law?” *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall) (Att. 20);
- NRDC Document Bank, <http://docs.nrdc.org/> (Att. 21).

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 22). *See also* Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing NRDC’s report) (Att. 23).
- (2) NRDC obtained, through FOIA, FDA review documents on the nontherapeutic use of antibiotic additives in livestock and poultry feed. In January 2014, NRDC published a report, titled *Playing Chicken with Antibiotics*, which is based on the documents obtained, and reveals decades of hesitancy on FDA’s part to ensure the safety of these drug additives (Att. 24). *See also* P.J. Huffstutter and Brian Grow, “Drug critic slams FDA over antibiotic oversight in meat production,” *Reuters*, Jan. 27, 2014 (discussing NRDC’s report) (Att. 25).
- (3) NRDC has used White House documents obtained through FOIA and from other sources to inform the public about EPA’s decision not to protect wildlife and workers from the pesticide atrazine in the face of industry pressure to keep atrazine on the market. *See Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, <http://www.nrdc.org/health/atrazine/files/atrazine10.pdf> (Apr. 2010) (update to 2009 report) (Att. 26); *see also* William Souder, “It’s Not Easy Being Green: Are Weed-Killers Turning Frogs Into Hermaphrodites?” *Harper’s Bazaar*, Aug. 1, 2006 (referencing documents obtained and posted online by NRDC) (Att. 27).
- (4) NRDC incorporated information obtained through FOIA into a report, available at <http://www.nrdc.org/wildlife/marine/sound/contents.asp>, on the impacts of

military sonar and other industrial noise pollution on marine life. *See Sounding the Depths II: The Rising Toll of Sonar, Shipping and Industrial Ocean Noise on Marine Life* (Nov. 2005) (update to 1999 report) (Att. 28). The report also relied upon and synthesized information from other sources. Since the report's publication, the sonar issue has continued to attract widespread public attention. *See, e.g.*, "Protest Raised over New Tests of Naval Sonar," Nat'l Pub. Radio, *All Things Considered*, July 24, 2007 (transcript at Att. 29).

- (5) NRDC scientists have used information obtained through FOIA to publish analyses of the United States' and other nations' nuclear weapons programs. In 2004, for example, NRDC scientists incorporated information obtained through FOIA into a feature article on the United States' plans to deploy a ballistic missile system and the implications for global security. *See* Hans M. Kristensen, Matthew G. McKinzie, and Robert S. Norris, "The Protection Paradox," *Bulletin of Atomic Scientists*, Mar./Apr. 2004 (Att. 30).
- (6) NRDC obtained through FOIA, and made public, records of the operations of the Bush administration's Energy Task Force, along with analysis of selected excerpts and links to the administration's index of withheld documents (Att. 31). NRDC's efforts cast light on an issue of considerable public interest. *See, e.g.*, Elizabeth Shogren, "Bush Gets One-Two Punch on Energy," *L.A. Times*, Mar. 28, 2002, at A22 (Att. 32).
- (7) Through FOIA, NRDC obtained a memorandum by ExxonMobil, advocating the replacement of the sitting head of the Intergovernmental Panel on Climate Change, and used the document to help inform the public about what may have been behind the Bush administration's decision to replace Dr. Robert Watson. *See* NRDC Press Release and attached Exxon memorandum, "Confidential Papers Show Exxon Hand in White House Move to Oust Top Scientist from International Global Warming Panel," Apr. 3, 2002 (Att. 33); Elizabeth Shogren, "Charges Fly Over Science Panel Pick," *L.A. Times*, Apr. 4, 2002, at A19 (Att. 34).
- (8) Through FOIA and other sources, NRDC obtained information on nationwide levels of arsenic in drinking water and used it in a report, *Arsenic and Old Laws* (2000), available in print and online at <http://www.nrdc.org/water/drinking/arsenic/aolinx.asp> (Att. 35). The report guided interested members of the public on how to learn more about arsenic in their own drinking water supplies. *Id.*; *see also* Steve LaRue, "EPA Aims to Cut Levels of Arsenic in Well Water," *San Diego Union-Tribune*, June 5, 2000, at B1 (referencing NRDC report) (Att. 36).<sup>3</sup>

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<sup>3</sup> There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. *See, e.g.*, Felicity Barringer, "Science Panel Issues Report on Exposure to Pollutant," *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, "Draft of Air Rule is Said to Exempt Many Old Plants," *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., "E Mail Suggests Energy Official Encouraged Lobbyist on Policy," *N.Y. Times*, Apr. 27, 2002 (Att. 39).

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public's understanding of the subject.

#### 4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: conservation and management of the summer flounder fishery, and agency views on what management measures are necessary to achieve conservation of this important species. Recent overfishing of the summer flounder stock, and subsequent coastwide catch reductions implemented by NOAA and the Department of Commerce have received significant media coverage in 2016 and 2017. In recent weeks, the Atlantic States Marine Fisheries Commission's (ASMFC) noncompliance finding for the State of New Jersey, and the Department's determination of compliance, have also received significant coverage regional and national media outlets and other public forums. Examples of recent media coverage on this issue include:

- (1) Staff Report, *Recreational summer flounder season runs through Sept. 5*, NJToday.Net (July 21, 2017) (Exhibit A).
- (2) Dave Monti, *Fishing Report: U.S., fisheries panel disagrees on flounder targets*, Providence Journal (July 20, 2017) (Exhibit B).
- (3) *ASMFC Blasts Secretary Ross Decision on Summer Flounder in Favor of New Jersey's Recreational Sector, Saving Seafood* (Republished from Seafood News) (July 18, 2017) (Exhibit C).
- (4) Blog: Charles Witek, *Commerce Department's Summer Flounder Decision Undermines ASMFC's Authority To Manage Fish Stocks*, Marine Fish Conservation Network (July 18, 2017) (Exhibit D).
- (5) Associated Press, *Group: Trump Official's Fish Ruling Could Harm Conservation*, New York Times (July 17, 2017) (Exhibit E).
- (6) Associated Press, *Fish fight: managers say NJ flounder flap harms conservation*, Washington Post (July 17, 2017) (Exhibit F).
- (7) David Madden, *NJ Prevails In Fish Fight with Federal Government*, CBS Philly (July 15, 2017) (Exhibit G).
- (8) Press Release, *Department of Commerce Decision May Impact ASMFC's Ability to Conserve Atlantic Coastal Fisheries*, Atlantic States Marine Fisheries Commission (July 14, 2017) (Exhibit H).
- (9) Kate King, *New Jersey Wins in Effort to Ease Summer Flounder Quotas*, Wall Street Journal (July 12, 2017) (Exhibit I).
- (10) Daniel Radel, *NJ's fluke season saved after US secretary approves regulations*, App.com (part of USA Today Network) (July 11, 2017) (Exhibit J).
- (11) Claire Lowe, *New Jersey ruled out of compliance on summer flounder, moratorium possible*, Press of Atlantic City (June 2, 2017) (Exhibit K).
- (12) Daniel Hampton, *Summer flounder season begins in N.J., but there's a catch this year*, NJ.com (May 25, 2017) (Exhibit L).
- (13) Blog: John McMurray, *The Hard Truth About Summer Flounder*, Marine Fish Conservation Network (Exhibit M).

Public understanding of the Department's opinion of what actions are needed to conserve summer flounder and its role in carrying out the cooperative management duties of the ACFCMA, would be significantly enhanced by disclosure of the requested records concerning the Secretary's compliance decision. *See* 15 C.F.R. § 4.11(l)(2)(iv). Disclosure would help the public to more effectively evaluate the Department's conclusion that the management measures New Jersey declined to implement are not necessary for conservation of the summer flounder fishery. Disclosure would also help the public to better understand and evaluate the Department's actions on summer flounder conservation and management, particularly with respect to its decision that a moratorium in New Jersey state waters was not warranted.

## **B. NRDC Satisfies the Second Fee Waiver Requirement**

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 15 C.F.R. § 4.11(l)(3). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. "Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters." *Rossotti*, 326 F.3d at 1312 (internal citation omitted); *see Natural Res. Def. Council v. United States Emvtl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about conservation and management of the summer flounder fishery. As noted at Part II.A, any work done by the Department on summer flounder management relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of summer flounder management and associated implications for marine conservation.

## **C. NRDC Is a Media Requester**

Even if the Department denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and the Department's FOIA regulations, 15 C.F.R. § 4.11(d)(1); *see also* 15 C.F.R. § 4.11(b)(6) (defining "[r]epresentative of the news media"). A representative of the news media is "any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii); *see also Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a "non-profit public interest organization" qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep't of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than

two million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. *See* 15 C.F.R. § 4.11(b)(6) (“Examples of news-media entities are . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. *See* 5 U.S.C. § 552(a)(4)(A)(ii) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (accord[ing] media requester status to the American Civil Liberties Union).<sup>4</sup>

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

### **III. Request for Expedited Processing**

NRDC requests expedited processing of this request. FOIA and relevant Department regulations allow for an expedited response, of less than 20 days, in cases where the requester is “primarily engaged in disseminating information” and demonstrates that there is an “urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(I), (II); 15 C.F.R. § 4.6(f)(1)(iv). The following explains NRDC’s basis for requesting expedited processing, based on information that we certify to be true and correct, to the best of our knowledge and belief.

As explained in Part II.C above, NRDC is a “representative of the news media,” *see* 5 U.S.C. § 552(a)(4)(A)(ii); 15 C.F.R. § 4.11(b)(6), and a key purpose of the organization’s work is to gather

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<sup>4</sup> To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

and publish or transmit current and accurate news to the public. *See Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (holding that organization was “primarily engaged in disseminating information” where its mission involved serving as site of record for relevant and up-to-the minute civil rights news and information). Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. Further, as discussed in Part II.A.3 above, NRDC has the ability and will to use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. Dissemination of information need not be an organization’s “sole occupation” in order to meet this first requirement. 15 C.F.R. § 4.6(f)(1)(iv). Thus, it is appropriate to conclude that NRDC is “primarily engaged in disseminating information” with regard to this request.

This is also a case that presents an urgency to inform the public regarding activities of the Federal Government. *See* 15 C.F.R. § 4.6(f)(1)(iv). The Secretary’s July 2017 decision is unprecedented in that it is the first time in the existence of the ACFCMA that the Department of Commerce has rejected a noncompliance finding by the ASMFC. By allowing New Jersey to use management measures that are noncompliant with the coastal management plan, the decision is likely to result in the fishery exceeding its coastwide recreational harvest limit and increase the risk of the summer flounder stock becoming overfished. Importantly, the Secretary’s final decision was not accompanied with any publicly available technical analysis or projections that support the conclusion that the management measures New Jersey failed to implement were not necessary for the conservation of summer flounder. Given that the recreational summer flounder season is currently underway and will end in just over one month (on September 5, 2017), it is critical that the public be informed about the Department’s opinion of what actions are (or are not) needed to achieve conservation of summer flounder in the 2017 fishing season. This information has important implications for the conservation of the summer flounder stock and management approaches in other states. As discussed in Part II.A.4 above, significant public attention and media coverage of the initial noncompliance finding for New Jersey, and the Secretary’s determination of compliance, indicates the public is closely following this issue and wants to better understand the basis for the Secretary’s decision. *See infra* p. 7; Exhibits A-M.

#### **IV. Willingness to Pay Fees Under Protest**

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with the Department’s FOIA regulations at 15 C.F.R. § 4.11(c) for all or a portion of the requested records. *See* 15 C.F.R. §4.11(l)(4). Please contact me before doing anything that would cause the fee to exceed \$500. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

#### **IV. Conclusion**

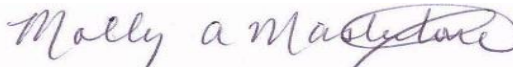
Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; the Department’s search for—or deliberations concerning—certain records should not delay the production of others that the

Department has already retrieved and elected to produce. *See generally* 15 C.F.R. § 4.6. If the Department concludes that any of the records requested here are publicly available, please let me know.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

A handwritten signature in purple ink that reads "Molly A. Masterton". The signature is written in a cursive style and is placed on a light pink rectangular background.

Molly A. Masterton  
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Tel.: 212-727-4451  
Fax: 212-727-1773  
Email: mmasterton@nrdc.org

**cc:** Mark H. Graff, FOIA Officer, National Oceanic and Atmospheric Administration;  
Bobbie Parsons, Immediate Office of the Secretary, Office of Privacy and Open  
Government, Department of Commerce

**Enclosures (sent via Certified U.S. Mail on CD):**

Attachments 1 through 40 (single .pdf file)

Exhibits A through M (single .pdf file)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

NATURAL RESOURCES DEFENSE	)	
COUNCIL, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
UNITED STATES DEPARTMENT OF	)	18-cv-583
COMMERCE,	)	ECF Case
	)	
Defendant.	)	
	)	

---

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**INTRODUCTION**

1. Defendant United States Department of Commerce (Commerce) has violated the Freedom of Information Act (FOIA), 5 U.S.C. § 552, by failing to fully disclose records relating to a July 2017 determination by the Secretary of Commerce that New Jersey had complied with its obligation to implement management measures aimed at conserving summer flounder. Plaintiff Natural Resources Defense Council (NRDC) requested these records from Commerce six months ago.

2. Commerce's National Oceanic and Atmospheric Administration (NOAA), regional fishery management councils, and the interstate Atlantic States Marine Fisheries Commission (the Fisheries Commission or Commission) work together to conserve and manage various fish populations along the Atlantic coast. As part of these efforts, the Fisheries Commission adopts management plans to protect certain fish species against depletion. Under Federal law, the Commission



identifies Atlantic coastal states to be included in its various management plans and then works to ensure that those states implement and enforce the plans.

3. In June 2017, the Fisheries Commission determined that New Jersey was out of compliance with the Commission's management plan for summer flounder, a fish species that is currently subject to overfishing. In July 2017, contrary to the Commission's determination, the Secretary of Commerce found that the summer flounder management measures New Jersey had failed to implement were not necessary for the conservation of summer flounder. The Secretary's determination allowed New Jersey's recreational summer flounder fishing season to proceed.

4. On July 26, 2017, NRDC submitted a FOIA request to Commerce for documents related to the Secretary's finding that the summer flounder management plan measures New Jersey had failed to implement were unnecessary for conserving summer flounder.

5. In October and November, Commerce via NOAA (a component of Commerce) provided NRDC with two "interim" releases of responsive documents. These interim releases consisted solely of documents from NOAA's files, and nothing from other Commerce components or the Office of the Secretary.

6. After the most recent interim release, Commerce informed NRDC that there were no more responsive documents in NOAA's files. Commerce further informed NRDC that it was unable to provide an update regarding the status of its

search for additional responsive documents outside of NOAA, other than noting a “significant logjam” due to the volume of Commerce FOIA requests.

7. Although Commerce has had six months to search for and produce responsive documents, it has not provided NRDC with any records from components of Commerce other than NOAA. Nor has Commerce provided NRDC with a final determination as to whether it will comply with NRDC’s request. The statutory deadline for such a final determination was, at the latest, September 11, 2017, with the final production of documents due promptly thereafter.

8. It is important that NRDC receives these documents in a timely manner. The Commission has already begun setting management measures for the 2018 summer flounder recreational fishing season, and the Commission and individual states will make key management decisions over the next four months prior to the opening of the season in May 2018. Particularly if New Jersey or other states choose not to comply with the relevant management plan for the 2018 fishing season, the requested documents could provide critical information to NRDC and the public in making advocacy decisions.

9. NRDC seeks a declaration that Commerce has violated FOIA by failing to provide a final determination as to whether it will comply with NRDC’s request, and by failing to produce all non-exempt responsive records, by the statutory deadline. NRDC seeks an injunction ordering Commerce to disclose at no cost and without further delay all non-exempt, responsive records to NRDC.

## THE PARTIES

10. Plaintiff NRDC is a national, non-profit environmental and public health membership organization with hundreds of thousands of members nationwide. NRDC engages in research, advocacy, public education, and litigation related to protecting public health and the environment. The organization's work includes efforts to end overfishing and promote the long-term sustainability of fishing practices in the United States.

11. Defendant Commerce is a federal agency within the meaning of FOIA, 5 U.S.C. § 551(1), and has possession or control of the records that NRDC seeks.

## JURISDICTION AND VENUE

12. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

13. Venue is proper in this court because plaintiff NRDC resides and has its principal place of business in this judicial district. 5 U.S.C. § 552(a)(4)(B).

## STATUTORY AND REGULATORY FRAMEWORK

14. FOIA requires that federal agencies release, upon request, information to the public, 5 U.S.C. § 552(a)(3), unless one of nine statutory exemptions applies, *id.* § 552(b).

15. Within 20 business days of an agency's receipt of a FOIA request, the agency must "determine . . . whether to comply with such request," *id.* § 552(a)(6)(A)(i); *see also* 15 C.F.R. § 4.6(b) (Commerce FOIA regulation), and "immediately notify the person making such request of . . . such determination and

the reasons therefor,” 5 U.S.C. § 552(a)(6)(A)(i). If the agency determines that it will comply with the request, it must “promptly” release responsive, non-exempt records to the requester. *Id.* § 552(a)(6)(C)(i); *see also* 15 C.F.R. § 4.7(c).

16. In “unusual circumstances,” an agency may extend the time limit for responding to a FOIA request by up to 10 business days. 5 U.S.C. § 552(a)(6)(B)(i).

17. If the agency fails to comply with the statutory time limits, the requester is deemed to have exhausted her administrative remedies and may immediately file suit “to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld.” 5 U.S.C. §§ 552(a)(4)(B), 552(a)(6)(C)(i).

### **FACTUAL BACKGROUND**

18. Summer flounder is an important fish for commercial and recreational fishing industries along the Mid-Atlantic coast, and is found in waters from Nova Scotia, Canada, to the east coast of Florida. Despite conservation efforts, the summer flounder population is below target levels and is currently subject to overfishing.

19. Summer flounder and the fishing of summer flounder collectively known as the summer flounder fishery are jointly managed by NOAA (a component of Commerce), the Mid-Atlantic Fishery Management Council, and the Fisheries Commission. Together, these entities seek to conserve summer flounder and prevent depletion of the species.

20. Under the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act), 16 U.S.C. §§ 5101-5108, the Fisheries Commission is tasked with developing management plans to conserve summer flounder (as well as other fish species in the Atlantic coastal region), *see id.* § 5104(a). The Atlantic Coastal Act provides that, for each management plan, the Commission must identify the states that are required to implement and enforce the plan. *Id.* § 5104(a)(1). Under some management plans, the Commission allows states to implement their own management measures, so long as the state's measures achieve the same level of conservation as the Commission's plan.

21. If the Fisheries Commission finds that a state has failed to implement or enforce measures in compliance with the Commission's management plan for a particular fish species, the Atlantic Coastal Act requires the Commission to make a formal non-compliance determination. *Id.* § 5105(a). This determination is subject to review by the Secretary of Commerce, who makes an independent compliance determination. *Id.* § 5106(a)(1). If the Secretary agrees that the state has failed to implement and enforce the measures contained in the management plan, and also that such measures are "necessary for the conservation of the fishery," the Secretary must declare a moratorium on fishing that species in the waters of the non-complying state. *Id.* § 5106(a), (c)(1).

22. In February 2017, in response to new science indicating the declining population status of summer flounder, the Fisheries Commission tightened measures in its summer flounder management plan applicable to recreational

fishing. These stricter measures included increased minimum size requirements and a reduction in the maximum number of summer flounder allowed to be caught and kept by any one person.

23. State officials from New Jersey—one of several states required to implement and enforce the Commission’s summer flounder management plan—vocally opposed these stricter measures. Soon after the Fisheries Commission voted on the new restrictions, the New Jersey Department of Environmental Protection Commissioner wrote a letter to the Secretary of Commerce, asking the Secretary to stop them from going into effect, claiming the restrictions would lead to the “destruction of” New Jersey’s recreational summer flounder industry.

24. New Jersey ultimately proposed its own summer flounder recreational management measures, instead of implementing the new measures adopted by the Commission. Although the Commission’s summer flounder management plan allowed New Jersey to do so if the measures would achieve the same level of conservation as the Commission’s plan, after reviewing the measures proposed by New Jersey, the Commission found that the measures would not sufficiently protect summer flounder and were therefore inconsistent with the Commission’s plan.

25. New Jersey nonetheless implemented its own measures, prompting a formal non-compliance determination by the Fisheries Commission on June 1, 2017.

26. In July 2017, for the first time in the twenty-four-year history of the Atlantic Coastal Act, the Secretary of Commerce made a finding contrary to the Commission’s non-compliance determination, allowing New Jersey’s recreational

summer flounder season to proceed. Specifically, the Secretary found that the measures New Jersey failed to implement were “not necessary for the conservation of summer flounder.” 82 Fed. Reg. 33,481 (July 20, 2017). The notice announcing the Secretary’s compliance determination was brief and devoid of any substantive explanation. *See id.*

27. On July 26, 2017, NRDC served a FOIA request on Commerce, seeking records supporting, explaining, or otherwise relating to the Secretary’s finding that the summer flounder management measures New Jersey failed to implement were not necessary for the conservation of summer flounder. NRDC also requested a fee waiver.

28. NRDC received an email notification indicating that the request would be processed by NOAA, a component of Commerce. NRDC also received a letter from NOAA on August 4, 2017, acknowledging receipt of the request and stating that the agency was invoking the statutory ten-day extension applicable in “unusual circumstances.” In its letter, NOAA stated that it anticipated completing NRDC’s request by September 7, 2017.

29. On August 23, NRDC received a letter from NOAA recommending that NRDC narrow the scope of its request. After a phone call with NRDC on August 24 and an additional email from NRDC on August 25, NOAA agreed to move forward with the request. Around the same time, Commerce granted NRDC’s fee waiver request.

30. NOAA provided NRDC with two “interim releases” of responsive documents in October and November, but did not provide a final date for Commerce’s completion of NRDC’s request. The interim releases consisted solely of documents from NOAA’s files, and a NOAA representative confirmed that NOAA itself has no other responsive documents. NOAA further informed NRDC that it was unable to provide more information regarding the status of Commerce’s search for additional responsive documents, other than noting a “significant logjam” due to the volume of Commerce FOIA requests.

31. It has been six months since NRDC served its FOIA request on Commerce, and more than four months since the statutory deadline passed, yet Commerce has failed to provide NRDC with a final response to its request.

#### **CLAIM FOR RELIEF**

32. Plaintiff incorporates by reference all preceding paragraphs.

33. NRDC has a statutory right under FOIA to obtain without further delay all records responsive to its request that are not exempt from disclosure.

34. Commerce violated its duty under FOIA, 5 U.S.C. § 552(a), to release by the statutory deadline all non-exempt, responsive records to NRDC.

#### **REQUEST FOR RELIEF**

Plaintiff respectfully requests that this Court enter judgment against Commerce as follows:

A. Declaring that Commerce has violated FOIA by failing to produce all non-exempt records responsive to NRDC’s FOIA request by the statutory deadline;



- B. Ordering that Commerce disclose the remaining requested records to NRDC at no cost and without further delay;
- C. Ordering that Commerce produce an index identifying any documents or parts thereof that it withholds and the basis for the withholdings, in the event Commerce determines that certain responsive records are exempt from disclosure;
- D. Retaining jurisdiction over this case to rule on any challenged assertions by Commerce that certain responsive records are exempt from disclosure;
- E. Awarding NRDC its costs and reasonable attorneys' fees; and
- F. Granting such other relief that the Court considers just and proper.

Respectfully submitted,

/s/ Catherine Marlantes Rahm  
Catherine Marlantes Rahm  
Natural Resources Defense Council  
40 West 20th Street, 11th Floor  
New York, NY 10011  
(212) 727-4628  
crahm@nrdc.org

*Counsel for Plaintiff*

Dated: January 23, 2018

**Mark Graff - NOAA Federal**

---

**From:** Mark Graff NOAA Federal  
**Sent:** Monday, February 5, 2018 8:38 AM  
**To:** Samuel Dixon NOAA Affiliate; Steven Goodman NOAA Federal  
**Cc:** Lola Stith NOAA Affiliate  
**Subject:** Fwd: FW: Question Re: DOC ISO 2018 000435  
**Attachments:** National Monuments and EO 13795 FOIAOnline pull.xls

Hey Sam,

I'd suggest w (b)(5) [redacted]  
[redacted]

[redacted]  
[redacted]  
[redacted]

[redacted]  
[redacted]  
[redacted]

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628 5658 (O)  
(b)(6) [redacted] (C)

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Forwarded message

**From:** Parsons, Bobbie (Federal) <[bParsons@doc.gov](mailto:bParsons@doc.gov)>  
**Date:** Fri, Feb 2, 2018 at 9:17 AM  
**Subject:** FW: Question Re: DOC ISO 2018 000435  
**To:** "Graff, Mark (Federal)" <[Mark.Graff@noaa.gov](mailto:Mark.Graff@noaa.gov)>

Please respond to belo (b)(5) [redacted]

[redacted]

Thanks,

Bobbie

**From:** Pua Kamaka - NOAA Federal [mailto:[pua.kamaka@noaa.gov](mailto:pua.kamaka@noaa.gov)]

**Sent:** Thursday, February 01, 2018 4:31 PM

**To:** Parsons, Bobbie (Federal) <[bParsons@doc.gov](mailto:bParsons@doc.gov)>

**Subject:** Question Re: DOC-ISO-2018-000435

Aloha Bobbie,

My name is Pua Kamaka, and I am the FOIA coordinator for NOAA-NMFS-Pacific Islands Regional Office. I had a few questions regarding FOIA request DOC-ISO-2018-000435, (b)(5) [REDACTED]

[REDACTED]

[REDACTED]

(b)(5) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

You can also reach me at [808-725-5006](tel:808-725-5006) if talking via phone is easier.

Mahalo,  
Pua

Tracking Number	Type	Status	Requester
DOC-IOS-2018-000166	Request	Assignment Determination	Margaret Townsend
DOC-IOS-2018-000170	Request	Assignment Determination	Chris Saeger
DOC-IOS-2018-000172	Request	Assignment Determination	Kellie M. Lunney
DOC-IOS-2018-000178	Request	Assignment Determination	Katherine Desormeau

DOC-NOAA-2017-000170	Request	Research Records	Kara McKenna
DOC-NOAA-2017-000361	Request	Initial Evaluation	Peter Shelley

DOC-NOAA-2017-001316	Request	Research Records	Chris Saeger
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DOC-OS-2017-001522	Request	Evaluation of Records	Yule Kim
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DOC-OS-2017-001150	Request	Research Records	Sean Smith
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DOC-OS-2017-000435	Request	Research Records	R. Rosenbaum
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DOC-NOAA-2017-001958	Request	Closed	Lauren Dillon
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DOC-IOS-2018-000380	Request	Assignment Determination	Laura Shields
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Requester Organization	Submitted	Assigned To	Due
	10/26/2017	Bobbie Parsons	12/05/2017
Western Values Project	10/27/2017	Bobbie Parsons	12/07/2017
E&E News	10/27/2017	Bobbie Parsons	12/05/2017
Natural Resources Defense Council	10/29/2017	Bobbie Parsons	12/13/2017

Cause of Action	11/09/2016	Samuel B. Dixon	01/05/2017
Conservation Law Foundation	12/22/2016	NOAA	N/A

Western Values Project	06/07/2017	Samuel B. Dixon	07/21/2017
	07/14/2017	Nkolika Ndubisi	08/14/2017
	05/03/2017	Ayana Crawford	06/08/2017
Sen. Schatz	12/6/2017	NOS	1/17/2017

DNC	9/29/2017	USEC	NA
Santa Cruz Sentinel	12/3/2017	NOS	1/23/2017

## Description/Basis for Appeal

DOC's report reviewing marine sanctuaries and monuments mandated by Executive Order 13795, "Implementing an America-First Offshore Energy Strategy," dated April 28, 2017 ("EO 13795") requiring: The Secretary of Commerce, in consultation with the Secretary of Defense, the Secretary of the Interior, and the Secretary of all documents created for the purpose of informing the Department of Justice regarding the views of the Office of the General Counsel for the Department of Commerce with respect to the President's authority to revoke or To Whom It May Concern: I am seeking a copy of an October 2017 report to the White House from Commerce assessing the offshore oil and drilling potential in areas containing 11 protected marine monuments and any and all records in the possession, custody, or control of the Department of Commerce ("the Department") that pertain to meetings on or after January 20, 2017, attended by Secretary Wilbur Ross and/or Earl Comstock, relating to any national marine sanctuary or marine national monument and/or to the Department's review of national marine sanctuaries and monuments under Executive Order No. 13795, including (1) any calendar CoA Institute hereby requests access to the following records for the time period of January 1, 2014, to the present:4 1. All records or communications (including emails, text messages, and voicemails) referring or relating to a NOAA Town Hall meeting held on or about September 15, 2015, in Providence, Rhode Island, and publicized on NOAA's website on or about September 3, 2015 (attached as Exhibit 1 to this FOIA request), including &mdot; but not limited to all written comments, as well as all communications with nongovernmental organizations referring or relating to the September 15, 2015, NOAA Town Hall meeting.

2. All records or communications (including emails and voicemails) referring or relating to a &quot;public event&quot; held by the Conservation Law Foundation, Natural Resources Defense Council, National Geographic Expedited Review is sought pursuant to 15 CFR sect; 4.6(f) Re: Freedom of Information Act Request – Northeast Canyons and Seamounts Marine National Monument and any other marine national monument records for the

SCOPE REVISION 6/20 - To exclude the following information: out-of-office replies, duplicates of the same emails and duplicate attachments disseminated to large volumes of recipients.

I request access to and copies of any information used to inform the development of the following national monument proclamations or expansions during the specified time periods: Northeast Canyons and Seamounts Marine National Monument (01/01/14 – 12/31/16) Papahānaumokuākea Marine National Monument Expansion In NOAA's notice published 6/26/2017, entitled "Review of National Marine Sanctuaries and Marine National Monuments Designated or Expanded Since April 28, 2007; Notice of Opportunity for Public Comment" NOAA stated: "The Department of Commerce will receive a copy of and consider all public comments submitted during The materials requested relate to presidential designations of national monuments . As such, I request all records relating to, or consisting of, communications — in any format — generated or received by the Department of Commerce related to: a. Any public communication to the Department of Commerce and/or its Bureaus on or since January 20, 2017 requesting a review of the national monuments identified in President Trump's Executive 1. Documents relating to the expansion of PRIMNM ultimately effectuated by Presidential Proclamation 9173, including, by way of illustration and not limitation, • communications, other than through public comments, with any person outside each of your agencies or offices concerning what land, waters or other objects should be included or excluded from the expansion of PRIMNM and/or the uses which should be permitted or prohibited in that expansion, including but not limited to Western Pacific Regional Fishery Management Council, the Hawaii Longline Association, other fishery and fishing organizations or industry groups in Hawaii and/or American

I request from the National Oceanic and Atmospheric Administration the following records: □ All correspondence, emails, faxes, memoranda, briefing documents, notes, legal opinions or other guidance, studies, or estimates sent, received or created by NOAA staff which reference Secretary of the Interior Ryan Zinke's review of national monument designations for Northeast Canyons and Seamounts Marine National Monument and Papahānaumokuākea Marine National Monument in accordance with Executive Order 13795, "Presidential Executive Order on the Review of Designations Under the Antiquities Act," dated April 26, 2017. The time frame "...all documents related to the National Marine Sanctuaries review as requested from Secretary Wilbur Ross by an executive order on April 28, 2017, including but not limited to emails, studies, reviews, and data. A final report







**Mark Graff - NOAA Federal**

---

**From:** Mark Graff NOAA Federal  
**Sent:** Monday, February 5, 2018 12:08 PM  
**To:** Bogomolny, Michael (Federal)  
**Subject:** Re: Direct Cost Retention  
**Attachments:** Request to Retain Direct Costs Recovered Associated with FOIA Processing.docx

Sorry the actual Memo was not attached (b)(5)

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628 5658 (O)  
(b)(6) (C)

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On Mon, Feb 5, 2018 at 12:04 PM, Mark Graff NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)> wrote:

Hello Bogo,

(b)(5)

Please let me know if you have any concerns with this approach.

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
[\(301\) 628 5658](tel:(301)6285658) (O)  
(b)(6) (C)

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Forwarded message

From: Kimberly Katzenbarger - NOAA Federal <[kimberly.katzenbarger@noaa.gov](mailto:kimberly.katzenbarger@noaa.gov)>



National Oceanic and Atmospheric Administration

[\(301\) 628 5658](tel:(301)6285658) (O)

(b)(6) (C)

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Kimberly Katzenbarger, Attorney  
National Oceanic and Atmospheric Administration  
Office of General Counsel, Natural Resources Section  
[1315 East West Hwy, Suite 15104](#)  
[Silver Spring, MD 20910](#) 3282

(b)(6)

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Kimberly Katzenbarger, Attorney  
National Oceanic and Atmospheric Administration  
Office of General Counsel, Natural Resources Section  
[1315 East West Hwy, Suite 15104](#)  
[Silver Spring, MD 20910](#) 3282

(b)(6)

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

June 27, 2017

MEMORANDUM FOR: Michael Toland, Deputy Chief FOIA Officer  
Office of Privacy and Open Government  
Department of Commerce

FROM: Mark Graff, FOIA Officer

THROUGH: Robert Swisher, Director  
Governance and Portfolio Division  
Office of the Chief Information Officer  
National Oceanic and Atmospheric  
Administration

SUBJECT: Retention of Direct Contractor-Related  
Costs Recovered Associated with  
Processing FOIA Requests

(b)(5)  
[Redacted]

[Redacted]

[Redacted]

[Redacted]

(b)(5)

[Redacted text block]

[Redacted text block]

Cc: Mark Graff, FOIA Officer  
Rob Swisher, Director, Governance and Portfolio  
Robert Hogan, NOAA Office of the General Counsel



**Jonelle Dilley - NOAA Federal**

---

**From:** Jonelle Dilley NOAA Federal  
**Sent:** Monday, February 5, 2018 3:47 PM  
**To:** colleen.roche@noaa.gov  
**Cc:** Laura Cesario NOAA Federal; Symone Stone NOAA Affiliate; Mark Graff NOAA Affiliate; Nkolika Ndubisi NOAA Federal  
**Subject:** Re: ACTION:2018 000580

I'd like to provide an update on the Blutstein FOIA referral from NASA.

(b)(5)  
[Redacted]

Thanks,  
Jonelle

Jonelle Dilley  
Attorney Advisor  
Oceans and Coasts Section  
NOAA, Office of General Counsel  
1305 East West Highway  
SSMC 4, Room 6111  
Silver Spring, MD 20910  
Tel: (301) 713 7383 (direct line)  
Cel (b)(6)  
Fax: (301) 713 4408

On Thu, Jan 25, 2018 at 4:55 PM, Nkolika Ndubisi NOAA Federal <[nkolika.ndubisi@noaa.gov](mailto:nkolika.ndubisi@noaa.gov)> wrote:  
Hi Jonelle

Thanks for the update (b)(5)  
[Redacted]

With regards,  
Nikki

On Thursday, January 25, 2018, Jonelle Dilley NOAA Federal <[jonelle.dilley@noaa.gov](mailto:jonelle.dilley@noaa.gov)> wrote:

(b)(5)

Thanks,

Jonelle

Sent from my iPhone

On Jan 25, 2018, at 2:34 PM, Nkolika Ndubisi NOAA Federal <[nkolika.ndubisi@noaa.gov](mailto:nkolika.ndubisi@noaa.gov)> wrote:

Hi Todd,

Thanks for the update.

Nkolika Ndubisi (Nikki)  
Administration Division  
Management and Budget  
National Ocean Service  
[\(240\) 533 0937](tel:(240)533-0937)

On Thu, Jan 25, 2018 at 2:32 PM, Todd Ehret NOAA Federal <[todd.ehret@noaa.gov](mailto:todd.ehret@noaa.gov)> wrote:

Nikki,

(b)(5)

I have cc'd Jonelle on this message.

Todd Ehret  
Physical Oceanographer  
Center for Operational Oceanographic Products and Services

On Tue, Jan 23, 2018 at 2:51 PM, Nkolika Ndubisi NOAA Federal  
<[nkolika.ndubisi@noaa.gov](mailto:nkolika.ndubisi@noaa.gov)> wrote:

**FOIA 2018-000580**

**Requester:** Allan Blutstein

**Description:** Please accept this email as a request pursuant to the Freedom of Information Act for access to any email sent by Kathleen Hibbard from June 14, 2017, through June 27, 2017 that mentions or refers to the Climate Science Special Report (CSSR).

(b)(5)

Let me know if you have any questions, I can be reached via email or [\(240\) 533-0937](tel:(240)533-0937).



Nkolika Ndubisi (Nikki)  
Administration Division  
Management and Budget  
National Ocean Service  
[\(240\) 533 0937](tel:(240)5330937)

Nkolika Ndubisi (Nikki)  
Administration Division  
Management and Budget  
National Ocean Service  
[\(240\) 533 0937](tel:(240)5330937)

## Sarah Brabson - NOAA Federal

---

**From:** Sarah Brabson NOAA Federal  
**Sent:** Tuesday, February 6, 2018 6:38 AM  
**To:** mark.graff@noaa.gov  
**Subject:** Fwd: PTA Revision FYI. Not happy  
**Attachments:** ATT00001.html; NOAA4100\_PTA\_20180206\_Ver1.1.docx

Sent from my iPhone

Begin forwarded message:

**From:** Mark Deforest NOAA Federal <[mark.deforest@noaa.gov](mailto:mark.deforest@noaa.gov)>  
**Date:** February 6, 2018 at 6:29:27 AM EST  
**To:** Sarah Brabson <[sarah.brabson@noaa.gov](mailto:sarah.brabson@noaa.gov)>  
**Subject:** PTA Revision

Sarah,

Tahir brought up something that had escaped me before and I had to do a revision of the PTA. We do handle FOIA requests and have a Clearwell server. I have updated the PTA to reflect this and will be getting to work on redoing the PIA to reflect this as well. Attached is the PTA for your review. Thank you for your help and sorry I didn't put this in before, I dislike creating more work.

V/R  
Mark Deforest  
978 282 8471



**U.S. Department of Commerce  
NOAA NMFS**



**Privacy Threshold Analysis  
for the  
NOAA4100 - Greater Atlantic Regional Office (GARFO) Network**

## U.S. Department of Commerce Privacy Threshold Analysis

### NOAA4100 - Greater Atlantic Regional Office (GARFO) Network

**Unique Project Identifier: NOAA4100**

**Introduction:** This Privacy Threshold Analysis (PTA) is a questionnaire to assist with determining if a Privacy Impact Assessment (PIA) is necessary for this IT system. This PTA is primarily based from the Office of Management and Budget (OMB) privacy guidance and the Department of Commerce (DOC) IT security/privacy policy. If questions arise or further guidance is needed in order to complete this PTA, please contact your Bureau Chief Privacy Officer (BCPO).

#### **Description of the information system and its purpose:**

- a) ***Whether it is a general support system, major application, or other type of system:***  
NOAA4100 is a general support system.
  
- b) ***System location:*** Gloucester, Massachusetts
  
- c) ***Whether it is a standalone system or interconnects with other systems (identifying and describing any other systems to which it interconnects):*** NOAA4100 is part of the larger NOAA4000 network; it has interconnections between other NMFS entities including New England Fisheries Science Center, NMFS Headquarters, and with the Atlantic Coastal Cooperative Statistics Program (ACCSP). All these connections are 24/7 connected using secure protocols.
  
- d) ***The purpose that the system is designed to serve:*** NOAA4100 maintains several NMFS main host applications and web servers. The computer systems within NOAA4100 provide service to our ultimate end beneficiaries, the habitat, the fish, and the environment; and to the biologists, scientists, statisticians, and economists within the region and nation; and all fishers who depend on our data.
  
- e) ***The way the system operates to achieve the purpose:*** NOAA 4100 Achieves this purpose by using the system in the analyzing, collection and collaboration of data. Through management of the data and the application of it in governing fisheries.

- f) ***A general description of the type of information collected, maintained, use, or disseminated by the system:*** NOAA4100 collects maintains and disseminates information used for identifying fisheries related organizations and individuals, FOIA requests. Fisheries specific data such as landing data from fish dealers and catch based allocation data.
  
- g) ***Identify individuals who have access to information on the system:*** Due to the varying sensitivity of NOAA4100's data, the individuals that have access to our data range from the public to only those who have been authorized by the data owner. NOAA4100 data is shared with a variety of organizations. This includes other federal agencies, state and local agencies, fisheries management organizations, fish dealers, educational entities, vessel owners and the public.
  
- h) ***How information in the system is retrieved by the user:*** Information retrieval on NOAA4100 is done securely in a variety of ways. The majority of access is through the Greater Atlantic Regions website, the information that is shared and collaborated with other organizations is done securely through hardwired interconnections and through the NOAA4000 controlled non-permanent VPN.
  
- i) ***How information is transmitted to and from the system:*** Information is transmitted from NOAA4100 through secure web based connections, using SSL. Through secure hardwired connections, or through secure VPN connections.

**Questionnaire:**

1. What is the status of this information system?

This is a new information system. *Continue to answer questions and complete certification.*

This is an existing information system with changes that create new privacy risks. *Complete chart below, continue to answer questions, and complete certification.*

<b>Changes That Create New Privacy Risks (CTCNPR)</b>			
a. Conversions		d. Significant Merging	g. New Interagency Uses
b. Anonymous to Non-Anonymous		e. New Public Access	h. Internal Flow or Collection
c. Significant System Management Changes		f. Commercial Sources	i. Alteration in Character of Data
j. Other changes that create new privacy risks (specify): Handling and Processing FOIA Data and Requests.			

This is an existing information system in which changes do not create new privacy risks, and there is not a SAOP approved Privacy Impact Assessment. *Continue to answer questions and complete certification.*

This is an existing information system in which changes do not create new privacy risks, and there is a SAOP approved Privacy Impact Assessment (version 01-2015 or later). *Continue to answer questions and complete certification.*

2. Is the IT system or its information used to support any activity which may raise privacy concerns?

NIST Special Publication 800-53 Revision 4, Appendix J, states “Organizations may also engage in activities that do not involve the collection and use of PII, but may nevertheless raise privacy concerns and associated risk. The privacy controls are equally applicable to those activities and can be used to analyze the privacy risk and mitigate such risk when necessary.” Examples include, but are not limited to, audio recordings, video surveillance, building entry readers, and electronic purchase transactions.

Yes. *Please describe the activities which may raise privacy concerns.*

No

3. Does the IT system collect, maintain, or disseminate business identifiable information (BII)?

As per DOC Privacy Policy: “For the purpose of this policy, business identifiable information consists of (a) information that is defined in the Freedom of Information Act (FOIA) as “trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.” (5 U.S.C.552(b)(4)). This information is exempt from automatic release under the (b)(4) FOIA exemption. “Commercial” is not confined to records that reveal basic commercial operations” but includes any records [or information] in which the

submitter has a commercial interest" and can include information submitted by a nonprofit entity, or (b) commercial or other information that, although it may not be exempt from release under FOIA, is exempt from disclosure by law (e.g., 13 U.S.C.)."

Yes, the IT system collects, maintains, or disseminates BII about: *(Check all that apply.)*

- Companies
- Other business entities

No, this IT system does not collect any BII.

#### 4. Personally Identifiable Information

4a. Does the IT system collect, maintain, or disseminate personally identifiable information (PII)?

As per OMB 07-16, Footnote 1: "The term 'personally identifiable information' refers to information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc... alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc..."

Yes, the IT system collects, maintains, or disseminates PII about: *(Check all that apply.)*

- DOC employees
- Contractors working on behalf of DOC
- Members of the public

No, this IT system does not collect any PII.

***If the answer is "yes" to question 4a, please respond to the following questions.***

4b. Does the IT system collect, maintain, or disseminate PII other than user ID?

Yes, the IT system collects, maintains, or disseminates PII other than user ID.

No, the user ID is the only PII collected, maintained, or disseminated by the IT system.

4c. Will the purpose for which the PII is collected, stored, used, processed, disclosed, or disseminated (context of use) cause the assignment of a higher PII confidentiality impact level?

Examples of context of use include, but are not limited to, law enforcement investigations, administration of benefits, contagious disease treatments, etc.



Yes, the context of use will cause the assignment of a higher PII confidentiality impact level.

No, the context of use will not cause the assignment of a higher PII confidentiality impact level.

***If any of the answers to questions 2, 3, 4b, and/or 4c are “Yes,” a Privacy Impact Assessment (PIA) must be completed for the IT system. This PTA and the approved PIA must be a part of the IT system’s Assessment and Authorization Package.***

## CERTIFICATION

  X   I certify the criteria implied by one or more of the questions above **apply** to the NOAA4100 and as a consequence of this applicability, I will perform and document a PIA for this IT system.

       I certify the criteria implied by the questions above **do not apply** to the NOAA4100 and as a consequence of this non-applicability, a PIA for this IT system is not necessary.

Name of System Owner (SO): Peter Couture

Signature of ISSO or SO: \_\_\_\_\_ Date: \_\_\_\_\_

Name of Information Technology Security Officer (ITSO): Catherine Amores

Signature of ITSO: \_\_\_\_\_ Date: \_\_\_\_\_

Name of Authorizing Official (AO): Kimberly Damon-Randall

Signature of AO: \_\_\_\_\_ Date: \_\_\_\_\_

Name of Bureau Chief Privacy Officer (BCPO): Mark Graff

Signature of BCPO: \_\_\_\_\_ Date: \_\_\_\_\_

## Lola Stith - NOAA Affiliate

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**From:** Lola Stith NOAA Affiliate  
**Sent:** Tuesday, February 6, 2018 12:45 PM  
**To:** Mark Graff NOAA Affiliate  
**Subject:** January Monthly FOIA Report (DRAFT FOR YOUR REVIEW)  
**Attachments:** FOIA Monthly Status Report 01 31 2018.pdf; FOIA Monthly Status Report 01 31 2018.xlsx; Incoming\_012018.xls; Closed\_012018.xls; Open Requests\_012018.xls; Backlog\_012018.xls

Hi Mark Please find Excel/PDF copies of the monthly report attached for review/approval. I have also attached the supporting files as a reference for the data compiled in the monthly report.

Please let me know if you have questions.

Lola Stith  
Contractor - The Ambit Group, LLC  
NOAA Office of the Chief Information Officer (OCIO)  
(c (b)(6) [REDACTED])  
[lola.m.stith@noaa.gov](mailto:lola.m.stith@noaa.gov)

Tracking Number	Type	Track	Requester	Submitted
DOC-NOAA-2018-000325	Request	Simple	Rose Santos	11/22/2017
DOC-NOAA-2017-000298	Request	Complex	Charles Mouton	11/30/2016
DOC-NOAA-2015-001487	Request	Simple	Richard Knudsen	06/29/2015
DOC-NOAA-2018-000303	Request	Simple	Ronald B. Hardwig	11/17/2017
DOC-NOAA-2018-000555	Request	Simple	Skyler Kopko	10/05/2017
DOC-NOAA-2017-001987	Request	Simple	Victoria Abbasi	04/13/2017
DOC-NOAA-2017-001966	Request	Simple	Alex Kotch	09/15/2017
DOC-NOAA-2017-000613	Request	Complex	Dan Vergano	02/07/2017
DOC-NOAA-2018-000509	Request	Simple	Catherine Kilduff	12/28/2017
DOC-NOAA-2018-000320	Request	Complex	Chloe Sorvino	11/21/2017
DOC-NOAA-2018-000377	Request	Complex	Alicia Cate	12/01/2017
DOC-NOAA-2018-000387	Request	Simple	Ryan P. Mulvey	12/05/2017
DOC-NOAA-2018-000463	Request	Simple	John Fulweiler	12/08/2017
DOC-NOAA-2018-000422	Request	Simple	Philip N. Brown	12/08/2017
DOC-NOAA-2018-000318	Request	Simple	Sarah N. Emerson	11/21/2017
DOC-NOAA-2018-000183	Request	Complex	Sean Sherman	10/25/2017
DOC-NOAA-2018-000077	Request	Complex	Maraya Cornell	10/11/2017
DOC-NOAA-2017-001974	Request	Complex	Ryan P. Mulvey	09/21/2017
DOC-NOAA-2018-000105	Request	Simple	Allan Parachini	10/16/2017
DOC-NOAA-2017-001798	Request	Complex	Brett Sommermeyer	08/31/2017
DOC-NOAA-2017-001710	Request	Complex	Rick Steiner	08/01/2017
DOC-NOAA-2017-001741	Request	Simple	Vivian Wang	08/22/2017
DOC-NOAA-2017-001986	Request	Simple	Beryl C. Lipton	08/25/2017
DOC-NOAA-2017-001606	Request	Complex	Molly Masterton	07/26/2017
DOC-NOAA-2017-001394	Request	Complex	Ivy N. Fredrickson	06/19/2017
DOC-NOAA-2017-001316	Request	Complex	Chris Saeger	06/07/2017
DOC-NOAA-2017-001411	Request	Complex	Margaret Townsend	06/22/2017
DOC-NOAA-2017-001194	Request	Complex	ERIC R. BOLINDER	05/02/2017
DOC-NOAA-2017-001431	Request	Complex	Margaret Townsend	06/27/2017
DOC-NOAA-2017-001391	Request	Complex	Elizabeth A. Mitchell	06/16/2017
DOC-NOAA-2017-001376	Request	Complex	Gabe Flick	06/12/2017
DOC-NOAA-2017-001198	Request	Complex	Brett Sommermeyer	05/11/2017
DOC-NOAA-2017-001285	Request	Complex	Jared S. Goodman	05/30/2017
DOC-NOAA-2017-001092	Request	Complex	Brettny E. Hardy	04/26/2017
DOC-NOAA-2017-001093	Request	Complex	Brettny E. Hardy	04/26/2017
DOC-NOAA-2017-001094	Request	Complex	Brettny E. Hardy	04/26/2017
DOC-NOAA-2017-001038	Request	Complex	Sean Sherman	04/17/2017
DOC-NOAA-2017-001220	Request	Complex	Nathan Eagle	05/16/2017
DOC-NOAA-2017-001217	Request	Complex	Nathan Eagle	05/16/2017
DOC-NOAA-2017-001219	Request	Complex	Nathan Eagle	05/16/2017
DOC-NOAA-2017-000994	Request	Complex	Mariel Combs	04/10/2017
DOC-NOAA-2016-001479	Request	Complex	Christopher Hudak	07/20/2016
DOC-NOAA-2017-000304	Request	Complex	Bryn Blomberg	11/30/2016
DOC-NOAA-2017-000170	Request	Complex	Kara McKenna	11/09/2016
DOC-NOAA-2016-001751	Request	Simple	Thomas Knudson	09/14/2016
DOC-NOAA-2016-001763	Request	Complex	Thomas Knudson	09/14/2016
DOC-NOAA-2016-000959	Request	Complex	Office Administrator	04/12/2016
DOC-NOAA-2016-000423	Request	Complex	Ryan P. Mulvey	12/21/2015
DOC-NOAA-2014-001474	Request	Complex	Eric Huber	08/12/2014
DOC-NOAA-2015-000190	Request	Simple	Miyo Sakashita	11/02/2014
DOC-NOAA-2018-000428	Request	Complex	Ryan P. Mulvey	12/11/2017

DOC-NOAA-2017-001915	Request Simple	Rose Santos	09/23/2017
DOC-NOAA-2018-000202	Request Complex	Marshall R. Morales	11/01/2017
DOC-NOAA-2018-000273	Request Complex	Andrew G. Ogden	11/14/2017
DOC-NOAA-2017-000414	Request Complex	Arnold & Porter Kaye Scholer LLP	01/09/2017
DOC-NOAA-2017-001678	Request Complex	James Zeiler	08/07/2017
DOC-NOAA-2017-001009	Request Complex	Edward Duhe	03/31/2017
DOC-NOAA-2017-001676	Request Complex	Vincent C. Catania	08/09/2017
DOC-NOAA-2017-001569	Request Complex	Sarah N. Emerson	07/19/2017
DOC-NOAA-2018-000580	Referral Simple	Allan Blutstein	12/22/2017
DOC-NOAA-2017-001874	Request Simple	Susanne Rust	09/18/2017
DOC-NOAA-2017-001059	Request Simple	Richard Hirn	04/18/2017
DOC-NOAA-2017-000768	Request Complex	Julio C. Gomez	03/10/2017
DOC-NOAA-2018-000437	Request Simple	Paul Lannus	12/13/2017
DOC-NOAA-2018-000229	Request Simple	Nicole Mason	11/03/2017
DOC-NOAA-2018-000024	Request Simple	Allan Blutstein	10/04/2017
DOC-NOAA-2017-001975	Request Complex	Margaret Townsend	08/31/2017
DOC-NOAA-2017-001796	Request Complex	Margaret Townsend	08/31/2017
DOC-NOAA-2017-001691	Request Simple	David Kovar	08/10/2017
DOC-NOAA-2017-000058	Request Complex	Christopher T. Clack	10/13/2016
DOC-NOAA-2017-000034	Request Complex	Christopher T. Clack	10/11/2016
DOC-NOAA-2017-001954	Request Simple	Alex Veeneman	09/28/2017
DOC-NOAA-2017-001565	Request Complex	Charles Seife	06/19/2017
DOC-NOAA-2017-001523	Request Complex	Brian L. Kahn	07/14/2017
DOC-NOAA-2018-000302	Request Simple	Michael L. Johnson	11/13/2017
DOC-NOAA-2018-000204	Request Simple	Nicole Mason	11/01/2017
DOC-NOAA-2017-001101	Request Complex	Ryan P. Mulvey	04/27/2017
DOC-NOAA-2017-001163	Request Complex	Jacqueline Iwata	05/05/2017
DOC-NOAA-2017-001967	Request Simple	Jennifer E. Kollmer	09/22/2017
DOC-NOAA-2017-001745	Request Simple	Michael Ravnitzky	08/22/2017
DOC-NOAA-2017-001756	Request Simple	Jeff Tollefson	08/24/2017
DOC-NOAA-2017-001734	Request Simple	Andrew C. Revkin	08/21/2017
DOC-NOAA-2017-001739	Request Simple	Lauren N. Evans	08/22/2017
DOC-NOAA-2017-001722	Request Simple	Michael Ravnitzky	08/21/2017
DOC-NOAA-2018-000180	Request Simple	James McNally	10/30/2017
DOC-NOAA-2017-001760	Request Simple	John Harding	08/16/2017

Assigned To	Due	Days Backlogged
AGO	01/09/2018	17
AGO	01/13/2017	221
AGO	07/31/2015	628
CAO	12/20/2017	29
CAO	11/03/2017	60
CAO	05/11/2017	182
LA	11/08/2017	57
NESDIS	03/29/2017	213
NMFS	01/30/2018	3
NMFS	02/16/2018	7
NMFS	01/24/2018	7
NMFS	01/24/2018	7
NMFS	01/18/2018	11
NMFS	01/16/2018	13
NMFS	01/09/2018	17
NMFS	12/13/2017	34
NMFS	12/01/2017	42
NMFS	11/21/2017	49
NMFS	11/16/2017	52
NMFS	10/25/2017	67
NMFS	12/29/2017	78
NMFS	10/06/2017	79
NMFS	09/25/2017	88
NMFS	09/21/2017	97
NMFS	08/11/2017	104
NMFS	07/21/2017	108
NMFS	08/10/2017	118
NMFS	06/22/2017	120
NMFS	07/28/2017	125
NMFS	08/01/2017	126
NMFS	07/26/2017	130
NMFS	07/21/2017	139
NMFS	07/13/2017	139
NMFS	07/03/2017	147
NMFS	07/03/2017	147
NMFS	07/03/2017	147
NMFS	05/16/2017	151
NMFS	08/16/2017	153
NMFS	06/20/2017	155
NMFS	06/20/2017	155
NMFS	05/09/2017	168
NMFS	09/22/2016	176
NMFS	01/13/2017	217
NMFS	01/05/2017	270
NMFS	10/28/2016	315
NMFS	10/27/2016	316
NMFS	05/25/2016	416
NMFS	02/04/2016	417
NMFS	09/10/2014	594
NMFS	12/05/2014	784
NOAA FOIA	02/01/2018	1

NOAA FOIA	10/26/2017	66
NOS	02/08/2018	1
NOS	12/14/2017	26
NOS	03/07/2017	30
NOS	10/02/2017	50
NOS	05/23/2017	55
NOS	09/19/2017	92
NOS	09/05/2017	102
NWS	01/24/2018	7
NWS	10/24/2017	66
NWS	05/19/2017	132
NWS	04/12/2017	192
OAR	01/18/2018	11
OAR	12/05/2017	40
OAR	11/16/2017	52
OAR	10/30/2017	64
OAR	10/25/2017	65
OAR	09/19/2017	92
OAR	11/25/2016	157
OAR	11/09/2016	160
OC	11/08/2017	13
OC	08/30/2017	105
OC	08/16/2017	115
OGC	12/18/2017	31
OGC	12/01/2017	38
OGC	06/16/2017	157
OGC	06/16/2017	157
OMAO	11/08/2017	57
USEC	09/22/2017	89
USEC	09/22/2017	89
USEC	09/20/2017	91
USEC	09/20/2017	91
USEC	09/19/2017	92
WFMO	12/05/2017	40
WFMO	10/10/2017	79

Tracking Number	Type	Requester
DOC-NOAA-2018-000465	Request	Eleanor Chernoff
DOC-NOAA-2018-000426	Request	Patrick Wardell
DOC-NOAA-2018-000389	Request	Rachel Terry
DOC-NOAA-2017-000580	Request	Bill Marshall
DOC-NOAA-2018-000424	Request	Paula Blanco
DOC-NOAA-2018-000415	Request	Hallie G. Templeton
DOC-NOAA-2018-000405	Request	Ryan P. Mulvey
DOC-NOAA-2018-000394	Request	Todd Schmitt
DOC-NOAA-2018-000419	Request	Anthony M. Barnes
DOC-NOAA-2018-000383	Request	Sharyn Taylor
DOC-NOAA-2018-000369	Request	Joseph Kakesh
DOC-NOAA-2018-000433	Request	James Buchal
DOC-NOAA-2017-000226	Request	Emma Hiolski
DOC-NOAA-2018-000316	Request	Lindsey Collom
DOC-NOAA-2018-000177	Request	Roberta Goodman
DOC-NOAA-2018-000124	Request	Thomas T. Alspach
DOC-NOAA-2017-001981	Request	Daniel L. Timmons
DOC-NOAA-2017-001729	Request	Robert Boesch
DOC-NOAA-2017-001420	Request	Russ Kick
DOC-NOAA-2017-000744	Request	Zeenat Mian
DOC-NOAA-2017-000361	Request	Peter Shelley
DOC-NOAA-2018-000619	Request	Anthony M. Barnes
DOC-NOAA-2018-000618	Request	Anthony M. Barnes
DOC-NOAA-2018-000617	Request	Anthony M. Barnes
DOC-NOAA-2018-000213	Request	Rachel S. Bradshaw
DOC-NOAA-2018-000579	Request	Allan Blutstein
DOC-NOAA-2018-000620	Request	Muir McCammon
DOC-NOAA-2017-001912	Request	Micah Maidenberg
DOC-NOAA-2017-001757	Request	Jacob Holle
DOC-NOAA-2018-000563	Request	Stephanie Kuzydym
DOC-NOAA-2018-000562	Request	Stephanie Kuzydym
DOC-NOAA-2018-000440	Request	Noah Rosmarin
DOC-NOAA-2018-000365	Request	Noah Rosmarin
DOC-NOAA-2018-000322	Request	Jacob R. Beck
DOC-NOAA-2018-000314	Request	Danielle McLean
DOC-NOAA-2017-001928	Request	Jacob Holle
DOC-NOAA-2018-000614	Request	Bruce D. Kuyper
DOC-NOAA-2017-001871	Request	Douglas Mackenzie
DOC-NOAA-2017-001825	Request	Robert A. Shuchman
DOC-NOAA-2017-001680	Request	Robert Shuchman
DOC-NOAA-2017-001403	Request	Robert Shuchman
DOC-NOAA-2018-000425	Request	Holly Jablonski
DOC-NOAA-2018-000181	Request	Lieutenant Anna-Liza Villard-Howe
DOC-NOAA-2018-000145	Request	Madeleine Stone
DOC-NOAA-2018-000352	Request	Neil S. Lamartin



Requester Organization	Submitted	Received	Assigned To
	12/12/2017	12/12/2017	AGO
	12/10/2017	12/11/2017	AGO
	12/05/2017	12/05/2017	NESDIS
Judicial Watch	02/08/2017	02/08/2017	NESDIS
	12/10/2017	12/11/2017	NMFS
Friends of the Earth	12/07/2017	12/07/2017	NMFS
Cause of Action Institute	12/07/2017	12/07/2017	NMFS
	12/06/2017	12/06/2017	NMFS
ATA Law Group	12/05/2017	12/05/2017	NMFS
	12/04/2017	12/04/2017	NMFS
Wiley Rein LLP	12/01/2017	12/01/2017	NMFS
Murphy & Buchal LLP	11/29/2017	11/29/2017	NMFS
	11/29/2016	11/29/2016	NMFS
The Arizona Republic	11/21/2017	11/21/2017	NMFS
	10/29/2017	10/30/2017	NMFS
Sea Watch International, Ltd.	10/18/2017	10/18/2017	NMFS
Southern Environmental Law Center	09/20/2017	09/20/2017	NMFS
University of Hawaii at Manoa	08/21/2017	08/21/2017	NMFS
	06/25/2017	06/26/2017	NMFS
	03/08/2017	03/08/2017	NMFS
Conservation Law Foundation	12/22/2016	12/22/2016	NOAA FOIA
Aqua Terra Aeris Law Group	12/05/2017	12/05/2017	NOAA FOIA
Aqua Terra Aeris Law Group	12/05/2017	12/05/2017	NOAA FOIA
Aqua Terra Aeris Law Group	12/05/2017	12/05/2017	NOAA FOIA
ReidGoodwin	11/03/2017	11/03/2017	NOAA FOIA
America Rising Squared	10/04/2017	10/04/2017	NOAA FOIA
MuckRock News	10/03/2017	10/03/2017	NOAA FOIA
Reporting Fellow, Columbia University School of Journalism	09/22/2017	09/22/2017	NOAA FOIA
Physical Optics Corporation	08/24/2017	08/24/2017	NOAA FOIA
KHOU-TV	01/12/2018	01/12/2018	NOAA FOIA
KHOU-TV	01/12/2018	01/12/2018	NOAA FOIA
Adkins, Kelston & Zavez, P.C.	12/13/2017	12/13/2017	NWS
Adkins, Kelston & Zavez, P.C.	11/30/2017	11/30/2017	NWS
	11/21/2017	11/21/2017	NWS
ThinkProgress.org	11/21/2017	11/21/2017	NWS
Physical Optics Corporation	09/18/2017	09/18/2017	NWS
	01/23/2018	01/23/2018	NWS
	09/16/2017	09/18/2017	OAR
Michigan Technological University, MTRI	09/08/2017	09/08/2017	OAR
MTRI, MTU	08/09/2017	08/09/2017	OAR
MTRI, Michigan Technological University	06/20/2017	06/20/2017	OAR
	12/10/2017	12/11/2017	OMAO
	10/24/2017	10/24/2017	OMAO
Gizmodo	10/22/2017	10/23/2017	USEC
	11/29/2017	11/29/2017	WFMO

Perfected?	Due	Closed Date	Status	Dispositions
Yes	01/17/2018	01/10/2018	Closed	Full grant
Yes	01/18/2018	01/10/2018	Closed	Full grant
Yes	01/09/2018	01/31/2018	Closed	Full grant
Yes	04/05/2017	01/04/2018	Closed	Partial grant/partial denial
Yes	01/18/2018	01/17/2018	Closed	Full grant
Yes	01/16/2018	01/25/2018	Closed	No records
Yes	01/09/2018	01/24/2018	Closed	Partial grant/partial denial
Yes	01/16/2018	01/23/2018	Closed	Full grant
Yes	02/14/2018	01/24/2018	Closed	Full grant
Yes	01/09/2018	01/12/2018	Closed	Full grant
Yes	01/09/2018	01/24/2018	Closed	Full grant
Yes	01/26/2018	01/29/2018	Closed	Full grant
Yes	01/12/2018	01/12/2018	Closed	Partial grant/partial denial
Yes	01/09/2018	01/12/2018	Closed	Full grant
Yes	12/05/2017	01/24/2018	Closed	Full grant
Yes	12/06/2017	01/11/2018	Closed	Partial grant/partial denial
Yes	11/20/2017	01/02/2018	Closed	Partial grant/partial denial
Yes	09/19/2017	01/30/2018	Closed	Partial grant/partial denial
Yes	07/28/2017	01/23/2018	Closed	Full grant
Yes	04/06/2017	01/23/2018	Closed	Partial grant/partial denial
No	TBD	01/31/2018	Closed	Other - Admin close - still interested letter
No	TBD	01/29/2018	Closed	Duplicate request
No	TBD	01/29/2018	Closed	Duplicate request
No	TBD	01/29/2018	Closed	Duplicate request
No	TBD	01/29/2018	Closed	Improper FOIA request for other reason
Yes	11/02/2017	01/17/2018	Closed	Duplicate request
No	TBD	01/29/2018	Closed	Duplicate request
Yes	10/25/2017	01/29/2018	Closed	Full grant
No	TBD	01/24/2018	Closed	Duplicate request
No	TBD	01/17/2018	Closed	Other - Aggregate cases
No	TBD	01/17/2018	Closed	Other - Aggregate cases
Yes	01/18/2018	01/02/2018	Closed	Full grant
Yes	01/09/2018	01/02/2018	Closed	Full grant
Yes	01/09/2018	01/31/2018	Closed	Other - Admin close - still interested letter
Yes	12/20/2017	01/02/2018	Closed	Partial grant/partial denial
Yes	10/25/2017	01/24/2018	Closed	Partial grant/partial denial
Yes	02/22/2018	01/31/2018	Closed	Full grant
Yes	10/17/2017	01/23/2018	Closed	No records
Yes	10/13/2017	01/31/2018	Closed	Duplicate request
Yes	09/19/2017	01/23/2018	Closed	Partial grant/partial denial
Yes	07/25/2017	01/12/2018	Closed	Partial grant/partial denial
Yes	01/18/2018	01/24/2018	Closed	Full grant
Yes	01/05/2018	01/09/2018	Closed	Partial grant/partial denial
Yes	11/21/2017	01/16/2018	Closed	Partial grant/partial denial
Yes	01/09/2018	01/02/2018	Closed	Full grant

## Detail

I am requesting a copy of the NOAA CELCP Siskiwit River Estuary Protection Project submitted in October 2016. The Hawaii Marine Mammal Alliance has received several grants from NOAA. I would like copies of all of the grant I would like copies of any reports prepared for or by NOAA regarding commercial weather data. Specifically, the vic Any and all records of communication between NOAA scientist Thomas Karl and Director of the Office of Science : Dear FOIA: Pursuant to the federal Freedom of Information Act, 5 U.S.C. &sect; 552, I am requesting access to re Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. &sect; 552, Friends of the Earth requests all records On April 11, 2017, CoA Institute submitted a comment to the New England and Mid-Atlantic Fishery Management ( Marine Mammal Inventory Dispositions - Deaths - cetaceans and pinnipeds, Acquisitions - wild captures - cetacear 1. Any and all documents generated on or after August 19, 2015 referring to, relating to, or regarding the [Merced F All reported necropsy reports for all Cetaceans from Sea World Enterprises Gold Coast, Queensland Australia (No Please also see attached letter. Pursuant to the Freedom of Information Act ("FOIA"), as amended, 5 U.S.C. Sectio I have another FOIA request as to which Dr. Zabel is probably the most knowledgeable custodian of documents. A I request access to and copies of any and all documents pertaining to California Governor Jerry Brown's request (F Marine Mammal Inventory (including any acquisitions, dispositions and notifications of transfer and/or transport) in Through the FOIA, I request all records of Bottlenose dolphins, Pilot Whales, Orcas, Pacific Whitesided dolphins a November 8, 2017: Based on phone conversation today, November 8, 2017, with requester, he acknowledge and c Pursuant to the Freedom of Information Act (&quot;FOIA&quot;), 5 U.S.C. &sect; 552, the Southern Environmental REVISED DESC 10/23: Records of strandings in the National Stranding Database from 1997 to present in the mail I hereby request all Marine Mammal Stranding Report forms (NOAA Form 89-864) that have been turned in to NMI Under the Freedom of Information Act I would like to request all documents and communications inter office (withir Expedited Review is sought pursuant to 15 CFR &sect; 4.6(f) Re: Freedom of Information Act Request – Northeast

See Attached

See attachment

See attachment

The hourly climate/weather data, including the temperature, wind chill temperature, and precipitation for the dates c Please accept this email as a request pursuant to the Freedom of Information Act for access to any email sent by k This is a request under the Freedom of Information Act. I hereby request the following records: I would like copies o To the National Oceanic and Atmospheric Administration - National Hurricane Center FOIA Officer: This is a reque was interested in gaining access to the Ops1 webpage links. Specifically, I am interested in files discussing Airfield January 12, 2018 Pursuant to the Freedom of Information Act, KHOU-TV respectfully requests: Copies of any and January 12, 2018 Pursuant to the Freedom of Information Act, KHOU-TV respectfully requests: Copies of any and Please provide all wind warnings, wind watches, and wind advisories for the Winthrop, Massachusetts, and Winthr We request that you please provide records of all small craft advisory warnings and gale warnings for the Boston, I Everything Related to Hurricane Katrina (2005). More specifically the landfall impact's felt as a result of the hurricar All comments submitted to the National Weather Service's online comment portal between August 23, 2017 and S UPDATED REQUEST 9/26 - I am interested in obtaining records describing Airfield Weather Sensors, and specific All Zone Area Forecasts for Western Montgomery County, Pennsylvania (Zone ID PAZ103) that were valid for any Dear NOAA: I request copies of records under the Freedom of Information Act (5 U.S.C. 552) containing data that NOAA Response Requested - After Michigan Tech's initial request to NOAA (Candice Jongsma - NOAA Federal ) We placed a request for a formal debrief on a proposal declination on Jun 20 - DOC-NOAA-2017-001403. The due Michigan Tech kindly requests a formal debrief on the CILER21 proposal that was not selected for funding. NOAA- NOAA Office of Marine and Aviation Operations (OMAO), Marine Operations Center (MOC) Customer Satisfaction I request a complete and unredacted copy of any and all documents related to the NOAA Corps' decision to Separ: Any emails or internal chat room messages (such as Slack)&nbsp;sent to or from NOAA public affairs officers Sus Looking for copy of the official narrative for General Engineer Position Description NA9028.

progress reports they submitted detailing their progress in these grants. In particular, I'm interested in availability, feasibility, accessibility, etc. of NOAA or related agencies buying weather data from a private party and Technology Policy John Holdren. The time frame for the requested records is January 20, 2009 through reports for SeaWorld San Diego, Marineland of Canada and Barcelona Zoo on pinniped historical transfers pertaining to any environmental review, assessment, consultation, or other procedures conducted the National Councils, and the National Oceanic and Atmospheric Administration ("NOAA") Greater Atlantic Regional Fisheries and Pinnipeds, Acquisitions - Birth - Cetaceans and Pinnipeds River] flow rates, for five miles above and below the Pilarcitos Dam. 2. Any and all documents generated within known As Sea World Gold Coast) from 1971-2017 on 552, and the Department of Commerce ("Department") rules issued thereunder, 15 C.F.R. Part 4, I ask as far as I know, someone at Montlake calculates "transportation-in-river ratios" or TIRs every year based on February 09, 2016 letter to Secretary of Commerce Penny Pritzker) that a federal fishery disaster be declared the months of September 2017 and October 2017 for Dolphinaris Arizona, 9500 E Via de Ventura, Scottsdale and any other cetaceans held by commercial permit to permanently hold captive by Marine World, Redwood confirm that his request included 2014 under DOC-NOAA-2016-000889 for citations, violations, fine and/ Law Center ("SELC") on behalf of American Rivers hereby requests certain records in the Pacific Northwest and Hawaiian Islands. If there is a stranding event reported for a juvenile Humpback Whale on Maui in February since July 1, 2016. Further, I ask that these documents be sent to me in any digital formats in which they were created (i.e. NOAA) and intra office (between NOAA and external sources/entities) where the Hawaiian Monk Seal, Florida Canyons and Seamounts Marine National Monument and any other marine national monument records

of December 7, 2013 through December 12, 2013 from Richmond Executive Airport, Chesterfield County Kathleen Hibbard from June 14, 2017, through June 27, 2017 that mentions or refers to the Climate Science of all tweets deleted by NOAA's National Weather Service (@NWS) from January 2012 to the present. I request under the Freedom of Information Act. I request that a copy of the following documents be provided to me: Weather Sensing equipment. My employer, Physical Optics Corporation, has been working with the US Coast Guard all email between August 23 to August 30 sent or received by National Hurricane Center deputy director all email between August 23 to August 30 sent or received by Storm Prediction Center director Russell Skerfving on Cape Cod Harbor, Massachusetts, areas (or nearest to those areas) issued at any time on October 23, 2016. The Massachusetts harbor marine area (more specifically those warnings for the Winthrop, Massachusetts harbor area. Also if there are any reports from the National Hurricane Center, please include those. These records from September 13, 2017 related to Hurricane Harvey and Hurricane Irma. <https://www.weather.gov/contact-mail> anything related to maintenance and field calibration methods conducted. I would only need the most recent times on February 14, 2016 between 12:00 p.m. noon and 11:59 p.m. EST, presumably issued by the National Weather Service refers to and/or describes the dispersal of materials in the atmosphere visible over Monterey County, California for a formal debrief on the declined CILER21, we were sent a link to file a request on this FOIA website on the date listed on the request is July 25. We still have not received a formal debrief or any indication that the request was denied. OAR-CIPO-2017-2005127 - candice.jongsma@noaa.gov

Surveys submitted by the scientific parties, and any attached comments or related notes on record, for the benefit of the Service. Because I am requesting documents about myself, I have enclosed an affidavit from Buchanan, Maureen O'Leary, or John Leslie regarding the new Warner Brothers movie Geostorm

[REDACTED]

what they state they have done in regards to educational school programs administered by Kathy Brown.  
y.

ough January 20, 2017.

s and status, including living and deceased animals, and origin of birth. I would like pinniped species to l  
ational Oceanic and Atmospheric Administration (NOAA) pursuant to the National Environmental Policy  
Fisheries Office, concerning the draft Industry-Funded Monitoring (IMF) Omnibus Amendment. Specific

on or after August 19, 2015 referring to, relating to, or regarding impacts on any species listed pursuan

m requesting the following records: (1) Any and all FOIA requests submitted in 2017 to the Department,  
l on PIT-tag data for returning ESA-listed Snake River Chinook salmon and steelhead. We are looking for  
lared following extended closure of West Coast Dungeness crab fisheries. This includes but is not limite  
tsdale, AZ, 85256. I'm also requesting any necropsy reports for animals that died in the care of Dolphina  
od City; and Marine World/Africa USA, Redwood City; and Vallejo and Six Flags, Vallejo since its incep  
'or permit sanctions related to surf clam/ocean quahogs and that no responsive information was found fr  
ossession or control of NOAA Fisheries (also known as the National Marine Fisheries Service) related to  
bruary 2008, please include photos and comments, necropsy results and other information. Do not includ  
they exist. Under the terms of the E-FOIA Amendments of 1996, Section 5, if a document exists in elect  
R912-Nihoa-Sally is mentioned from June 28th 2016 until present.

s for the Atlantic Ocean. Supporting documents attached

y, Virginia (KFCI).

nce Special Report (CSSR).

This would include any tweets sent out on Twitter that were deleted or kept in draft form from the Twitter  
ome: a list or log of all Freedom of Information Act requests received by the National Oceanic and Atmc  
; Air Force, Navy, and Marine Core weather departments to develop both remote and fixed weather sens  
or Ed Rappaport, Warning Coordinator Meteorologist Daniel Brown and Senior Hurricane Specialists Lix  
Schneider, Warning coordinator meteorologist Patrick Marsh, Branch Chief Bill Bunting and Lead Forec  
he requested materials include: each individual warning, watch, and advisory issued; the time at which e  
arbor marine area if available) issued between October 16, 2016, and October 30, 2016. The requested  
s are requested under the Freedom of Information Act

essage

st recent publications (2016). -----

lational Weather Service Forecast Office for Philadelphia, PA located in Mount Holly, NJ.

alifornia on September 16, 2017, including but not limited to, the composition(s) of the materials disperse  
system. We have placed 2 requests for a formal debrief on a proposal declination. First request on Jun  
ie request has been reviewed. Our earlier request is below: Michigan Tech kindly requests a formal deb

all NOAA Ship Nancy Foster cruises between the dates of 01 March 2012 and 28 February 2013. This i  
d a Statement of Identity. At a minimum, I request that a copy of the following documents be provided to

Several people have informed me that the HMMA claims to have been solely responsible for these prog

oe California sea lions and harbor seals.

Act, 42 U.S.C. &sect; 4321 et seq., and/or the Endangered Species Act, 16 U.S.C. &sect; 1531 et seq., ally, CoA Institute expressed concern over the lack of statutory authority for the Councils and NOAA to c

t to the Federal Endangered Species Act (ESA) or the California Endangered Species Act (CESA) in the

NOAA, NMFS, or any component thereof (including but not limited to the June 27, 2017 FOIA request s or the most recent TIR calculations, specifically including an estimate based on adults returning from the d to communications, reports and records about the fishery disaster, both within the Department of Corr ris Arizona during that period of time.

tion in the 1960's and through the name and location changes from Redwood City, California to present or 2014. His request is now modified to only include the years of 2015 and 2016 of the information he is o NOAA Fisheries' ongoing Endangered Species Act consultation with the Federal Energy Regulatory C de photos, comments, necropsy results or other information for any other stranding events. ----- ronic format, it must be released in that format upon request.

account @NWS. This request also would include copies of any e-mails or correspondence regarding th spheric Administration's National Hurricane Center from Jan 1, 2005 until Sept. 21, 2017. As part of this sors. As a prior Air Force weather forecaster, I understand the benefit of staying up to date with current p ion Avila, Jack Beven, Michael Brennan, Richard Pasch and Stacy R. Stewart, including the keyword(s): asters Roger Edwards, Jeremy Grams, Jared Guyer, John Hart and Rich Thompson, including the keyw each warning, watch, and advisory was issued; and the duration of time in which each warning, watch, ar l materials include each individual warning issued, the time at which each warning was issued, and the d

I was interested in gaining access to the Ops1 webpage links. Specificall

ed and the quantities of each material dispersed. On information and observation, I have probable cause 20, 2017 - Tracking # DOC-NOAA-2017-001403. Our second request on August 9, 2017 - Tracking # D rief on the CILER21 proposal that was not selected for funding. NOAA-OAR-CIPO-2017-2005127 - canc

ncludes, but is not limited to, the following cruises: NF-12-02, NF-12-03, NF-12-04, NF-12-05, NF-12-06 me: 1. The &quot;complete record of the proceedings, including the exhibits,&quot; all findings and rec

[REDACTED]

grams during a time period that the Monk Seal Foundation was paying for the programs to operate unde

with regard to NOAA's recent request for proposals as part of its regional aquaculture pilot project. compel regulated parties to pay for supplemental at-sea monitoring services. Pursuant to the Freedom o

3. Any and all documents generated on or after August 19, 2015 referring to, relating t

submitted by the Center for Biological Diversity with the FOIA request record DOC-NOAA-2017-001431) juvenile class outmigrating in 2015. Presumably there is a paper somewhere, or draft paper out for rev merce and between the DOC and external agencies.

day in Vallejo, California. As well as cetaceans held at the facilities, please included the further transpor seeking for. \_\_\_\_\_END\_\_\_\_\_ 1. All documents that constitute, relate to or quantify dockside i ommission for the Saluda Hydroelectric Project in South Carolina (the "Consultation"). Specifically, we re ----- Records of all cetacean str

e drafting and deletion of these tweets. The requested documents will be made available to the general ; request, I would like to obtain the names of the persons or entities seeking information from the Nation ublications, as well as in touch with the NWS/NOAA departments. Would I be able to gain access to pa • rain • flood • Houston • Hurricane • Harvey • tropical storm • inches • disaster If this information is avai ord(s): • rain • flood • Houston • Hurricane • Harvey • tropical storm • inches • disaster If this information rd advisory was in effect. Thank you. uration of time in which each warning was in effect. Thank you.

to suspect that the materials dispersed include at least Welsbach and Welsbach-like materials (such a OC-NOAA-2017-001680. To date we have not received a formal debrief or any indication that the first o dice.jongsma@noaa.gov

, and NF-12-07. ommendations, and the "Board's recommendation" provided to Rear Admiral Michael J. Silat

[REDACTED]

r a grant from Schofield Barracks Wives Club. PLEASE NOT

of Information Act ("FOIA"), 5 U.S.C. &s

to, or regarding any efforts to mitigate any i

requesting any records relating to draft and/or final biological evaluati  
iew.

tation and dispensation of  
nspections

request the following records related to the Cons

public, and this r  
al Hurricane Center via the FOIA process, a  
rticular Ops1 Publi  
lable electronically, I prefer to receive i  
is available electronically, I prefer to receive it vi

s the oxides of metals), coa  
r second request has been reviewed. Our earlier request is below: Michigan Tech k

n, NOAA, Director, NOAA Corps. This is the same record reviewed







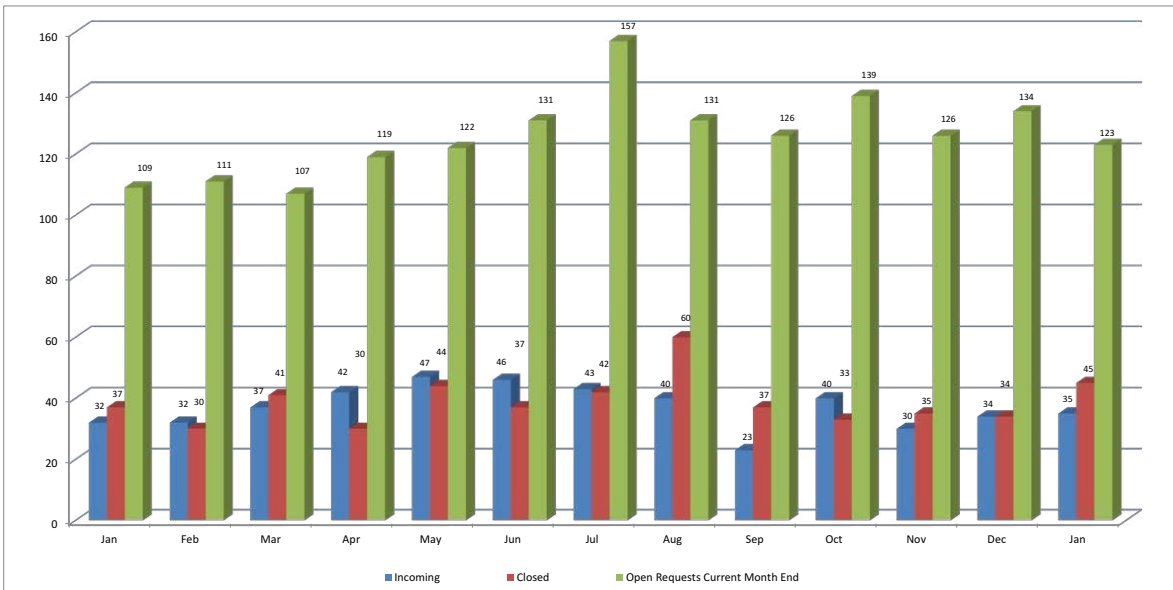


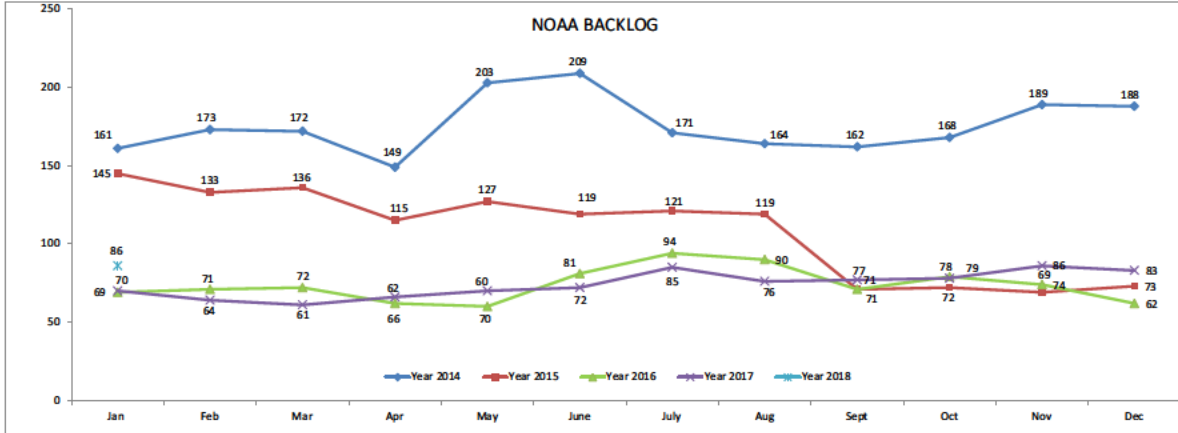
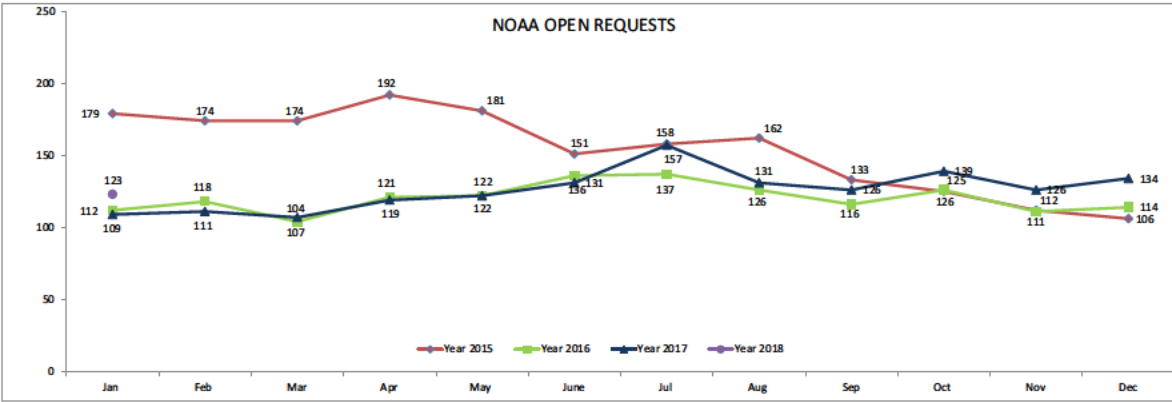




FOIA Monthly Status Report 01 31 2018

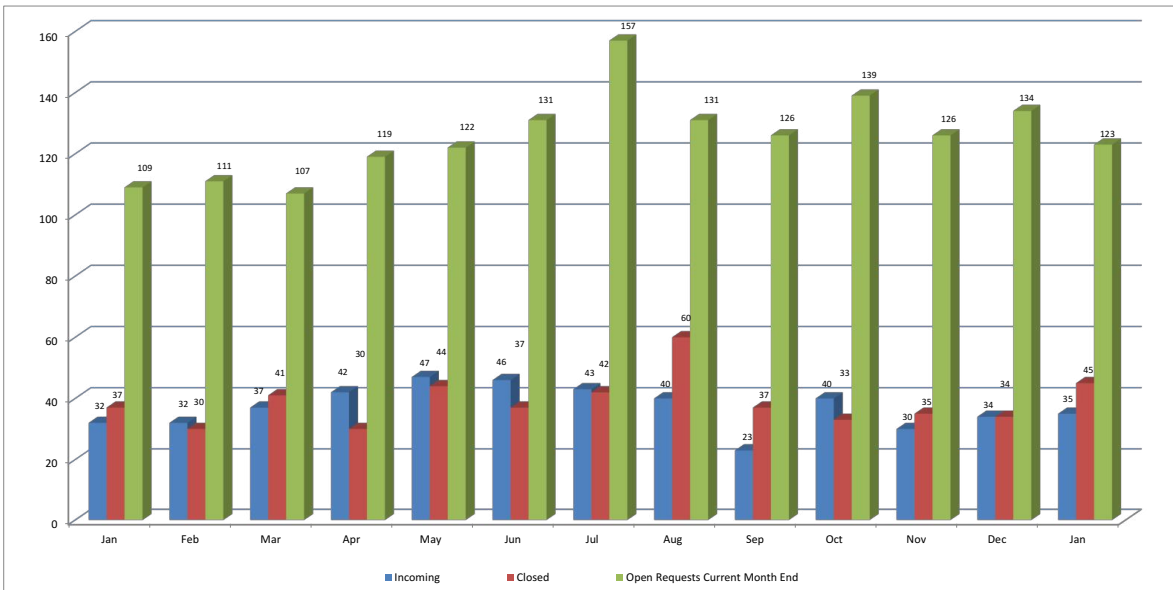
Organization	Open Requests Previous Month End	Incoming Requests	Closed Requests	Open Requests Current Month End	Backlog 21-120 days	Backlog 121-364 days	Backlog 365 or more days	Total Backlog
AGO	6	7	2	10	1	1	1	3
CAO	2	2	0	6	2	1	0	3
CFO	0	0	0	0	0	0	0	0
CIO	0	0	0	0	0	0	0	0
CIO/FOIA	8	8	11	2	2	0	0	2
GC	4	0	0	4	2	2	0	4
IA	0	0	0	0	0	0	0	0
LA	1	0	0	1	1	0	0	1
NESDIS	2	0	2	1	0	1	0	1
NMFS	67	7	16	54	20	18	4	42
NOS	10	2	0	10	7	0	0	7
NWS	6	3	6	5	2	2	0	4
OAR	14	4	4	15	6	2	0	8
OMAO	3	0	2	1	1	0	0	1
OC	3	0	0	3	3	0	0	3
PPI	0	0	0	0	0	0	0	0
USEC	6	1	1	6	5	0	0	5
WFMO	2	1	1	5	2	0	0	2
<b>NOAA Totals</b>	<b>134</b>	<b>35</b>	<b>45</b>	<b>123</b>	<b>54</b>	<b>27</b>	<b>5</b>	<b>86</b>





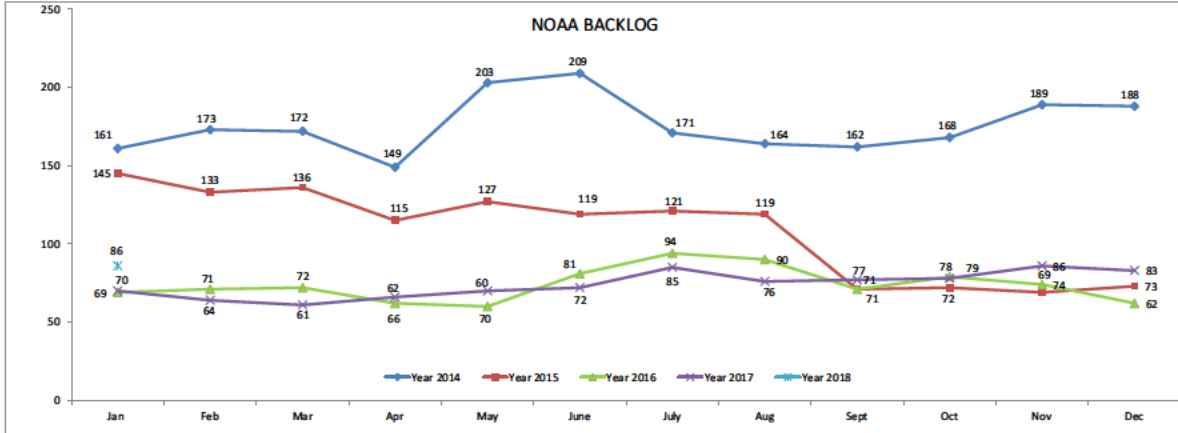
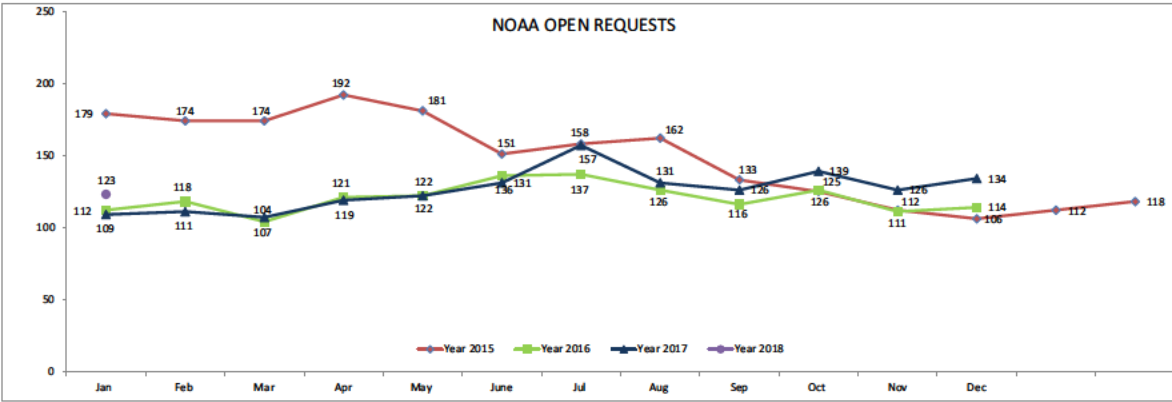
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Organization	Open Requests Previous Month End	Incoming Requests	Closed Requests	Open Requests Current Month End	Backlog 21-120 days	Backlog 121-364 days	Backlog 365 or more days	Total Backlog
AGO	6	7	2	10	1	1	1	3
CAO	2	2	0	6	2	1	0	3
CFO	0	0	0	0	0	0	0	0
CIO	0	0	0	0	0	0	0	0
CIO/FOIA	8	8	11	2	2	0	0	2
GC	4	0	0	4	2	2	0	4
IA	0	0	0	0	0	0	0	0
LA	1	0	0	1	1	0	0	1
NESDIS	2	0	2	1	0	1	0	1
NMFS	67	7	16	54	20	18	4	42
NOS	10	2	0	10	7	0	0	7
NWS	6	3	6	5	2	2	0	4
OAR	14	4	4	15	6	2	0	8
OMAO	3	0	2	1	1	0	0	1
OC	3	0	0	3	3	0	0	3
PPI	0	0	0	0	0	0	0	0
USEC	6	1	1	6	5	0	0	5
WFMO	2	1	1	5	2	0	0	2
<b>NOAA Totals</b>	<b>134</b>	<b>35</b>	<b>45</b>	<b>123</b>	<b>54</b>	<b>27</b>	<b>5</b>	<b>86</b>





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Tracking Number	Type	Requester	Requester Organization	Submitted
DOC-NOAA-2018-000511	Request	Rose Santos	FOIA GROUP INC	12/30/2017
DOC-NOAA-2018-000662	Request	Rose Santos	FOIA GROUP INC	01/30/2018
DOC-NOAA-2018-000629	Request	Zack S. Larson		01/25/2018
DOC-NOAA-2018-000604	Request	Mary McCullough		01/20/2018
DOC-NOAA-2018-000590	Request	Rose Santos	FOIA GROUP INC	01/17/2018
DOC-NOAA-2018-000589	Request	Rose Santos	FOIA GROUP INC	01/17/2018
DOC-NOAA-2018-000582	Request	Joel P. Angeles		01/17/2018
DOC-NOAA-2018-000536	Request	Michael C. Ryan		01/06/2018
DOC-NOAA-2018-000512	Request	Thomas J. Madsen	Port Discovery Seafarms	12/30/2017
DOC-NOAA-2018-000661	Request	Hume Ross		01/30/2018
DOC-NOAA-2018-000660	Request	Hume Ross		01/30/2018
DOC-NOAA-2018-000659	Request	Hume Ross		01/30/2018
DOC-NOAA-2018-000587	Request	Hallie G. Templeton	Friends of the Earth	01/17/2018
DOC-NOAA-2018-000585	Request	Andrew Hitchings	SOMACH SIMMONS & DUN	01/16/2018
DOC-NOAA-2018-000565	Request	Matthew Owens		01/12/2018
DOC-NOAA-2018-000670	Request	Rose Santos	FOIA GROUP INC	01/31/2018
DOC-NOAA-2018-000666	Request	Alexis Thomas		01/31/2018
DOC-NOAA-2018-000665	Request	Alexis Thomas		01/31/2018
DOC-NOAA-2018-000647	Request	Harold Henderson	Thompson Hine LLP	01/29/2018
DOC-NOAA-2018-000636	Request	Steve Ham	Secure Lead Solutions LLC	01/28/2018
DOC-NOAA-2018-000627	Request	Doug Simpson		01/25/2018
DOC-NOAA-2018-000563	Request	Stephanie Kuzydym	KHOU-TV	01/12/2018
DOC-NOAA-2018-000562	Request	Stephanie Kuzydym	KHOU-TV	01/12/2018
DOC-NOAA-2018-000657	Request	Daniel G. Sullivan	Roux Associates, Inc	01/30/2018
DOC-NOAA-2018-000621	Request	stephen j. franklin		01/24/2018
DOC-NOAA-2018-000614	Request	Bruce D. Kuyper		01/23/2018
DOC-NOAA-2018-000561	Request	Stephanie Kuzydym	KHOU-TV	01/12/2018
DOC-NOAA-2018-000553	Request	Nicole S. Ngo	University of Oregon	01/09/2018
DOC-NOAA-2018-000607	Request	David E. Holcomb		01/23/2018
DOC-NOAA-2018-000596	Request	Daniel B. Harwood		01/18/2018
DOC-NOAA-2018-000572	Request	Jeff Ruch	PEER	01/16/2018
DOC-NOAA-2018-000638	Request	Nicole Mason		01/11/2018
DOC-NOAA-2018-000615	Request	Gary M. Crothers	Small-Medium	01/24/2018
DOC-NOAA-2018-000598	Request	Brian C. Eiler		01/18/2018
DOC-NOAA-2018-000554	Request	Terra Mowatt		01/08/2018

Received	Assigned To	Perfected?	Due	Closed Date	Status
01/02/2018	AGO	Yes	02/08/2018	TBD	Assignment Determination
01/30/2018	AGO	Yes	03/06/2018	TBD	Assignment Determination
01/25/2018	AGO	Yes	03/06/2018	TBD	Assignment Determination
01/22/2018	AGO	Yes	02/22/2018	TBD	Assignment Determination
01/17/2018	AGO	Yes	02/21/2018	TBD	Assignment Determination
01/17/2018	AGO	Yes	02/21/2018	TBD	Assignment Determination
01/17/2018	AGO	Yes	02/21/2018	TBD	Assignment Determination
01/08/2018	CAO	Yes	02/08/2018	TBD	Final Preparation of Response
01/02/2018	NMFS	Yes	02/23/2018	02/05/2018	Closed
01/30/2018	NMFS	Yes	03/06/2018	TBD	Assignment Determination
01/30/2018	NMFS	Yes	03/06/2018	TBD	Assignment Determination
01/30/2018	NMFS	Yes	03/06/2018	TBD	Assignment Determination
01/17/2018	NMFS	Yes	03/07/2018	TBD	Assignment Determination
01/16/2018	NMFS	Yes	03/01/2018	TBD	Assignment Determination
01/12/2018	NMFS	Yes	02/14/2018	TBD	Assignment Determination
01/31/2018	NOAA FOIA	No	TBD	TBD	Submitted
01/31/2018	NOAA FOIA	No	TBD	TBD	Submitted
01/31/2018	NOAA FOIA	No	TBD	TBD	Initial Evaluation
01/29/2018	NOAA FOIA	No	TBD	TBD	Initial Evaluation
01/29/2018	NOAA FOIA	Yes	03/06/2018	TBD	Assignment Determination
01/25/2018	NOAA FOIA	No	TBD	02/05/2018	Closed
01/12/2018	NOAA FOIA	No	TBD	01/17/2018	Closed
01/12/2018	NOAA FOIA	No	TBD	01/17/2018	Closed
01/30/2018	NOS	Yes	03/06/2018	TBD	Assignment Determination
01/24/2018	NOS	Yes	03/06/2018	TBD	Assignment Determination
01/23/2018	NWS	Yes	02/22/2018	01/31/2018	Closed
01/12/2018	NWS	Yes	02/14/2018	TBD	Assignment Determination
01/09/2018	NWS	Yes	02/07/2018	TBD	Assignment Determination
01/23/2018	OAR	Yes	02/22/2018	TBD	Assignment Determination
01/18/2018	OAR	Yes	02/21/2018	TBD	Assignment Determination
01/16/2018	OAR	Yes	02/21/2018	TBD	Assignment Determination
01/11/2018	OAR	Yes	02/26/2018	TBD	Assignment Determination
01/24/2018	CAO	Yes	02/22/2018	TBD	Assignment Determination
01/18/2018	USEC	Yes	02/21/2018	TBD	Assignment Determination
01/08/2018	WFMO	Yes	02/06/2018	TBD	Assignment Determination

## Dispositions

Not an agency record  
No records

Improper FOIA request for other reason  
Other - Aggregate cases  
Other - Aggregate cases

Full grant

## Detail

[Reference FGI 17- 55437] relevant to DOC DG133W10CQ0049 Orders 8,12,14,15,18-23,25 we seek the following

[Reference FGI# 18-56041] Good morning, under the provisions of the Freedom of Information Act, and relevant a

According to the General Services Administration (see [https://smartpay.gsa.gov/sites/default/files/SP2\\_StatsTool\\_I](https://smartpay.gsa.gov/sites/default/files/SP2_StatsTool_I)

Any and all records, files, notes, personnel actions, contracts regarding my contract and temporary employment at

[FGI 18- 55919] Relevant to DOCAB133018CN0002, we seek copy of the contract SOW/PWS; and attachments

[FGI 18- 55918] Relevant to DOCAB133018CN0003, we seek copy of the contract SOW/PWS; and attachments

Hello, Hope this message finds you well. I worked on the NPOESS NPP/JPSS (VIIRS) program from 2005-2008. I

In September of 2017 an investigation into the Conduct of William Parker Meteorologist In Charge of the National \

this FOIA concerns: Washington State Recreation and Conservation Office project #04-1649 Salmon/Snow Lower

As set out fully in the attached letter, this request is for records possessed by the National Marine Fisheries Service

As set out fully in the attached letter, this request is for records possessed by the National Marine Fisheries Service

As set out fully in the attached letter, this request is for records possessed by the National Marine Fisheries Service

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. &sect; 552, Friends of the Earth requests all records

The request seeks all records and documents subject to disclosure under FOIA within the following nine categories:

Request directed to National Marine Fisheries Service, Pacific Islands Regional Office. Please see attached files. |

[FGI 18-56059] Relevant to Contract No. DOCEA133C17BA0062, National Oceanic And Atmospheric Administrati

I am requesting any marine mammal necropsy reports or necropsy-related information reported from Dolphin Ques

I am requesting any marine mammal necropsy reports or necropsy-related information reported by Sea Life Park F

1) the agreement between American Export Lines, Inc. (my client's merger predecessor) and Isbrandtsen Compan

I am requesting a employee e-mail contact list in Excel Spreadsheet format (if possible) for all N.O.A.A. employees

I would appreciate receiving a certified copy of National Weather Service past data described in (1)-(4) below for J:

January 12, 2018 Pursuant to the Freedom of Information Act, KHOU-TV respectfully requests: Copies of any and

January 12, 2018 Pursuant to the Freedom of Information Act, KHOU-TV respectfully requests: Copies of any and

Request a copy of the Natural Resource Damage Assessment and the Habitat Equivalency Analysis (if not already

Requesting digital (online) copies of Approved Special Use Permits for Scientific Scuba Diving Activities on the US

All Zone Area Forecasts for Western Montgomery County, Pennsylvania (Zone ID PAZ103) that were valid for any

January 12, 2018 Pursuant to the Freedom of Information Act, KHOU-TV respectfully requests: Copies of any and

I'm an asst. prof. at the Univ. of Oregon interested in how well forecasts align with actual events. I wanted to know

All radar data captured by the National Weather Radar Testbed (Phased Array Site, Norman, OK) on May 20, 201:

Summary spreadsheet (or equivalent) of completed NOAA Form 17-4 (Initial Report On Weather Modification Activ

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, as amended, Public Employees for Environmental Resp

AJJ time and attendance records and computer records retrieved and submitted to the Office of Audits and Investig

I am requesting the Inspector General Report composed as a result of DOC OIG Referral 17-0688-N. I filed the all

A letter from Deputy Under Secretary for Operations Ben Friedman to the Government Accountability Office regard

CLARIFIED REQUEST SCOPE 1/23/18: A FOIA request for job announcement number (Financial Management S)

[REDACTED]

: (1) specified task orders with current SOW/PWS, labor rates and all modifications agency regulations, I hereby request a copy of the following information data fields for the time period Jar FY18\_M3\_v3\_EXTERNAL%20%282%29.xlsx) in Fiscal Year 2017 the Department of Commerce had 3 NOAA's CPO, NOS and other departments within NOAA. Location: Silver Spring, Maryland. (1)Sole So

would like to request any contract pertaining to this program for this time period. This was also under N Weather Service Forecast Office in Jackson Mississippi was conducted. This investigation was conduct Watershed Restoration: final report (see attached): invoice #22 Active 10/2/2008 12:00 AM MikeR state e("NMFS") related to certain documents and meetings, all of which were described in Chapte e("NMFS") related to certain meetings, calls, and webinars, all of which were described in Ch e("NMFS") related to certain interagency workshops, all of which were described in Chapter 2 pertaining to Manna Fish Farms or its Chief Executive Officer, Donna Lanzetta, from January 1, 2016 to s of records. In this request, we use the terms "National Oceanic and Atmospheric Administration f Freedom of Information Act request for fisheries data from Tri Marine owned and other US flagged tuna on ("NOAA") Blanket Purchase Agreement ("BPA") for Life Science And Technical Support Services, iss st Hawaii and Dolphin Quest Oahu from 2000 to present. Thank you.

lawii (Owned by Palace Entertainment) from 2000 to present. Particularly, I am looking for the necrops y, Inc. (the "AEL/ICI Agreement, together with any related agreements), dated on or around November 2 ; in the states of IL, IN, MN, and PA, separated by state if possible, to be sent via e-mail.

anuary 05, 2018 between 6:00 p.m. and 8:00 p.m. (or other conveniently available time or report that em all email between August 23 to August 30 sent or received by National Hurricane Director deputy direct all email between August 23 to August 30 sent or received by Storm Prediction Center director Russell ; included in the Damage Assessment) for the Lower Duwamish Waterway Superfund Site in Seattle, W: S Monitor, issued by NOAA's Office of National Marine Sanctuaries. The time frame is from 2007 thru th times on February 14, 2016 between 12:00 p.m. noon and 11:59 p.m. EST, presumably issued by the N all email between August 23 to August 30 sent or received by Weather Prediction Center director David if NOAA kept any history data on forecasts (e.g., forecast temperature, precipitation for a given day).

3 from 2:00PM CDT until 4:00PM CDT. (Essentially the EF-5 tornado event) This data requested would i /ities), in effect during 2017. For a similar request for the 2014 data, which was fully granted, please see onsibility (PEER), requests information concerning recent actions to comply with the requirements of the gations Unit pertaining to the Office of Inspector General complaint filed by Katy Stewart referencing Nic egations that triggered this IG report process under the Whistleblower Act, I am the Whistleblower in this ling National Weather Service staffing vacancies. This letter should have been transmitted in the secon specialist SO-CFO-2017-0020/SO-CFO-2017-0021) for which I interviewed for on 8 September 2017 at 1

January 1, 2017 through Present, relevant to your agency's employee SMARTPAY Credit Card Purchase February 29, 2015 GSA SmartPay Purchase Card holders, with a total spend of \$101,277,023.17. I would like an Executive Contract in my name Mary McCullough, Company: Hometown Events and Management. (2) Temp

GSA Contract No. 50-SPNA-9-00010 <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.201.280>  
Requested by J. Kirk Essmyer Inquiry Official / Appeals Officer NOAA Fisheries Service, National Appeals Office  
Subject: "a site tour was conducted with NOAA Fisheries...Hazardous materials were encountered."  
Paragraph 2 of the NMFS Biological Opinion for chlorpyrifos, diazinon, and malathion issued on December 29, 2015  
Paragraph 2 of the NMFS Biological Opinion for chlorpyrifos, diazinon, and malathion issued on December 29, 2015  
Paragraph 2 of the NMFS Biological Opinion for chlorpyrifos, diazinon, and malathion issued on December 29, 2015  
present.

"Fisheries" (NOAA Fisheries) and "National Marine Fisheries Service" (NMFS). All such  
purpose seine vessels operating in the Western and Central Pacific Fisheries Commission (WCPFC) con-  
ducted under GSA Schedule No. GS00F217CA, we seek a copy of the BPA Contract, all task orders issue

by or any reported information regarding the death of Mikioi, a bottlenose dolphin that died at Sea Life Park  
25, 1960, which was reviewed by the Federal Maritime Board and the office of the Secretary of Commer

includes those hours) collected from the (a) Skylark Airfield in Killeen, Texas, and from Killeen-Ft. Hood F  
or Ed Rappaport, Warning Coordinator Meteorologist Daniel Brown and Senior Hurricane Specialists Lix  
Schneider, Warning coordinator meteorologist Patrick Marsh, Branch Chief Bill Bunting and Lead Forec  
Washington. It is possible that the Damage Assessment has a slightly different title, or is Preliminary, or Dr  
the end of 2017 (in essence 10 years looking back from current date). I only wish for permits that are for  
National Weather Service Forecast Office for Philadelphia, PA located in Mount Holly, NJ.

Novak, deputy director Kathy Gilbert, administrative officer Crystal Rickett and secretary Dawn Cyrus in

include (but not be limited to) Base Reflectivity, Base Velocity, Storm Relative Velocity and correlation cc  
DOC-NOAA-2015-000750.

the Animal Welfare Act by two components of the National Oceanic & Atmospheric Administration (NOAA)  
role Mason; 2. The first management inquiry written by Glenn Boledorich for OAR Leadership and submi  
this matter under federal law, and my allegations included allegations that NOAA consciously and with mal  
the first half of 2016, most likely through NOAA's GAO liaison. If this letter is difficult to locate, perhaps ask the  
7:00 PST via telephone in Seattle, WA with Angela Hunter. Request the following: Hiring decision doc

[REDACTED]

rogram for your agency : Specifically we request: 1. All credit card holder (names, address, tel #, email) or csv file of all Department of Commerce GSA SmartPay Purchase card holder contact information a rary worker through a temporary service, I cannot recall the name of the temp agency. (3) Copy of IBS

5&rep=rep1&type=pdf

and Mr. Steven Goodman NOAA Fisheries Chief National Appeals Office, Office of Management and B t; Please provide any and all information concerning this billing, to include field notes and communicatio )17. (1) Any and all records in NMFS's possession which in any way relate to the discussion of the prepa 9, 2017. (1) Any and all records in NMFS's possession which in any way relate to the discussion of the p 7. (1) Any and all records in NMFS's possession which in any way relate to the discussion of the prepara

usages refer to the United States Department of Commerce, National Oceanic and Atmospheric Admin /ention area. The Tri Marine-specific data request is for fisheries data for activities in the WCPFC conve d thereunder, all modifications issued thereto, and all communications between the Contracting Officer :

rk in 2017. Thank you.

ce, as referenced in Decision B-148413, April 23, 1962, 41 Comp. Gen. 689.

Regional Airport, also in Killeen, Texas: 1. visibility; 2. cloud cover; 3. wind strength and direction; and 4. ion Avila, Jack Beven, Michael Brennan, Richard Pasch and Stacy R. Stewart, including the keyword(s): asters Roger Edwards, Jeremy Grams, Jared Guyer, John Hart and Rich Thompson, including the keyw aft, but since it is being used to compensate the public for the lost services of public domain resources, scuba diving activities only, and only those permits that have been approved. I do not request any permi

cluding the keyword(s): • rain • flood • Houston • Hurricane • Harvey • tropical storm • inches • disaster (

efficient radar products at all angles scanned for that two hour window of time.

i: the Oceanic & Atmospheric Research (OAR) and the National Ocean Service (NOS). Specifically, we r tted to the Office of Audits and Investigations Unit regarding the Office of Inspector General complaint fi ice of forethought, sought to abuse it's jurisdiction to deprive me of my federally recognized property righ GAO liaison to search his email for internal correspondence to/or from Brian Eiler (myself) who helped j uments, interview notes and associated correspondence Rating sheets listing all applicants identified as



[REDACTED]

& their respective transaction data for the last "FY" year in the format as previously provided. To include transaction details for Fiscal Year 2017. Specifically, I am requesting first names, last names, email, and phone numbers for all contractors who have worked on the contract with NOAA for my services as a temporary/contract worker at NOAA, including rate of pay, re

budget. These gentlemen have interviewed numerous NOAA employees and were directed to submit a written report and any information in the possession of NOAA concerning: planning of, the visit any related publication or presentation of biological opinions during the Federal Advisory Committee Act, Pesticide Program Dialogue Conference, or the preparation of biological opinions during any of the (initially monthly, then weekly) hour-long ESA Steering Committee meetings, the preparation of biological opinions during the Interagency Endangered Species Act ("ESA") National Academies

Workshop, National Marine Fisheries Service, and their employees, agents, attorneys, and consultants. In addition, I am requesting information for 2012, 2013, 2014, 2015, and 2016, for fishing vessels Cape Breton, Cape Cod, Cape Elizabeth, and the contractor arising out of or relating to the subject contract. [Agency POC is EMILY.CLARK@NOAA.gov]

humidity. Thanks for your time and effort! Doug Simpson

• rain • flood • Houston • Hurricane • Harvey • tropical storm • inches • disaster If this information is available, please provide it to me as soon as possible. I am requesting this information as well as a basis for monetizing multiple Natural Resource Damage Settlements with Potentially Responsible Parties that have been denied. These permits are specifically for the USS Monitor National Marine Sanctuary

Copies of any and all email between August 23 to August 30 sent or received by Storm Prediction Center

I request the following: 1. The roster for the IACUC members for OAR and NOS; 2. Minutes of the IACUC meeting led by Katy Stewart referencing Nicole Mason and all documents attached to the management inquiry; 3. Documents in the matter of Kohala Coast Enterprises v. Unidentified Shipwrecked Vessel, as such, I believe the documents should be pulled together.

Not qualified, Qualified, and Best Qualified Resumes of all applicants

[REDACTED]

include - (A) Cardholder employee name  
phone, and location as well as date of purchase  
reason for my removal from support position. Any and all records or reports for

written reports  
violations and contamination encounters  
committee meetings

In response to this request, we refer to the "Sacramento  
Elizabeth  
AA.GOV]

If available electronically, I prefer to receive it  
if it is available electronically, I prefer to receive it via  
interested Parties, this  
with

Director Russell Schneide

meetings for OAR and NOS; 3. Actions that  
The cover letter by OAR Leadership to Mack Cato included  
the law entitles me to see all the information and reports











Tracking Number	Type	Requester
DOC-NOAA-2018-000511	Request	Rose Santos
DOC-NOAA-2018-000571	Request	John M. Palatiello
DOC-NOAA-2018-000423	Request	Rose Santos
DOC-NOAA-2017-000298	Request	Charles Mouton
DOC-NOAA-2018-000325	Request	Rose Santos
DOC-NOAA-2015-001487	Request	Richard Knudsen
DOC-NOAA-2018-000604	Request	Mary McCullough
DOC-NOAA-2018-000590	Request	Rose Santos
DOC-NOAA-2018-000589	Request	Rose Santos
DOC-NOAA-2018-000582	Request	Joel P. Angeles
DOC-NOAA-2018-000449	Request	Omar Purcell
DOC-NOAA-2018-000303	Request	Ronald B. Hardwig
DOC-NOAA-2018-000536	Request	Michael C. Ryan
DOC-NOAA-2018-000555	Request	Skyler Kopko
DOC-NOAA-2017-001987	Request	Victoria Abbasi
DOC-NOAA-2018-000615	Request	Gary M. Crothers
DOC-NOAA-2017-001966	Request	Alex Kotch
DOC-NOAA-2017-000613	Request	Dan Vergano
DOC-NOAA-2018-000557	Request	Markos Scheer
DOC-NOAA-2018-000509	Request	Catherine Kilduff
DOC-NOAA-2016-000423	Request	Ryan P. Mulvey
DOC-NOAA-2018-000468	Request	Katarina Zimmer
DOC-NOAA-2018-000459	Request	Margaret Townsend
DOC-NOAA-2018-000422	Request	Philip N. Brown
DOC-NOAA-2018-000463	Request	John Fulweiler
DOC-NOAA-2018-000420	Request	Anthony M. Barnes
DOC-NOAA-2018-000387	Request	Ryan P. Mulvey
DOC-NOAA-2018-000377	Request	Alicia Cate
DOC-NOAA-2017-000304	Request	Bryn Blomberg
DOC-NOAA-2018-000320	Request	Chloe Sorvino
DOC-NOAA-2018-000318	Request	Sarah N. Emerson
DOC-NOAA-2017-000170	Request	Kara McKenna
DOC-NOAA-2015-000190	Request	Miyo Sakashita
DOC-NOAA-2018-000183	Request	Sean Sherman
DOC-NOAA-2018-000126	Request	HASSELMAN, JAN
DOC-NOAA-2018-000105	Request	Allan Parachini
DOC-NOAA-2018-000077	Request	Maraya Cornell
DOC-NOAA-2018-000070	Request	Cathy Readinger
DOC-NOAA-2017-001985	Request	Georgia Hancock
DOC-NOAA-2017-001974	Request	Ryan P. Mulvey
DOC-NOAA-2016-001763	Request	Thomas Knudson
DOC-NOAA-2016-001751	Request	Thomas Knudson
DOC-NOAA-2017-001798	Request	Brett Sommermeyer
DOC-NOAA-2017-001986	Request	Beryl C. Lipton
DOC-NOAA-2017-001741	Request	Vivian Wang
DOC-NOAA-2014-001474	Request	Eric Huber
DOC-NOAA-2017-001710	Request	Rick Steiner
DOC-NOAA-2017-001606	Request	Molly Masterton
DOC-NOAA-2016-001479	Request	Christopher Hudak
DOC-NOAA-2017-001431	Request	Margaret Townsend
DOC-NOAA-2016-001402	Request	Stephen S. Schwartz



DOC-NOAA-2017-001411 Request Margaret Townsend  
DOC-NOAA-2017-001394 Request Ivy N. Fredrickson  
DOC-NOAA-2017-001391 Request Elizabeth A. Mitchell  
DOC-NOAA-2017-001376 Request Gabe Flick  
DOC-NOAA-2017-001316 Request Chris Saeger  
DOC-NOAA-2017-001285 Request Jared S. Goodman  
DOC-NOAA-2017-001220 Request Nathan Eagle  
DOC-NOAA-2017-001219 Request Nathan Eagle  
DOC-NOAA-2017-001217 Request Nathan Eagle  
DOC-NOAA-2017-001198 Request Brett Sommermeyer  
DOC-NOAA-2017-001190 Request ERIC R. BOLINDER  
DOC-NOAA-2017-001194 Request ERIC R. BOLINDER  
DOC-NOAA-2017-001094 Request Brettny E. Hardy  
DOC-NOAA-2017-001093 Request Brettny E. Hardy  
DOC-NOAA-2017-001092 Request Brettny E. Hardy  
DOC-NOAA-2017-001038 Request Sean Sherman  
DOC-NOAA-2016-000959 Request Office Administrator  
DOC-NOAA-2017-000994 Request Mariel Combs  
DOC-NOAA-2018-000587 Request Hallie G. Templeton  
DOC-NOAA-2018-000585 Request Andrew Hitchings  
DOC-NOAA-2018-000565 Request Matthew Owens  
DOC-NOAA-2018-000428 Request Ryan P. Mulvey  
DOC-NOAA-2017-001915 Request Rose Santos  
DOC-NOAA-2018-000494 Request Aaron Jaehnig  
DOC-NOAA-2017-000268 Request Brian D. Israel  
DOC-NOAA-2018-000273 Request Andrew G. Ogden  
DOC-NOAA-2018-000202 Request Marshall R. Morales  
DOC-NOAA-2017-001676 Request Vincent C. Catania  
DOC-NOAA-2017-001678 Request James Zeiler  
DOC-NOAA-2017-001569 Request Sarah N. Emerson  
DOC-NOAA-2017-001009 Request Edward Duhe  
DOC-NOAA-2018-000621 Request stephen j. franklin  
DOC-NOAA-2017-000414 Request Arnold & Porter Kaye Scholer LLP  
DOC-NOAA-2017-001874 Request Susanne Rust  
DOC-NOAA-2017-001059 Request Richard Hirn  
DOC-NOAA-2017-000768 Request Julio C. Gomez  
DOC-NOAA-2018-000561 Request Stephanie Kuzydym  
DOC-NOAA-2018-000553 Request Nicole S. Ngo  
DOC-NOAA-2018-000453 Request Hallie G. Templeton  
DOC-NOAA-2018-000437 Request Paul Lannus  
DOC-NOAA-2018-000229 Request Nicole Mason  
DOC-NOAA-2017-000058 Request Christopher T. Clack  
DOC-NOAA-2017-000034 Request Christopher T. Clack  
DOC-NOAA-2018-000024 Request Allan Blutstein  
DOC-NOAA-2014-001694 Request Lawrence A. Kogan  
DOC-NOAA-2017-001796 Request Margaret Townsend  
DOC-NOAA-2017-001975 Request Margaret Townsend  
DOC-NOAA-2017-001691 Request David Kovar  
DOC-NOAA-2014-000714 Request Lawrence Kogan  
DOC-NOAA-2018-000607 Request David E. Holcomb  
DOC-NOAA-2018-000596 Request Daniel B. Harwood  
DOC-NOAA-2018-000572 Request Jeff Ruch

DOC-NOAA-2018-000638 Request Nicole Mason  
DOC-NOAA-2017-001954 Request Alex Veeneman  
DOC-NOAA-2017-001523 Request Brian L. Kahn  
DOC-NOAA-2017-001565 Request Charles Seife  
DOC-NOAA-2018-000302 Request Michael L. Johnson  
DOC-NOAA-2018-000204 Request Nicole Mason  
DOC-NOAA-2017-001163 Request Jacqueline Iwata  
DOC-NOAA-2017-001101 Request Ryan P. Mulvey  
DOC-NOAA-2017-001967 Request Jennifer E. Kollmer  
DOC-NOAA-2017-001756 Request Jeff Tollefson  
DOC-NOAA-2017-001745 Request Michael Ravnitzky  
DOC-NOAA-2017-001739 Request Lauren N. Evans  
DOC-NOAA-2017-001734 Request Andrew C. Revkin  
DOC-NOAA-2017-001722 Request Michael Ravnitzky  
DOC-NOAA-2018-000598 Request Brian C. Eiler  
DOC-NOAA-2018-000622 Request Patricia Mann  
DOC-NOAA-2018-000467 Request Pamela Paige Murphy-Youn  
DOC-NOAA-2018-000180 Request James McNally  
DOC-NOAA-2017-001760 Request John Harding  
DOC-NOAA-2018-000554 Request Terra Mowatt

Requester Organization	Submitted	Received	Assigned To
FOIA GROUP INC	12/30/2017	01/02/2018	AGO
John M. Palatiello & Associates, Inc.	12/13/2017	12/13/2017	AGO
FOIA GROUP INC	12/09/2017	12/11/2017	AGO
Mahtook & Lafleur	11/30/2016	11/30/2016	AGO
FOIA GROUP INC	11/22/2017	11/22/2017	AGO
	06/29/2015	06/29/2015	AGO
	01/20/2018	01/22/2018	AGO
FOIA GROUP INC	01/17/2018	01/17/2018	AGO
FOIA GROUP INC	01/17/2018	01/17/2018	AGO
	01/17/2018	01/17/2018	AGO
NOAA	12/14/2017	12/14/2017	CAO
	11/17/2017	11/17/2017	CAO
	01/06/2018	01/08/2018	CAO
Muckrock	10/05/2017	10/05/2017	CAO
Colliers International	04/13/2017	04/13/2017	CAO
Small-Medium	01/24/2018	01/24/2018	CAO
	09/15/2017	09/15/2017	LA
BuzzFeed News	02/07/2017	02/07/2017	NESDIS
Premium Aquatics, LLC	12/28/2017	12/28/2017	NMFS
Center for Biological Diversity	12/28/2017	12/28/2017	NMFS
Cause of Action	12/21/2015	12/21/2015	NMFS
Self-employed	12/18/2017	12/18/2017	NMFS
	12/18/2017	12/18/2017	NMFS
	12/08/2017	12/08/2017	NMFS
Fulweiler lle	12/08/2017	12/08/2017	NMFS
ATA Law Group	12/05/2017	12/05/2017	NMFS
Cause of Action Institute	12/05/2017	12/05/2017	NMFS
Oceana	12/01/2017	12/01/2017	NMFS
Western Resources Legal Center	11/30/2016	11/30/2016	NMFS
Forbes Magazine	11/21/2017	11/21/2017	NMFS
VICE	11/21/2017	11/21/2017	NMFS
Cause of Action	11/09/2016	11/09/2016	NMFS
Center for Biological Diversity	11/02/2014	11/03/2014	NMFS
Public Citizen, Inc	10/25/2017	10/25/2017	NMFS
Earthjustice	10/18/2017	10/18/2017	NMFS
The Garden Island, Lihue, HI	10/16/2017	10/16/2017	NMFS
Freelance Writer	10/11/2017	10/11/2017	NMFS
	10/03/2017	10/03/2017	NMFS
Animal Welfare Institute	09/29/2017	09/29/2017	NMFS
Cause of Action Institute	09/21/2017	09/21/2017	NMFS
Center for Investigative Reporting	09/14/2016	09/15/2016	NMFS
Center for Investigative Reporting	09/14/2016	09/14/2016	NMFS
	08/31/2017	08/31/2017	NMFS
MuckRock	08/25/2017	08/25/2017	NMFS
Natural Resources Defense Council	08/22/2017	08/22/2017	NMFS
Sierra Club	08/12/2014	08/12/2014	NMFS
Oasis Earth	08/01/2017	08/01/2017	NMFS
Natural Resources Defense Council	07/26/2017	07/26/2017	NMFS
Environmental Advocates	07/20/2016	07/21/2016	NMFS
	06/27/2017	06/27/2017	NMFS
Cause of Action Institute	06/27/2016	06/27/2016	NMFS

	06/22/2017	06/23/2017	NMFS
Ocean Conservancy	06/19/2017	06/19/2017	NMFS
Association for Professional Observers	06/16/2017	06/16/2017	NMFS
	06/12/2017	06/12/2017	NMFS
Western Values Project	06/07/2017	06/07/2017	NMFS
PETA Foundation	05/30/2017	05/31/2017	NMFS
Honolulu Civil Beat	05/16/2017	05/17/2017	NMFS
Honolulu Civil Beat	05/16/2017	05/17/2017	NMFS
Honolulu Civil Beat	05/16/2017	05/17/2017	NMFS
	05/11/2017	05/11/2017	NMFS
Cause of Action Institute	05/09/2017	05/09/2017	NMFS
Cause of Action Institute	05/02/2017	05/02/2017	NMFS
Earthjustice	04/26/2017	04/26/2017	NMFS
Earthjustice	04/26/2017	04/26/2017	NMFS
Earthjustice	04/26/2017	04/26/2017	NMFS
Public Citizen, Inc	04/17/2017	04/17/2017	NMFS
Friends of Animals	04/12/2016	04/13/2016	NMFS
Oceana	04/10/2017	04/11/2017	NMFS
Friends of the Earth	01/17/2018	01/17/2018	NMFS
SOMACH SIMMONS & DUNN	01/16/2018	01/16/2018	NMFS
	01/12/2018	01/12/2018	NMFS
Cause of Action Institute	12/11/2017	12/11/2017	NOAA FOIA
FOIA GROUP INC	09/23/2017	09/25/2017	NOAA FOIA
	12/22/2017	12/22/2017	NOS
ARNOLD & PORTER LLP	11/28/2016	11/28/2016	NOS
Turtle Island Restoration Network	11/14/2017	11/14/2017	NOS
Beveridge and Diamond	11/01/2017	11/01/2017	NOS
	08/09/2017	08/09/2017	NOS
Citizens for Responsible Zoning and Landowner Rights	08/07/2017	08/07/2017	NOS
VICE	07/19/2017	07/19/2017	NOS
LISKOW & LEWIS	03/31/2017	03/31/2017	NOS
	01/24/2018	01/24/2018	NOS
Arnold & Porter Kaye Scholer LLP	01/09/2017	01/09/2017	NOS
Columbia University - Graduate School of Journalism	09/18/2017	09/18/2017	NWS
National Weather Service Employees	04/18/2017	04/18/2017	NWS
GOMEZ LLC Attorney At Law	03/10/2017	03/10/2017	NWS
KHOU-TV	01/12/2018	01/12/2018	NWS
University of Oregon	01/09/2018	01/09/2018	NWS
Friends of the Earth	12/15/2017	12/15/2017	OAR
	12/13/2017	12/13/2017	OAR
	11/03/2017	11/03/2017	OAR
	10/13/2016	10/13/2016	OAR
	10/11/2016	10/11/2016	OAR
America Rising Squared	10/04/2017	10/04/2017	OAR
Institute for Trade, Standards and Sustainable Development	09/22/2014	09/22/2014	OAR
Center for Biological Diversity	08/31/2017	08/31/2017	OAR
	08/31/2017	08/31/2017	OAR
	08/10/2017	08/10/2017	OAR
ITSSD	03/26/2014	03/26/2014	OAR
	01/23/2018	01/23/2018	OAR
	01/18/2018	01/18/2018	OAR
PEER	01/16/2018	01/16/2018	OAR

	01/11/2018	01/11/2018	OAR
Kettle Magazine, London	09/28/2017	09/28/2017	OC
Climate Central	07/14/2017	07/14/2017	OC
	06/19/2017	06/19/2017	OC
	11/13/2017	11/13/2017	OGC
	11/01/2017	11/01/2017	OGC
Natural Resources Defense Council	05/05/2017	05/05/2017	OGC
Cause of Action	04/27/2017	04/27/2017	OGC
Rolls-Royce Marine North America Inc.	09/22/2017	09/22/2017	OMAO
Nature	08/24/2017	08/24/2017	USEC
	08/22/2017	08/22/2017	USEC
	08/22/2017	08/22/2017	USEC
ProPublica	08/21/2017	08/21/2017	USEC
	08/21/2017	08/21/2017	USEC
	01/18/2018	01/18/2018	USEC
Ferguson Case Orr Paterson LLP	12/28/2017	12/28/2017	WFMO
	12/12/2017	12/12/2017	WFMO
QUINTAIROS, PRIETO, WOOD Be BOYER, P.A.	10/30/2017	10/30/2017	WFMO
Martin Kane & Kuper	08/16/2017	08/16/2017	WFMO
	01/08/2018	01/08/2018	WFMO

Perfected?	Due	Closed Date	Status	Dispositions
Yes	02/08/2018	TBD	Assignment Determination	
Yes	02/13/2018	TBD	Assignment Determination	
Yes	01/16/2018	TBD	Assignment Determination	
Yes	01/13/2017	TBD	Assignment Determination	
Yes	01/09/2018	TBD	Research Records	
Yes	07/31/2015	TBD	Assignment Determination	
Yes	02/22/2018	TBD	Assignment Determination	
Yes	02/21/2018	TBD	Assignment Determination	
Yes	02/21/2018	TBD	Assignment Determination	
Yes	02/21/2018	TBD	Assignment Determination	
Yes	02/01/2018	TBD	Evaluation of Records	
Yes	12/20/2017	TBD	Research Records	
Yes	02/08/2018	TBD	Final Preparation of Response	Not an agency record
Yes	11/03/2017	TBD	Assignment Determination	
Yes	05/11/2017	TBD	Assignment Determination	
Yes	02/22/2018	TBD	Assignment Determination	
Yes	11/08/2017	TBD	Evaluation of Records	
Yes	03/29/2017	TBD	Evaluation of Records	
Yes	01/29/2018	TBD	Assignment Determination	
Yes	01/30/2018	TBD	Assignment Determination	
Yes	02/04/2016	TBD	Research Records	
Yes	02/23/2018	TBD	Evaluation of Records	
Yes	02/08/2018	TBD	Assignment Determination	
Yes	01/16/2018	TBD	Evaluation of Records	
Yes	01/18/2018	TBD	Assignment Determination	
Yes	02/12/2018	TBD	Evaluation of Records	
Yes	01/24/2018	TBD	Assignment Determination	
Yes	01/24/2018	TBD	Research Records	
Yes	01/13/2017	TBD	Research Records	
Yes	02/16/2018	TBD	Evaluation of Records	
Yes	01/09/2018	TBD	Assignment Determination	
Yes	01/05/2017	TBD	Research Records	
Yes	12/05/2014	TBD	Research Records	
Yes	12/13/2017	TBD	Research Records	
Yes	02/22/2018	TBD	Assignment Determination	
Yes	11/16/2017	TBD	Research Records	
Yes	12/01/2017	TBD	Evaluation of Records	
Yes	12/14/2017	TBD	Evaluation of Records	
Yes	02/08/2018	TBD	Research Records	
Yes	11/21/2017	TBD	Evaluation of Records	
Yes	10/27/2016	TBD	Research Records	
Yes	10/28/2016	TBD	Final Preparation of Response	
Yes	10/25/2017	TBD	Evaluation of Records	
Yes	09/25/2017	TBD	Assignment Determination	
Yes	10/06/2017	TBD	Evaluation of Records	
Yes	09/10/2014	TBD	Evaluation of Records	
Yes	12/29/2017	TBD	Evaluation of Records	
Yes	09/21/2017	TBD	Evaluation of Records	
Yes	09/22/2016	TBD	Research Records	
Yes	07/28/2017	TBD	Evaluation of Records	
Yes	08/19/2016	TBD	Assignment Determination	

Yes	08/10/2017	TBD	Research Records
Yes	08/11/2017	TBD	Evaluation of Records
Yes	08/01/2017	TBD	Research Records
Yes	07/26/2017	TBD	Evaluation of Records
Yes	07/21/2017	TBD	Research Records
Yes	07/13/2017	TBD	Evaluation of Records
Yes	08/16/2017	TBD	Evaluation of Records
Yes	06/20/2017	TBD	Evaluation of Records
Yes	06/20/2017	TBD	Research Records
Yes	07/21/2017	TBD	Evaluation of Records
Yes	06/22/2017	TBD	Assignment Determination
Yes	06/22/2017	TBD	Final Preparation of Response
Yes	07/03/2017	TBD	Assignment Determination
Yes	07/03/2017	TBD	Assignment Determination
Yes	07/03/2017	TBD	Research Records
Yes	05/16/2017	TBD	Evaluation of Records
Yes	05/25/2016	TBD	Final Preparation of Response
Yes	05/09/2017	TBD	Assignment Determination
Yes	03/07/2018	TBD	Assignment Determination
Yes	03/01/2018	TBD	Assignment Determination
Yes	02/14/2018	TBD	Assignment Determination
Yes	02/01/2018	TBD	Evaluation of Records
Yes	10/26/2017	TBD	Assignment Determination
Yes	02/08/2018	TBD	Assignment Determination
Yes	01/10/2017	TBD	Assignment Determination
Yes	12/14/2017	TBD	Assignment Determination
Yes	02/08/2018	TBD	Evaluation of Records
Yes	09/19/2017	TBD	Assignment Determination
Yes	10/02/2017	TBD	Assignment Determination
Yes	09/05/2017	TBD	Research Records
Yes	05/23/2017	TBD	Research Records
Yes	03/06/2018	TBD	Assignment Determination
Yes	03/07/2017	TBD	Research Records
Yes	10/24/2017	TBD	Assignment Determination
Yes	05/19/2017	TBD	Research Records
Yes	04/12/2017	TBD	Research Records
Yes	02/14/2018	TBD	Assignment Determination
Yes	02/07/2018	TBD	Assignment Determination
Yes	01/19/2018	TBD	Assignment Determination
Yes	01/18/2018	TBD	Assignment Determination
Yes	12/05/2017	TBD	Assignment Determination
Yes	11/25/2016	TBD	Research Records
Yes	11/09/2016	TBD	Research Records
Yes	11/16/2017	TBD	Assignment Determination
Yes	10/22/2014	TBD	Assignment Determination
Yes	10/25/2017	TBD	Assignment Determination
Yes	10/30/2017	TBD	Assignment Determination
Yes	09/19/2017	TBD	Assignment Determination
Yes	05/13/2014	TBD	Assignment Determination
Yes	02/22/2018	TBD	Assignment Determination
Yes	02/21/2018	TBD	Assignment Determination
Yes	02/21/2018	TBD	Assignment Determination

Yes	02/26/2018	TBD	Assignment Determination
Yes	11/08/2017	TBD	Evaluation of Records
Yes	08/16/2017	TBD	Assignment Determination
Yes	08/30/2017	TBD	Research Records
Yes	12/18/2017	TBD	Assignment Determination
Yes	12/01/2017	TBD	Assignment Determination
Yes	06/16/2017	TBD	Assignment Determination
Yes	06/16/2017	TBD	Assignment Determination
Yes	11/08/2017	TBD	Assignment Determination
Yes	09/22/2017	TBD	Assignment Determination
Yes	09/22/2017	TBD	Assignment Determination
Yes	09/20/2017	TBD	Assignment Determination
Yes	09/20/2017	TBD	Assignment Determination
Yes	09/19/2017	TBD	Assignment Determination
Yes	02/21/2018	TBD	Assignment Determination
Yes	02/27/2018	TBD	Assignment Determination
Yes	01/17/2018	TBD	Assignment Determination
Yes	12/05/2017	TBD	Research Records
Yes	10/10/2017	TBD	Assignment Determination
Yes	02/06/2018	TBD	Assignment Determination



## Detail

[Reference FGI 17- 55437] relevant to DOC DG133W10CQ0049 Orders 8,12,14,15,18-23,25 we seek the following I request that a copy of the following documents, or documents containing the following information, be provided to [Reference FGI 17-55354] relevant to DOC DG133E09CN0094 we seek the following: (1) contract with current SOV We are representing Harvest Pipeline Company in connection with an incident which occurred on 5 September 20 [Reference FGI# 17- 55085-B] Relevant to DOC ST133016NC1161 we seek [1] copy of the contract title page (1st I request an April 1, 2009 Blanked Purchase Agreement (BPA) order for Verizon Wireless wireless supplies-and se Any and all records, files, notes, personnel actions, contracts regarding my contract and temporary employment at [FGI 18- 55919] Relevant to DOC AB133018CN0002, we seek copy of the contract SOW/PWS; and attachments [FGI 18- 55918] Relevant to DOC AB133018CN0003, we seek copy of the contract SOW/PWS; and attachments Hello, Hope this message finds you well. I worked on the NPOESS NPP/JPSS (VIIRS) program from 2005-2008. I I would like a copy of final findings or response made by the inquiry officials at NMFS for OIG complaint number 17 The final report for Case Number 17-1346

In September of 2017 an investigation into the Conduct of William Parker Meteorologist In Charge of the National This is a request under the Freedom of Information Act. I hereby request the following records: Any records and co I would like to obtain data on all National Oceanic and Atmospheric Administration direct leased properties excludir I am requesting the Inspector General Report composed as a result of DOC OIG Referral 17-0688-N. I filed the all All correspondence from these selected Texas members of Congress (listed below) and their staff members, Texa Pursuant to the federal Freedom of Information Act, 5 U.S.C. &sect; 552, I request access to and copies of any ag This request is for the following categories of documents and information. Data, reports or memoranda created bet I'm reviewing a few NMFS denials of ESA listing. I found most of the documents posted online, but I didn't see the All records of communications between (i) Eileen Sobek, Assistant Administrator for Fisheries; (ii) Samuel Rauch, December 18, 2017 Dear FOIA Officer: This is a request under the Freedom of Information Act. I hereby request th The Center requests from National Marine Fisheries Service ("NMFS"): all records generated in connection with th I request the following information through the Freedom of Information Act pertaining to my work as a NMFS fisher 1. Copy of Confirmation of Permit History fur the f/v ALEX MARIE (Doc. Number 1027010). 2. Copies of all permits 1. Any and all documents generated on or after August 19, 2015 referring to, relating to, or regarding the Arroyo Gr Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. &sect; 552, CoA Institute hereby requests access to Oceana requests copies of all documents, records, and materials, including but not limited to all memoranda, studi This request generally concerns records related to the NMFS document entitled &quot; Technical Guidance for As I ask to obtain a copy of the following, which I understand to be held by your agency. I believe these, at least in part Please provide all records generated in connection with the deployment of US Navy dolphins to locate endangered CoA Institute hereby requests access to the following records for the time period of January 1, 2014, to the present

- All documents and communications related to the National Marine Fisheries Service's (NMFS) listing determina

Any and all records concerning the effect of Executive Order 13771, entitled "Reducing Regulation and Controlling 1) All records reflecting or relating to inter-agency analysis, discussion or correspondence regarding the boundarie: REVISED DESC 11/1: -Final reports and official letters addressed to the Navy from NOAA -NMFSPacific Islands R Pursuant to the federal Freedom of Information Act, 5 U.S.C. &sect; 552, I request access to and a copy of the Nat I am requesting the following: 1) Copy of Cathy Readinger's personnel file from October 27, 1982 to present in its e Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. &sect; 552, et seq., and the regulations of the Depa With the foregoing as background, and pursuant to the FOIA, 5 U.S.C. &sect; 552, CoA Institute hereby requests a Copies of all emails pertaining to observer health and safety written or received by National Marine Fisheries Servic A copy of the NMFS contract Arinex Pty Ltd. for the 8th International Fisheries Observer & Monitoring Confere I am writing on behalf of Sea Shepherd Legal ("SSL") with a request for records maintained by the National Marine As discussed 24 Jan 2018, for now we'll limit this request to the Level A reports for stranded or deceased whales (I Please produce records1 of the following types in the possession, custody, or control of the National Oceanic and / Endangered Species Act Section 7 Consultation Programmatic Biological Opinion of the US EPA's Issuance and Ir Any records (emails, other documents, etc.) of discussions/suggestions subsequent to November 8, 2016, from an Please find attached a FOIA request from the Natural Resources Defense Council (NRDC) for records regarding th Note: all requests set forth below are for documents generated on or after January 1, 2009 through the date that NI The Center requests the following records from the U.S. Department of Commerce ("DOC") from April 1, 2017 to th All documents, including intra-agency discussions and communications with outside parties, related to (1) NOAA's

The Center requests from the National Marine Fisheries Service ("NMFS") all records generated in connection with copies of all memoranda, studies, reports, data, correspondence, comments, conversation records, files, electronic On 28 June 2017, via email, the requester clarified the search scope of the request to: "I would like both foreign or  
REVISED SCOPE 6/20: For the time period of May 8, 2015 through May 8, 2017 all text messages, facsimiles and  
SCOPE REVISION 6/20 - To exclude the following information: out-of-office replies, duplicates of the same emails  
On behalf of People for the Ethical Treatment of Animals (PETA), and pursuant to the Freedom of Information Act,  
I'd like to request information related to lobbying by the Western Pacific Regional Fishery Management Council (W  
I'd like to request information related to the staff, consultants, and members of the Western Pacific Regional Fish  
I'd like to request financial information concerning the Western Pacific Regional Fishery Management Council (WP  
I am writing with a request for records maintained by the National Marine Fisheries Service ("NMFS") regarding the  
Pursuant to the Freedom of Information Act, 5 U.S.C. &sect; 552 ("FOIA"), CoA Institute hereby requests access to  
Pursuant to the Freedom of Information Act, 5 U.S.C. &sect; 552 ("FOIA"), CoA Institute hereby requests access to  
We request copies of all memoranda, studies, reports, data, correspondence, comments, conversation records, files  
We request copies of all memoranda, studies, reports, data, correspondence, comments, conversation records, files  
We request copies of all memoranda, studies, reports, data, correspondence, comments, conversation records, files  
Any and all records concerning implementation of Executive Order 13771, entitled "Reducing Regulation and Conti  
Unless otherwise specified, Requesters seek all documents for the time period starting January 26th, 2007 and en  
REVISED SCOPE: PART 1: You request the following information for the HI SSSL Fishery from 2014 to 2017 (Prior  
Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. &sect; 552, Friends of the Earth requests all records  
The request seeks all records and documents subject to disclosure under FOIA within the following nine categories  
Request directed to National Marine Fisheries Service, Pacific Islands Regional Office. Please see attached files. |  
1. All weekly reports, charts, and transmittal e-mails that identify "high visibility" or otherwise "sensitive" FOIA requ  
[Reference FGI 17-54286] relevant to DOC50PAPT170003 we seek a copy of (a) contract with SOW/PWS (2) all r  
I am requesting copies of all records related to any conversation or communication between Rhode Island Coastal  
1. All information (including work plans, quality assurance plans, validated and unvalidated data, results, correspon  
TIRN requests from the National Oceanic and Atmospheric Administration (NOAA), the Office of National Marine S  
1. The most recent index for the administrative record of the Portland Harbor natural resource damage assessmen  
This is a Freedom of Information Act Request on behalf of Alliance of Communities for Sustainable Fisheries (ACS  
We are requesting copies of all emails, sent or received, of NOAA employees Ellen Brody and Russ Green that coi  
Please provide all records generated in connection to complaints made to the Monterey Bay National Marine Sanct  
1. Any and all records, photographs, correspondence, documents, including email communication, pertaining to the  
Requesting digital (online) copies of Approved Special Use Permits for Scientific Scuba Diving Activities on the US  
REQUEST UPDATED 3/27 - The requester has approved that the \$18,212 refund for FOIA #2017-000320 be rolle  
UPDATED SCOPE 11/2017: Seeking records regarding the influence of two NWS reports on a catastrophe bond is  
1. A copy of any and all reports on the testing of the radiosonde autolauncher manufactured by the Vaisala Corpora  
Copies of all reports submitted to the Secretary of Commerce pursuant to 15 U.S.C. &sect;330a, concerning "weat  
January 12, 2018 Pursuant to the Freedom of Information Act, KHOU-TV respectfully requests: Copies of any and  
I'm an asst. prof. at the Univ. of Oregon interested in how well forecasts align with actual events. I wanted to know  
REVISED DESCRIPTION: This request pertains specifically to any ESA Section 7 consultations, and NEPA catego  
Under Title 5 of the United States Code Section 552 and the California Public Records Act, I hereby request an opp  
1. Official record of panel notes and recommendations of NOAA's 2016 Leadership Competencies Development Pr  
UPDATED DESCRIPTION 10/26/16: All emails (and attachments) that have been received by or sent by the follow  
Emails (and attachments) that have been received by or sent by the following NOAA employees (over the course o  
Any email sent by David Fahey, NOAA Earth System Research Lab, from June 14, 2017, through June 27, 2017, th  
This new FOIA Request seeks disclosure of as yet publicly disclosed documents substantiating the IQA conformar  
All records mentioning, including and/or referencing timing for release of 4th National Climate Assessment, whethe  
1. All records mentioning, including and/or referencing the decision to terminate, or otherwise not renew, the Fede  
The Verge published an article this week citing a NOAA study on the cyber security of DJI UAVs. Here is the link to  
Enactment by the USEPA of a series of national greenhouse gas (GHG) emission regulations based primarily upc  
All radar data captured by the National Weather Radar Testbed (Phased Array Site, Norman, OK) on May 20, 2013  
Summary spreadsheet (or equivalent) of completed NOAA Form 17-4 (Initial Report On Weather Modification Activ  
Pursuant to the Freedom of Information Act, 5 U.S.C. 552, as amended, Public Employees for Environmental Resp

AJJ time and attendance records and computer records retrieved and submitted to the Office of Audits and Investigations. Per the Act, I am requesting copies of correspondence or memorandums dated from January 20, 2017 to the date I request any records and email communications relating to drafting the press release on the 2017 edition of NOAA. I therefore request the following documents: Any e-mails, memos, presentations, or other documents that a) are dated I request that a copy of the Notice of Violation and Assessment (NOVA). Case NE9803 IA. be provided to me. NOV 1. Official record from The Office of Special Counsel indicating that I was in violation of the Hatch Act in Aug 2016 : Please produce the following records in the National Oceanic & Atmospheric Administration's (NOAA) possession. Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), CoA Institute hereby requests access to Request information regarding vessel equipment maintenance records for Rolls-Royce equipment. We are requesting I would like copies of all emails including the word CLIMATE or the word CHARTER or the phrase "ADVISORY CO A copy of the Meeting Minutes for the Gulf Coast Interagency Environmental Restoration Working Group, during C A copy of each email that includes the word CLIMATE or the word CHARTER or the phrase "ADVISORY CO I request access to and copies of all email correspondence to and from Acting NOAA Administrator (and Under Sec A copy of each email that includes the word CLIMATE or the word CHARTER or the phrase "ADVISORY CO A letter from Deputy Under Secretary for Operations Ben Friedman to the Government Accountability Office regarding All pay records from January 1, 2015, to the date of production for the EMPLOYEE: a. All annual gross income from A former NOAA employee, I am requesting records in response to a Social Security Administration (SSA) requirement YOUR ENTIRE FILE WITH ALL CONTENTS, including but not limited to any and all personnel records, employment A true, complete and certified copy of your entire personnel/employment file of Thomas E. Taylor, III including but r CLARIFIED REQUEST SCOPE 1/23/18: A FOIA request for job announcement number (Financial Management S)

[REDACTED]

; (1) specified task orders with current SOW/PWS, labor rates and all modifications  
me: Any documents that identify the prime ( Dewberry, Fugro Geospatial, Quantum Spatial, Tetra Tech  
N/PWS; and attachments, modifications  
16 involving the Harvest BOA Pipeline System in Plaquemine Parish, Louisiana. Pursuant to the Freedom  
page) and [2] Statement of Work/Performance Work Statement (SOW/PWS)  
services (approximately 9 pages) by Kathy Clark, U.S. Dept. of Commerce- Boulder Labs; Acquisition Man  
NOAA's CPO, NOS and other departments within NOAA. Location: Silver Spring, Maryland. (1)Sole So

would like to request any contract pertaining to this program for this time period. This was also under N  
'-0561. The investigation was handled by Kirk Essmyer. The focus of the OIG complaint was Jeff Radon

Weather Service Forecast Office in Jackson Mississippi was conducted. This investigation was conducted  
communications regarding the "NOAA Withdrawal Land" outside of Fairbanks, AK. Here is a list  
ing leases negotiated through the General Services Administration (GSA) as follows: Location Code Leas  
negotiations that triggered this IG report process under the Whistleblower Act, I am the Whistleblower in this  
is Gov. Greg Abbott and former Texas Gov. Rick Perry to the National Weather Service from January 1,  
agency communications to, or from, Dr. John Bates regarding the 2015 Karl et al study in Science magazin  
between January 1, 1972 and the present regarding the existence of any Harbor seal haul out or rookeries  
NMFS decision memos. Can you please email them to me? • Bumphead parrotfish • Q  
, Deputy Assistant Administrator for Regulatory Programs; (iii) Brian Pawlak, Director of the Office of Ma  
re following records: All records, including but not limited to, reports, memos and communications (elect  
e denial of the Pacific bluefin tuna listing petition under the Endangered Species Act, 16 U.S.C. § 1531  
ies observer in the Pacific Islands Regional Observer Program from 2006 through my last trip and subse  
; including, but not limited to, access and moratorium permits for the f/v ALEX MARIE (Doc. Number 102  
'ande Creek flow rates, for five miles above and below the diversion to the Lopez Dam. 2. Any and all dc  
) all issues of "Fathoms," a NOAA-generated publication of the Greater Atlantic Regional Office, publish  
es, reports, data, correspondence, comments, conversation records, meeting notes, files, electronic ma  
essing the Effects of Anthropogenic Sound on Marine Mammal Hearing: Underwater Acoustic Thresho  
t, will likely be held by the Office of Law Enforcement within NOAA, as well as the Office of International  
vaquita porpoises near the Gulf of California. For this request, the term "all records" refers to, but is not  
:4 1. All records or communications (including emails, text messages, and voicemails) referring or relat  
itions on the proposal to list 66 coral species and to reclassify elkhorn and staghorn corals under the En  
Regulatory Costs" and associated guidance from the Office of Management and Budget (OMB Guidanc  
s of the Corps' CWA § 404 jurisdiction in Puget Sound's tidally influenced waters. 2) All records refl  
egional Office, concerning the causes of death of pilot whales in the State of Hawaii for the period of Jar  
ional Oceanic and Atmospheric Administration's law enforcement case file for Edward Schlieff, who was  
ntirety, including documents that are retained in separate employee files; 2) Copy of Cathy Readinger's  
rtment of Commerce, 15 C.F.R., Part 4; the regulations of the Department of the Interior, 43 C.F.R., Par  
ccess to all communications—including, but not limited to, e-mail, instant messages, Google Hangouts  
ce National Observer Program managers for the time period September 1, 2015 to September 14, 2016  
ance in San Diego, California from August 29 to September 2, 2016, including attachments. Copies of al  
Fisheries Service ("NMFS") regarding the mass stranding ("Stranding") of nearly 100 false killer whales  
used to reference animals with "whale" in the common name) from Jan 1, 2017 through Dec 31, 2017 fo  
Atmospheric Administration ("NOAA"), that are, include, or reflect decisions, directions, or communicatio  
nplementation of Final Regulations under Section 316(b) of the Clean Water Act.  
yone external to NMFS Alaska, including other federal agencies, the Trump transition team, State of Ala  
re Secretary of Commerce's decision determining that the state of New Jersey was in compliance with r  
MFS responds to this request. 1. Any reports, memoranda, correspondence, or other documents (includ  
re date of this search: 1. All records mentioning, including, and/or referencing the draft and/or final biolo  
June 23, 2016 announcement attached as Exhibit A, and (2) NOAA 's underlying decision to partially rei

the issuance of incidental harassment authorizations for oil and gas seismic exploration in the Atlantic ( mail records, or other documents, which were generated, received, kept, and/or considered by NMFS ( servers (on US vessels) and US observers. For all observers I would like to know the regional observer emails (Including attachments) sent or received by: Will Ellis, NOAA OLE, Alaska Division Assistant Dir and duplicate attachments disseminated to large volumes of recipients. I request access to and copies I request copies of all records regarding Permit No. 774, issued to SeaWorld on October 7, 1992, to im PRFMC). Specifically, I'm requesting: 1) Documents sufficient to show the amount of time spent by WPI ry Management Council (WPRFMC). Specifically, I'm requesting: 1) Documents sufficient to identify the 'RFMC). Specifically, I'm requesting: 1) The WPRFMC formal books of accounts over the 5 years prece mass stranding ("Stranding") of nearly 100 false killer whales at Hog Key, on Florida's southwestern co all communications—including, but not limited to, e-mail, instant messaging, Google hangouts or Goo all communications—including, but not limited to, e-mail,8 instant messaging, Google hangouts or Goc es, electronic mail records, or other documents, which were generated, received, kept, and/or considere es, electronic mail records, or other documents, which were generated, received, kept, and/or considere es, electronic mail records, or other documents, which were generated, received, kept, and/or considere rolling Regulatory Costs," the February 2, 2017 OMB guidance entitled, "Interim Guidance Implementing ding April 11, 2016. Over the course of several years, NOAA has issued multiple Letters of Authorization rity): All video and photographs of injured or dead sea turtles and marine mammals All phc pertaining to Manna Fish Farms or its Chief Executive Officer, Donna Lanzetta, from January 1, 2016 to s of records. In this request, we use the terms "National Oceanic and Atmospheric Administration F Freedom of Information Act request for fisheries data from Tri Marine owned and other US flagged tuna sts. The time period for this item of the request is December 2015 to the present. 2. All memoranda, gu modifications (3) task orders with SOW (if any) and (4) winning proposal Resources Management Council (CRMC) and National Oceanic and Atmospheric Administration (NOA dence, reports and presentations) related to the "Avian Injury Study egg injection studies conducte anctuaries ("ONMS"), the Flower Garden Banks National Marine Sanctuary (FGBNMS) and any other si it. 2. All external correspondence (including letters, emails, and memoranda) created or received betwe eF), for copies of all internal and external communications concerning and regarding proposed wave or v ntain the "key words" Lake Michigan, Lake Michigan National Marine Sanctuary, Lake Michig tuary about wildlife being harassed or disturbed by drones or unmanned aerial vehicles. This request is l e National Oceanic and Atmospheric Administration's approval of Louisiana's State and Local Coastal R S Monitor, issued by NOAA's Office of National Marine Sanctuaries. The time frame is from 2007 thru th d into the cost of this FOIA (#2017-000414). As such, this FOIA has been narrowed to the production of ssued by the World Bank and the government of Mexico ----- ation conducted by the National Weather Service. We understand that such testing has been conducted her modification" as defined by federal law 15 U.S.C. §330, from 1971 (the date this federal law wa all email between August 23 to August 30 sent or received by Weather Prediction Center director David if NOAA kept any history data on forecasts (e.g., forecast temperature, precipitation for a given day). rical exclusion justifications, NEPA environmental assessments, and NEPA environmental impact staten portunity to inspect or obtain copies of the following records that pertain to the ship, USC&GSS Pio ogram (LCDP X) for Oceanic and Atmospheric Research (OAR); 2. Official record of employee recomm ing NOAA employees since April of 2016 to the present: 1. Melinda Marquis [Melinda.Marquis@noaa.gov f 2016); 1. Melinda Marquis [Melinda.marquis@noaa.gov], 2. Kevin Kelleher [Kevin.Kelleher@noaa.gov] hat mentions or refers to the Climate Science Special Report (CSSR). rice of NOAA and NOAA third-party contractor peer reviews of ten NOAA-developed climate assessmen r it will be issued in final form by the statutory deadline, obstacles for completing by the deadline, and w ral Advisory Committee Act charter for the "Advisory Committee for the Sustained National Climate Asses that article:

gations Unit pertaining to the Office of Inspector General complaint filed by Katy Stewart referencing Nic  
of this request originating from the Office of the Administrator or the Office of Communications when it c  
\'s Annual Greenhouse Gas Index found here: <http://www.noaa.gov/news/noaa-s-greenhouse-gas-index>  
ated from 1/1/2015 onward b) originate with, or are sent to or from personnel in the following offices: Cor  
/A Case NE98031A was issued on 14 June 2000 by Charles R. Juliand of the Gloucester, MA Office of  
2. Official record of my ethical violation in having a NOAA logo on my personal website under coaching s  
sion, custody or control that are referenced in Administration of Coral Reef Resources in the Northwest  
y any final guidance concerning the retention of instant messaging sessions created or received through  
iting a complete history of planned maintenance, corrective maintenance and repair records for the follo  
RY COMMITTEE". I limit this search to an electronic search of emails in the email accounts of the  
alendar Years 2015, 2016 and 2017. NOAA serves as the Chair of this Interagency Working Group.  
MMITTEE". I limit this search to an electronic search of emails in the email accounts of the Acting  
retary of Commerce for Oceans and Atmosphere) Ben Friedman, his senior advisor, special assistant,  
MMITTEE". I limit this search to an electronic search of emails in the email accounts of the Acting  
ling National Weather Service staffing vacancies. This letter should have been transmitted in the secon  
all sources including, but not limited to, regular pay, overtime, bonuses, cash, profit sharing, commissio  
ent for documentation relevant to my appeal of the SSA's initial benefits determination. Specifically, the  
nt records, including employment application, letters of recommendation, health records, physical exam  
ot limited to application for employment, performance evaluations, wage earnings, disability records, att  
pecialist SO-CFO-2017-0020/SO-CFO-2017-0021) for which I interviewed for on 8 September 2017 at 1

[REDACTED]

, Woolpert) contractors and subcontractors (all members of the teams in support of the prime contractor  
n of Information Act, we request you provide us with a true and correct copy of the official records of the  
agement Division I MC3; :325 Broadway, Boulder .CO 80305. The NOAA Contracting Officer was Mark.  
orce Contract in my name Mary McCullough, Company: Hometown Events and Management. (2) Temp

OAA Contract No. 50-SPNA-9-00010 <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.201.280>  
iski. The final response or findings was sent to OCAO.

ed by J. Kirk Essmyer Inquiry Official / Appeals Officer NOAA Fisheries Service, National Appeals Office  
nk to the land I am referring to <https://eplanning.blm.gov/epl-front-office/projects/nepa/77455/104562/12>  
se Effective Date Property Name Lease Expiration Date Property Address Current Annual Rent Property  
s matter under federal law, and my allegations included allegations that NOAA consciously and with mal  
2015 through the present: Sen. John Cornyn, Sen. Ted Cruz, Rep. Louie Gohmert, Rep. Ted Poe, Rep  
re (see <http://science.sciencemag.org/content/348/6242/1469>) from July 30, 2014 to February 4, 2017. I  
located on or near Madre de Dios Island, or the Ladrone Islands identified in NOAA Chart 17405, and  
reen Conch & Smooth hammerhead & Humphead wrasse & Reef manta ray &  
nagement and Budget; (iv) Alan Risenhoover, Director of the Office of Sustainable Fisheries; or (v) Johr  
ronic, physical and otherwise sent or received by representatives of this agency), regarding an investiga  
sect; 1531-1544 ("ESA"). See Attachment A (12 Month Decision Not To List Pacific Bluefin Tuna).

requent decertification or ineligibility as an observer in this program: 1) All my sea time with dates of emb  
27010). 3. Copies of all completed Applications for Vessel Replacement, Upgrade, and Confirmation of I  
documents generated on or after August 19, 2015 referring to, relating to, or regarding impacts on any spe  
ed between December 1, 2015 and the present. You may exclude from the scope of this request the Apr  
il records, or other documents, which have been generated, received, kept, and/or considered by NMFS  
lds for Onset of Permanent and Temporary Threshold Shifts" ("Technical Guidance").  
Affairs and Seafood Inspection within NOAA. -All documents related to U.S. fishing and processing licer  
limited to, any and all documents, correspondence (including, but not limited to, inter and/or intra-agenc  
rg to a NOAA Town Hall meeting held on or about September 15, 2015, in Providence, Rhode Island, ar  
dangered Species Act. ☐ All documents and communications to and from all NMFS staff, including div  
:e) on: ☐1) the rulemaking entitled Designation of Critical Habitat for Threatened Indo-Pacific Reef-buildin  
ecting or relating to intra-agency analysis, discussion or internal correspondence regarding the boundar  
r. 1, 2000, to the present. -Final reports and full documentation for necropsies performed on pilot whales  
charged in Alaska in 2012 with selling seal-skin bowhunting tabs falsely marketed as Alaska Native-ma  
time and attendance records for the 24-month period preceding March 8, 2016; 3) Copy of Cathy Read  
t 2; and the regulations of the Marine Mammal Commission, 50 C.F.R., Part 520; I am writing on behalf  
or Google Chat messages, text messages, SMS messages, Blackberry messages, Skype messages, M  
(including attachments).

I NMFS correspondence (electronic and hard-copy) with Arinex Pty Ltd. regarding the conference, includ  
(*Pseudorca crassidens*) at Hog Key, on Florida's southwestern coast, on or about January 14, 2017. U  
r the East Coast and Gulf of Mexico area, and from there, I'll identify the events for which I would like to  
ns—internal or external to Commerce—concerning President Trump's Executive Order titled "Implemen

aska, industry, or NGOs, etc.; and any internal discussion within NMFS of such discussions/suggestions,  
egard to management of its recreational summer flounder fishery under the Atlantic Coastal Fisheries C  
ing electronic mail messages) concerning any Endangered Species Act ("ESA") section 7 consultations  
gical evaluation of chlorpyrifos under the Endangered Species Act, 16 U.S.C. &sect;&sect; 1531-1544 ("  
mburse the expenses of industry-funded at-sea monitoring.

Ocean under the Marine Mammal Protection Act, 16 U.S.C. &sect;&sect; 1361-1389 ("MMPA"), from Jar relating to the reopening of the red snapper season, between the dates of January 20, 2017 and June 15, 2017, from the program from which the observers are deployed. " Through the Freedom of Information Act, I request tl rector Nathan Lagerwey, OLE, Alaska Division, Deputy Special Agent in Charge to or from James W. B s of any information used to inform the development of the following national monument proclamations c port the orca Tilikum pursuant to the Marine Mammal Protection Act (MMPA), from July 7, 2014, to the p RFMC staff on lobbying activities from 2014 to 2017.&nbsp; By lobbying activities, I am referring to any e name and position of all WPRFMC staff for the 5 years preceding a response to this request. 2) For eac ding a response to this request, including a cash receipts and disbursements journal, a general journal, ast, on or about January 14, 2017. I respectfully request the following records from NMFS: 1. All records gle chat messages, text messages, SMS messages, Blackberry messages, Skype messages, handwritl gle chat messages, text messages, SMS messages, Blackberry messages, Skype messages, handwrit d by NMFS Southeast Regional Office relating to: 1. The data sources used to estimate the bycatch of s d by NMFS relating to: 1. The data sources used to estimate shark bycatch in the Gulf of Mexico reef fis d by NMFS relating to: 1. The data sources used to estimate shark bycatch in the HMS pelagic longline Section 2 of the Executive Order of January 30, 2017, Titled 'Reducing Regulation and Controlling Reg ("LoA") and Incidental Harassment Authorizations ("IHA") for Level B takes of Cook Inlet beluga whales otograph of injured or dead seabirds (up to 10 per year/species) □ All photographs of each fish spec present.

fisheries&quot; (NOAA Fisheries) and &quot;National Marine Fisheries Service&quot; (NMFS). All such purse seine vessels operating in the Western and Central Pacific Fisheries Commission (WCPFC) con idelines, procedures, processing metrics, or communications concerning any type of "sensitive review,"

A) regarding or related to federal preemption of any CRMC regulatory standards related but not limited t ad in 2006 and 2007 Hudson River PCBs Superfund Site Natural Resource Damages Trustees (&quot;T ubagencies or divisions under the supervision and administration of NOAA, all "records" as defined in th en January 1, 2007, and June 1, 2009, to or from the Yakama Nation, or its designated representatives a vind energy projects offshore California between January 1, 2010, to date. This request includes, but is r an NMS, Wisconsin, or any combination of those words related to the creation of an National Marine Se imited to the time-frame between January 1, 2016 and the time this request is processed. For this reque esources Management Act of 1978 and/or Louisiana's Coastal Resources Program. 2. Any and all recor ie end of 2017 (in essence 10 years looking back from current date). I only wish for permits that are for s the native MATLAB files used in the publication, L. Jay Field et al., Re-visiting projections of PCBs in Lo ----- All correspondence (from 2012 - present) between staff/scientists at the National Hurrica by the NWS at Sterling, Virginia and possibly at one or more locations in Alaska, and that the report ma is enacted) to the present.

Novak, deputy director Kathy Gilbert, administrative officer Crystal Rickett and secretary Dawn Cyrus inc

rents, including any records related to the preparation of such documents and the documents themselv near (OSS-31). • Ship/captain's logs for the USC&amp;GSS Pioneer (OSS-31). • Documents concerning endations to the OAR Assistant Administrator (AA), Craig N. McLean, in March 2016 from the 3 membe cv] 2. Kevin Kelleher [Kevin.Kelleher@noaa.gov] 3. Jennifer Mahoney [Jennifer.Mahoney@noaa.gov] 4. ], 3. Jennifer Mahoney [jennifer.mahoney@noaa.gov], that pertain to the following subjects; 1. The NEW

ts that NOAA knew or had reason to know the EPA Administrator would use as the scientific foundation, hether the recent decision to terminate the 'Advisory Committee for Sustained National Climate Assessn essment" (hereafter "Committee") including, but not limited to: a. Who participated in this decision-makin fety I would like: 1) A copy of a report and all supporting documents. 2) Any email relating to the Verge a

include (but not be limited to) Base Reflectivity, Base Velocity, Storm Relative Velocity and correlation cc DOC-NOAA-2015-000750.

e Animal Welfare Act by two components of the National Oceanic & Atmospheric Administration (NOAA)



ole Mason; 2. The first management inquiry written by Glenn Boledorich for OAR Leadership and submitted to requests from members of the media. This information is being requested in light of recent report: -up-40-percent-since-1990 I would prefer to receive these in electronic format if possible. Communications Legislative and Intergovernmental Affairs c) include one or more of the following terms: & the General Council. Enforcement and Litigation (GCEL). I also request a copy of the Notice of Permit & services versus &quot;as seen at&quot; section for where I have been a speaker 3. Official record of my Hawaiian Islands, 24 O.L.C. 183, 184 & n.1 (2000). • Memorandum for Randolph Moss, Assistant / the "Google Chat" or "Google Hangouts" feature of the National Oceanic and Atmospheric Administration wing Rolls-Royce equipment: Fishery Survey Vessel - FSV 6 NOAA Ship Reuben Lasker Shafting, Seals Acting Administrator Ben Friedman, and those of his Senior Advisor, Special Assistant, Chief of Staff, De

Administrator Ben Friedman, and those of his Senior Advisor, Special Assistant, Chief of Staff, Deputy ( chief of staff, deputy chief of staff and policy director, between the dates of July 1, 2017, and the date that Administrator Ben Friedman, and those of his Senior Advisor, Special Assistant, Chief of Staff, Deputy ( I half of 2016, most likely through NOAA's GAO liaison. If this letter is difficult to locate, perhaps ask the ons and expense accounts, identifying said sources other than regular income. b. The annual deductions: SSA is requiring documents: 1) Showing that I am not (and have not been) receiving monthly pension benefit information report, payroll records, questionnaire forms, correspondence, documents concerning background clearance records, vacation and/or sick time taken, workers' compensation claims; copies of any and all 7:00 PST via telephone in Seattle, WA with Angela Hunter. Request the following: Hiring decision doc

[REDACTED]

rs) to the NOAA Office for Coastal Management in Charleston, South Carolina (with contracting officer s

United States Department of Commerce, National Oceanic and Atmospheric Administration, concernin

E. Caban.

rary worker through a temporary service, I cannot recall the name of the temp agency. (3) Copy of IBS

5&rep=rep1&type=pdf

and Mr. Steven Goodman NOAA Fisheries Chief National Appeals Office, Office of Management and B  
8131/Withdrawal\_Land\_Status\_Map.pdf Of particular interest is communication surrounding "Parc  
/ City Renewal Options Property State Renewal Notice Date Property Zip Code Renewal Option Type Pr  
ice of forethought, sought to abuse it's jurisdiction to deprive me of my federally recognized property righ  
. Sam Johnson, Rep. John Ratcliffe, Rep. Jeb Hensarling, Rep. Joe Barton, Rep. John Culberson, Rep.  
would like to receive the information in electronic form, preferably a searchable PDF or in XML format.  
excerpt of which is shown below (the "Madre de Dios Island Complex"). The Madre de Dios Island Com  
ddot; Bigeye thresher & Common thresher

1 Bullard, Regional Administrator for the Greater Atlantic Region, and any person associated with the fol  
tion with case number PI1501648. According to a NOAA Public Affairs officer, this investigation was cor

arkation and disembarkation, number of sea days, and names of vessels; 2) All performance evaluation  
-history for the f/v ALEX MARIE (Doc. Number 102701 O).

pecies listed pursuant to the Federal Endangered Species Act (ESA) or the California Endangered Specie  
ril 1– 15, 2017 issue of Fathoms, which has been already disclosed in response to another FOIA reques  
& and/or NOAA relating to OMB's review of the Final Rule with RIN 0648-BG45.

1. Information not cited in the final version of the Technical Guidance or released to the public that NMF's  
ases for Red Chamber Co., also known as Red Chamber or Red Chamber Group, a company based in  
y correspondence as well as correspondence with entities or individuals outside the federal government  
id publicized on NOAA's website on or about September 3, 2015 (attached as Exhibit 1 to this FOIA requ  
isions beyond the Protected Resources division, concerning the petitioned, proposed, and listed corals  
ig Corals, including the timing and content of any such designation. 2) the rulemaking entitled Designat  
ies of the Corps' CWA & 404 jurisdiction in Puget Sound's tidally influenced waters. 3) Any records  
s in the State of Hawaii by NOAA-NMFS-Pacific Islands Regional Office for the period of January 1, 2001  
de. I would like to receive the information in electronic copies via email.

inger's time and attendance records from March 8, 2016 through June 27, 2017; 4) Listing of administra  
of the Animal Welfare Institute ("AWI") to request from the National Oceanic and Atmospheric Administ  
icrosoft Exchange Server messages, handwritten notes, or correspondence through any other medium

ling attachments.

less otherwise stated below, and for purposes of this request, SSL seeks only those records produced  
receive necropsy reports.

ting an America-First Offshore Energy Strategy" (April 28, 2017) ("Executive Order") (Exh. A) as it pertai

excluding any publicly available documents found via a web search, regarding the following two items: 1  
operative Management Act. 1. Decision memoranda, letters, emails, situation summaries, discussion c  
(16 U.S.C. § 1536) that have been initiated or proposed, including Biological Opinions, Biological Asses  
'ESA"); 2. All records mentioning, including, and/or referencing the draft and/or final biological evaluation

January 20, 2017 to the date of the search.

9, 2017. This includes documents, records, and materials regarding: 1. extension or reopening of the prior. The following documents: A summary of all complaints of violence, threats, or harassment against fisheries managers – NOAA, Alaska Regional Administrator Robert D. Mecum – NOAA, Alaska Deputy Regional Administrator or expansions during the specified time periods: Northeast Canyons and Seamounts Marine National Monument, excepting correspondence between the agency and PETA, the Animal Welfare Institute, and the effort to influence legislation or executive action, including indirect or grassroots lobbying. 2) All WPRFM records of any person identified, documents sufficient to identify the individual's employment status, including but not limited to a general ledger, in the greatest level of detail available without need for redaction. I would like this information relating to the facts surrounding the Stranding, including how the event was discovered, the condition of the stranding notes, or communications through any other media—sent or received by the following individuals for the stranding notes, or communications through any other media—sent or received by any and all NOAA employees involved in the Gulf of Mexico reef fish fishery (bottom longline and vertical line) and the Southeastern Atlantic shark fishery (bottom longline and vertical line) and the Southeastern Atlantic snapper-grouper fishery (bottom longline and shark bottom longline fisheries). 2. Logbook data related to shark bycatch, by species, in the HMS Sigsbee, "Regulatory Costs," or the April 5, 2017 Office of Management and Budget (OMB) guidance entitled, "Implementing the Marine Mammal Protection Act ("MMPA") incidental to anthropogenic activities in Cook Inlet. 3. Images of species discarded dead (up to 10 per year/species) (Prioritizing images of sea turtles and marine mammal

uses refer to the United States Department of Commerce, National Oceanic and Atmospheric Administration. The Tri Marine-specific data request is for fisheries data for activities in the WCPFC convention area. The Tri Marine-specific data request is for fisheries data for activities in the WCPFC convention area or handling of "high visibility" FOIA requests, including politically-sensitive requests or those submitted by

of application 2016-10-99, National Grid Fields Point Liquefaction Facility since October 2015 (Trustees), as well as all information generated by the Trustees as part of the 2008, 2009 and any previous requests, including without limitation all inter and intra-agency communications and data, used, consulted, and consultants (including Ridolfi Environmental), where the correspondence refers to Portland Harbor, not exclusive of, any policy-development discussions for these types of energy projects, and/or discussions in the Sanctuary in Lake Michigan. The period for the requested emails is January 1, 2017 through July 31, 2017. In addition, the term "all records" refers to, but is not limited to, any and all complaints submitted to the Monterey Bay Aquarium, photographs, correspondence, documents, including email communication, related to every periodic scuba diving activities only, and only those permits that have been approved. I do not request any permits for Hudson River fish using model emulation, Science of the Total Environment 557-558:489-501 (July 2016) by the Center and Josh Morgerman, iCyclone, and any employees or representatives at AIR, RMS, AGROA or any other agency located in or maintained by Joe Pica, the Director of the NWS Office of Observations. 2. Document

including the keyword(s): • rain • flood • Houston • Hurricane • Harvey • tropical storm • inches • disaster (

3. These records should include, but not be limited to, any internal or external correspondence regarding the presence or remediation (including abatement) of asbestos-containing materials aboard or from the ship panel through Carolyn McDonald, OAR Representative; 3. The employee names that OAR submitted to Stanley Benjamin [Stan.Benjamin@noaa.gov] That pertains to the following subjects: 1. The reasons for the S [National Energy with Weather Systems] project, 2. The future direction of the NEWS project, 3. Plans

in part, of the Clean Air Act endangerment analysis the EPA had been required to undertake in response to the report will impact the date for issuance of the final 4th National Climate Assessment.

ing process, both within and outside the agency and the U.S. Department of Commerce; b. What factors influenced the report? (article 3) Any email communication between the authors of the report and any representatives of DJI 4) /

efficient radar products at all angles scanned for that two hour window of time.

from the Oceanic & Atmospheric Research (OAR) and the National Ocean Service (NOS). Specifically, we request

tted to the Office of Audits and Investigations Unit regarding the Office of Inspector General complaint fi  
rts surrounding concerns on relationships between other federal agencies and journalists, particularly th

quot;embargo&quot; &quot;embargoed until&quot; &quot;press conference&quot; &quot;press briefing&  
Sanction (NOPS) associated with the NOVA for Case NE9803 I A .

ethical violation in sending sensitive information about a pending investigation to those that needed to k  
Attorney General, Office of Legal Counsel, from John Leshy, Solicitor, Department of the Interior, James  
on's ("NOAA") Unified Messaging System (i.e., NOAA's Google-hosted agency e-mail platform). Accordi  
s, and Bearings Fixed Pitch Propeller Steering Gear (Model SR662) Moving Vessel Profiler Survey Syste  
eputy Chief of Staff and Policy Director. I limit this search to the dates July 1, 2017 to the present.

Chief of Staff and Policy Director. I limit this search to the dates July 1, 2017 to the present.

is request is fulfilled with the following search terms: □ "climate assessment" □ "advisory committee" A c  
Chief of Staff and Policy Director. I limit this search to the dates July 1, 2017 to the present.

GAO liaison to search his email for internal correspondence to/or from Brian Eiler (myself) who helped j  
s from pay, identifying the nature of said deductions. c. Bonuses: All records necessary to reflect any bo  
enefits associated with my work for NOAA; and 2) Providing proof of the amount of any lump sum paym  
d investigations, telephone messages, notes, time lost from work due to any injury or illness, reason for  
doctor's reports, doctors notes concerning medical/physical limitations; and reports of physical examina  
ments, interview notes and associated correspondence Rating sheets listing all applicants identified as

[REDACTED]

services provided by NOAA's Eastern Acquisition Division in Norfolk, Virginia), under the Coastal Geospa  
ng the Cheniere Ronquille Barrier Island Coastal Restoration Project FED NO. BA-76 and the pipeline sp  
S contract with NOAA for my services as a temporary/contract worker at NOAA, including rate of pay, re

udget. These gentlemen have interviewed numerous NOAA employees and were directed to submit a  
:el G,&quot; the land that NOAA may be relinquishing to Kinross. I am interested in any agency commun  
roperty Rentable SF Owner Contact Name Property Usable SF Owner Address Lease Number Owner C  
its in the matter of Kohala Coast Enterprises v. Unidentified Shipwrecked Vessel, as such, I believe the  
Kevin Brady, Rep. Michael McCaul, Rep. Michael Conaway, Rep. Kay Granger, Rep. Mac Thornberry, I

plex is located in Bucareli Bay approximately 6 miles south of Craig, Alaska on Prince of Wales Island. A

lowing entities concerning industry funding for the Northeast Multispecies Fishery's At-Sea Monitor Prog  
nducted by NOAA's Office of Law Enforcement and forwarded to NOAA's Office of General Counsel, En

s made by NMFS and/or Techsea International, Inc. staff after each trip; 3) The original complaint from I

ys Act (CESA) in the Arroyo Grande Creek. 3. Any and all documents generated on or after August 19, 2  
t. Please see the attached PDF for a complete description of CoA Institute's FOIA request.

S relied upon in the Technical Guidance, including scientific documents, studies, and reports. 2. Technic  
Vernon, California and registered to the following address: 1912 E Vernon Ave., Vernon, California, 900  
:), emails, letters, notes, telephone records, telephone notes, minutes, memoranda, comments, files, pre  
uest), including &middot; but not limited to all written comments, as well as all communications with nonq  
See attached for full request and fee waiver request.

ion of Critical Habitat for the Arctic Ringed Seal, including the timing and content of any such designatio  
reflecting Army Corps' directives, guidance, rules, or other authorities regarding the appropriate tidal  
0, to the present. This includes supporting materials such as lab reports, Level A data, photographs, res

tive hours provided to Council staff from March 8, 2016 through June 27, 2017; 5) Confirmation from the  
ration ("NOAA"), the National Marine Fisheries Service ("NMFS"), the Fish and Wildlife Service ("FWS"),  
—sent or received by all NOAA employees and members of the Gulf of Mexico Fishery Management Cc

or received by NMFS since May 25, 2017. SSL selected this date on the basis of representations by NM

ns to "Incidental Take Authorization requests, including Incidental Harassment Authorizations and Letter

1. weakening or eliminating any existing NOAA species or habitat protections in state or  
documents, or briefing documents that discuss summer flounder and New Jersey's 2017 recreational se  
gments, or informal consultations, pertaining to the implementation of the National Flood Insurance Prog  
1 of malathion under the ESA; 3. All records mentioning, including, and/or referencing the draft and/or fin

vate recreational red snapper season; 2. how or whether this action would affect progress toward rebuild  
as observers in US fisheries observer programs that occurred in calendar year 2013, 2014, 2015, and 2016  
Administrator Glenn G. Merrill – NOAA, Alaska Region Sustainable Fisheries Fish and Wildlife  
Document (01/01/14 – 12/31/16) Papahānaumokuākea Marine National Monument Expansion (01/01/14 -  
air representatives. This request includes, but is not limited to, memoranda, reports, notes, letters, email  
C letters, testimony, or presentations for federal or state legislators, the President, or state governors fo  
t limited to whether the individual is a contractor, volunteer, or federal employee and whether the individ  
record(s) provided in electronic format; if the information cannot be exported in an Excel or comma-delim  
of the animals, any efforts made to assist the animals, and mortality data. 2. All records relating to any in  
the time period of April 17, 2017 through April 24, 2017: □ John F. Quinn □ E.F. “Terry” Stockwell III □  
ees who attended the April 18–20, 2017 NEFMC meetings in their official capacity. The time period for th  
ntic snapper-grouper fishery (bottom longline and vertical line). 2. Logbook data regarding the bycatch (c  
om longline and vertical line) in the First Edition of the U.S. National Bycatch Report and the First and Se  
hark bottom longline and pelagic longline fisheries. 3. Observer data and reports related to shark bycatc  
venting Executive Order 13771, Titled ‘Reducing Regulation and Controlling Regulatory Costs.’” This rec  
Please provide the following documents in your possession, whether received, created, and/or distribute  
s for the HI SSSL) □ Data collected by the NMFS-Pacific Islands Regional Observer Program for all spec

istration, National Marine Fisheries Service, and their employees, agents, attorneys, and consultants. In  
ention area for 2012, 2013, 2014, 2015, and 2016, for fishing vessels Cape Breton, Cape Cod, Cape Eliz  
y news-media requesters. The scope of this item includes records defining or describing “high

post-2009 avian egg injection work. 2. All information (including work plans, quality assurance plans, vali  
ed, referenced or relied upon to prepare the following: (1) that certain “Environmental Assessment for  
the Lower Columbia River, the Multnomah Channel, or the Willamette River. For the Lower Columbia Ri  
ons of the fiscal implications to the national marine sanctuary program, or to individual sanctuary sites, a  
,

/ Bay National Marine Sanctuary (via email, mail, fax, and phone) about wildlife being harassed or distur  
; evaluation by the National Oceanic and Atmospheric Administration of Louisiana’s State and Local Coe  
ts that have been denied. These permits are specifically for the USS Monitor National Marine Sanctuary  
2016), and as time permits, John Kern and Jay Field will organize and provide computer code to read th  
SEMEX, Swiss Re, Goldman Sac  
ts that reveal the cost of the Vaisala radiosonde autolaunchers procured by the National Weather Servic

Copies of any and all email between August 23 to August 30 sent or received by Storm Prediction Center

g the application of the aforementioned laws and preparation of assessments, statements, and consulta  
; USC&GSS Pioneer (OSS-31). • Documents concerning the repair, overhaul or maintenance of the  
to NOAA Leadership in March 2016; 4. Emails between Craig McLean and Gary Matlock on the LCDP i  
; behind the cancellation of the NEWS (National Energy with Weather System) project 2. The decisio  
s of the NEWS project after October 1, 2016, 4. CIRES employee Christopher T M Clack, 5. Budget info

se to the U.S. Supreme Court’s decision in Massachusetts v. EPA, and of the positive 2009 Clean Air Ac

were considered in making this decision; and c. How the Committee’s unfinished work will now be comp  
Any email communication between NOAA, the Dept of Commerce and DJI concerning the article 5) Any

request the following: 1. The roster for the IACUC members for OAR and NOS; 2. Minutes of the IACUC

led by Katy Stewart referencing Nicole Mason and all documents attached to the management inquiry); 3. the CDC, especially agencies with a science focus.

“press call” “press event” “press strategy” “presser”

now (ie management officials and the Office of General Counsel representative).

; Dorskind, General Counsel, National Oceanic and Atmospheric Administration, and Dinah Bear, General Counsel, to a March 2012 handbook, “[p]er the decision of NOAA General Counsel,” communications through the Oscar Dyson Class Fishery Research Vessels Shafting, Seals, and Bearings Fixed Pitch Propeller

copy of each email that includes the phrase “CLIMATE ASSESSMENT” or the phrase “ADVISORY COMMITTEE”

pull the letter together.

bonuses paid to EMPLOYEE, including but not limited to the following information. 1. Date(s) of bonus(es) received and the effective date of such payment. The Social Security Administration requires that such information be included in the termination of employment, AND ANY AND ALL RECORDS WHATSOEVER YOU MAY HAVE regarding such bonuses.

Not qualified, Qualified, and Best Qualified Resumes of all applicants

ational Services Contract Vehicle,

which occurred on 5 September 2016. This request is

reason for my removal from support position. Any and all records or reports for

written reports

communications that have any of

Agency Name Owner State Agency Rentable SF Owner Zip Agency Usab

law entitles me to see all the information and reports

Rep. Randy Weber, Rep. Bill Flores, Rep. Jodey Arrington, Rep. Lamar Smith, Rep. Pete Olson, Rep. W

Any reports, memoranda or comments provided to any party or other agency relating to any proposed

for

Morgan Lynne Miller filed with NMFS detail

2015 referring to, relating to, or regarding any efforts

analytical tools and models

58. I ask that you search based on address, because

presentations, consultation

government

in (3) the critical habitat design

response reports, and e

the Council's contracted Information Technology Company regarding the date of

, and the Marine Mammal Commission ("MMC"), certain documents related to the Public

Council ("Gulf Council") who attended the Gulf

NMFS that it considered May 25 as the "cutoff" date

of Authorization" for seismic surveys. See Exh. A § 9. This includes but is not limited to records that are

reason; 2. Communications pertaining

to the program ("NFIP") by the Federal E

nvironmental biological evaluation of diaz



ding under the red snapper rebuilding plan; 3. how or whether  
16, separated by: 1. Year; 2. Whether the complaint was i

- 12/31/16) Pacific Remote Islands Marine National Mo  
ls, and other correspondence.

r the 10 years prec

ual serv

nited format, please let

vestigation, whether conducted by NMFS or other

Mark Alexander □ Matthew McKenzie □ Terry Alexander □ Vincent Balzano □ Mary Beth Nickell-Tooley

his request is April 17, 2017 through April 24, 2017. The list of individuals should include, but not be limit

of sharks, by species, in the Gulf of Mexico reef fish fishery (bottom longline and vertical line) and the Sc

cond Updates to the National Bycatch Report. 2. Logbook data used to estimate shark bycatch, by spec

h, by species, in the HMS

quest includes both records related to implementation generally

id by NOAA: (

ies, including

this request, we refer to the &quot;Sacramen

zabeth

dated and unvalidated

ver, this request is limited to external correspondence that refers or pertains to environ

nd

bed by drones or unmanned aeria

astal Resources Management Act of 1978 an

w

re data files and produce relevant inputs/assumptions/informati

re; estimated cost of installation per unit; and estimated cost of

director Russell Schneide

ition

USC&GSS Pioneer (OSS- 31 ). • Photographs of

n March 2016; 5. Emails between Craig McLean and NOAA Leadership on the LCDP in March 2

making process of the cancellation

mation on the Wind Boundary Layer [WBL] or Atmospheric

t GHG Endangerm

leted, including: i. NOAA's

between NASA and the Verge reporter. 6) Any documents relating to

meetings for OAR and NOS; 3. Actions that

. The cover letter by OAR Leadership to Mack Cato included

&quot;media event&quot; &quot;media call&quot; &quot;

ral Counsel, Council on Environmental Quality, Re: Request for Opini  
Google Chat (or Google Hangouts) "will be con

/

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rg: MELISSA SOLDEVILLA.



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e or reflect:  NOAA's evaluation of applications for incidental harassment authorizations (IHAs) for seis

/ □ Mark Gibson □ Eric Reid □ Rick Bellavance □ David E. Pierce □ Michael Sissenwine □ Elizabeth E  
ed to: □ John Bullard □ Michael Pentony □ Elizabeth Chilton □ Amy Martins □ J. Michael Lanning □ Jo  
outheastern Atlantic snapper-grouper fishery (bottom longline and vertical line). 3. Observer data regardi  
sies, in the Gulf of Mexico reef fish fishery (bottom longline and vertical line) and the Southeastern Atlant  
-grouper fisher





ismic airgun surveys in the Mid- and South Atlantic Planning Areas; and communications with applicants

trie □ John Pappalardo □ Douglas Grout □ Peter T. Kendall □ Mark Godfory □ Thomas A. Nies □ Chris  
r Hare □ Moira Kelly □ Carrie Nordeen

ng the bycatch of sharks, by species, in the Gulf of Mexico reef fish fishery (bottom longline and vertical  
tic snapper-grouper fishery (bottom longline and vertical line) in the First Edition of the U.S. National Byc  
y. 5. The number of vessels that have both a directed shark permit and a directed reef fish or directed st







seeking IHAs for seismic surveys, and/or with any other industry group regarding the Executive Order a:

Christopher Kellogg □ Sandra Stone □ Janice Plante □ Andrew Applegate □ Michelle Bachman □ Deirdre B

line) and the Southeastern Atlantic snapper-grouper fishery (bottom longline and vertical line) and any a  
atch Report and the First and Second Updates to the National Bycatch Report. 3. Observer data used to  
snapper-grouper permit in the Gulf of Mexico and Southeastern Atlantic. 6. The number of vessels that h:





s it applies to authorizations for the taking of marine mammals inc

oelke □ Jamie Cournane □ Rachel Feeney □ Lou Goodreau □ Demet Haksever □ Fiona Hogan □ Jon:

associated observer reports or characterizations of the f  
o estimate shark bycatch, by species, in the Gulf of Mexico reef  
ave both an incidental permit to land sharks and a directed reef fish





athon Peros □ Naresh Pradhan □ Rob





**Stacey Nathanson - NOAA Federal**

---

**From:** Stacey Nathanson NOAA Federal  
**Sent:** Tuesday, February 6, 2018 3:46 PM  
**To:** Mark Graff NOAA Federal; Bogomolny, Michael (Federal)  
**Subject:** Fwd: Update on next interim release in DOC NOAA 2017 001974  
**Attachments:** 0.7.612.10136.pdf; 0.7.612.10137.pdf; Council Email FOIA Memo 2012.pdf; Council FOIA Policy Annex 2013.pdf

Hi guys!

(b)(5)  
[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block] Thoughts on that approach?

(b)(5)

If you can give this some thought and get back to me by tomorrow, that would be great. I'll start drafting up a reply in the meantime. Thanks!

*Stacey*

Stacey Nathanson  
Attorney-Advisor  
NOAA Office of the General Counsel  
Fisheries and Protected Resources Section  
Phone: 301-713-9673  
Email: [Stacey.Nathanson@noaa.gov](mailto:Stacey.Nathanson@noaa.gov)

*Confidentiality Notice: This e mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.*

Forwarded message

From: **Ryan Mulvey** <[ryan.mulvey@causeofaction.org](mailto:ryan.mulvey@causeofaction.org)>  
Date: Tue, Feb 6, 2018 at 11:18 AM  
Subject: RE: Update on next interim release in DOC NOAA 2017 001974  
To: Stacey Nathanson NOAA Federal <[stacey.nathanson@noaa.gov](mailto:stacey.nathanson@noaa.gov)>

Stacey,

Thank you for your email. I have, indeed, received the second interim release. I appreciate your efforts to get that out to us and to push out another interim release by the end of the month.

I just had two quick follow up questions:

First, do you know the status of the searches for the Council members' communications? It seems that everything has been from NOAA employees so far. There were two records that had on the Outlook heading the names of a couple of employees from the Florida Fish and Wildlife Conservation Commission. I don't think they were ever on the Council as state representatives, so that must have been a quirk of Outlook when the MSG file was exported for review and release. Probably because the NOAA employee was a recipient, instead of the sender. I've attached the records so you can see what I mean.

Second, could you please confirm the status or the ability of the agency to search for non email electronic correspondence—*e.g.*, instant/text messages, and Google Hangouts/chat messages? I believe we briefly discussed this in one of our calls, but I can't recall what exact determination the agency had reached. My recollection is that the agency doesn't retain such records.

Thanks,

Ryan

**From:** Stacey Nathanson NOAA Federal [mailto:[stacey.nathanson@noaa.gov](mailto:stacey.nathanson@noaa.gov)]  
**Sent:** Monday, February 05, 2018 9:50 AM  
**To:** Ryan Mulvey <[ryan.mulvey@causeofaction.org](mailto:ryan.mulvey@causeofaction.org)>  
**Subject:** Update on next interim release in DOC NOAA 2017 001974

Good morning, Ryan,

I hope you are doing well this icy morning. I just wanted to let you know that I just received word that the next interim release in your FOIA request is now available on FOIA online. Please let me know if you have any questions about this release. We are continuing to review your request and should have another interim out to you within the month. Thank you and take care!

# *Stacey*

Stacey Nathanson  
Attorney-Advisor  
NOAA Office of the General Counsel  
Fisheries and Protected Resources Section  
Phone: [301-713-9673](tel:301-713-9673)  
Email: [Stacey.Nathanson@noaa.gov](mailto:Stacey.Nathanson@noaa.gov)

*Confidentiality Notice: This e mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.*

**Flewelling, Leanne**

---

**From:** Flewelling, Leanne  
**Sent:** Thursday, July 20, 2017 4:39 PM  
**To:** Ruth Ewing NOAA Federal  
**Subject:** RE: FMMSN1714 Samples False Killer Whale Mass Stranding

Hi Ruth,  
Please send liver, lung, colon, and the forestomach lining.

Leanne J. Flewelling, Ph.D.  
Research Administrator II  
Fish and Wildlife Research Institute  
Florida Fish and Wildlife Conservation Commission  
100 Eighth Avenue SE  
St. Petersburg, FL 33701 5020  
Phone: (727) 502 4891  
[Leanne.Flewelling@MyFWC.com](mailto:Leanne.Flewelling@MyFWC.com)

*Please note: Florida has a very broad public records law. Most written communications to or from state officials regarding state business are considered public records and are available to the public and the media upon request. Therefore, your email communications may be subject to public disclosure.*

**From:** Ruth Ewing - NOAA Federal [mailto:ruth.ewing@noaa.gov]  
**Sent:** Thursday, July 20, 2017 2:48 PM  
**To:** Flewelling, Leanne <Leanne.Flewelling@MyFWC.com>  
**Subject:** Fwd: FMMSN1714 Samples - False Killer Whale Mass Stranding

Hi Leanne,

I received a request from Hada to submit some biotox samples to you from the Pseudorca mass stranding this year.

I checked the -80 and discovered that the samples we have for FMMSN1714 consist of:  
liver  
lung  
colon  
heart  
skin & blubber  
forestomach lining

Of these tissue which would you prefer to receive for testing. Please let me know.

Thanks,

Ruth

----- Forwarded message -----

From: **Ruth Ewing - NOAA Federal** <[ruth.ewing@noaa.gov](mailto:ruth.ewing@noaa.gov)>

Date: Fri, Jul 14, 2017 at 9:34 AM

Subject: Re: FMMSN1714 Samples - False Killer Whale Mass Stranding

To: "Herring, Hada" <[Hada.Herring@myfwc.com](mailto:Hada.Herring@myfwc.com)>

Cc: Blair Mase - NOAA Federal <[blair.mase@noaa.gov](mailto:blair.mase@noaa.gov)>, "Boyd, Denise" <[Denise.Boyd@myfwc.com](mailto:Denise.Boyd@myfwc.com)>

Hi Hada,

I'll look into what we have and when best to ship at the beginning of next week.

Have a nice weekend.

Ruth

On Thu, Jul 13, 2017 at 4:37 PM, Herring, Hada <[Hada.Herring@myfwc.com](mailto:Hada.Herring@myfwc.com)> wrote:

Hi Ruth,

Thanks for the quick reply! Please submit the biotoxin samples on dry ice, standard overnight at your earliest convenience at the following address:

Leanne Flewelling  
Fish and Wildlife Research Institute  
Florida Fish and Wildlife Conservation Commission  
100 Eighth Avenue SE  
St. Petersburg, FL 33701

Leanne Flewelling prefer samples to be shipped earlier in the week, but please coordinate with her via e-mail ([Leanne.Flewelling@MyFWC.com](mailto:Leanne.Flewelling@MyFWC.com)) prior to shipping. Also, please e-mail us the list of what is being shipped and when (prior to shipping), so that we can complete the necessary form for Leanne.

When you have the chance, could you also send me a list of the exact viral samples collected?

Please let me know if you have any questions and thanks!

Best,

Hada

**From:** Ruth Ewing - NOAA Federal [mailto:[ruth.ewing@noaa.gov](mailto:ruth.ewing@noaa.gov)]

**Sent:** Thursday, July 13, 2017 4:08 PM

**To:** Herring, Hada <[Hada.Herring@MyFWC.com](mailto:Hada.Herring@MyFWC.com)>

**Cc:** Blair Mase <[Blair.Mase@noaa.gov](mailto:Blair.Mase@noaa.gov)>

**Subject:** Re: FMMSN1714 Samples - False Killer Whale Mass Stranding

Hi Hada,

We can certainly ship them where ever you would want them to go and retain the virology sample in our -80 until they need to be analyzed.

I am out of the office tomorrow. Please let me know when you would like those samples to be shipped.

Regards,  
Ruth

On Thu, Jul 13, 2017 at 3:53 PM, Herring, Hada <[Hada.Herring@myfwc.com](mailto:Hada.Herring@myfwc.com)> wrote:

Hi Dr. Ruth,

Hope all is well! We are working on processing the samples collected from the *Pseudorca* mass stranding and believe that you have biotoxin and virology samples for FMMSN1714? If so, then would you prefer to send all of the samples to our office in Port Charlotte, for us to ship as necessary for analyses? If you prefer, I can instead provide you with the information needed for shipping biotoxin samples to FWRI and you can retain the virology samples for the time being. Please let me know and appreciate it!

Best,

Hada M. Herring, M.P.S.  
Marine Research Biologist  
Florida Fish and Wildlife Conservation Commission  
Fish and Wildlife Research Institute  
Southwest Field Lab  
585 Prineville St.  
Port Charlotte, FL 33954  
Office:  [\(941\)-613-0946 Ext. 116](tel:(941)6130946)  
Fax:  [\(941\)-613-0948](tel:(941)6130948)  
[Hada.Herring@myFWC.com](mailto:Hada.Herring@myFWC.com)  
**Manatee Hotline:** [1-888-404-3922](tel:18884043922)





## Boyd, Denise

---

**From:** Boyd, Denise  
**Sent:** Monday, July 31, 2017 1:24 PM  
**To:** Sabrina Stevens NOAA Affiliate  
**Cc:** Jenny Litz; Elizabeth Stratton  
**Subject:** RE: GE 2017 0001 Started

Hi Everyone!

I like the title. I added the Level A's to the group event (really easy to do with the search functions!), added some locality information and a map. I first added the map under the manually counted box and thought I deleted it. I then added it to the locality information section. But for some reason it shows up in duplicate in both areas. Now that I have hit submit I am not able to edit and remove what looks to me like multiple entries for the map. Did you want me to add more detail to the event summary?

Denise

**From:** Sabrina Stevens - NOAA Affiliate [mailto:sabrina.stevens@noaa.gov]  
**Sent:** Monday, May 15, 2017 9:00 AM  
**To:** Boyd, Denise <Denise.Boyd@MyFWC.com>  
**Cc:** Jenny Litz <Jenny.Litz@noaa.gov>; Elizabeth Stratton <elizabeth.stratton@noaa.gov>  
**Subject:** GE-2017-0001 Started

Hi Denise,

I just wanted to let you know that I started the event for the false killer whales. I added you as the onsite coordinator so you should have access to everything. Feel free to add more to the event summary. I have not assigned any level A's or added any files. For the tile I just did the year, month, common name, and location. I am open to other suggestions.

take care,

--

*Sabrina Stevens*

UM/CIMAS

SEFSC, Miami FL

305-361-4296

[sabrina.stevens@noaa.gov](mailto:sabrina.stevens@noaa.gov)



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
Washington, D.C. 20230

OFFICE OF THE GENERAL COUNSEL

August 21, 2012

MEMORANDUM

TO: Lois J. Schiffer  
General Counsel

FROM: Adam D. Issenberg *AD 8/21/12*  
Section Chief  
Fisheries and Protected Resources Section

Keith A. Hagg *Keith Hagg 8/21/12*  
Attorney-Advisor  
Fisheries and Protected Resources Section

SUBJECT: Whether MSA Council Member Records are NOAA or Council Records for  
FOIA Purposes

(b)(5)

Questions Presented

(b)(5)

(b) (5)

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***NMFS POLICY DIRECTIVE ANNEX, PDS 30-125-ANNEX-A  
February 19, 2013***

***Administration and Operations***

***Freedom of Information Act ANNEX:  
Records Management for Fishery Management Councils***

**NOTICE:** This publication is available at: <http://www.nmfs.noaa.gov/directives/>.

**OPR:** Management and Budget

**Certified by:** Alan Risenhoover

**Type of Issuance:** Initial

***SUMMARY OF REVISIONS: This ANNEX provides allied information on the definition and handling of agency records from Regional Fishery Management Council members.***

Purpose: This document identifies what Regional Fishery Management Council (Council) member documents are considered **agency records** and describes their handling.

The Federal Records Act, 44 U.S.C. § 3101, requires agencies to “preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency ....” Documents written or received by Council members are agency records that are subject to the Federal Records Act if they reflect official Council business.

A document reflects Council business if it represents the business of the Council as a full body. For example, a comment or views letter signed by the Council chair on behalf of the entire Council reflects Council business. Similarly, a letter submitted to the chair as the principal representative of the Council reflects Council business. These are agency records.

A document written or received by an individual Council member also reflects Council business if it relates to a matter within the Council’s jurisdiction and the document is specifically discussed or disseminated at a Council meeting (including committee meetings, planning meetings, etc.). Thus, such a document also is an agency record. Official Council business does not include documents that reflect personal or private business matters of members, or matters related to their other employment.

All documents relating to a matter within the Council’s jurisdiction and that is discussed or disseminated must be collected by the Council staff and maintained in the Council’s record-keeping system.

The Executive Directors are responsible for collecting all records from Council members and maintain that record in accordance with the Federal Records Act. In the case of a FOIA request that seeks documents as described above, NMFS will request responsive documents from the Executive Director of the appropriate Council. NMFS, in conjunction with Office of General Counsel-Admin and NOAA General Counsel, will review any records that a Council produces to determine whether they are responsive to the request and, if they are, whether they are subject to disclosure under the FOIA. Though some responsive records may be disclosed, any personal identifiers on the documents, such as the personal email address of a Council member, will be withheld.

Relevant Regulations:

50 CFR 600, Subpart B - Regional Fishery Management Councils

§ 600.150

Disposition of records.

(a) Council records must be handled in accordance with NOAA records management office procedures. All records and documents created or received by Council employees while in active duty status belong to the Federal Government. When employees leave the Council, they may not take the original or file copies of records with them.

(b) Each Council is required to maintain documents generally available to the public on its Internet site. Documents for posting must include: fishery management plans and their amendments for the fisheries for which the Council is responsible, drafts of fishery management plans and plan amendments under consideration, analysis of actions the Council has under review, minutes or official reports of past meetings of the Council and its committees, materials provided by the Council staff to Council members in preparation for meetings, and other Council documents of interest to the public. For documents too large to maintain on the Web site, not available electronically, or seldom requested, the Council must provide copies of the documents for viewing at the Council office during regular business hours or may provide the documents through the mail.

[66 FR 57887, Nov. 19, 2001, as amended at 75 FR 59151, Sept. 27, 2010]

§ 600.155

Freedom of Information Act (FOIA) requests.

(a) FOIA requests received by a Council should be coordinated promptly with the appropriate NMFS Regional Office. The Region will forward the request to the NMFS FOIA Official to secure a FOIA number and log into the FOIA system. The Region will also obtain clearance from the NOAA General Counsel's Office concerning initial determination for denial of requested information.

(b) FOIA requests will be controlled and documented in the Region. The requests should be forwarded to the NMFS FOIA Officer who will prepare the Form CD-244, "FOIA Request and Action Record", with the official FOIA number and due date. In the event the Region determines that the requested information is exempt from disclosure, in full or in part, under the FOIA, the denial letter prepared for the Assistant Administrator's signature, along with the "Foreseeable Harm" Memo and list of documents to be withheld, must be cleared through the NMFS FOIA Officer. Upon completion, a copy of the signed CD-244 and cover letter transmitting the information should be provided to the NMFS FOIA Officer and the NOAA FOIA Officer.

[66 FR 57887, Nov. 19, 2001]

/s/

2/18/2013

Samuel D. Rauch III

Date

Deputy Assistant Administrator for Regulatory Programs, performing  
the functions and duties of the Assistant Administrator for Fisheries  
National Marine Fisheries Service

**Ellen Sebastian - NOAA Federal**

---

**From:** Ellen Sebastian NOAA Federal  
**Sent:** Tuesday, February 6, 2018 4:22 PM  
**To:** Graff, Mark; Lola Stith NOAA Affiliate  
**Subject:** Fwd: Submitter Ltr template  
**Attachments:** 2008 00091 Final Full Denial.pdf

Hi Mark and Lola (b)(5)

Any help on this matter would be much appreciated.

Forwarded message

**From:** NMFS HQ PR FOIA Requests - NOAA Service Account <[nmfs.hq.pr.foia@noaa.gov](mailto:nmfs.hq.pr.foia@noaa.gov)>  
**Date:** Fri, Feb 2, 2018 at 3:56 PM  
**Subject:** Submitter Notification Do you happen to know....  
**To:** Samuel Dixon NOAA Affiliate <[samuel.dixon@noaa.gov](mailto:samuel.dixon@noaa.gov)>

Sam (b)(5)

Any help on this would be greatly appreciated. ~ Ell

Forwarded message

**From:** Amy SCHOLIK - NOAA Federal <[amy.scholik@noaa.gov](mailto:amy.scholik@noaa.gov)>  
**Date:** Tue, Feb 6, 2018 at 10:23 AM  
**Subject:** Re: Submitter Ltr template  
**To:** Ellen Sebastian NOAA Federal <[ellen.sebastian@noaa.gov](mailto:ellen.sebastian@noaa.gov)>  
**Cc:** Deborah Ben David NOAA Federal <[deborah.ben.david@noaa.gov](mailto:deborah.ben.david@noaa.gov)>

(b) (5)

Not sure if this is helpful or not?,  
Amy



**Amy R. Scholik-Schlomer, Ph.D.**

Fishery Biologist (Protected Resources Acoustic Coordinator)

NOAA's National Marine Fisheries Service

Office of Protected Resources

Marine Mammal and Sea Turtle Conservation Division

[1315 East-West Hwy.](#)

SSMC3, Rm. 13605

Silver Spring, MD 20910

[\(301\) 427-8449](#)

Email: [Amy.Scholik@noaa.gov](mailto:Amy.Scholik@noaa.gov)

<http://www.nmfs.noaa.gov/pr/acoustics/>

On Fri, Feb 2, 2018 at 9:45 AM, Amy SCHOLIK NOAA Federal <[amy.scholik@noaa.gov](mailto:amy.scholik@noaa.gov)> wrote:

Apologies for the confusion.

(b)(5)

[Redacted content]

Thanks,  
Amy



**Amy R. Scholik-Schlomer, Ph.D.**

Fishery Biologist (Protected Resources Acoustic Coordinator)



NOAA's National Marine Fisheries Service  
Office of Protected Resources  
Marine Mammal and Sea Turtle Conservation Division  
[1315 East-West Hwy.](#)  
SSMC3, Rm. 13605  
Silver Spring, MD 20910  
[\(301\) 427-8449](#)  
Email: [Amy.Scholik@noaa.gov](mailto:Amy.Scholik@noaa.gov)  
<http://www.nmfs.noaa.gov/pr/acoustics/>

On Fri, Feb 2, 2018 at 9:13 AM, Ellen Sebastian NOAA Federal <[ellen.sebastian@noaa.gov](mailto:ellen.sebastian@noaa.gov)> wrote:  
Hi Debbie, yes, let's circle the wagons with Mark and/or Stacey when you return. I'm monkey in the middle on this record's content.

On Fri, Feb 2, 2018 at 9:07 AM, Deborah Ben David NOAA Federal <[deborah.ben david@noaa.gov](mailto:deborah.ben david@noaa.gov)> wrote:

Hi Ellen,

(b)(5) [Redacted]

[Redacted] ? but I can also get engaged on this Monday. I'm off today.

Debbie

Sent from my iPhone

On Feb 2, 2018, at 8:53 AM, Ellen Sebastian NOAA Federal <[ellen.sebastian@noaa.gov](mailto:ellen.sebastian@noaa.gov)> wrote:

Amy and Debbi (b)(5) [Redacted]

[Redacted]

[Redacted]

On Thu, Feb 1, 2018 at 11:45 AM, Amy SCHOLIK NOAA Federal <[amy.scholik@noaa.gov](mailto:amy.scholik@noaa.gov)> wrote:

Hello Ellen,

(b)(5) [Redacted]

[Redacted]

[Redacted]

[Redacted]

(b)(5)

Thanks,  
Amy



**Amy R. Scholik-Schlomer, Ph.D.**

Fishery Biologist (Protected Resources Acoustic Coordinator)  
NOAA's National Marine Fisheries Service  
Office of Protected Resources  
Marine Mammal and Sea Turtle Conservation Division

[1315 East-West Hwy.](#)

SSMC3, Rm. 13605

Silver Spring, MD 20910

[\(301\) 427-8449](#)

Email: [Amy.Scholik@noaa.gov](mailto:Amy.Scholik@noaa.gov)

<http://www.nmfs.noaa.gov/pr/acoustics/>

On Thu, Feb 1, 2018 at 10:43 AM, Ellen Sebastian NOAA Federal  
<[ellen.sebastian@noaa.gov](mailto:ellen.sebastian@noaa.gov)> wrote:

per our discussion, please see attached.

For further detailed information regarding use of exemption (b)(4),  
see [https://www.justice.gov/oip/doj\\_guide\\_freedom\\_information\\_act\\_0](https://www.justice.gov/oip/doj_guide_freedom_information_act_0)

Ellen Sebastian

FOIA & Records Coordinator Alaska Region

Temporary Detail w/ Office of Protected Resources/PR4

[\(301\) 427 8489](#)

*Nourish and sustain your sense of joy.*

Ellen Sebastian

FOIA & Records Coordinator Alaska Region

Temporary Detail w/ Office of Protected Resources/PR4

[\(301\) 427 8489](#)

*Nourish and sustain your sense of joy.*

<2008 00091 Final Full Denial.pdf>

Ellen Sebastian  
FOIA & Records Coordinator Alaska Region  
Temporary Detail w/ Office of Protected Resources/PR4  
[\(301\) 427 8489](tel:3014278489)

*Nourish and sustain your sense of joy.*

Ellen Sebastian  
FOIA & Records Coordinator Alaska Region  
Temporary Detail w/ Office of Protected Resources/PR4  
[\(301\) 427 8489](tel:3014278489)

*Nourish and sustain your sense of joy.*



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
 NATIONAL MARINE FISHERIES SERVICE  
 1315 East-West Highway  
 Silver Spring, Maryland 20910  
 THE DIRECTOR

Mr. Paul MacGregor  
 Mundt MacGregor L.L.P.  
 999 Third Avenue, Suite 4200  
 Seattle, Washington 98104-4082

JAN 25 2008

RE: FOIA Request #2008-00091

Dear Mr. MacGregor:

This letter is in response to your Freedom of Information Act (FOIA) request dated November 21, 2007, and received by NOAA's National Marine Fisheries Service (NMFS) on November 26, 2007. You requested peer reviews and other critiques of a paper prepared by Holmes et al., entitled "Age-structured Modeling Provides Evidence for a 28-year Decline in Birth Rate of Western Steller Sea Lions."

This letter completes our response to your request. Our search of NOAA's National Marine Fisheries Service Northwest and Alaska Fisheries Science Centers identified three responsive records. We determined that the documents are exempt from disclosure pursuant to 5 U.S.C. 552(b)(5), which protects inter-agency or intra-agency memorandums or letters that would not be available by law to a party in litigation with the agency.

NMFS considers draft technical reports, draft scientific publications, and their evaluations to be confidential and predecisional. In the scientific review process, a draft technical report or scientific publication is reviewed by professional peers and scientific editors who validate the paper and provide recommendations for corrections or revisions before it is published. The peer-review protocol allows for more candid and forthright discussion of problems, such as faulty scientific methods, errors in the data or in their interpretation, inadequate discussion of relevant scientific literature, exaggerated or unwarranted conclusions, etc. Release of peer reviews, critiques, and evaluations for this draft paper would prejudice the final content of the paper, cause substantial harm to the peer-review process, and place inaccurate information in the public domain.

Under Title 15, Code of Federal Regulations, Section 4.10 (a), you have the right to appeal this denial determination. The Assistant General Counsel for Administration must receive your appeal within **30 calendar days** of the date of the initial denial letter. Address your appeal to the following office:

**Assistant General Counsel for Administration**  
**U.S. Department of Commerce**  
**Room 5898-C**  
**14<sup>th</sup> Street & Constitution Avenue, N.W.**  
**Washington, D.C. 20230**

THE ASSISTANT ADMINISTRATOR  
 FOR FISHERIES



You may also send your appeal via e-mail to [FOIAAPPEALS@doc.gov](mailto:FOIAAPPEALS@doc.gov) or by facsimile (fax) to (202) 482-2552. The appeal must include a copy of the original request, the response to your request, and a statement of the reasons why you believe this decision to be in error. The submission (including email and fax submissions) is not complete without the required attachments. The appeal, the envelope, the email subject line, and the fax cover sheet should be clearly marked "Freedom of Information Act Appeal." The email, fax machine and Office of the General Counsel are monitored only on working days during normal business hours (8:30 am to 5:00 pm Eastern Time, Monday through Friday). FOIA appeals posted to the email box, fax machine or Office of the General Counsel after normal business hours will be deemed received on the next normal business day.

If you have any question or concerns, please contact Ms. Ellen Sebastian, FOIA Coordinator, NMFS Alaska Region, at (907) 586-7152.

Sincerely,

A handwritten signature in black ink, appearing to read "John Oliver", is written over a horizontal line.

John Oliver  
Acting Assistant Administrator  
for Fisheries

**Bogomolny, Michael (Federal)**

---

**From:** Bogomolny, Michael (Federal)  
**Sent:** Friday, February 9, 2018 3:05 PM  
**To:** Graff, Mark (Federal)  
**Cc:** Allison Holman, Roxie (Federal)  
**Subject:** new FOIA cases  
**Attachments:** 01 0.pdf; 01 3.pdf; 01 1.pdf; 01 2.pdf

I know you're aware of this one:

(b)(5) [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

[Redacted]  
[Redacted].

This one is probably new to you:

(b)(5) [Redacted]  
[Redacted]  
[Redacted]  
[Redacted].

Complaint and FOIA requests are attached.

-bogo

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

<hr/>		)	
NATURAL RESOURCES DEFENSE	)	)	
COUNCIL, INC.,	)	)	
	)	)	
Plaintiff,	)	)	
v.	)	)	
	)	)	
U.S. DEPARTMENT OF THE INTERIOR	)	)	Civil Action No. 18-cv-650
	)	)	
and	)	)	
	)	)	
U.S. DEPARTMENT OF COMMERCE,	)	)	
	)	)	
Defendants.	)	)	
<hr/>		)	

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**INTRODUCTION**

1. Plaintiff Natural Resources Defense Council, Inc. (NRDC or Plaintiff), brings this case to compel Defendants, the U.S. Department of the Interior (Interior Department) and the U.S. Department of Commerce (Commerce Department) (collectively, Defendants), to disclose records relating to the agencies’ reviews of certain national monuments.

2. Over the course of the past year, Defendants have conducted controversial “reviews” of at least twenty-seven national monuments established by former Presidents Clinton, G.W. Bush, and Obama including the Bears Ears National Monument in Utah, the Grand Staircase-Escalante National Monument in

Utah, and the Northeast Canyons and Seamounts Marine National Monument in the Atlantic Ocean for the purpose of making recommendations to the President about whether to preserve those monuments, or to dismantle them and open them to industrial resource extraction and other destructive uses. Despite an outpouring of popular support for preserving existing national monuments, the President has already acted to revoke national monument protections for huge swaths of Bears Ears and Grand Staircase-Escalante.

3. In September and October 2017, NRDC sought production under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, of records relating to the agencies' review processes. As explained below, NRDC sought records relating to the public comments that Defendants received, the meetings and communications Defendants' leadership had with non-governmental individuals and entities (including industry groups), and the criteria by which Defendants weighed the information they gathered. NRDC, its members, and the American public at large have a right to know who is influencing the federal government's decisions about the fate of these iconic American lands and waters.

4. FOIA required Defendants to respond within twenty business days. Yet Defendants did not respond substantively by that deadline, and they still have not done so. Their failure to timely disclose the requested records violates FOIA.

5. NRDC seeks a declaration that Defendants violated FOIA by failing to provide a final determination by the statutory deadline as to whether they will comply with NRDC's requests, and by failing to produce any responsive documents



promptly thereafter. NRDC seeks an injunction ordering that Defendants disclose, without further delay, all non-exempt, responsive records and portions of records to NRDC. NRDC also seeks a declaration that, pursuant to FOIA, it is entitled to a fee waiver in connection with its FOIA requests to the Interior Department.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question) and 5 U.S.C. § 552(a)(4)(B) (FOIA).

7. Venue is proper in the U.S. District Court for the Southern District of New York because NRDC resides and has its principal place of business in this judicial district. 5 U.S.C. § 552(a)(4)(B); 28 U.S.C. § 1391(e)(1).

### **THE PARTIES**

8. Plaintiff NRDC is a national nonprofit advocacy organization with hundreds of thousands of members nationwide. On behalf of its members, NRDC engages in research, advocacy, public education, and litigation to protect public health and the environment. NRDC has a long history of disseminating information of public interest, including information obtained from FOIA requests.

9. Defendant Interior Department is an agency within the meaning of 5 U.S.C. §§ 551(1) and 552(f)(1), and it has possession or control of documents NRDC seeks. The Office of the Secretary of the Interior is a component of the Interior Department.

10. Defendant Commerce Department is an agency within the meaning of 5 U.S.C. §§ 551(1) and 552(f)(1), and it has possession or control of documents

NRDC seeks. The Office of the Secretary of Commerce is a component of the Commerce Department.

### **STATUTORY AND REGULATORY FRAMEWORK**

11. FOIA requires federal agencies to release records to the public upon request, unless one of nine statutory exemptions from disclosure applies. 5 U.S.C. § 552(a)-(b).

12. Within twenty business days of an agency's receipt of a FOIA request, the agency must "determine . . . whether to comply" with the request. *Id.* § 552(a)(6)(A)(i); *see also* 43 C.F.R. § 2.16(a) (Interior FOIA regulation); 15 C.F.R. § 4.6(b) (Commerce FOIA regulation). The agency must "immediately notify" the requester of "such determination and the reasons therefor." 5 U.S.C. § 552(a)(6)(A)(i)(I); 43 C.F.R. § 2.21(b) (requiring Interior Department to "immediately" send a written acknowledgement and tracking number if a request will take longer than ten workdays to process).

13. Once an agency determines that it will comply with a FOIA request, it must "promptly" release responsive, non-exempt records to the requester. 5 U.S.C. § 552(a)(6)(C)(i); *see also* 43 C.F.R. § 2.22(c) (Interior FOIA regulation); 15 C.F.R. § 4.7(c) (Commerce FOIA regulation).

14. In "unusual circumstances," an agency may extend the twenty-day time limit for responding to a FOIA request by up to ten working days. 5 U.S.C. § 552(a)(6)(B)(i); *see also* 43 C.F.R. § 2.19(a)(1) (Interior FOIA regulation); 15 C.F.R. § 4.6(b) (Commerce FOIA regulation).

15. The agency must provide requested records at no or reduced cost “if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”

5 U.S.C. § 552(a)(4)(A)(iii); *see also* 43 C.F.R. § 2.45(a) (Interior FOIA regulation);

15 C.F.R. § 4.11(l) (Commerce FOIA regulation).

16. If the agency fails to notify the requester of its determination within the statutory time limit, the requester is “deemed to have exhausted his administrative remedies” and may immediately file suit. 5 U.S.C. § 552(a)(6)(C)(i).

17. FOIA grants federal district courts authority to “enjoin [an] agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” *Id.* § 552(a)(4)(B).

## FACTS

18. On April 26, 2017, President Donald J. Trump issued Executive Order 13,792, titled “Review of Designations Under the Antiquities Act,” which directed Secretary of the Interior Ryan Zinke to conduct a review of twenty-seven national monuments created by President Trump’s predecessors. Exec. Order 13,792, 82 Fed. Reg. 20,429 (Apr. 26, 2017). The Executive Order directed Secretary Zinke to provide “recommendations for such Presidential actions, legislative proposals, or other actions consistent with the law as the Secretary may consider appropriate” to

“balance the protection of . . . objects against the appropriate use of Federal lands and the effects on surrounding lands and communities.” *Id.*

19. Two days later, on April 28, 2017, President Trump issued another executive order, this one titled “Implementing an America-First Offshore Energy Strategy.” Exec. Order 13,795, 82 Fed. Reg. 20,815 (April 28, 2017). The order, among other things, directed Secretary of Commerce Wilbur Ross to review marine national monuments and national marine sanctuaries that had been designated or expanded within the previous ten years. The executive order required the Secretary of Commerce to “report the results of the review” within 180 days. *Id.*

20. The Interior Department and the Commerce Department subsequently accepted public comments regarding the covered national monuments and marine sanctuaries. *See* 82 Fed. Reg. 22,016 (May 11, 2017) (Interior review); 82 Fed. Reg. 28,827 (June 26, 2017) (Commerce review). On information and belief, Secretaries Zinke and Ross and other agency officials also met with a variety of stakeholders, including representatives of industry groups expressing interest in commercial exploitation of the national monuments and marine sanctuaries under review.

21. On information and belief, Defendants collectively received over three million public comments during their review period, and the overwhelming majority of those comments called on Defendants and the Trump Administration to preserve existing national monuments and marine sanctuaries.

22. Plaintiff NRDC submitted comments to the Interior and Commerce Departments in support of national monuments in general, and in support of Bears

Ears National Monument, Grand Staircase-Escalante National Monument, and Northeast Canyons and Seamounts Marine National Monument in particular. In addition, tens of thousands of NRDC's individual members submitted comments to the Interior and Commerce Departments in support of national monuments and marine sanctuaries.

23. On August 24, 2017, Interior Secretary Zinke submitted his final report to the President. Neither Secretary Zinke nor President Trump released the report publicly at the time, but national news reporters obtained what appears to be a leaked copy of the report, and Secretary Zinke released a substantially similar version to the public on December 5, 2017. Both versions of the Interior report recommended that the President unilaterally revoke or substantially weaken protections for several national monuments, including the Bears Ears National Monument, the Grand Staircase-Escalante National Monument, and the Northeast Canyons and Seamounts Marine National Monument.

24. On October 25, 2017, Secretary Ross's report describing the results of the Commerce review was due to be completed and submitted to the President. To date, neither Secretary Ross nor any other government official has released the Commerce report publicly.

25. On December 4, 2017, President Trump issued two proclamations dismantling Bears Ears National Monument and Grand Staircase-Escalante National Monument. President Trump and other federal officials have indicated that additional proclamations dismantling other national monuments would follow.

26. The American public has a strong interest in understanding the Interior and Commerce Departments' monument review processes and the basis for the Secretaries' reports and recommendations to the President. That includes understanding the criteria by which Interior and Commerce Department officials reviewed, weighed, or discounted the public comments they received; the contents of those comments; and the identities of industry representatives with whom Interior and Commerce Department officials met and the contents of those meetings.

27. The Interior and Commerce Departments' reviews of national monuments and marine sanctuaries have generated intense, widespread, and sustained public interest and concern. NRDC and its members are particularly keenly interested in these review processes and their outcomes. Yet, despite the public's desire for transparency and input into the Administration's review process, Defendants have made very little information publicly available about their information-gathering and review processes.

28. To better inform the American public at large, and NRDC members in particular, about a topic of intense public concern, NRDC submitted the following FOIA requests to the Interior Department and the Commerce Department.

**NRDC's first FOIA request to the Interior Department**

**# OS-2017-01247**

29. According to the Regulations.gov website, the Interior Department received more than 2.8 million public comments through its online portal relating to the Department's national monument review. Only 782,460 comments less than a

third of the total count of online submissions were made publicly available online as of the close of the comment period. The Regulations.gov website notes that “agencies may choose to redact, or withhold, certain submissions . . . such as those containing private or proprietary information . . . or duplicate/near duplicate examples of a mass-mail campaign.”

30. Interior Secretary Zinke’s report to President Trump acknowledged that the public “[c]omments received were overwhelmingly in favor of maintaining existing monuments.” Memorandum for the President from Secretary Zinke, “Final Report Summarizing Findings of the Review of Designations Under the Antiquities Act” at 3 (Aug. 24, 2017). Secretary Zinke nevertheless opined that the overwhelming public support for national monuments reflected not genuine popular will, but rather, in his words, “a well-orchestrated national campaign organized by multiple organizations.” *Id.* The report went on to dismiss what it called “form comments associated with NGO-organized campaigns, which far outnumbered individual comments,” opining that “[t]oo often it is the local stakeholders who lack the organization, funding, and institutional support to compete with well-funded NGOs.” *Id.* at 3, 8.

31. On September 22, 2017, in an effort to better understand the Interior Department’s review process and the information underlying Secretary Zinke’s report and recommendations, NRDC submitted a FOIA request to the Interior Department. *See Exhibit A.*

32. NRDC's request sought the following records:
- a. "Any and all comments the [Interior] Department received on or after April 26, 2017 (whether via online submission, by mail, or by any other means) that relate to national monuments, and that are not among the 782,460 comments publicly available on the Regulations.gov website. This includes but is not limited to comments that include "private or proprietary information" or that are considered "duplicate/near duplicate examples of a mass-mail campaign." If you determine that any such comments (or any portions thereof) are exempt from disclosure, please produce a detailed ledger explaining the basis for each withheld comment or portion thereof.
  - b. "Any and all records created or transmitted on or after April 26, 2017, that contain or relate to the Department's or the Secretary's directives, policies, standards, or procedures for reviewing or analyzing public comments relating to national monuments.
  - c. "Any and all records created or transmitted on or after April 26, 2017, that contain or relate to the Department's or the Secretary's review of, assessment of, or findings about public comments relating to national monuments.
  - d. "Any and all records created or transmitted on or after April 26, 2017, that contain or relate to the Department's or the Secretary's inquiry into or findings about "NGO-organized campaigns" relating to the



Department's monument review, or directions or instructions concerning such inquiry or findings.

- e. "Any and all records created or transmitted on or after April 26, 2017, that contain or relate to the basis for the Secretary's statement that there was "a well-orchestrated national campaign organized by multiple organizations" to submit public comments.
- f. "Any records created or transmitted by the Department (or any official or staff-member thereof) on or after April 26, 2017, that relate to the Natural Resources Defense Council (NRDC)." *Id.*

33. NRDC explained that, for purposes of its request, the term "records" is consistent with the meaning of the term under FOIA, including "documents of any kind, including electronic as well as paper documents, e-mails, memoranda, letters, writings (handwritten, typed, electronic or otherwise produced, reproduced, or stored), reports, summaries, notes, meeting notes or minutes, text messages, and any other compilations of data from which information can be obtained." *Id.*

34. NRDC also requested that the Interior Department waive any fees for the search and production of the requested records. NRDC is entitled to a waiver of all fees pursuant to FOIA's fee waiver provisions and the agency's regulations. *See* 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(a).

35. NRDC submitted its request to the Interior Department's Office of the Secretary via the Interior Department's online FOIA portal, in accordance with the agency's FOIA regulations and guidance.

36. The Interior Department's online portal sent NRDC an automated e-mail response acknowledging receipt of the request on September 22, 2017.

37. The Interior Department's response was due within twenty business days of the request i.e., by October 23, 2017. *See* 5 U.S.C. § 552(a)(6)(A)(i). NRDC received no response of any kind by that date.

38. On October 24, 2017 the day after FOIA's statutory deadline had run a FOIA Officer from the Interior Department's Office of the Secretary e-mailed an acknowledgement letter to NRDC's counsel. That letter stated that NRDC's "request was received in the Office of the Secretary FOIA office on September 22, 2017, and assigned control number OS-2017-01247."

39. The letter further stated: "Because we will need to consult with one or more bureaus of the Department in order to properly process your request, the Office of the Secretary FOIA office is taking a 10-workday extension under 43 C.F.R. § 2.19. For the same reason, we are placing your request under the 'Complex' processing track. *See* 43 C.F.R. § 2.15."

40. Finally, the letter stated that the Interior Department had "classified [NRDC's] request as an 'other-use request.'" Seeking clarification, NRDC's counsel asked the FOIA Officer by e-mail whether this meant the Interior Department had denied NRDC's fee waiver request. In an e-mail dated November 1, 2017, the FOIA Officer responded: "It is not a denial of your fee waiver request. We are waiting to determine if a fee waiver i[s] necessary depending on whether there will be any fees."

41. NRDC never received any further communications from the Interior Department relating to its FOIA request.

42. Even accounting for the belated ten-day extension, the Interior Department's response was due on November 7, 2017.

43. To date, the Interior Department still has not substantively responded to NRDC's FOIA request, produced any responsive records, claimed any exemptions, or made a determination on NRDC's fee waiver request.

**NRDC's second FOIA request to the Interior Department**

**# OS-2018-00232**

44. On October 29, 2017, NRDC submitted a second FOIA request to the Interior Department, this time seeking records relating to meetings between Secretary Zinke or other Interior Department leadership and outside groups or individuals regarding national monuments. *See* Exhibit B.

45. Specifically, NRDC sought the following records:

- a. "[A]ny and all records in the possession, custody, or control of the [Interior] Department . . . that pertain to meetings on or after January 20, 2017, attended by Secretary Ryan Zinke, Scott Hommel, Lori Mashburn, James Cason, Doug Domenech, and/or Downey Magallanes, relating to any national monument and/or to the Department's review of national monuments under Executive Order No. 13792, including:
- b. "Any calendar entries, invitations, itineraries, or communications referencing such meetings;

- c. “Any agendas, minutes, attendee lists, or presentations relating to such meetings;
- d. “Any records of individuals who attended these meetings or accompanied the above-named officials on any of these occasions, excluding current career federal employees;
- e. “Any briefings, summaries, or materials prepared or transmitted in relation to such meeting, whether before, during, or after the meeting itself; and
- f. “Any notes taken by any federal employee, including the above-named officials.” *Id.*

46. NRDC explained that, for purposes of its request, the term “records” is consistent with the meaning of the term under FOIA, including “documents of any kind, including electronic and paper documents, emails, memoranda, letters, writings (handwritten, typed, electronic or otherwise produced, reproduced, or stored), reports, summaries, notes, meeting notes or minutes, text messages, and any other compilations of data from which information can be obtained.” *Id.*

47. NRDC also requested that the Interior Department waive any fees for the search and production of the requested records. NRDC is entitled to a waiver of all fees pursuant to FOIA’s fee waiver provisions and the agency’s regulations. *See* 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(a).

48. NRDC submitted its request to the Interior Department's Office of the Secretary via the Interior Department's online FOIA portal, in accordance with the agency's FOIA regulations and guidance.

49. The Interior Department's online portal sent NRDC an automated e-mail response acknowledging receipt of the request on October 29, 2017.

50. The Interior Department's response was due within twenty business days of the request i.e., by November 28, 2017. *See* 5 U.S.C. § 552(a)(6)(A)(i).

51. On November 21, 2017, a FOIA Officer from the Interior Department's Office of the Secretary e-mailed an acknowledgement letter to NRDC's counsel. That letter stated that NRDC's "request was received in the Office of the Secretary FOIA office on October 29, 2017, and assigned control number OS-2018-00232."

52. The letter further stated: "Because we will need to consult with one or more bureaus of the Department in order to properly process your request, the Office of the Secretary FOIA office is taking a 10-workday extension under 43 C.F.R. § 2.19. For the same reason, we are placing your request under the 'Complex' processing track. *See* 43 C.F.R. § 2.15."

53. Finally, the letter stated that the Interior Department had "classified [NRDC's] request as an 'other-use request,'" and went on to explain: "[W]e are in the process of determining whether or not your entitlements are sufficient to enable us to process your request, or if we will need to issue a formal determination on your request for a fee waiver."

54. NRDC never received any further communications from the Interior Department relating to its FOIA request.

55. Accounting for a ten-day extension, the Interior Department's response was due on December 12, 2017.

56. To date, the Interior Department still has not substantively responded to NRDC's FOIA request, produced any responsive records, claimed any exemptions, or made a determination on NRDC's fee waiver request.

**NRDC's FOIA request to the Commerce Department**

**# DOC-IOI-2018-000178**

57. Also on October 29, 2017, NRDC submitted a FOIA request to the Commerce Department, seeking records relating to meetings between Secretary Ross or another member of the Commerce Department's leadership and outside groups or individuals regarding national marine monuments or sanctuaries. *See* Exhibit C.

58. Specifically, NRDC requested the following records:

- a. "[A]ny and all records in the possession, custody, or control of the [Commerce] Department . . . that pertain to meetings on or after January 20, 2017, attended by Secretary Wilbur Ross and/or Earl Comstock, relating to any national marine sanctuary or marine national monument and/or to the Department's review of national marine sanctuaries and monuments under Executive Order No. 13795, including:

- b. “Any calendar entries, invitations, itineraries, or communications referencing such meetings;
- c. “Any agendas, minutes, attendee lists, or presentations relating to such meetings;
- d. “Any records of individuals who attended these meetings or accompanied Secretary Ross or Mr. Comstock on any of these occasions, excluding current career federal employees;
- e. “Any briefings, summaries, or materials prepared or transmitted in relation to such meeting, whether before, during, or after the meeting itself; and
- f. “Any notes taken by any federal employee, including Secretary Ross or Mr. Comstock.” *Id.*

59. NRDC explained that, for purposes of its request, the term “records” is consistent with the meaning of the term under FOIA, including “documents of any kind, including electronic as well as paper documents, e-mails, memoranda, letters, writings (handwritten, typed, electronic or otherwise produced, reproduced, or stored), reports, summaries, notes, meeting notes or minutes, text messages, and any other compilations of data from which information can be obtained.” *Id.*

60. In its request, NRDC requested that the Commerce Department waive any fees for the search and production of the requested records, pursuant to FOIA’s and the agency’s fee waiver provisions. *See* 5 U.S.C. § 552(a)(4)(A)(iii); 15 C.F.R. § 4.11(*l*).

61. NRDC submitted its request to the Commerce Department's Office of the Secretary via the federal government's online FOIA portal, in accordance with the agency's FOIA regulations and guidance.

62. The federal government's online FOIA portal sent NRDC an automated e-mail response acknowledging receipt of the request on October 29, 2017, and assigning it tracking number # DOC-OS-2018-000178.

63. On October 31, 2017, NRDC's counsel received another e-mail from the federal government's online FOIA portal advising that the request's tracking number had been changed to # DOC-IOS-2018-000178.

64. The Commerce Department's response was due within twenty business days of the request i.e., by November 28, 2017. *See* 5 U.S.C. § 552(a)(6)(A)(i).

65. On November 14, 2017, the Commerce Department sent NRDC's counsel an e-mail advising that NRDC's fee waiver request had been "fully granted." Exhibit K. The Commerce Department did not respond substantively to NRDC's FOIA request by the statutory deadline, however.

66. To date, the Commerce Department still has not substantively responded to NRDC's FOIA request, produced any responsive records, or claimed any exemptions.

\* \* \*



67. NRDC seeks a declaration that Defendants have violated the FOIA by failing to respond to NRDC's FOIA requests and failing to promptly release all responsive, non-exempt records. NRDC also seeks an injunction ordering Defendants to provide the requested records without further delay.

68. NRDC brings this action on behalf of itself and its members. NRDC and its members have been and continue to be injured by Defendants' failure to provide responsive records. The requested relief will redress these injuries.

### **CLAIM FOR RELIEF**

#### **COUNT ONE**

#### **5 U.S.C. § 552(a) (FOIA)**

#### ***All Defendants***

69. NRDC incorporates by reference all preceding paragraphs.

70. NRDC has a statutory right under FOIA to the records it seeks.

71. Defendants have violated their statutory duties under FOIA, 5 U.S.C. § 552(a), and the applicable implementing regulations, to release all non-exempt, responsive records to NRDC. Defendants have identified no basis, let alone any valid basis, for withholding or partially withholding the records that are responsive to NRDC's FOIA requests.

72. NRDC is entitled to all non-exempt responsive documents at no cost because disclosure of the requested records would contribute significantly to public understanding and is not primarily in NRDC's commercial interest. 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(a); 15 C.F.R. § 4.11(l).

73. NRDC is being harmed by Defendants' unlawful withholding of the requested records, and it will continue to be harmed unless Defendants are compelled to comply with FOIA's statutory requirements.

### **REQUEST FOR RELIEF**

NRDC respectfully requests that this Court enter a judgment against Defendants as follows:

A. Declare that Defendants have violated FOIA by failing to provide a final determination as to whether they will comply with NRDC's FOIA requests and by failing to produce non-exempt records responsive to NRDC's FOIA requests by the statutory deadline;

B. Declare that Defendant Interior Department has violated FOIA by failing to make a determination as to NRDC's fee waiver requests;

C. Order Defendants to release to NRDC, without further delay and at no cost to NRDC, all responsive, non-exempt records in their possession, custody, or control;

D. If either Defendant contends that any responsive records are exempt or partially exempt from disclosure under FOIA, order that Defendant to produce a log identifying any such records or parts thereof and the basis for the withholdings, and require Defendant to prove that its decision to withhold or redact any such records is justified by law;

E. Order Defendant Interior Department to grant NRDC's fee waiver in full;

F. Award NRDC its reasonable costs and attorneys' fees; and

G. Grant such other and further relief as the Court deems just and proper.

Dated: January 24, 2018

Respectfully submitted,

/s/ Nancy S. Marks

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Counsel for NRDC

# Exhibit A



September 22, 2017

**Via online submission**

Interior Department  
Office of the Secretary FOIA Contact  
Clarice Julka  
MS-7328, MIB  
1849 C Street, NW  
Washington, DC 20240

**Re: FOIA Request for Records Relating to Public Comments  
on National Monuments**

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.*, and implementing regulations, 43 C.F.R. § 2.1 *et seq.*

**I. Description of Records Sought**

NRDC seeks records relating to the review of national monuments conducted by the Department of the Interior (“the Department”). According to the Regulations.gov website, the Department received more than 2.8 million public comments through its online portal relating to the Department’s review of national monuments pursuant to Executive Order 13792 of April 26, 2017 (“monument review”).<sup>1</sup> Only 782,460 comments less than a third of the total count of online submissions are publicly available online.<sup>2</sup> The Regulations.gov website notes that “agencies may choose to redact, or withhold, certain submissions . . . such as those

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<sup>1</sup> See Regulations.gov, Docket Folder Summary: Review of Certain National Monuments Established Since 1996; Notice of Opportunity for Public Comment, Docket ID DOI-2017-0002, at [www.regulations.gov/document?D=DOI-2017-0002-0001](http://www.regulations.gov/document?D=DOI-2017-0002-0001) (last visited Sept. 20, 2017) (hereinafter “Docket Folder Summary”).

<sup>2</sup> See Regulations.gov, Docket Browser, Review of Certain National Monuments Established Since 1996; Notice of Opportunity for Public Comment, Docket ID DOI-2017-0002, at <https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&dct=PS&D=DOI-2017-0002> (last visited Sept. 20, 2017) (hereinafter “Docket Browser”).

containing private or proprietary information . . . or duplicate/near duplicate examples of a mass-mail campaign.”<sup>3</sup>

In his report and recommendations to the President, Interior Secretary Ryan Zinke (“the Secretary”) acknowledged that the “[c]omments received were overwhelmingly in favor of maintaining existing monuments,” which he opined “demonstrated a well-orchestrated national campaign organized by multiple organizations.”<sup>4</sup> The Secretary went on to dismiss what he called “form comments associated with NGO-organized campaigns, which far outnumbered individual comments,” stating his view that “[t]oo often it is the local stakeholders who lack the organization, funding, and institutional support to compete with well-funded NGOs.”<sup>5</sup>

The American public has a strong interest in understanding the Department’s monument review process and the basis for the Secretary’s recommendations to the President, including the criteria by which the Department reviewed, weighed, or discounted the public comments it received. To inform public understanding of this process, NRDC seeks disclosure of the following records:

- Any and all comments the Department received on or after April 26, 2017 (whether via online submission, by mail, or by any other means) that relate to national monuments, and that are not among the 782,460 comments publicly available on the Regulations.gov website. This includes but is not limited to comments that include “private or proprietary information” or that are considered “duplicate/near duplicate examples of a mass-mail campaign.” If you determine that any such comments (or any portions thereof) are exempt from disclosure, please produce a detailed ledger explaining the basis for each withheld comment or portion thereof.
- Any and all records created or transmitted on or after April 26, 2017, that contain or relate to the Department’s or the Secretary’s directives, policies, standards, or procedures for reviewing or analyzing public comments relating to national monuments.
- Any and all records created or transmitted on or after April 26, 2017, that contain or relate to the Department’s or the Secretary’s review of, assessment of, or findings about public comments relating to national monuments.

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<sup>3</sup> See Docket Folder Summary, *supra* note 1.

<sup>4</sup> Memorandum for the President from Secretary Zinke, “Final Report Summarizing Findings of the Review of Designations Under the Antiquities Act” at 3 (Aug. 24, 2017).

<sup>5</sup> *Id.* at 8.

- Any and all records created or transmitted on or after April 26, 2017, that contain or relate to the Department's or the Secretary's inquiry into or findings about "NGO-organized campaigns" relating to the Department's monument review, or directions or instructions concerning such inquiry or findings.
- Any and all records created or transmitted on or after April 26, 2017, that contain or relate to the basis for the Secretary's statement that there was "a well-orchestrated national campaign organized by multiple organizations" to submit public comments.
- Any records created or transmitted by the Department (or any official or staff-member thereof) on or after April 26, 2017, that relate to the Natural Resources Defense Council (NRDC).

For purposes of this request, the term "records" is consistent with the meaning of the term under FOIA. This includes, but is not limited to, documents of any kind, including electronic as well as paper documents, e-mails, memoranda, letters, writings (handwritten, typed, electronic or otherwise produced, reproduced or stored), reports, summaries, notes, meeting notes or minutes, text messages, and any other compilations of data from which information can be obtained.

Under FOIA, you are obligated to provide records in a readily-accessible electronic format and in the format requested. *See, e.g.*, 5 U.S.C. § 552(a)(3)(B) ("In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format."). We request that you provide the responsive records in electronic .pdf format without any "profiles" or "embedded files." Please do not provide the records in a single or "batched" .pdf file. To the extent that a subset of the requested records is readily available, please provide that subset immediately while you continue to search for additional records to complete your response.

If you decide to invoke any FOIA exemptions in response to this request, please include in your response sufficient information for us to assess the basis for the exemption(s), including any interest(s) that would be harmed by release. Please include a detailed ledger which includes (1) basic factual material about each withheld record, including the originator, date, length, general subject matter, and location of each item; and (2) complete explanations and justifications for the withholding, including the specific exemption(s) under which the record (or portion thereof) was withheld and a

full explanation of how each exemption applies to the withheld material. Such statements will be helpful in deciding whether to appeal an adverse determination. Your written justification may help to avoid litigation.

If you determine that portions of any requested records are exempt from disclosure, the FOIA requires that you produce any reasonably segregable non-exempt portions within the statutory time limit. *See* 5 U.S.C. § 552(b). *See, e.g., Gatore v. U.S. Dep't of Homeland Sec.*, 177 F. Supp. 3d 46, 53 (D.D.C. 2016); *Gosen v. U.S. Citizenship & Immigration Servs.*, 118 F. Supp. 3d 232, 243-44 (D.D.C. 2015).

Please produce the records on a rolling basis. The Department's search for or deliberations concerning certain records should not delay the production of others that the Department has already retrieved and elected to produce. If the Department takes the position that any of these records are publicly available, please indicate where each of them may be found.

## **II. Request for a Fee Waiver**

NRDC asks that the Department waive any fee it would otherwise charge for the search and production of the records described above. FOIA provides that a requester is entitled to a fee waiver when “disclosure of the information is in the public interest because it [A] is likely to contribute significantly to public understanding of the operations or activities of the government and [B] is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 43 C.F.R. § 2.45(a)(1)-(2) (DOI regulations mirroring the FOIA standard). The disclosure NRDC seeks here meets both these requirements.

### **A. Disclosure is likely to contribute significantly to public understanding of the operations or activities of the government**

First, the disclosure requested here is “likely to contribute significantly to public understanding of the operations or activities of the government,” 5 U.S.C. § 552(a)(4)(A)(iii), based on the following factors. *See* 43 C.F.R. § 2.48(a)(1)-(4) (describing factors to be considered).

#### **1. The requested records concern the operations or activities of the federal government (43 C.F.R. § 2.48(a)(1))**

The requested records directly “concern the operations or activities of the Federal government.” 43 C.F.R. § 2.48(a)(1). The records pertain to the Department's review of certain national monuments and its



recommendations to the President concerning possible “Presidential actions, legislative proposals, or other actions” that the federal government might take with respect to those monuments. Executive Order No. 13792, section 2(d). Disclosure of the records will provide context for the Department’s recommendations and help the public to evaluate the Department’s recommendations and whatever actions the President, Congress, or other federal government officials take with respect to the affected monuments.

**2. Disclosure is likely to contribute to public understanding of the government’s activities (43 C.F.R. § 2.48(a)(2)(i)-(iii), 2.48(a)(3), 2.48(a)(4))**

Disclosure of the requested records is “likely to contribute to public understanding of those operations or activities” of the federal government. 43 C.F.R. § 2.48(a)(2). The records are relevant to the Department’s weighing of the public comments it received on national monuments, and therefore they are likely to be “meaningfully informative” in providing context and a rationale for actions the Administration may take with respect to those monuments. *Id.* § 2.48(a)(2)(i)-(ii). Because the Department’s monument review has attracted broad public attention, as explained below, disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in the subject.” *Id.* at § 2.48(a)(2)(iii). For these same reasons, and because the requested records have not previously been made available, their disclosure is “likely to significantly contribute to the understanding of a reasonably broad audience of persons interested in the subject,” *id.* § 2.48(a)(3), and will enhance “the public’s understanding of the subject in question . . . to a significant extent,” *id.* § 2.48(a)(4).

The American public has demonstrated a strong interest in the Department’s monument review process. According to the Regulations.gov website, 2,836,268 public comments relating to the Department’s monument review were submitted online. See [www.regulations.gov/document?D=DOI-2017-0002-0001](http://www.regulations.gov/document?D=DOI-2017-0002-0001) (last visited Sept. 20, 2017). The Department’s monument review has also been the subject of numerous protests and rallies across the country, many letters to the editor and op-eds, widespread social media activism, and numerous media reports in local and national publications many of which decry the Department’s lack of transparency. See, e.g., SALT LAKE TRIBUNE, *Editorial: Zinke’s Report Leaves a Monumental Mess* (Sept. 19, 2017); Juliet Eilperin, *Shrink at Least Four National Monuments and Modify a Half-Dozen Others, Zinke Tells Trump*, WASHINGTON POST (Sept. 17, 2017); Henry Brean, *Monumental Silence from Trump Administration on Zinke’s Review*, LAS VEGAS REVIEW-JOURNAL (Aug. 25, 2017); LOS ANGELES TIMES, *Editorial: Zinke’s Plan for Shrinking National Monuments*

*Belongs in the Recycling Bin* (Aug. 25, 2017); Julie Turkewitz & Lisa Friedman, *Interior Secretary Proposes Shrinking Four National Monuments*, NEW YORK TIMES (Aug. 24, 2017); Amy Joi O'Donoghue, *Bears Ears Monument Designation Draws Thousands of Comments*, DESERET NEWS (May 25, 2017); Rebecca Worby, *Zinke Went to Bears Ears to Listen, But Supporters Felt Unheard*, HIGH COUNTRY NEWS (May 12, 2017); Amanda Paulson, *Can the President Shrink or Even Eliminate National Monuments?* CHRISTIAN SCIENCE MONITOR (Apr. 26, 2017).

NRDC does not seek the requested records for its own benefit. Rather, it seeks the records to provide new information to the public about the Department's monument review and its recommendations to the President. Disclosure of this information will make possible a more complete public understanding of the federal government's decision-making process and intentions regarding the national monuments at issue. As demonstrated by the many public comments and the sustained media attention described above, this is an issue of intense and widespread public interest. See 43 C.F.R. § 2.48(2)(iii) (requiring requester to show that the "disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject"). There is more than a reasonable likelihood that disclosure of the requested records will significantly increase public understanding of the government's review process and actions among a broad audience of interested people. See *Citizens for Responsibility & Ethics in Washington v. U.S. Dep't of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

**3. NRDC has the ability and intent to disseminate the information to a reasonably broad audience (43 C.F.R. § 2.48(a)(2)(iv)-(v))**

NRDC has both the ability and the intent to disseminate the information obtained through this request "in a manner that will be informative to the understanding of a reasonably broad audience of persons interested in the subject." 43 C.F.R. § 2.48(a)(2)(iv); *see also id.* § 2.48(a)(2)(v) (considering requester's "ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject"). NRDC has more than two million members and online activists, tens of thousands of whom have responded to action alerts relating to the Department's monument review in particular. And, as detailed below, NRDC has extensive communications capabilities and a proven history of disseminating information of public interest, including information obtained from FOIA requests. NRDC has both the capability and the intent to broadly disseminate the information it seeks here to its members and to the

general public, thereby contributing to a better general understanding of the Department's monument review process.

NRDC uses numerous modes of communication to disseminate information to its members and to the public at large. These include:

- (1) NRDC's website (<http://www.nrdc.org>), which is updated daily and draws approximately 1.7 million page views and 1.5 million unique page views per month, and which features NRDC staff blogs, original reporting on environmental news stories, and in-depth analyses on topics of public interest;
- (2) NRDC's Activist email list, which includes more than 2.4 million subscribers who receive regular communications on urgent environmental issues;
- (3) *NRDC Insider* (<http://www.nrdc.org/newsletter>), a monthly electronic environmental newsletter distributed by email to more than 1.47 million subscribers;
- (4) NRDC's Facebook page, with 873,128 followers;
- (5) NRDC's Twitter handle, with 261,395 followers;
- (6) NRDC's Instagram feed, with 95,841 followers;
- (7) NRDC's YouTube channel (<https://www.youtube.com/user/NRDCflix>), with 20,837 subscribers; and
- (8) online media outlets like Medium (<https://medium.com/natural-resources-defense-council>) and Huffington Post (<http://www.huffingtonpost.com/topic/natural-resources-defense-council>).

NRDC also publishes legal and scientific analyses, policy documents, and reports; issues press releases; and directs and produces movies (including *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*). NRDC has more than fifty staff members dedicated to communications work.

In addition, NRDC employees and representatives are widely quoted in the news media; participate in interviews on television, radio, and web broadcasts; appear at conferences; provide congressional testimony; and contribute articles and op-eds to numerous national newspapers, magazines, academic journals, and books. See, e.g., Zoe Carpenter, *After Promising a "Fair Hearing" on Monuments, Secretary Zinke Shuts Out the Public*, THE NATION (May 18, 2017) (quoting NRDC Land and Wildlife Program Director

Sharon Buccino); Op-Ed, *Don't Take Bears Ears Away from Us*, SALT LAKE TRIBUNE (May 6, 2017) (contributed by NRDC trustee Robert Redford); Research Article, *The Requirement To Rebuild U.S. Fish Stocks: Is It Working?* MARINE POLICY (July 2014) (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell); Transcript, *Conservationists Call for Quiet: The Ocean Is Too Loud*, ALL THINGS CONSIDERED (July 28, 2013) (featuring NRDC Marine Mammal Protection Program Director Michael Jasny); Testimony of Johanna Wald, NRDC Senior Attorney, before the U.S. Senate Committee on Energy and Natural Resources, Hearing on the California Desert Protection Act of 2010 (May 20, 2010).

NRDC's legal and scientific experts routinely analyze information obtained through FOIA and use it to inform the public about a variety of environmental issues. *See, e.g.*, Theo Spencer, *The Fight to Stop a Strip Mine Near Bryce Canyon: A History*, NRDC Blog (June 5, 2017) (analyzing documents obtained through partner organization's FOIA request regarding a proposed expansion of an open pit strip mine in Utah); Kevin Bogardus *et al.*, "Homework Assignment": *How Pebble Lobbied Trump's EPA*, E&E NEWS (June 8, 2017) (quoting NRDC staff discussing results of a FOIA seeking communications between EPA and Pebble Mine developers); Tom Neltner *et al.*, *Generally Recognized as Secret: Chemicals Added to Food in the United States*, NRDC Report (2014) (analyzing FOIA documents relating to potentially unsafe chemicals added to food); Carmen Cordova, *Playing Chicken with Antibiotics*, NRDC Issue Brief (2014) (describing FDA records, obtained through FOIA, which show widespread violations of the agency's safety standards for antibiotic feed additives); Dan Flynn, *NRDC Releases FSIS Inspection Reports on Foster Farms*, FOOD SAFETY NEWS (Sept. 12, 2014) (reporting on documents NRDC obtained through FOIA relating to safety violations by poultry company, and linking to the documents); Mae Wu *et al.*, *Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, NRDC Report (2010) (analyzing White House documents obtained through FOIA and from other sources to inform the public about EPA's decision not to protect wildlife and workers from the pesticide atrazine).

In sum, NRDC has a proven ability to digest, synthesize, and disseminate information obtained through FOIA to a broad audience of interested persons. NRDC's more than two million members and activists, when combined with the members of the general public who read NRDC's communications online and in the news media, clearly constitute "a reasonably broad audience of persons interested in the subject." 43 C.F.R. § 2.48(a)(2)(iv), (v). NRDC intends to disseminate any newsworthy information in the released records to this large audience in a manner that

will meaningfully enhance the public's understanding of the federal government's decision-making process. NRDC does not seek records that have been previously disclosed to the public. *See id.* §§ 2.48(a)(3)(i), (iv), 2.48(a)(4)(b). Disclosure may therefore confirm, clarify, or contradict documents or statements in the public domain or actions taken by the federal government, and it will enable the public to better evaluate the federal government's actions. *Id.* § 2.48(3)(ii)-(iii).

For these reasons, NRDC has met the first prerequisite for a fee waiver request under the FOIA.

**B. Disclosure is not primarily in NRDC's commercial interest**

Second, NRDC has no commercial interests that would be furthered by the requested disclosure. *See* 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.48(a)(4)(b). Therefore, it satisfies the second prerequisite for a fee waiver request under the FOIA.

NRDC is a not-for-profit organization. It does not act as a middleman to resell information obtained under FOIA. "Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requesters.'" *Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (internal citation omitted); *see also Better Gov't Ass'n v. Dep't of State*, 780 F.2d 86, 88-89 (D.C. Cir. 1986) (recognizing that "[the fee waiver] provision was added to FOIA in an attempt to prevent government agencies from using high fees to discourage certain types of requesters and requests, in particular those from journalists, scholars and nonprofit public interest groups." (internal quotation marks omitted)). Requesters wish to serve the public by reviewing, analyzing, and disseminating newsworthy and presently non-public information about the protection of national monuments, and this is precisely the sort of "investigation[]" of "governmental choices and highlighting [of] possible abuses" for which the fee waiver was enacted. *Better Gov't Ass'n*, 780 F.2d at 93.

Access to government records, disclosure forms, and similar materials through FOIA requests is essential to NRDC's role of educating its members, activists, and the general public. NRDC has no commercial interest in the disclosure of the records, and it will realize no commercial benefit or profit from the disclosure of the requested records. In addition, as discussed further in Section III below, NRDC qualifies as a "representative of a news media organization" for whom the Department "presume[s] that the public interest outweighs [any] commercial interest." 43 C.F.R. § 2.48(b)(3)(ii).



For these reasons, NRDC is entitled to a fee waiver under the FOIA.

### III. Request for a Reduction of Fees

In the alternative, even if the Department denies NRDC's fee waiver request, NRDC qualifies as a "representative of the news media" that is entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

A representative of the news media is "any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii); *see also Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a "non-profit public interest organization" qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep't of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described in detail in Section II above, NRDC publishes original reports and analyses on conservation-related topics on its website, in its newsletter, and in blog posts; it contributes articles and op-eds to a variety of online and print platforms; and it maintains free online libraries of documents, publications, and other information of interest to the general public. These types of publications and media sources constitute news media outlets for purposes of FOIA. *See* OPEN Government Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii) (clarifying that "as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities"). Public interest organizations performing these sorts of public communication functions "are regularly granted news representative status." *Serv. Women's Action Network v. Dep't of Def.*, 888 F. Supp. 2d 282, 287-89 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union); *see also Cause of Action v. Fed. Trade Comm'n*, 961 F. Supp. 2d 142, 164 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it "distributes work to an audience and is especially organized around doing so").

NRDC intends to review the records it obtains through this FOIA request and, if the information is appropriately newsworthy, to analyze them, synthesize them with information from other sources, and create and

disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of its publications or other suitable media channels. NRDC will not resell the information obtained through this FOIA request to other media organizations. For these reasons, even if the Department denies NRDC's fee waiver request, it should grant a fee reduction consistent with 5 U.S.C. § 552(a)(4)(A)(ii).

#### **IV. Willingness to Pay Fees Under Protest**

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with the Department's FOIA regulations at 43 C.F.R. § 2.37 *et seq.* Please contact me, however, before doing anything that would cause the fee to exceed \$250. NRDC reserves the right to seek administrative or judicial review of any fee waiver denial.

#### **V. Conclusion**

Please email the requested records or, if it is not possible to email, mail a CD of electronic copies of the requested records to me at the address listed below. Please call or email me with any questions. Thank you for your time.

Sincerely,

/s/ Katherine Desormeau  
Katherine Desormeau  
Natural Resources Defense Council, Inc.  
111 Sutter Street, 21<sup>st</sup> Floor  
San Francisco, CA 94104  
Tel: (415) 875-6158  
kdesormeau@nrdc.org

# Exhibit B



# NRDC

October 29, 2017

## Via online submission

Interior Department  
Office of the Secretary FOIA Contact  
Clarice Julka  
MS-7328, MIB  
1849 C Street, NW  
Washington, DC 20240

### **Re: FOIA Request for Records Relating to Secretary Zinke's Meetings Relating to National Monuments**

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.*, and implementing regulations, 43 C.F.R. § 2.1 *et seq.*

#### **I. Description of Records Sought**

Please produce any and all records in the possession, custody, or control of the Department of the Interior (“the Department”) that pertain to meetings on or after January 20, 2017, attended by Secretary Ryan Zinke, Scott Hommel, Lori Mashburn, James Cason, Doug Domenech, and/or Downey Magallanes, relating to any national monument and/or to the Department’s review of national monuments under Executive Order No. 13792, including:

- Any calendar entries, invitations, itineraries, or communications referencing such meetings;
- Any agendas, minutes, attendee lists, or presentations relating to such meetings;
- Any records of individuals who attended these meetings or accompanied the above-named officials on any of these occasions, excluding current career federal employees;
- Any briefings, summaries, or materials prepared or transmitted in relation to such meeting, whether before, during, or after the meeting itself; and

- Any notes taken by any federal employee, including the above-named officials.

For purposes of this request, the term “records” is consistent with the meaning of the term under FOIA. This includes, but is not limited to, documents of any kind, including electronic and paper documents, emails, memoranda, letters, writings (handwritten, typed, electronic or otherwise produced, reproduced, or stored), reports, summaries, notes, meeting notes or minutes, text messages, and any other compilations of data from which information can be obtained.

Under FOIA, you are obligated to provide records in a readily-accessible electronic format and in the format requested. *See, e.g.*, 5 U.S.C. § 552(a)(3)(B) (“In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.”). We request that you provide the responsive records in electronic .pdf format without “profiles” or “embedded files.” Please do not provide the records in a single or “batched” .pdf file. To the extent that a subset of the requested records is readily available, please provide that subset immediately while you continue to search for additional records to complete your response.

If you decide to invoke any FOIA exemptions in response to this request, please include in your response sufficient information for us to assess the basis for the exemption(s), including any interest(s) that would be harmed by release. Please include a detailed ledger which includes (1) basic factual material about each withheld record, including the originator, date, length, general subject matter, and location of each item; and (2) complete explanations and justifications for the withholding, including the specific exemption(s) under which the record (or portion thereof) was withheld and a full explanation of how each exemption applies to the withheld material. Such statements will be helpful in deciding whether to appeal an adverse determination. Your written justification may help to avoid litigation.

If you determine that portions of any requested records are exempt from disclosure, the FOIA requires that you produce any reasonably segregable, non-exempt portions within the statutory time limit. *See* 5 U.S.C. § 552(b). *See, e.g., Gatore v. U.S. Dep’t of Homeland Sec.*, 177 F. Supp. 3d 46, 53 (D.D.C. 2016); *Gosen v. U.S. Citizenship & Immigration Servs.*, 118 F. Supp. 3d 232, 243-44 (D.D.C. 2015).

Please produce the records on a rolling basis. The Department’s search for or deliberations concerning certain records should not delay the production of others that the Department has already retrieved and elected

to produce. If the Department takes the position that any of these records are publicly available, please indicate where each of them may be found.

## **II. Request for a Fee Waiver**

NRDC asks that the Department waive any fee it would otherwise charge for the search and production of the records described above. FOIA provides that a requester is entitled to a fee waiver when “disclosure of the information is in the public interest because it [A] is likely to contribute significantly to public understanding of the operations or activities of the government and [B] is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 43 C.F.R. § 2.45(a)(1)-(2) (DOI regulations mirroring the FOIA standard). The disclosure NRDC seeks here meets both these requirements.

### **A. Disclosure is likely to contribute significantly to public understanding of the operations or activities of the government**

First, the disclosure requested here is “likely to contribute significantly to public understanding of the operations or activities of the government,” 5 U.S.C. § 552(a)(4)(A)(iii), based on the following factors. *See* 43 C.F.R. § 2.48(a)(1)-(4) (describing factors to be considered).

#### **1. Subject of the request (43 C.F.R. § 2.48(a)(1))**

The requested records directly “concern the operations or activities of the Federal government.” 43 C.F.R. § 2.48(a)(1). The records pertain to the Department’s review of certain national monuments and its recommendations to the President concerning possible “Presidential actions, legislative proposals, or other actions” that the federal government might take with respect to those monuments. Executive Order No. 13792, section 2(d). Disclosure of the records will provide context for the Department’s recommendations and help the public to evaluate the Department’s recommendations and whatever actions the President, Congress, or other federal government officials take with respect to the affected monuments.

#### **2. Informative value of the information to be disclosed (43 C.F.R. § 2.48(a)(2))**

Disclosure of the requested records is “likely to contribute to public understanding of those operations or activities” of the federal government. 43 C.F.R. § 2.48(a)(2). Records reflecting the Department’s meetings with outside individuals and groups as part of the monument review process are

directly “logical[ly] connect[ed]” to the Department’s review and its resulting report on national monuments. *Id.* § 2.48(a)(2)(i). These records are likely to be “meaningfully informative” in providing context and a rationale for the Secretary’s report and any actions the Administration may take with respect to those monuments. *Id.* § 2.48(a)(2)(i). Because the Department’s monument review has attracted broad public attention, disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in the subject.” *Id.* at § 2.48(a)(2)(iii). Finally, NRDC has both the ability and the intention of disseminating the requested information to a broad audience of interested members of the public. *Id.* at § 2.48(a)(2)(iv)-(v).

There is undoubtedly a “reasonably broad audience of persons interested” in the Department’s monument review process. 43 C.F.R. § 2.48(a)(2)(iii). According to the Regulations.gov website, 2,836,268 public comments relating to the Department’s monument review were submitted online. See [www.regulations.gov/document?D=DOI-2017-0002-0001](http://www.regulations.gov/document?D=DOI-2017-0002-0001) (last visited Sept. 20, 2017). The Department’s monument review has also been the subject of many letters to the editor and op-eds, widespread social media activism, and numerous media reports in local and national publications many of which decry the Department’s lack of transparency. See, e.g., SALT LAKE TRIBUNE, *Editorial: Zinke’s Report Leaves a Monumental Mess* (Sept. 19, 2017); Juliet Eilperin, *Shrink at Least Four National Monuments and Modify a Half-Dozen Others, Zinke Tells Trump*, WASHINGTON POST (Sept. 17, 2017); Henry Breaun, *Monumental Silence from Trump Administration on Zinke’s Review*, LAS VEGAS REVIEW-JOURNAL (Aug. 25, 2017); LOS ANGELES TIMES, *Editorial: Zinke’s Plan for Shrinking National Monuments Belongs in the Recycling Bin* (Aug. 25, 2017); Julie Turkewitz & Lisa Friedman, *Interior Secretary Proposes Shrinking Four National Monuments*, NEW YORK TIMES (Aug. 24, 2017); Brian Maffly, *Lawsuit Filed over Kane, Garfield Commissions’ Meetings with Zinke*, SALT LAKE TRIBUNE (Aug. 16, 2017); Rebecca Worby, *Zinke Went to Bears Ears to Listen, But Supporters Felt Unheard*, HIGH COUNTRY NEWS (May 12, 2017).

Further, NRDC “plan[s] to disclose” the information obtained through this request “in a manner that will be informative to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to [its] individual understanding.” 43 C.F.R. § 2.48(a)(2)(iv). NRDC does not seek the requested records for its own benefit. Rather, it seeks the records to provide new information to the public about the Department’s monument review and its recommendations to the President. Disclosure of this information will make possible a more complete public understanding of the federal government’s decision-making process and intentions regarding the national monuments at issue. As demonstrated by the many public

comments and the sustained media attention described above, this is an issue of intense and widespread public interest. *See id.* § 2.48(a)(2)(iii) (requiring requester to show that the “disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject”). There is more than a reasonable likelihood that disclosure of the requested records will significantly increase public understanding of the government’s review process and actions among a broad audience of interested people. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

Because NRDC is a “representative of the news media,” as explained in Part III below, the Department must presume that it has the “ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject.” 43 C.F.R. § 2.48(a)(2)(v). However, even if NRDC were not a media requester, NRDC satisfies this requirement as well. NRDC has more than two million members and online activists, tens of thousands of whom have responded to action alerts relating to the Department’s monument review in particular. And, as detailed below, NRDC has extensive communications capabilities and a proven history of disseminating information of public interest, including information obtained from FOIA requests. NRDC has both the capability and the intent to broadly disseminate the information it seeks here to its members and to the general public, thereby contributing to a better general understanding of the Department’s monument review process.

NRDC uses numerous modes of communication to disseminate information to its members and to the public at large. These include:

- (1) NRDC’s website (<http://www.nrdc.org>), which is updated daily and draws approximately 1.7 million page views and 1.5 million unique page views per month, and which features NRDC staff blogs, original reporting on environmental news stories, and in-depth analyses on topics of public interest;
- (2) NRDC’s Activist email list, which includes more than 2.4 million subscribers who receive regular communications on urgent environmental issues;
- (3) *NRDC Insider* (<http://www.nrdc.org/newsletter>), a monthly electronic environmental newsletter distributed by email to more than 1.47 million subscribers;
- (4) NRDC’s Facebook page, with 909,921 likes and 872,632 followers;

- (5) NRDC's Twitter handle, with 274,922 followers;
- (6) NRDC's Instagram feed, with 111,024 followers;
- (7) NRDC's YouTube channel (<https://www.youtube.com/user/NRDCflix>), with 21,050 subscribers; and
- (8) online media outlets like Medium (<https://medium.com/natural-resources-defense-council>) and Huffington Post (<http://www.huffingtonpost.com/topic/natural-resources-defense-council>).

NRDC also publishes legal and scientific analyses, policy documents, and reports; issues press releases; and directs and produces movies (including *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*). NRDC has more than fifty staff members dedicated to communications work.

In addition, NRDC employees and representatives are widely quoted in the news media; participate in interviews on television, radio, and web broadcasts; appear at conferences; provide congressional testimony; and contribute articles and op-eds to numerous national newspapers, magazines, academic journals, and books. *See, e.g.,* Zoe Carpenter, *After Promising a "Fair Hearing" on Monuments, Secretary Zinke Shuts Out the Public*, THE NATION (May 18, 2017) (quoting NRDC Land and Wildlife Program Director Sharon Buccino); Op-Ed, *Don't Take Bears Ears Away from Us*, SALT LAKE TRIBUNE (May 6, 2017) (contributed by NRDC trustee Robert Redford); Research Article, *The Requirement To Rebuild U.S. Fish Stocks: Is It Working?* MARINE POLICY (July 2014) (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell); Transcript, *Conservationists Call for Quiet: The Ocean Is Too Loud*, ALL THINGS CONSIDERED (July 28, 2013) (featuring NRDC Marine Mammal Protection Program Director Michael Jasny); Testimony of Johanna Wald, NRDC Senior Attorney, before the U.S. Senate Committee on Energy and Natural Resources, Hearing on the California Desert Protection Act of 2010 (May 20, 2010).

NRDC's legal and scientific experts routinely analyze information obtained through FOIA and use it to inform the public about a variety of environmental issues. *See, e.g.,* Theo Spencer, *The Fight to Stop a Strip Mine Near Bryce Canyon: A History*, NRDC Blog (June 5, 2017) (analyzing documents obtained through a partner organization's FOIA request regarding a proposed expansion of an open pit strip mine in Utah); Kevin Bogardus et al., *"Homework Assignment": How Pebble Lobbied Trump's EPA*, E&E NEWS (June 8, 2017) (quoting NRDC staff discussing results of a FOIA seeking communications between EPA and Pebble Mine developers);



Tom Neltner et al., *Generally Recognized as Secret: Chemicals Added to Food in the United States*, NRDC Report (2014) (analyzing FOIA documents relating to potentially unsafe chemicals added to food); Carmen Cordova, *Playing Chicken with Antibiotics*, NRDC Issue Brief (2014) (describing FDA records, obtained through FOIA, which show widespread violations of the agency’s safety standards for antibiotic feed additives); Dan Flynn, *NRDC Releases FSIS Inspection Reports on Foster Farms*, FOOD SAFETY NEWS (Sept. 12, 2014) (reporting on documents NRDC obtained through FOIA relating to safety violations by poultry company, and linking to the documents); Mae Wu et al., *Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, NRDC Report (2010) (analyzing White House documents obtained through FOIA and from other sources to inform the public about EPA’s decision not to protect wildlife and workers from the pesticide atrazine).

In sum, NRDC has a proven ability to digest, synthesize, and disseminate information obtained through FOIA to a broad audience of interested persons. NRDC’s more than two million members and activists, when combined with the members of the general public who read NRDC’s communications online and in the news media, clearly constitute “a reasonably broad audience of persons interested in the subject.” 43 C.F.R. § 2.48(a)(2)(iv), (v). NRDC intends to disseminate any newsworthy information in the released records to this large audience in a manner that will meaningfully enhance the public’s understanding of the federal government’s decision-making process.

**3. Significant contribution to understanding of a reasonably broad audience of interested persons (43 C.F.R. § 2.48(a)(3))**

Disclosure “is likely to significantly contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to [its] individual understanding.” 43 C.F.R. § 2.48(a)(3). NRDC does not seek records that have been previously disclosed to the public. *Id.* § 2.48(a)(3)(i), (iv). Disclosure of these records may confirm, clarify, or contradict documents or statements in the public domain including the Department’s report, once issued or actions taken by the federal government. *Id.* § 2.48(a)(3)(ii). Disclosure will also enable the public to better evaluate the basis for any actions the federal government may take with respect to national monuments. *Id.* § 2.48(a)(3)(iii).

**4. Significant enhancement of public understanding (43 C.F.R. § 2.48(a)(4))**

Finally, “the public’s understanding of the subject in question will be enhanced to a significant extent by the disclosure.” 43 C.F.R. § 2.48(a)(4). The requested records have not previously been made available, and their disclosure will shed light on a matter of considerable public interest and concern: the sources of information for the Department’s monument review process, and the process by which the Department assessed national monuments and recommended changes to some of them. Disclosure would help the public more effectively evaluate the legal and factual bases for the Department’s conclusions and recommendations, and for any actions the federal government may take with respect to national monuments.

For these reasons, NRDC has met the first prerequisite for a fee waiver request under the FOIA.

**B. Disclosure is not primarily in NRDC’s commercial interest**

Second, NRDC has no commercial interests that would be furthered by the requested disclosure. *See* 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.48(a)(4)(b). Therefore, it satisfies the second prerequisite for a fee waiver request under the FOIA.

NRDC is a not-for-profit organization. It does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (internal citation omitted); *see also Better Gov’t Ass’n v. Dep’t of State*, 780 F.2d 86, 88-89 (D.C. Cir. 1986) (recognizing that “[the fee waiver] provision was added to FOIA in an attempt to prevent government agencies from using high fees to discourage certain types of requesters and requests, in particular those from journalists, scholars and nonprofit public interest groups.” (internal quotation marks omitted)). Requesters wish to serve the public by reviewing, analyzing, and disseminating newsworthy and presently non-public information about the protection of national monuments, and this is precisely the sort of “investigation[]” of “governmental choices and highlighting [of] possible abuses” for which the fee waiver was enacted. *Better Gov’t Ass’n*, 780 F.2d at 93.

Access to government records, disclosure forms, and similar materials through FOIA requests is essential to NRDC’s role of educating its members, activists, and the general public. NRDC has no commercial interest in the disclosure of the records, and it will realize no commercial benefit or profit from the disclosure of the requested records. In addition, as discussed further in Section III below, NRDC qualifies as a “representative



of a news media organization” for whom the Department “presume[s] that the public interest outweighs [any] commercial interest.” 43 C.F.R. § 2.48(b)(3)(ii).

For these reasons, NRDC is entitled to a fee waiver under the FOIA.

### III. Request for a Reduction of Fees

In the alternative, even if the Department denies NRDC’s fee waiver request, NRDC qualifies as a “representative of the news media” that is entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); *see also Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep’t of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described in detail in Section II above, NRDC publishes original reports and analyses on conservation-related topics on its website, in its newsletter, and in blog posts; it contributes articles and op-eds to a variety of online and print platforms; and it maintains free online libraries of documents, publications, and other information of interest to the general public. These types of publications and media sources constitute news media outlets for purposes of FOIA. *See* OPEN Government Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). Public interest organizations performing these sorts of public communication functions “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-89 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union); *see also Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 164 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”).

NRDC intends to review the records it obtains through this FOIA request and, if the information is appropriately newsworthy, to analyze them, synthesize them with information from other sources, and create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of its publications or other suitable media channels. NRDC will not resell the information obtained through this FOIA request to other media organizations. For these reasons, even if the Department denies NRDC's fee waiver request, it should grant a fee reduction consistent with 5 U.S.C. § 552(a)(4)(A)(ii).

#### **IV. Willingness to Pay Fees Under Protest**

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with the Department's FOIA regulations at 43 C.F.R. § 2.37 *et seq.* Please contact me, however, before doing anything that would cause the fee to exceed \$250. NRDC reserves the right to seek administrative or judicial review of any fee waiver denial.

#### **V. Conclusion**

Please email the requested records or, if it is not possible to email, mail a CD of electronic copies of the requested records to me at the address listed below. Please call or email me with any questions. Thank you for your time.

Sincerely,

/s/ Katherine Desormeau  
Katherine Desormeau  
Natural Resources Defense Council, Inc.  
111 Sutter Street, 21<sup>st</sup> Floor  
San Francisco, CA 94104  
Tel: (415) 875-6158  
kdesormeau@nrdc.org

# Exhibit C

# NRDC

October 29, 2017

## Via online submission

Department of Commerce  
FOIA Officer

**Re: FOIA Request for Records Relating to Meetings Relating  
to National Marine Sanctuaries and Monuments**

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.*, and applicable Department of Commerce regulations, 15 C.F.R. § 4.1-4.11.

### **I. Description of Records Sought**

Please produce any and all records in the possession, custody, or control of the Department of Commerce (“the Department”) that pertain to meetings on or after January 20, 2017, attended by Secretary Wilbur Ross and/or Earl Comstock, relating to any national marine sanctuary or marine national monument and/or to the Department’s review of national marine sanctuaries and monuments under Executive Order No. 13795, including:

- Any calendar entries, invitations, itineraries, or communications referencing such meetings;
- Any agendas, minutes, attendee lists, or presentations relating to such meetings;
- Any records of individuals who attended these meetings or accompanied Secretary Ross or Mr. Comstock on any of these occasions, excluding current career federal employees;
- Any briefings, summaries, or materials prepared or transmitted in relation to such meeting, whether before, during, or after the meeting itself; and
- Any notes taken by any federal employee, including Secretary Ross or Mr. Comstock.

For purposes of this request, the term “records” is consistent with the meaning of the term under FOIA. This includes, but is not limited to,

documents of any kind, including electronic as well as paper documents, e-mails, memoranda, letters, writings (handwritten, typed, electronic or otherwise produced, reproduced, or stored), reports, summaries, notes, meeting notes or minutes, text messages, and any other compilations of data from which information can be obtained.

Under FOIA, you are obligated to provide records in a readily-accessible electronic format and in the format requested. *See, e.g.*, 5 U.S.C. § 552(a)(3)(B) (“In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.”). We request that you provide the responsive records in electronic .pdf format without “profiles” or “embedded files.” Please do not provide the records in a single or “batched” .pdf file. To the extent that a subset of the requested records is readily available, please provide that subset immediately while you continue to search for additional records to complete your response.

If you decide to invoke any FOIA exemptions in response to this request, please include in your response sufficient information for us to assess the basis for the exemption(s), including any interest(s) that would be harmed by release. Please include a detailed ledger which includes (1) basic factual material about each withheld record, including the originator, date, length, general subject matter, and location of each item; and (2) complete explanations and justifications for the withholding, including the specific exemption(s) under which the record (or portion thereof) was withheld and a full explanation of how each exemption applies to the withheld material. Such statements will be helpful in deciding whether to appeal an adverse determination. Your written justification may help to avoid litigation.

If you determine that portions of any requested records are exempt from disclosure, the FOIA requires that you produce any reasonably segregable non-exempt portions within the statutory time limit. *See* 5 U.S.C. § 552(b). *See, e.g., Gatore v. U.S. Dep’t of Homeland Sec.*, 177 F. Supp. 3d 46, 53 (D.D.C. 2016); *Gosen v. U.S. Citizenship & Immigration Servs.*, 118 F. Supp. 3d 232, 243-44 (D.D.C. 2015).

Please produce the records on a rolling basis. The Department’s search for or deliberations concerning certain records should not delay the production of others that the Department has already retrieved and elected to produce. *See generally* 15 C.F.R. § 4.7. If the Department takes the position that any of these records are publicly available, please indicate where each of them may be found.

## **II. Request for a Fee Waiver**

NRDC asks that the Department waive any fee it would otherwise charge for the search and production of the records described above. FOIA provides that a requester is entitled to a fee waiver when “disclosure of the information is in the public interest because it [A] is likely to contribute significantly to public understanding of the operations or activities of the government and [B] is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 15 C.F.R. § 4.11(l). The disclosure NRDC seeks here meets both these requirements.

### **A. Disclosure is likely to contribute significantly to public understanding of the operations or activities of the government**

First, the disclosure requested here is “likely to contribute significantly to public understanding of the operations or activities of the government,” 5 U.S.C. § 552(a)(4)(A)(iii), based on the following factors. *See* 15 C.F.R. § 4.11(l)(2)(i)-(iv) (describing factors to be considered).

#### **1. Subject of the request (15 C.F.R. § 4.11(l)(2)(i))**

The requested records directly concern “the operations or activities of the Government.” 15 C.F.R. § 4.11(l)(2)(i). The records pertain to the Department’s “review of all designations and expansions of National Marine Sanctuaries, and of all designations and expansions of Marine National Monuments under the Antiquities Act of 1906 . . . designated or expanded within the 10-year period prior to the date of this order” and the Department’s resulting report. Executive Order No. 13795, section 4(b)(i)-(ii). Disclosure of the records will provide context for the Department’s report and help the public to evaluate the Department’s recommendations and whatever actions the President, Congress, or other federal government officials take with respect to the affected sanctuaries and monuments.

#### **2. Informative value of the information to be disclosed (15 C.F.R. § 4.11(l)(2)(ii))**

Disclosure of the requested records is “likely to contribute’ to an understanding of Government operations or activities.” 15 C.F.R. § 4.11(l)(2)(ii). The records are relevant to the Department’s review of national marine sanctuaries and monuments, and therefore they are likely to be “meaningfully informative” in providing context for the Department’s report and for any actions the Administration may take with respect to those sanctuaries or monuments. *Id.* Because the Department’s review has

attracted broad public attention (as explained below), and because the requested records have not previously been made available, disclosure will “contribute’ to an increased public understanding of those operations or activities.” *Id.*

**3. Contribution to public understanding of the subject  
(15 C.F.R. § 4.11(l)(2)(iii))**

Because NRDC is a “representative of the news media,” as explained in Part III below, the Department must presume that this disclosure is likely to contribute to public understanding of the subject of the disclosure. 15 C.F.R. § 4.11(l)(2)(iii). However, even if NRDC were not a media requester, NRDC satisfies the requirement that disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in the subject.” *Id.*

NRDC does not seek the requested records for its own benefit. Rather, it seeks the records to provide new information to the public about the Department’s review process and its resulting report and recommendations. Disclosure of this information will make possible a more complete public understanding of the federal government’s decision-making process and intentions regarding the national marine sanctuaries and monuments at issue. *See* 15 C.F.R. § 4.11(l)(2)(iii) (requiring requester to show that disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester”). There is more than a reasonable likelihood that disclosure of the requested records will significantly increase public understanding of the government’s review process and actions among a broad audience of interested people. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

NRDC has both the ability and the intent to disseminate the information obtained through this request “in a manner that will be informative to the understanding of a reasonably broad audience of persons interested in the subject.” 43 C.F.R. § 2.48(a)(2)(iv); *see also id.* § 2.48(a)(2)(v) (considering requester’s “ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject”). NRDC has more than two million members and online activists, tens of thousands of whom have responded to action alerts relating to the Department’s monument review in particular. And, as detailed below, NRDC has extensive communications capabilities and a proven history of disseminating information of public interest, including information obtained from FOIA requests. NRDC has both the capability and the intent to broadly disseminate the information it seeks here to its members and to the



general public, thereby contributing to a better general understanding of the Department's review process and its ultimate findings.

NRDC uses numerous modes of communication to disseminate information to its members and to the public at large. These include:

- (1) NRDC's website (<http://www.nrdc.org>), which is updated daily and draws approximately 1.7 million page views and 1.5 million unique page views per month, and which features NRDC staff blogs, original reporting on environmental news stories, and in-depth analyses on topics of public interest;
- (2) NRDC's Activist email list, which includes more than 2.4 million subscribers who receive regular communications on urgent environmental issues;
- (3) *NRDC Insider* (<http://www.nrdc.org/newsletter>), a monthly electronic environmental newsletter distributed by email to more than 1.47 million subscribers;
- (4) NRDC's Facebook page, with 909,921 likes and 872,632 followers;
- (5) NRDC's Twitter handle, with 274,922 followers;
- (6) NRDC's Instagram feed, with 111,024 followers;
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NRDC's legal and scientific experts routinely analyze information obtained through FOIA and use it to inform the public about a variety of environmental issues. *See, e.g.*, Theo Spencer, *The Fight to Stop a Strip Mine Near Bryce Canyon: A History*, NRDC Blog (June 5, 2017) (analyzing documents obtained through partner organization's FOIA request regarding a proposed expansion of an open pit strip mine in Utah); Kevin Bogardus *et al.*, "Homework Assignment": *How Pebble Lobbied Trump's EPA*, E&E NEWS (June 8, 2017) (quoting NRDC staff discussing results of a FOIA seeking communications between EPA and Pebble Mine developers); Tom Neltner *et al.*, *Generally Recognized as Secret: Chemicals Added to Food in the United States*, NRDC Report (2014) (analyzing FOIA documents relating to potentially unsafe chemicals added to food); Carmen Cordova, *Playing Chicken with Antibiotics*, NRDC Issue Brief (2014) (describing FDA records, obtained through FOIA, which show widespread violations of the agency's safety standards for antibiotic feed additives); Dan Flynn, *NRDC Releases FSIS Inspection Reports on Foster Farms*, FOOD SAFETY NEWS (Sept. 12, 2014) (reporting on documents NRDC obtained through FOIA relating to safety violations by poultry company, and linking to the documents); Mae Wu *et al.*, *Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, NRDC Report (2010) (analyzing White House documents obtained through FOIA and from other sources to inform the public about EPA's decision not to protect wildlife and workers from the pesticide atrazine).

In sum, NRDC has a proven ability to digest, synthesize, and disseminate information obtained through FOIA to a broad audience of interested persons. NRDC's more than two million members and activists, when combined with the members of the general public who read NRDC's communications online and in the news media, clearly constitute "a reasonably broad audience of persons interested in the subject." 15 C.F.R. § 4.11(l)(2)(iii). NRDC intends to disseminate any newsworthy information in the released records to this large audience in a manner that will

meaningfully enhance the public's understanding of the federal government's decision-making process. NRDC does not seek records that have been previously disclosed to the public. *See id.* Disclosure may therefore confirm, clarify, or contradict documents or statements in the public domain or actions taken by the federal government, and it will enable the public to better evaluate the federal government's actions.

#### **4. Significance of the contribution to public understanding (15 C.F.R. § 4.11(l)(2)(iv))**

Finally, the records requested will shed significant light on a matter of considerable public interest and concern. *See* 15 C.F.R. § 4.11(l)(2)(iv).

The American public has demonstrated a strong interest in the Department's review of national marine sanctuaries and monuments. According to the Regulations.gov website, nearly 100,000 non-duplicative public comments relating to the Department's review of national marine sanctuaries and monuments were submitted online. *See* <https://www.regulations.gov/docket?D=NOAA-NOS-2017-0066> (last visited Sept. 29, 2017). The Department's review has also prompted many letters to the editor and op-eds, widespread social media activism, and numerous media reports in local and national publications. *See, e.g.,* Guy Kovner, *Marine Sanctuaries that Protect California Coast Get Strong Public Support, Conservationists Say*, THE PRESS-DEMOCRAT (Aug. 17, 2017); Zack Klyver, *Op-Ed: Marine Monument Vital for a Healthy, Bountiful Ocean*, BANGOR DAILY NEWS (Aug. 3, 2017); David Helvarg, *Op-Ed: Time Is Running Out to Stop Trump From Opening California Marine Sanctuaries to Oil Drilling*, LOS ANGELES TIMES (July 7, 2017); Marine Conservation Institute, *Blog: Analysis Shows Overwhelming Public Support for Marine Monuments and Sanctuaries* (Aug. 15, 2017), at <https://blog.marine-conservation.org/2017/08/overwhelming-support-for-marine-monuments-and-sanctuaries.html>.

Despite this strong showing of public interest and concern, very little information is publicly available about the Department's information-gathering and review process. Disclosure of the requested records concerning the Department's meetings with outside individuals and groups will significantly contribute to public understanding of the Department's review process. Disclosure will also provide valuable context for understanding the Department's report, and will enable the public more effectively to evaluate the legal and factual bases for the Department's assertions and recommendations.

For these reasons, NRDC has met the first prerequisite for a fee waiver request under the FOIA.

**B. Disclosure is not primarily in NRDC's commercial interest**

Second, NRDC has no commercial interests that would be furthered by the requested disclosure. *See* 5 U.S.C. § 552(a)(4)(A)(iii); 15 C.F.R. § 4.11(l)(1)(ii). Therefore, it satisfies the second prerequisite for a fee waiver request under the FOIA.

NRDC is a not-for-profit organization. It does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (internal citation omitted); *see also Better Gov't Ass'n v. Dep't of State*, 780 F.2d 86, 88-89 (D.C. Cir. 1986) (recognizing that “[the fee waiver] provision was added to FOIA in an attempt to prevent government agencies from using high fees to discourage certain types of requesters and requests, in particular those from journalists, scholars and nonprofit public interest groups.” (internal quotation marks omitted)). Requesters wish to serve the public by reviewing, analyzing, and disseminating newsworthy and presently non-public information about the federal government's decision-making process with respect to national marine sanctuaries and monuments, and this is precisely the sort of “investigation[]” of “governmental choices and highlighting [of] possible abuses” for which the fee waiver was enacted. *Better Gov't Ass'n*, 780 F.2d at 93.

Access to government records, disclosure forms, and similar materials through FOIA requests is essential to NRDC's role of educating its members, activists, and the general public. NRDC has no commercial interest in the disclosure of the records, and it will realize no commercial benefit or profit from the disclosure of the requested records. For these reasons, NRDC is entitled to a fee waiver under the FOIA.

**III. Request for a Reduction of Fees**

In the alternative, even if the Department denies NRDC's fee waiver request, NRDC qualifies as a “representative of the news media” that is entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and applicable regulations, 15 C.F.R. § 4.11(c), (d); *see also id.* § 4.11(b)(6) (defining “[r]epresentative of the news media”).

A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its

editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); *see also Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep’t of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described in detail in Section II above, NRDC publishes original reports and analyses on conservation-related topics on its website, in its newsletter, and in blog posts; it contributes articles and op-eds to a variety of online and print platforms; and it maintains free online libraries of documents, publications, and other information of interest to the general public. These types of publications and media sources constitute news media outlets for purposes of FOIA. *See* OPEN Government Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”); *see also* 15 C.F.R. § 4.11(b)(6) (“Examples of news-media entities are . . . publishers of periodicals . . . including news organizations that disseminate solely on the Internet.”).

Public interest organizations performing these sorts of public communication functions “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-89 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union); *see also Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 164 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”).

NRDC intends to review the records it obtains through this FOIA request and, if the information is appropriately newsworthy, to analyze them, synthesize them with information from other sources, and create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of its publications or other suitable media channels. NRDC will not resell the information obtained through this FOIA request to other media organizations. For these reasons, even if the Department denies NRDC’s fee waiver request, it should grant a fee reduction consistent with 5 U.S.C. § 552(a)(4)(A)(ii).

#### **IV. Willingness to Pay Fees Under Protest**

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with the Department's FOIA regulations. *See* 15 C.F.R. § 4.11. Please contact me, however, before doing anything that would cause the fee to exceed \$250. NRDC reserves the right to seek administrative or judicial review of any fee waiver denial.

#### **V. Conclusion**

Please email the requested records or, if it is not possible to email, mail a CD of electronic copies of the requested records to me at the address listed below. Please call or email me with any questions. Thank you for your time.

Sincerely,

/s/ Katherine Desormeau  
Katherine Desormeau  
Natural Resources Defense Council, Inc.  
111 Sutter Street, 21<sup>st</sup> Floor  
San Francisco, CA 94104  
Tel: (415) 875-6158  
kdesormeau@nrdc.org

Jackie Rolleri - NOAA Federal

---

**From:** Jackie Rolleri NOAA Federal  
**Sent:** Monday, February 12, 2018 10:51 AM  
**To:** Mark Graff NOAA Federal  
**Subject:** question re exemption 6

ATTORNEY-CLIENT COMMUNICATION

Hi Mark,

I did some research on (b)(5) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]  
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[REDACTED]

- [REDACTED]  
[REDACTED]  
[REDACTED]  
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[REDACTED]

- [REDACTED]  
[REDACTED]  
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[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

(b)(5)

[Redacted]

- [Redacted]

[Redacted]

- [Redacted]

[Redacted]

[Redacted]

[Redacted]

Thanks,  
Jackie

--  
Jackie Rolleri, Attorney-Advisor  
Oceans and Coasts Section  
Office of the General Counsel  
National Oceanic and Atmospheric Administration  
1305 East-West Highway  
SSMC4, Suite 6111  
Silver Spring, MD 20910  
[301-713-7387](tel:301-713-7387) (office)  
[\(b\)\(6\)](tel:(b)(6)) (cell) (Telework Tues. and Fri)

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**Mark Graff - NOAA Federal**

---

**From:** Mark Graff NOAA Federal  
**Sent:** Monday, February 12, 2018 12:18 PM  
**To:** Dennis Morgan NOAA Federal; Robert Swisher NOAA Federal; Stacey Nathanson NOAA Federal  
**Cc:** Robert Hogan; Samuel Dixon NOAA Affiliate; Steven Goodman NOAA Federal; Devin Brakob NOAA Federal; James LeDuc NOAA Federal; Nkolika Ndubisi NOAA Federal; Jackie Rolleri NOAA Federal; Adam Dilts NOAA Federal; Laura Cesario NOAA Federal  
**Subject:** Fwd: new FOIA cases  
**Attachments:** 01 3.pdf; NRDC v. DOI and DOC Original Complaint.pdf

Hey Guys,

(b)(5) [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

[Redacted]  
[Redacted] ?

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628 5658 (O)  
(b)(6) [Redacted] (C)

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Forwarded message  
**From:** Mark Graff - NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)>  
**Date:** Mon, Feb 12, 2018 at 9:09 AM  
**Subject:** Re: new FOIA cases  
**To:** "Bogomolny, Michael (Federal)" <[MBogomolny@doc.gov](mailto:MBogomolny@doc.gov)>

Cc: "Allison Holman, Roxie (Federal)" <[Roxie.Allison.Holman@noaa.gov](mailto:Roxie.Allison.Holman@noaa.gov)>, Stacey Nathanson NOAA Federal <[stacey.nathanson@noaa.gov](mailto:stacey.nathanson@noaa.gov)>

Thanks Bogo

(b)(5) [Redacted]  
[Redacted].

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration

[\(301\) 628 5658](tel:3016285658) (O)

(b)(6) [Redacted] (C)

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On Fri, Feb 9, 2018 at 3:05 PM, Bogomolny, Michael (Federal) <[MBogomolny@doc.gov](mailto:MBogomolny@doc.gov)> wrote:

I know you're aware of this one:

(b)(5) [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

[Redacted]  
[Redacted]  
[Redacted]

This one is probably new to you:

(b)(5) [Redacted]  
[Redacted]  
[Redacted]  
[Redacted].

Complaint and FOIA requests are attached.

bogo

# Exhibit C

# NRDC

October 29, 2017

## Via online submission

Department of Commerce  
FOIA Officer

**Re: FOIA Request for Records Relating to Meetings Relating  
to National Marine Sanctuaries and Monuments**

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.*, and applicable Department of Commerce regulations, 15 C.F.R. § 4.1-4.11.

### **I. Description of Records Sought**

Please produce any and all records in the possession, custody, or control of the Department of Commerce (“the Department”) that pertain to meetings on or after January 20, 2017, attended by Secretary Wilbur Ross and/or Earl Comstock, relating to any national marine sanctuary or marine national monument and/or to the Department’s review of national marine sanctuaries and monuments under Executive Order No. 13795, including:

- Any calendar entries, invitations, itineraries, or communications referencing such meetings;
- Any agendas, minutes, attendee lists, or presentations relating to such meetings;
- Any records of individuals who attended these meetings or accompanied Secretary Ross or Mr. Comstock on any of these occasions, excluding current career federal employees;
- Any briefings, summaries, or materials prepared or transmitted in relation to such meeting, whether before, during, or after the meeting itself; and
- Any notes taken by any federal employee, including Secretary Ross or Mr. Comstock.

For purposes of this request, the term “records” is consistent with the meaning of the term under FOIA. This includes, but is not limited to,

documents of any kind, including electronic as well as paper documents, e-mails, memoranda, letters, writings (handwritten, typed, electronic or otherwise produced, reproduced, or stored), reports, summaries, notes, meeting notes or minutes, text messages, and any other compilations of data from which information can be obtained.

Under FOIA, you are obligated to provide records in a readily-accessible electronic format and in the format requested. *See, e.g.*, 5 U.S.C. § 552(a)(3)(B) (“In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.”). We request that you provide the responsive records in electronic .pdf format without “profiles” or “embedded files.” Please do not provide the records in a single or “batched” .pdf file. To the extent that a subset of the requested records is readily available, please provide that subset immediately while you continue to search for additional records to complete your response.

If you decide to invoke any FOIA exemptions in response to this request, please include in your response sufficient information for us to assess the basis for the exemption(s), including any interest(s) that would be harmed by release. Please include a detailed ledger which includes (1) basic factual material about each withheld record, including the originator, date, length, general subject matter, and location of each item; and (2) complete explanations and justifications for the withholding, including the specific exemption(s) under which the record (or portion thereof) was withheld and a full explanation of how each exemption applies to the withheld material. Such statements will be helpful in deciding whether to appeal an adverse determination. Your written justification may help to avoid litigation.

If you determine that portions of any requested records are exempt from disclosure, the FOIA requires that you produce any reasonably segregable non-exempt portions within the statutory time limit. *See* 5 U.S.C. § 552(b). *See, e.g., Gatore v. U.S. Dep’t of Homeland Sec.*, 177 F. Supp. 3d 46, 53 (D.D.C. 2016); *Gosen v. U.S. Citizenship & Immigration Servs.*, 118 F. Supp. 3d 232, 243-44 (D.D.C. 2015).

Please produce the records on a rolling basis. The Department’s search for or deliberations concerning certain records should not delay the production of others that the Department has already retrieved and elected to produce. *See generally* 15 C.F.R. § 4.7. If the Department takes the position that any of these records are publicly available, please indicate where each of them may be found.

## II. Request for a Fee Waiver

NRDC asks that the Department waive any fee it would otherwise charge for the search and production of the records described above. FOIA provides that a requester is entitled to a fee waiver when “disclosure of the information is in the public interest because it [A] is likely to contribute significantly to public understanding of the operations or activities of the government and [B] is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 15 C.F.R. § 4.11(l). The disclosure NRDC seeks here meets both these requirements.

### A. Disclosure is likely to contribute significantly to public understanding of the operations or activities of the government

First, the disclosure requested here is “likely to contribute significantly to public understanding of the operations or activities of the government,” 5 U.S.C. § 552(a)(4)(A)(iii), based on the following factors. *See* 15 C.F.R. § 4.11(l)(2)(i)-(iv) (describing factors to be considered).

#### 1. Subject of the request (15 C.F.R. § 4.11(l)(2)(i))

The requested records directly concern “the operations or activities of the Government.” 15 C.F.R. § 4.11(l)(2)(i). The records pertain to the Department’s “review of all designations and expansions of National Marine Sanctuaries, and of all designations and expansions of Marine National Monuments under the Antiquities Act of 1906 . . . designated or expanded within the 10-year period prior to the date of this order” and the Department’s resulting report. Executive Order No. 13795, section 4(b)(i)-(ii). Disclosure of the records will provide context for the Department’s report and help the public to evaluate the Department’s recommendations and whatever actions the President, Congress, or other federal government officials take with respect to the affected sanctuaries and monuments.

#### 2. Informative value of the information to be disclosed (15 C.F.R. § 4.11(l)(2)(ii))

Disclosure of the requested records is “likely to contribute’ to an understanding of Government operations or activities.” 15 C.F.R. § 4.11(l)(2)(ii). The records are relevant to the Department’s review of national marine sanctuaries and monuments, and therefore they are likely to be “meaningfully informative” in providing context for the Department’s report and for any actions the Administration may take with respect to those sanctuaries or monuments. *Id.* Because the Department’s review has

attracted broad public attention (as explained below), and because the requested records have not previously been made available, disclosure will “contribute’ to an increased public understanding of those operations or activities.” *Id.*

**3. Contribution to public understanding of the subject  
(15 C.F.R. § 4.11(l)(2)(iii))**

Because NRDC is a “representative of the news media,” as explained in Part III below, the Department must presume that this disclosure is likely to contribute to public understanding of the subject of the disclosure. 15 C.F.R. § 4.11(l)(2)(iii). However, even if NRDC were not a media requester, NRDC satisfies the requirement that disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in the subject.” *Id.*

NRDC does not seek the requested records for its own benefit. Rather, it seeks the records to provide new information to the public about the Department’s review process and its resulting report and recommendations. Disclosure of this information will make possible a more complete public understanding of the federal government’s decision-making process and intentions regarding the national marine sanctuaries and monuments at issue. *See* 15 C.F.R. § 4.11(l)(2)(iii) (requiring requester to show that disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester”). There is more than a reasonable likelihood that disclosure of the requested records will significantly increase public understanding of the government’s review process and actions among a broad audience of interested people. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

NRDC has both the ability and the intent to disseminate the information obtained through this request “in a manner that will be informative to the understanding of a reasonably broad audience of persons interested in the subject.” 43 C.F.R. § 2.48(a)(2)(iv); *see also id.* § 2.48(a)(2)(v) (considering requester’s “ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject”). NRDC has more than two million members and online activists, tens of thousands of whom have responded to action alerts relating to the Department’s monument review in particular. And, as detailed below, NRDC has extensive communications capabilities and a proven history of disseminating information of public interest, including information obtained from FOIA requests. NRDC has both the capability and the intent to broadly disseminate the information it seeks here to its members and to the



general public, thereby contributing to a better general understanding of the Department's review process and its ultimate findings.

NRDC uses numerous modes of communication to disseminate information to its members and to the public at large. These include:

- (1) NRDC's website (<http://www.nrdc.org>), which is updated daily and draws approximately 1.7 million page views and 1.5 million unique page views per month, and which features NRDC staff blogs, original reporting on environmental news stories, and in-depth analyses on topics of public interest;
- (2) NRDC's Activist email list, which includes more than 2.4 million subscribers who receive regular communications on urgent environmental issues;
- (3) *NRDC Insider* (<http://www.nrdc.org/newsletter>), a monthly electronic environmental newsletter distributed by email to more than 1.47 million subscribers;
- (4) NRDC's Facebook page, with 909,921 likes and 872,632 followers;
- (5) NRDC's Twitter handle, with 274,922 followers;
- (6) NRDC's Instagram feed, with 111,024 followers;
- (7) NRDC's YouTube channel (<https://www.youtube.com/user/NRDCflix>), with 21,050 subscribers; and
- (8) online media outlets like Medium (<https://medium.com/natural-resources-defense-council>) and Huffington Post (<http://www.huffingtonpost.com/topic/natural-resources-defense-council>).

NRDC also publishes legal and scientific analyses, policy documents, and reports; issues press releases; and directs and produces movies (including *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*). NRDC has more than fifty staff members dedicated to communications work.

In addition, NRDC employees and representatives are widely quoted in the news media; participate in interviews on television, radio, and web broadcasts; appear at conferences; provide congressional testimony; and contribute articles and op-eds to numerous national newspapers, magazines, academic journals, and books. See, e.g., Zoe Carpenter, *After Promising a "Fair Hearing" on Monuments, Secretary Zinke Shuts Out the Public*, THE NATION (May 18, 2017) (quoting NRDC Land and Wildlife Program Director

Sharon Buccino); Op-Ed, *Don't Take Bears Ears Away from Us*, SALT LAKE TRIBUNE (May 6, 2017) (contributed by NRDC trustee Robert Redford); Research Article, *The Requirement To Rebuild U.S. Fish Stocks: Is It Working?* MARINE POLICY (July 2014) (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell); Transcript, *Conservationists Call for Quiet: The Ocean Is Too Loud*, ALL THINGS CONSIDERED (July 28, 2013) (featuring NRDC Marine Mammal Protection Program Director Michael Jasny); Testimony of Johanna Wald, NRDC Senior Attorney, before the U.S. Senate Committee on Energy and Natural Resources, Hearing on the California Desert Protection Act of 2010 (May 20, 2010).

NRDC's legal and scientific experts routinely analyze information obtained through FOIA and use it to inform the public about a variety of environmental issues. *See, e.g.*, Theo Spencer, *The Fight to Stop a Strip Mine Near Bryce Canyon: A History*, NRDC Blog (June 5, 2017) (analyzing documents obtained through partner organization's FOIA request regarding a proposed expansion of an open pit strip mine in Utah); Kevin Bogardus *et al.*, "Homework Assignment": *How Pebble Lobbied Trump's EPA*, E&E NEWS (June 8, 2017) (quoting NRDC staff discussing results of a FOIA seeking communications between EPA and Pebble Mine developers); Tom Neltner *et al.*, *Generally Recognized as Secret: Chemicals Added to Food in the United States*, NRDC Report (2014) (analyzing FOIA documents relating to potentially unsafe chemicals added to food); Carmen Cordova, *Playing Chicken with Antibiotics*, NRDC Issue Brief (2014) (describing FDA records, obtained through FOIA, which show widespread violations of the agency's safety standards for antibiotic feed additives); Dan Flynn, *NRDC Releases FSIS Inspection Reports on Foster Farms*, FOOD SAFETY NEWS (Sept. 12, 2014) (reporting on documents NRDC obtained through FOIA relating to safety violations by poultry company, and linking to the documents); Mae Wu *et al.*, *Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, NRDC Report (2010) (analyzing White House documents obtained through FOIA and from other sources to inform the public about EPA's decision not to protect wildlife and workers from the pesticide atrazine).

In sum, NRDC has a proven ability to digest, synthesize, and disseminate information obtained through FOIA to a broad audience of interested persons. NRDC's more than two million members and activists, when combined with the members of the general public who read NRDC's communications online and in the news media, clearly constitute "a reasonably broad audience of persons interested in the subject." 15 C.F.R. § 4.11(l)(2)(iii). NRDC intends to disseminate any newsworthy information in the released records to this large audience in a manner that will

meaningfully enhance the public's understanding of the federal government's decision-making process. NRDC does not seek records that have been previously disclosed to the public. *See id.* Disclosure may therefore confirm, clarify, or contradict documents or statements in the public domain or actions taken by the federal government, and it will enable the public to better evaluate the federal government's actions.

#### **4. Significance of the contribution to public understanding (15 C.F.R. § 4.11(l)(2)(iv))**

Finally, the records requested will shed significant light on a matter of considerable public interest and concern. *See* 15 C.F.R. § 4.11(l)(2)(iv).

The American public has demonstrated a strong interest in the Department's review of national marine sanctuaries and monuments. According to the Regulations.gov website, nearly 100,000 non-duplicative public comments relating to the Department's review of national marine sanctuaries and monuments were submitted online. *See* <https://www.regulations.gov/docket?D=NOAA-NOS-2017-0066> (last visited Sept. 29, 2017). The Department's review has also prompted many letters to the editor and op-eds, widespread social media activism, and numerous media reports in local and national publications. *See, e.g.*, Guy Kovner, *Marine Sanctuaries that Protect California Coast Get Strong Public Support, Conservationists Say*, THE PRESS-DEMOCRAT (Aug. 17, 2017); Zack Klyver, *Op-Ed: Marine Monument Vital for a Healthy, Bountiful Ocean*, BANGOR DAILY NEWS (Aug. 3, 2017); David Helvarg, *Op-Ed: Time Is Running Out to Stop Trump From Opening California Marine Sanctuaries to Oil Drilling*, LOS ANGELES TIMES (July 7, 2017); Marine Conservation Institute, *Blog: Analysis Shows Overwhelming Public Support for Marine Monuments and Sanctuaries* (Aug. 15, 2017), at <https://blog.marine-conservation.org/2017/08/overwhelming-support-for-marine-monuments-and-sanctuaries.html>.

Despite this strong showing of public interest and concern, very little information is publicly available about the Department's information-gathering and review process. Disclosure of the requested records concerning the Department's meetings with outside individuals and groups will significantly contribute to public understanding of the Department's review process. Disclosure will also provide valuable context for understanding the Department's report, and will enable the public more effectively to evaluate the legal and factual bases for the Department's assertions and recommendations.

For these reasons, NRDC has met the first prerequisite for a fee waiver request under the FOIA.

**B. Disclosure is not primarily in NRDC's commercial interest**

Second, NRDC has no commercial interests that would be furthered by the requested disclosure. *See* 5 U.S.C. § 552(a)(4)(A)(iii); 15 C.F.R. § 4.11(l)(1)(ii). Therefore, it satisfies the second prerequisite for a fee waiver request under the FOIA.

NRDC is a not-for-profit organization. It does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (internal citation omitted); *see also Better Gov't Ass'n v. Dep't of State*, 780 F.2d 86, 88-89 (D.C. Cir. 1986) (recognizing that “[the fee waiver] provision was added to FOIA in an attempt to prevent government agencies from using high fees to discourage certain types of requesters and requests, in particular those from journalists, scholars and nonprofit public interest groups.” (internal quotation marks omitted)). Requesters wish to serve the public by reviewing, analyzing, and disseminating newsworthy and presently non-public information about the federal government's decision-making process with respect to national marine sanctuaries and monuments, and this is precisely the sort of “investigation[]” of “governmental choices and highlighting [of] possible abuses” for which the fee waiver was enacted. *Better Gov't Ass'n*, 780 F.2d at 93.

Access to government records, disclosure forms, and similar materials through FOIA requests is essential to NRDC's role of educating its members, activists, and the general public. NRDC has no commercial interest in the disclosure of the records, and it will realize no commercial benefit or profit from the disclosure of the requested records. For these reasons, NRDC is entitled to a fee waiver under the FOIA.

**III. Request for a Reduction of Fees**

In the alternative, even if the Department denies NRDC's fee waiver request, NRDC qualifies as a “representative of the news media” that is entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and applicable regulations, 15 C.F.R. § 4.11(c), (d); *see also id.* § 4.11(b)(6) (defining “[r]epresentative of the news media”).

A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its

editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); *see also Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep’t of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described in detail in Section II above, NRDC publishes original reports and analyses on conservation-related topics on its website, in its newsletter, and in blog posts; it contributes articles and op-eds to a variety of online and print platforms; and it maintains free online libraries of documents, publications, and other information of interest to the general public. These types of publications and media sources constitute news media outlets for purposes of FOIA. *See* OPEN Government Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”); *see also* 15 C.F.R. § 4.11(b)(6) (“Examples of news-media entities are . . . publishers of periodicals . . . including news organizations that disseminate solely on the Internet.”).

Public interest organizations performing these sorts of public communication functions “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-89 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union); *see also Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 164 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”).

NRDC intends to review the records it obtains through this FOIA request and, if the information is appropriately newsworthy, to analyze them, synthesize them with information from other sources, and create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of its publications or other suitable media channels. NRDC will not resell the information obtained through this FOIA request to other media organizations. For these reasons, even if the Department denies NRDC’s fee waiver request, it should grant a fee reduction consistent with 5 U.S.C. § 552(a)(4)(A)(ii).

#### **IV. Willingness to Pay Fees Under Protest**

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with the Department's FOIA regulations. *See* 15 C.F.R. § 4.11. Please contact me, however, before doing anything that would cause the fee to exceed \$250. NRDC reserves the right to seek administrative or judicial review of any fee waiver denial.

#### **V. Conclusion**

Please email the requested records or, if it is not possible to email, mail a CD of electronic copies of the requested records to me at the address listed below. Please call or email me with any questions. Thank you for your time.

Sincerely,

/s/ Katherine Desormeau  
Katherine Desormeau  
Natural Resources Defense Council, Inc.  
111 Sutter Street, 21<sup>st</sup> Floor  
San Francisco, CA 94104  
Tel: (415) 875-6158  
kdesormeau@nrdc.org



**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

<hr/>		)	
NATURAL RESOURCES DEFENSE	)	)	
COUNCIL, INC.,	)	)	
	)	)	
Plaintiff,	)	)	
v.	)	)	
	)	)	
U.S. DEPARTMENT OF THE INTERIOR	)	)	Civil Action No. 18-cv-650
	)	)	
and	)	)	
	)	)	
U.S. DEPARTMENT OF COMMERCE,	)	)	
	)	)	
Defendants.	)	)	
<hr/>		)	

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**INTRODUCTION**

1. Plaintiff Natural Resources Defense Council, Inc. (NRDC or Plaintiff), brings this case to compel Defendants, the U.S. Department of the Interior (Interior Department) and the U.S. Department of Commerce (Commerce Department) (collectively, Defendants), to disclose records relating to the agencies’ reviews of certain national monuments.

2. Over the course of the past year, Defendants have conducted controversial “reviews” of at least twenty-seven national monuments established by former Presidents Clinton, G.W. Bush, and Obama including the Bears Ears National Monument in Utah, the Grand Staircase-Escalante National Monument in

Utah, and the Northeast Canyons and Seamounts Marine National Monument in the Atlantic Ocean for the purpose of making recommendations to the President about whether to preserve those monuments, or to dismantle them and open them to industrial resource extraction and other destructive uses. Despite an outpouring of popular support for preserving existing national monuments, the President has already acted to revoke national monument protections for huge swaths of Bears Ears and Grand Staircase-Escalante.

3. In September and October 2017, NRDC sought production under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, of records relating to the agencies' review processes. As explained below, NRDC sought records relating to the public comments that Defendants received, the meetings and communications Defendants' leadership had with non-governmental individuals and entities (including industry groups), and the criteria by which Defendants weighed the information they gathered. NRDC, its members, and the American public at large have a right to know who is influencing the federal government's decisions about the fate of these iconic American lands and waters.

4. FOIA required Defendants to respond within twenty business days. Yet Defendants did not respond substantively by that deadline, and they still have not done so. Their failure to timely disclose the requested records violates FOIA.

5. NRDC seeks a declaration that Defendants violated FOIA by failing to provide a final determination by the statutory deadline as to whether they will comply with NRDC's requests, and by failing to produce any responsive documents



promptly thereafter. NRDC seeks an injunction ordering that Defendants disclose, without further delay, all non-exempt, responsive records and portions of records to NRDC. NRDC also seeks a declaration that, pursuant to FOIA, it is entitled to a fee waiver in connection with its FOIA requests to the Interior Department.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question) and 5 U.S.C. § 552(a)(4)(B) (FOIA).

7. Venue is proper in the U.S. District Court for the Southern District of New York because NRDC resides and has its principal place of business in this judicial district. 5 U.S.C. § 552(a)(4)(B); 28 U.S.C. § 1391(e)(1).

### **THE PARTIES**

8. Plaintiff NRDC is a national nonprofit advocacy organization with hundreds of thousands of members nationwide. On behalf of its members, NRDC engages in research, advocacy, public education, and litigation to protect public health and the environment. NRDC has a long history of disseminating information of public interest, including information obtained from FOIA requests.

9. Defendant Interior Department is an agency within the meaning of 5 U.S.C. §§ 551(1) and 552(f)(1), and it has possession or control of documents NRDC seeks. The Office of the Secretary of the Interior is a component of the Interior Department.

10. Defendant Commerce Department is an agency within the meaning of 5 U.S.C. §§ 551(1) and 552(f)(1), and it has possession or control of documents

NRDC seeks. The Office of the Secretary of Commerce is a component of the Commerce Department.

### **STATUTORY AND REGULATORY FRAMEWORK**

11. FOIA requires federal agencies to release records to the public upon request, unless one of nine statutory exemptions from disclosure applies. 5 U.S.C. § 552(a)-(b).

12. Within twenty business days of an agency's receipt of a FOIA request, the agency must "determine . . . whether to comply" with the request. *Id.* § 552(a)(6)(A)(i); *see also* 43 C.F.R. § 2.16(a) (Interior FOIA regulation); 15 C.F.R. § 4.6(b) (Commerce FOIA regulation). The agency must "immediately notify" the requester of "such determination and the reasons therefor." 5 U.S.C. § 552(a)(6)(A)(i)(I); 43 C.F.R. § 2.21(b) (requiring Interior Department to "immediately" send a written acknowledgement and tracking number if a request will take longer than ten workdays to process).

13. Once an agency determines that it will comply with a FOIA request, it must "promptly" release responsive, non-exempt records to the requester. 5 U.S.C. § 552(a)(6)(C)(i); *see also* 43 C.F.R. § 2.22(c) (Interior FOIA regulation); 15 C.F.R. § 4.7(c) (Commerce FOIA regulation).

14. In "unusual circumstances," an agency may extend the twenty-day time limit for responding to a FOIA request by up to ten working days. 5 U.S.C. § 552(a)(6)(B)(i); *see also* 43 C.F.R. § 2.19(a)(1) (Interior FOIA regulation); 15 C.F.R. § 4.6(b) (Commerce FOIA regulation).

15. The agency must provide requested records at no or reduced cost “if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”

5 U.S.C. § 552(a)(4)(A)(iii); *see also* 43 C.F.R. § 2.45(a) (Interior FOIA regulation);

15 C.F.R. § 4.11(l) (Commerce FOIA regulation).

16. If the agency fails to notify the requester of its determination within the statutory time limit, the requester is “deemed to have exhausted his administrative remedies” and may immediately file suit. 5 U.S.C. § 552(a)(6)(C)(i).

17. FOIA grants federal district courts authority to “enjoin [an] agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” *Id.* § 552(a)(4)(B).

## FACTS

18. On April 26, 2017, President Donald J. Trump issued Executive Order 13,792, titled “Review of Designations Under the Antiquities Act,” which directed Secretary of the Interior Ryan Zinke to conduct a review of twenty-seven national monuments created by President Trump’s predecessors. Exec. Order 13,792, 82 Fed. Reg. 20,429 (Apr. 26, 2017). The Executive Order directed Secretary Zinke to provide “recommendations for such Presidential actions, legislative proposals, or other actions consistent with the law as the Secretary may consider appropriate” to

“balance the protection of . . . objects against the appropriate use of Federal lands and the effects on surrounding lands and communities.” *Id.*

19. Two days later, on April 28, 2017, President Trump issued another executive order, this one titled “Implementing an America-First Offshore Energy Strategy.” Exec. Order 13,795, 82 Fed. Reg. 20,815 (April 28, 2017). The order, among other things, directed Secretary of Commerce Wilbur Ross to review marine national monuments and national marine sanctuaries that had been designated or expanded within the previous ten years. The executive order required the Secretary of Commerce to “report the results of the review” within 180 days. *Id.*

20. The Interior Department and the Commerce Department subsequently accepted public comments regarding the covered national monuments and marine sanctuaries. *See* 82 Fed. Reg. 22,016 (May 11, 2017) (Interior review); 82 Fed. Reg. 28,827 (June 26, 2017) (Commerce review). On information and belief, Secretaries Zinke and Ross and other agency officials also met with a variety of stakeholders, including representatives of industry groups expressing interest in commercial exploitation of the national monuments and marine sanctuaries under review.

21. On information and belief, Defendants collectively received over three million public comments during their review period, and the overwhelming majority of those comments called on Defendants and the Trump Administration to preserve existing national monuments and marine sanctuaries.

22. Plaintiff NRDC submitted comments to the Interior and Commerce Departments in support of national monuments in general, and in support of Bears

Ears National Monument, Grand Staircase-Escalante National Monument, and Northeast Canyons and Seamounts Marine National Monument in particular. In addition, tens of thousands of NRDC's individual members submitted comments to the Interior and Commerce Departments in support of national monuments and marine sanctuaries.

23. On August 24, 2017, Interior Secretary Zinke submitted his final report to the President. Neither Secretary Zinke nor President Trump released the report publicly at the time, but national news reporters obtained what appears to be a leaked copy of the report, and Secretary Zinke released a substantially similar version to the public on December 5, 2017. Both versions of the Interior report recommended that the President unilaterally revoke or substantially weaken protections for several national monuments, including the Bears Ears National Monument, the Grand Staircase-Escalante National Monument, and the Northeast Canyons and Seamounts Marine National Monument.

24. On October 25, 2017, Secretary Ross's report describing the results of the Commerce review was due to be completed and submitted to the President. To date, neither Secretary Ross nor any other government official has released the Commerce report publicly.

25. On December 4, 2017, President Trump issued two proclamations dismantling Bears Ears National Monument and Grand Staircase-Escalante National Monument. President Trump and other federal officials have indicated that additional proclamations dismantling other national monuments would follow.

26. The American public has a strong interest in understanding the Interior and Commerce Departments' monument review processes and the basis for the Secretaries' reports and recommendations to the President. That includes understanding the criteria by which Interior and Commerce Department officials reviewed, weighed, or discounted the public comments they received; the contents of those comments; and the identities of industry representatives with whom Interior and Commerce Department officials met and the contents of those meetings.

27. The Interior and Commerce Departments' reviews of national monuments and marine sanctuaries have generated intense, widespread, and sustained public interest and concern. NRDC and its members are particularly keenly interested in these review processes and their outcomes. Yet, despite the public's desire for transparency and input into the Administration's review process, Defendants have made very little information publicly available about their information-gathering and review processes.

28. To better inform the American public at large, and NRDC members in particular, about a topic of intense public concern, NRDC submitted the following FOIA requests to the Interior Department and the Commerce Department.

**NRDC's first FOIA request to the Interior Department**

**# OS-2017-01247**

29. According to the Regulations.gov website, the Interior Department received more than 2.8 million public comments through its online portal relating to the Department's national monument review. Only 782,460 comments less than a

third of the total count of online submissions were made publicly available online as of the close of the comment period. The Regulations.gov website notes that “agencies may choose to redact, or withhold, certain submissions . . . such as those containing private or proprietary information . . . or duplicate/near duplicate examples of a mass-mail campaign.”

30. Interior Secretary Zinke’s report to President Trump acknowledged that the public “[c]omments received were overwhelmingly in favor of maintaining existing monuments.” Memorandum for the President from Secretary Zinke, “Final Report Summarizing Findings of the Review of Designations Under the Antiquities Act” at 3 (Aug. 24, 2017). Secretary Zinke nevertheless opined that the overwhelming public support for national monuments reflected not genuine popular will, but rather, in his words, “a well-orchestrated national campaign organized by multiple organizations.” *Id.* The report went on to dismiss what it called “form comments associated with NGO-organized campaigns, which far outnumbered individual comments,” opining that “[t]oo often it is the local stakeholders who lack the organization, funding, and institutional support to compete with well-funded NGOs.” *Id.* at 3, 8.

31. On September 22, 2017, in an effort to better understand the Interior Department’s review process and the information underlying Secretary Zinke’s report and recommendations, NRDC submitted a FOIA request to the Interior Department. *See Exhibit A.*

32. NRDC's request sought the following records:
- a. "Any and all comments the [Interior] Department received on or after April 26, 2017 (whether via online submission, by mail, or by any other means) that relate to national monuments, and that are not among the 782,460 comments publicly available on the Regulations.gov website. This includes but is not limited to comments that include "private or proprietary information" or that are considered "duplicate/near duplicate examples of a mass-mail campaign." If you determine that any such comments (or any portions thereof) are exempt from disclosure, please produce a detailed ledger explaining the basis for each withheld comment or portion thereof.
  - b. "Any and all records created or transmitted on or after April 26, 2017, that contain or relate to the Department's or the Secretary's directives, policies, standards, or procedures for reviewing or analyzing public comments relating to national monuments.
  - c. "Any and all records created or transmitted on or after April 26, 2017, that contain or relate to the Department's or the Secretary's review of, assessment of, or findings about public comments relating to national monuments.
  - d. "Any and all records created or transmitted on or after April 26, 2017, that contain or relate to the Department's or the Secretary's inquiry into or findings about "NGO-organized campaigns" relating to the



Department's monument review, or directions or instructions concerning such inquiry or findings.

- e. "Any and all records created or transmitted on or after April 26, 2017, that contain or relate to the basis for the Secretary's statement that there was "a well-orchestrated national campaign organized by multiple organizations" to submit public comments.
- f. "Any records created or transmitted by the Department (or any official or staff-member thereof) on or after April 26, 2017, that relate to the Natural Resources Defense Council (NRDC)." *Id.*

33. NRDC explained that, for purposes of its request, the term "records" is consistent with the meaning of the term under FOIA, including "documents of any kind, including electronic as well as paper documents, e-mails, memoranda, letters, writings (handwritten, typed, electronic or otherwise produced, reproduced, or stored), reports, summaries, notes, meeting notes or minutes, text messages, and any other compilations of data from which information can be obtained." *Id.*

34. NRDC also requested that the Interior Department waive any fees for the search and production of the requested records. NRDC is entitled to a waiver of all fees pursuant to FOIA's fee waiver provisions and the agency's regulations. *See* 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(a).

35. NRDC submitted its request to the Interior Department's Office of the Secretary via the Interior Department's online FOIA portal, in accordance with the agency's FOIA regulations and guidance.

36. The Interior Department's online portal sent NRDC an automated e-mail response acknowledging receipt of the request on September 22, 2017.

37. The Interior Department's response was due within twenty business days of the request i.e., by October 23, 2017. *See* 5 U.S.C. § 552(a)(6)(A)(i). NRDC received no response of any kind by that date.

38. On October 24, 2017 the day after FOIA's statutory deadline had run a FOIA Officer from the Interior Department's Office of the Secretary e-mailed an acknowledgement letter to NRDC's counsel. That letter stated that NRDC's "request was received in the Office of the Secretary FOIA office on September 22, 2017, and assigned control number OS-2017-01247."

39. The letter further stated: "Because we will need to consult with one or more bureaus of the Department in order to properly process your request, the Office of the Secretary FOIA office is taking a 10-workday extension under 43 C.F.R. § 2.19. For the same reason, we are placing your request under the 'Complex' processing track. *See* 43 C.F.R. § 2.15."

40. Finally, the letter stated that the Interior Department had "classified [NRDC's] request as an 'other-use request.'" Seeking clarification, NRDC's counsel asked the FOIA Officer by e-mail whether this meant the Interior Department had denied NRDC's fee waiver request. In an e-mail dated November 1, 2017, the FOIA Officer responded: "It is not a denial of your fee waiver request. We are waiting to determine if a fee waiver i[s] necessary depending on whether there will be any fees."

41. NRDC never received any further communications from the Interior Department relating to its FOIA request.

42. Even accounting for the belated ten-day extension, the Interior Department's response was due on November 7, 2017.

43. To date, the Interior Department still has not substantively responded to NRDC's FOIA request, produced any responsive records, claimed any exemptions, or made a determination on NRDC's fee waiver request.

**NRDC's second FOIA request to the Interior Department**

**# OS-2018-00232**

44. On October 29, 2017, NRDC submitted a second FOIA request to the Interior Department, this time seeking records relating to meetings between Secretary Zinke or other Interior Department leadership and outside groups or individuals regarding national monuments. *See* Exhibit B.

45. Specifically, NRDC sought the following records:

- a. "[A]ny and all records in the possession, custody, or control of the [Interior] Department . . . that pertain to meetings on or after January 20, 2017, attended by Secretary Ryan Zinke, Scott Hommel, Lori Mashburn, James Cason, Doug Domenech, and/or Downey Magallanes, relating to any national monument and/or to the Department's review of national monuments under Executive Order No. 13792, including:
- b. "Any calendar entries, invitations, itineraries, or communications referencing such meetings;

- c. “Any agendas, minutes, attendee lists, or presentations relating to such meetings;
- d. “Any records of individuals who attended these meetings or accompanied the above-named officials on any of these occasions, excluding current career federal employees;
- e. “Any briefings, summaries, or materials prepared or transmitted in relation to such meeting, whether before, during, or after the meeting itself; and
- f. “Any notes taken by any federal employee, including the above-named officials.” *Id.*

46. NRDC explained that, for purposes of its request, the term “records” is consistent with the meaning of the term under FOIA, including “documents of any kind, including electronic and paper documents, emails, memoranda, letters, writings (handwritten, typed, electronic or otherwise produced, reproduced, or stored), reports, summaries, notes, meeting notes or minutes, text messages, and any other compilations of data from which information can be obtained.” *Id.*

47. NRDC also requested that the Interior Department waive any fees for the search and production of the requested records. NRDC is entitled to a waiver of all fees pursuant to FOIA’s fee waiver provisions and the agency’s regulations. *See* 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(a).

48. NRDC submitted its request to the Interior Department's Office of the Secretary via the Interior Department's online FOIA portal, in accordance with the agency's FOIA regulations and guidance.

49. The Interior Department's online portal sent NRDC an automated e-mail response acknowledging receipt of the request on October 29, 2017.

50. The Interior Department's response was due within twenty business days of the request i.e., by November 28, 2017. *See* 5 U.S.C. § 552(a)(6)(A)(i).

51. On November 21, 2017, a FOIA Officer from the Interior Department's Office of the Secretary e-mailed an acknowledgement letter to NRDC's counsel. That letter stated that NRDC's "request was received in the Office of the Secretary FOIA office on October 29, 2017, and assigned control number OS-2018-00232."

52. The letter further stated: "Because we will need to consult with one or more bureaus of the Department in order to properly process your request, the Office of the Secretary FOIA office is taking a 10-workday extension under 43 C.F.R. § 2.19. For the same reason, we are placing your request under the 'Complex' processing track. *See* 43 C.F.R. § 2.15."

53. Finally, the letter stated that the Interior Department had "classified [NRDC's] request as an 'other-use request,'" and went on to explain: "[W]e are in the process of determining whether or not your entitlements are sufficient to enable us to process your request, or if we will need to issue a formal determination on your request for a fee waiver."

54. NRDC never received any further communications from the Interior Department relating to its FOIA request.

55. Accounting for a ten-day extension, the Interior Department's response was due on December 12, 2017.

56. To date, the Interior Department still has not substantively responded to NRDC's FOIA request, produced any responsive records, claimed any exemptions, or made a determination on NRDC's fee waiver request.

**NRDC's FOIA request to the Commerce Department**

**# DOC-IOI-2018-000178**

57. Also on October 29, 2017, NRDC submitted a FOIA request to the Commerce Department, seeking records relating to meetings between Secretary Ross or another member of the Commerce Department's leadership and outside groups or individuals regarding national marine monuments or sanctuaries. *See* Exhibit C.

58. Specifically, NRDC requested the following records:

- a. "[A]ny and all records in the possession, custody, or control of the [Commerce] Department . . . that pertain to meetings on or after January 20, 2017, attended by Secretary Wilbur Ross and/or Earl Comstock, relating to any national marine sanctuary or marine national monument and/or to the Department's review of national marine sanctuaries and monuments under Executive Order No. 13795, including:

- b. “Any calendar entries, invitations, itineraries, or communications referencing such meetings;
- c. “Any agendas, minutes, attendee lists, or presentations relating to such meetings;
- d. “Any records of individuals who attended these meetings or accompanied Secretary Ross or Mr. Comstock on any of these occasions, excluding current career federal employees;
- e. “Any briefings, summaries, or materials prepared or transmitted in relation to such meeting, whether before, during, or after the meeting itself; and
- f. “Any notes taken by any federal employee, including Secretary Ross or Mr. Comstock.” *Id.*

59. NRDC explained that, for purposes of its request, the term “records” is consistent with the meaning of the term under FOIA, including “documents of any kind, including electronic as well as paper documents, e-mails, memoranda, letters, writings (handwritten, typed, electronic or otherwise produced, reproduced, or stored), reports, summaries, notes, meeting notes or minutes, text messages, and any other compilations of data from which information can be obtained.” *Id.*

60. In its request, NRDC requested that the Commerce Department waive any fees for the search and production of the requested records, pursuant to FOIA’s and the agency’s fee waiver provisions. *See* 5 U.S.C. § 552(a)(4)(A)(iii); 15 C.F.R. § 4.11(*l*).

61. NRDC submitted its request to the Commerce Department's Office of the Secretary via the federal government's online FOIA portal, in accordance with the agency's FOIA regulations and guidance.

62. The federal government's online FOIA portal sent NRDC an automated e-mail response acknowledging receipt of the request on October 29, 2017, and assigning it tracking number # DOC-OS-2018-000178.

63. On October 31, 2017, NRDC's counsel received another e-mail from the federal government's online FOIA portal advising that the request's tracking number had been changed to # DOC-IOS-2018-000178.

64. The Commerce Department's response was due within twenty business days of the request i.e., by November 28, 2017. *See* 5 U.S.C. § 552(a)(6)(A)(i).

65. On November 14, 2017, the Commerce Department sent NRDC's counsel an e-mail advising that NRDC's fee waiver request had been "fully granted." Exhibit K. The Commerce Department did not respond substantively to NRDC's FOIA request by the statutory deadline, however.

66. To date, the Commerce Department still has not substantively responded to NRDC's FOIA request, produced any responsive records, or claimed any exemptions.

\* \* \*



67. NRDC seeks a declaration that Defendants have violated the FOIA by failing to respond to NRDC's FOIA requests and failing to promptly release all responsive, non-exempt records. NRDC also seeks an injunction ordering Defendants to provide the requested records without further delay.

68. NRDC brings this action on behalf of itself and its members. NRDC and its members have been and continue to be injured by Defendants' failure to provide responsive records. The requested relief will redress these injuries.

### **CLAIM FOR RELIEF**

#### **COUNT ONE**

#### **5 U.S.C. § 552(a) (FOIA)**

#### ***All Defendants***

69. NRDC incorporates by reference all preceding paragraphs.

70. NRDC has a statutory right under FOIA to the records it seeks.

71. Defendants have violated their statutory duties under FOIA, 5 U.S.C. § 552(a), and the applicable implementing regulations, to release all non-exempt, responsive records to NRDC. Defendants have identified no basis, let alone any valid basis, for withholding or partially withholding the records that are responsive to NRDC's FOIA requests.

72. NRDC is entitled to all non-exempt responsive documents at no cost because disclosure of the requested records would contribute significantly to public understanding and is not primarily in NRDC's commercial interest. 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(a); 15 C.F.R. § 4.11(l).

73. NRDC is being harmed by Defendants' unlawful withholding of the requested records, and it will continue to be harmed unless Defendants are compelled to comply with FOIA's statutory requirements.

### **REQUEST FOR RELIEF**

NRDC respectfully requests that this Court enter a judgment against Defendants as follows:

A. Declare that Defendants have violated FOIA by failing to provide a final determination as to whether they will comply with NRDC's FOIA requests and by failing to produce non-exempt records responsive to NRDC's FOIA requests by the statutory deadline;

B. Declare that Defendant Interior Department has violated FOIA by failing to make a determination as to NRDC's fee waiver requests;

C. Order Defendants to release to NRDC, without further delay and at no cost to NRDC, all responsive, non-exempt records in their possession, custody, or control;

D. If either Defendant contends that any responsive records are exempt or partially exempt from disclosure under FOIA, order that Defendant to produce a log identifying any such records or parts thereof and the basis for the withholdings, and require Defendant to prove that its decision to withhold or redact any such records is justified by law;

E. Order Defendant Interior Department to grant NRDC's fee waiver in full;

F. Award NRDC its reasonable costs and attorneys' fees; and

G. Grant such other and further relief as the Court deems just and proper.

Dated: January 24, 2018

Respectfully submitted,

/s/ Nancy S. Marks

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Counsel for NRDC

**Slattery, Elizabeth (Federal)**

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**From:** Slattery, Elizabeth (Federal)  
**Sent:** Monday, February 12, 2018 1:54 PM  
**To:** O'Brien, Mary (Federal); Graff, Mark (Federal)  
**Subject:** RE: AWI FOIA Answer  
**Attachments:** AWI FOIA Exhibits.pdf

Thank you, both (b)(5) [redacted]  
[redacted]

- [redacted]
- [redacted]

I'm attaching copies of the letters just so everyone has them handy (Attachment B and C).

Thanks!  
Elle

**From:** Mary O'Brien - NOAA Federal [mailto:mary.obrien@noaa.gov]  
**Sent:** Monday, February 12, 2018 1:35 PM  
**To:** Graff, Mark (Federal) <Mark.Graff@noaa.gov>  
**Cc:** Slattery, Elizabeth (Federal) <ESlattery@doc.gov>  
**Subject:** Re: AWI FOIA Answer

(b)(5) [redacted]  
[redacted] ?

On Mon, Feb 12, 2018 at 1:24 PM, Mary O'Brien - NOAA Federal <[mary.obrien@noaa.gov](mailto:mary.obrien@noaa.gov)> wrote:

I've been watching this conversation with great interest, thanks to both of you. I've learned a lot, at least about what is supposed to happen or what usually happens.

(b)(5) [redacted] ?

On Mon, Feb 12, 2018 at 1:21 PM, Mark Graff - NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)> wrote:

I would (b)(5) [redacted]  
[redacted]  
[redacted].

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
[\(301\) 628-5658](tel:3016285658) (O)  
(b)(6) [redacted] (C)

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On Mon, Feb 12, 2018 at 1:16 PM, Slattery, Elizabeth (Federal) <[ESlattery@doc.gov](mailto:ESlattery@doc.gov)> wrote:

Thank you for the quick response (b)(5)

[REDACTED]  
[REDACTED] ?

Thanks!  
Elle

**From:** Mark Graff - NOAA Federal [mailto:[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)]  
**Sent:** Monday, February 12, 2018 1:12 PM  
**To:** Slattery, Elizabeth (Federal) <[ESlattery@doc.gov](mailto:ESlattery@doc.gov)>  
**Cc:** O'Brien, Mary (Federal) <[Mary.Obrien@noaa.gov](mailto:Mary.Obrien@noaa.gov)>  
**Subject:** Re: AWI FOIA Answer

(b)(5)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
[\(301\) 628-5658](tel:3016285658) (O)  
(b)(6) (C)

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On Mon, Feb 12, 2018 at 1:10 PM, Slattery, Elizabeth (Federal) <[ESlattery@doc.gov](mailto:ESlattery@doc.gov)> wrote:

Hi, Mark;

(b)(5)  
[REDACTED]  
[REDACTED] ?

Thanks,  
Elle

**From:** Mark Graff - NOAA Federal [mailto:[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)]  
**Sent:** Monday, February 12, 2018 1:07 PM  
**To:** Slattery, Elizabeth (Federal) <[ESlattery@doc.gov](mailto:ESlattery@doc.gov)>

Cc: O'Brien, Mary (Federal) <[Mary.Obrien@noaa.gov](mailto:Mary.Obrien@noaa.gov)>

Subject: Re: AWI FOIA Answer

Hi Elle--

(b)(5)

[REDACTED]

Mark H. Graff

FOIA Officer/Bureau Chief Privacy Officer (BCPO)

National Oceanic and Atmospheric Administration

[\(301\) 628-5658](tel:3016285658) (O)

(b)(6) (C)

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On Mon, Feb 12, 2018 at 12:54 PM, Slattery, Elizabeth (Federal) <[ESlattery@doc.gov](mailto:ESlattery@doc.gov)> wrote:

Mary (or Mark, you might know better...),

(b)(5)

Thanks!

Elle

**From:** Mary O'Brien - NOAA Federal [mailto:[mary.obrien@noaa.gov](mailto:mary.obrien@noaa.gov)]

**Sent:** Monday, February 12, 2018 10:08 AM

**To:** Slattery, Elizabeth (Federal) <[ESlattery@doc.gov](mailto:ESlattery@doc.gov)>

**Cc:** Graff, Mark (Federal) <[Mark.Graff@noaa.gov](mailto:Mark.Graff@noaa.gov)>

**Subject:** Re: AWI FOIA Answer

Just to clarify (b)(5)

On Mon, Feb 12, 2018 at 9:55 AM, Mary O'Brien - NOAA Federal <[mary.obrien@noaa.gov](mailto:mary.obrien@noaa.gov)> wrote:

Elle (b)(5)

Mark, could you pleas (b)(5) [redacted]  
[redacted]?

On Mon, Feb 12, 2018 at 9:49 AM, Slattery, Elizabeth (Federal) <[ESlattery@doc.gov](mailto:ESlattery@doc.gov)> wrote:

Thanks, Mary.

Mark, here is a copy of our current answer (b)(5) [redacted]  
[redacted]  
[redacted].

If you want to chat on the phone, I'm at x1296. I should be in my office until 3:30 or so.

Thanks!  
Elle

**From:** Mary O'Brien - NOAA Federal [mailto:[mary.obrien@noaa.gov](mailto:mary.obrien@noaa.gov)]  
**Sent:** Monday, February 12, 2018 9:42 AM  
**To:** Slattery, Elizabeth (Federal) <[ESlattery@doc.gov](mailto:ESlattery@doc.gov)>; Graff, Mark (Federal) <[Mark.Graff@noaa.gov](mailto:Mark.Graff@noaa.gov)>  
**Subject:** Re: AWI FOIA Answer

Oops, I just saw this. Still recommen (b)(5) [redacted]  
[redacted].

On Mon, Feb 12, 2018 at 9:38 AM, Slattery, Elizabeth (Federal) <[ESlattery@doc.gov](mailto:ESlattery@doc.gov)> wrote:

Hi, again, Mary;

(b)(5) [redacted]  
[redacted]  
[redacted].

Thanks!  
Elle

---

**From:** Slattery, Elizabeth (Federal)  
**Sent:** Monday, February 12, 2018 8:25 AM  
**To:** 'Mary O'Brien - NOAA Federal' <[mary.obrien@noaa.gov](mailto:mary.obrien@noaa.gov)>  
**Subject:** RE: AWI FOIA Answer

Good Morning, Mary;

That's a good question (b)(5) [redacted]  
[redacted].

Thanks!

Elle

**From:** Mary O'Brien - NOAA Federal [<mailto:mary.obrien@noaa.gov>]  
**Sent:** Friday, February 09, 2018 3:35 PM  
**To:** Slattery, Elizabeth (Federal) <[ESlattery@doc.gov](mailto:ESlattery@doc.gov)>  
**Subject:** Re: AWI FOIA Answer

Hi, Elle- I looked this over very quickly. (b)(5)

[REDACTED]

On Fri, Feb 9, 2018 at 2:15 PM, Slattery, Elizabeth (Federal) <[ESlattery@doc.gov](mailto:ESlattery@doc.gov)> wrote:

Hi, Mary;

(b)(5)

Let me know what you think.

Thanks!

Elle

---

**From:** Slattery, Elizabeth (Federal)  
**Sent:** Thursday, February 08, 2018 3:54 PM  
**To:** O'Brien, Mary (Federal) <[Mary.Obrien@noaa.gov](mailto:Mary.Obrien@noaa.gov)>  
**Subject:** AWI FOIA Answer

Good Afternoon, Mary;

(b)(5)

[REDACTED]

I'm also attaching a copy of the Complaint, just in case you don't have it handy.

Thank You,  
Elle

Elle Slattery  
Attorney, Information Law Division  
[eslattery@doc.gov](mailto:eslattery@doc.gov) (202) 482-1296  
United States Department of Commerce  
Office of the General Counsel



---

**From:** Bogomolny, Michael (Federal)  
**Sent:** Wednesday, February 07, 2018 9:58 AM  
**To:** O'Brien, Mary (Federal) <[Mary.Obrien@noaa.gov](mailto:Mary.Obrien@noaa.gov)>  
**Cc:** Slattery, Elizabeth (Federal) <[ESlattery@doc.gov](mailto:ESlattery@doc.gov)>  
**Subject:** RE: AWI FOIA case

Mary,

(b)(5)

Thanks,  
bogo

---

**Michael Bogomolny**  
Acting Chief, Information Law Division  
[mbogomolny@doc.gov](mailto:mbogomolny@doc.gov) (202) 482-0703  
United States Department of Commerce  
Office of the General Counsel

**From:** Mary O'Brien - NOAA Federal [<mailto:mary.obrien@noaa.gov>]  
**Sent:** Tuesday, February 06, 2018 11:07 AM  
**To:** Bogomolny, Michael (Federal) <[MBogomolny@doc.gov](mailto:MBogomolny@doc.gov)>  
**Subject:** Re: AWI FOIA case

Not sure if you saw my earlier email:

(b)(5)

?

On Mon, Jan 29, 2018 at 9:18 AM, Mary O'Brien - NOAA Federal  
<[mary.obrien@noaa.gov](mailto:mary.obrien@noaa.gov)> wrote:

Hi, Bogo (b)(5)

?

Thanks,  
Mary



# Exhibit 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ANIMAL WELFARE INSTITUTE,	)	
	)	
Plaintiff,	)	
v.	)	Civ. No.
	)	
NATIONAL OCEANIC AND ATMOSPHERIC	)	
ADMINISTRATION, NATIONAL MARINE	)	
FISHERIES SERVICE,	)	
	)	
Defendants.	)	

---

**DECLARATION OF DONALD C. BAUR**

I, DONALD C. BAUR, declare as follows:

1. I am an attorney duly licensed to practice law in the District of Columbia. I am a partner of the law firm of Perkins Coie LLP in Washington, D.C. and attorney of record for the Animal Welfare Institute. I am familiar with the matter set forth herein and if called as a witness, I could and would competently testify thereto.

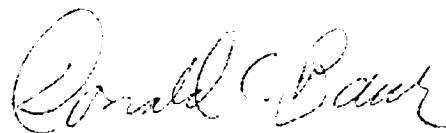
2. Attached as Attachment A is a true and correct copy of a Freedom of Information Act (FOIA) request letter from the Animal Welfare Institute (AWI) to the National Oceanic and Atmospheric Administration (NOAA), U.S. Fish and Wildlife Service (FWS) and the Marine Mammal Commission (MMC), dated September 29, 2017, and transmittal email from Georgia Hancock, AWI, to NOAA (foia@noaa.gov), FWS (fwhq\_foia@fws.gov), and MMC (mmc@mmc.gov), dated September 29, 2017.

3. Attached as Attachment B is a true and correct copy of a “follow-up” letter from AWI to NOAA, regarding “Freedom of Information Act Request,” dated December 4, 2017, and

transmittal email from Sheri Pais, Perkins Coie, to NOAA (foia@noaa.gov), dated December 4, 2017.

4. Attached as Attachment C is a true and correct copy of an email from Sheri Pais, Perkins Coie, to NOAA (foia@noaa.gov), regarding “AWI Freedom of Information Act Request Follow Up Letter,” dated December 22, 2017, and attaching the December 4, 2017 follow up letter.

Executed within the United States this 8th day of January, 2018

A handwritten signature in cursive script, appearing to read "Donald C. Baur".

---

Donald C. Baur

# Attachment A

**From:** [Georgia Hancock](#)  
**To:** [FOIA@noaa.gov](mailto:FOIA@noaa.gov); [fwfq.foia@fws.gov](mailto:fwfq.foia@fws.gov); [mmc@mmc.gov](mailto:mmc@mmc.gov)  
**Cc:** [Baur, Don \(WDC\)](#); [Naomi Rose](#)  
**Subject:** AWI FOIA to NOAA, FWS, MMC 9-29-2017  
**Attachments:** [NOAA NMFS FWS MMC FOIA 9.29.17.pdf](#)

---

On behalf of the Animal Welfare Institute, please see the attached FOIA request.

Very truly yours,

Georgia Hancock  
*Of Counsel*  
[georgia@awionline.org](mailto:georgia@awionline.org)  
mobile: 607-329-8638  
Animal Welfare Institute  
Visit us at [awionline.org](http://awionline.org)



# Animal Welfare Institute

903 Pennsylvania Avenue, SE, Washington, DC 20003  
awionline.org phone: (202) 397-2332 fax: (202) 446-2031

September 29, 2017

## VIA OVERNIGHT MAIL AND EMAIL

National Oceanic and Atmospheric Administration  
Public Reference Facility (SOU1000)  
1315 East-West Highway (SSMC3)  
Room 9719  
Silver Spring, Maryland 20910  
FOIA@noaa.gov

Carrie Hyde-Michaels  
FWS FOIA Officer  
U.S. Fish and Wildlife Service  
5275 Leesburg Pike  
MS:IRTM  
Falls Church, VA 22041  
fwhq\_foia@fws.gov

Michael Gosliner  
Marine Mammal Commission  
4340 East-West Highway, Room 700  
Bethesda, Maryland 20814  
mmc@mmc.gov

## Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq.*, and the regulations of the Department of Commerce, 15 C.F.R., Part 4; the regulations of the Department of the Interior, 43 C.F.R., Part 2; and the regulations of the Marine Mammal Commission, 50 C.F.R., Part 520; I am writing on behalf of the Animal Welfare Institute ("AWI") to request from the National Oceanic and Atmospheric Administration ("NOAA"), the National Marine Fisheries Service ("NMFS"), the Fish and Wildlife Service ("FWS"), and the Marine Mammal Commission ("MMC"), certain documents related to the Public Display Permit that NMFS issued under the Marine Mammal Protection Act ("MMPA") for Tilikum the orca whale (Permit No. 774).



September 29, 2017

Page 2

Specifically, I request all documents from each of the aforementioned agencies between January 1, 2017 and May 1, 2017 related to NMFS' March 10, 2017 determination that the necropsy/clinical history requirements of Permit No. 774 were effectively extinguished by the 1994 amendments to the MMPA.

For purposes of this FOIA request, "all documents" encompass: (i) any written, printed, or typed material of any kind, including without limitation to all correspondence, memoranda, notes, meeting minutes, emails from or to official or personal e-mail accounts, spreadsheets, reports, calendars; (ii) any electronically, magnetically, or mechanically stored records, such as materials stored on a compact disk, digital video disk, microfiche, regardless of form; (iii) any audio, visual, aural, or video records, including but not limited to photographs, videotapes, microfilm; and (iv) any other records preserved by any other means for documenting thought or expression.

In the event that the requested documents cannot be disclosed in their entirety, AWI requests that you release any material that can be reasonably segregated. Should any documents or portions thereof be withheld, AWI requests that the agency state with specificity the description of the withheld document or portions thereof, and the legal and factual grounds for doing so.

AWI requests that any fees associated with responding to this FOIA request be waived. *See* 15 C.F.R. § 4.11; 43 C.F.R. § 2.45; 50 C.F.R. § 520.7. AWI is a non-profit, charitable institution that was founded over 50 years ago and is dedicated to protecting animals from suffering caused by human action. The documents that AWI is requesting concern the terms of Public Display Permit No. 774, the agencies' interpretation of those terms, and the level of input that NMFS received from other agencies to interpret those terms. Releasing the documents covered by this request will significantly enhance the public's understanding of the necropsy and clinical history requirements of MMPA public display permits issued before 1994 and the agencies' procedures for evaluating those permits. This information will help the public determine whether additional changes to the MMPA permitting processes are needed in order to achieve the goals of the statute.

Disclosure of the requested documents will benefit a broad audience of people interested in the MMPA and public display permits. AWI is an institute with significant expertise in marine mammals and animal welfare and is well suited to convey the information learned from the documents to the public. As a non-profit organization, AWI's primary goal is to increase awareness of human mistreatment of animals and releasing the documents it obtains in response to this FOIA request will further that goal. The documents AWI is requesting are not yet publicly available and thus the release of these documents will significantly enhance the public's understanding of the public display permits at issue.

AWI does not have any commercial interest that will be furthered by releasing the requested documents.

Please contact me if you have any questions.

September 29, 2017  
Page 3

Sincerely,

/s/ Georgia Hancock  
Georgia Hancock, Esq.  
Of Counsel  
Animal Welfare Institute  
georgia@awionline.org  
mobile: 607-329-8638

cc: Dr. Naomi Rose (via electronic mail)  
Don Baur, Esq. (via electronic mail)

## **Attachment B**

**From:** Pais, Sheri (WDC)  
**To:** ["FOIA@noaa.gov"](mailto:FOIA@noaa.gov)  
**Cc:** [Georgia Hancock \(georgia@awionline.org\)](mailto:Georgia.Hancock@awionline.org); [Naomi Rose \(naomi@awionline.org\)](mailto:Naomi.Rose@awionline.org); [Baur, Don \(Perkins Coie\)](mailto:Don.Baur@perkinscoie.com)  
**Subject:** AWI Freedom of Information Act Request Follow Up Letter  
**Date:** Monday, December 04, 2017 8:38:00 AM  
**Attachments:** [2017.12.04 AWI Letter to NOAA NMFS re Sept 29 2017 FOIA Request.pdf](#)

---

NOAA FOIA Officer –

Attached please find the Dec. 4 letter from the Animal Welfare Institute (AWI) pertaining to its September 29, 2017 FOIA Request.

Thank you,

Sheri Pais

**Sheri Pais | Perkins Coie LLP**

SENIOR PARALEGAL  
700 Thirteenth Street, N.W. Suite 600  
Washington, DC 20005-3960  
D. +1.202.654.1735  
F. +1.202.654.6211  
E. [SPais@perkinscoie.com](mailto:SPais@perkinscoie.com)



# Animal Welfare Institute

900 Tennessee Avenue, SE, Washington, DC 20003  
awionline.org phone (202) 337-2332 fax (202) 462-2131

December 4, 2017

## VIA OVERNIGHT MAIL AND EMAIL

Carrie Hyde-Michaels  
FWS FOIA Officer  
U.S. Fish and Wildlife Service  
5275 Leesburg Pike  
MS:IRTM  
Falls Church, VA 22041  
fwhq\_foia@fws.gov

### Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq.*, and the regulations of the Department of the Interior, 43 C.F.R., Part 2, I am writing on behalf of the Animal Welfare Institute ("AWI") to follow up with regard to the September 29, 2017 request submitted to the Fish and Wildlife Service ("FWS") pertaining to certain documents related to the Public Display Permit that NMFS issued under the Marine Mammal Protection Act ("MMPA") for the male orca Tilikum (Permit No. 774).

AWI requested all documents from each of the aforementioned agencies between January 1, 2017 and May 1, 2017 related to NMFS' March 10, 2017 determination that the necropsy/clinical history requirements of Permit No. 774 were effectively extinguished by the 1994 amendments to the MMPA.

While AWI received an acknowledgment of its request from headquarters on the submittal date of September 29, to date AWI has not received a formal acknowledgment from the Division of Management Authority (DMA), the division to which the request was forwarded for processing, nor has AWI received a response to its FOIA request. AWI should not need to remind the agency of its obligation to respond to AWI's FOIA request within twenty work days. As the agency has allowed that time period to elapse, AWI is prepared to exercise the legal options available to it under FOIA if we do not receive a complete response to our request by December 15, 2017.

Please contact me if you have any questions.

December 4, 2017

Page 2

Sincerely,

/s/ Georgia Hancock  
Georgia Hancock, Esq.  
Of Counsel  
Animal Welfare Institute  
[georgia@awionline.org](mailto:georgia@awionline.org)  
mobile: 607-329-8638

cc: Dr. Naomi Rose (via electronic mail)  
Don Baur, Esq. (via electronic mail)

## Attachment C

**From:** Pais, Sheri (WDC)  
**To:** ["foia@noaa.gov"](mailto:foia@noaa.gov)  
**Bcc:** [Baur, Don \(Perkins Coie\)](mailto:Baur, Don (Perkins Coie))  
**Subject:** FW: AWI Freedom of Information Act Request Follow Up Letter  
**Date:** Friday, December 22, 2017 11:06:00 AM  
**Attachments:** [2017.12.04 AWI Letter to NOAA NMFS re Sept 29 2017 FOIA Request.pdf](#)

---

Good morning—

Please confirm receipt.

Thank you.

**Sheri Pais | Perkins Coie LLP**

SENIOR PARALEGAL  
700 Thirteenth Street, N.W. Suite 600  
Washington, DC 20005-3960  
D. +1.202.654.1735  
F. +1.202.654.6211  
E. [SPais@perkinscoie.com](mailto:SPais@perkinscoie.com)

---

**From:** Pais, Sheri (WDC)  
**Sent:** Monday, December 04, 2017 8:39 AM  
**To:** 'FOIA@noaa.gov'  
**Cc:** Georgia Hancock ([georgia@awionline.org](mailto:georgia@awionline.org)); Naomi Rose ([naomi@awionline.org](mailto:naomi@awionline.org)); Baur, Don (Perkins Coie)  
**Subject:** AWI Freedom of Information Act Request Follow Up Letter

NOAA FOIA Officer –

Attached please find the Dec. 4 letter from the Animal Welfare Institute (AWI) pertaining to its September 29, 2017 FOIA Request.

Thank you,

Sheri Pais

**Sheri Pais | Perkins Coie LLP**

SENIOR PARALEGAL  
700 Thirteenth Street, N.W. Suite 600  
Washington, DC 20005-3960  
D. +1.202.654.1735  
F. +1.202.654.6211  
E. [SPais@perkinscoie.com](mailto:SPais@perkinscoie.com)





# Animal Welfare Institute

900 Pennsylvania Avenue, SE, Washington, DC 20003  
awtonline.org phone (202) 337-2332 fax (202) 446-2131

December 4, 2017

## VIA OVERNIGHT MAIL AND EMAIL

Carrie Hyde-Michaels  
FWS FOIA Officer  
U.S. Fish and Wildlife Service  
5275 Leesburg Pike  
MS:IRTM  
Falls Church, VA 22041  
fwhq\_foia@fws.gov

### Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq.*, and the regulations of the Department of the Interior, 43 C.F.R., Part 2, I am writing on behalf of the Animal Welfare Institute ("AWI") to follow up with regard to the September 29, 2017 request submitted to the Fish and Wildlife Service ("FWS") pertaining to certain documents related to the Public Display Permit that NMFS issued under the Marine Mammal Protection Act ("MMPA") for the male orca Tilikum (Permit No. 774).

AWI requested all documents from each of the aforementioned agencies between January 1, 2017 and May 1, 2017 related to NMFS' March 10, 2017 determination that the necropsy/clinical history requirements of Permit No. 774 were effectively extinguished by the 1994 amendments to the MMPA.

While AWI received an acknowledgment of its request from headquarters on the submittal date of September 29, to date AWI has not received a formal acknowledgment from the Division of Management Authority (DMA), the division to which the request was forwarded for processing, nor has AWI received a response to its FOIA request. AWI should not need to remind the agency of its obligation to respond to AWI's FOIA request within twenty work days. As the agency has allowed that time period to elapse, AWI is prepared to exercise the legal options available to it under FOIA if we do not receive a complete response to our request by December 15, 2017.

Please contact me if you have any questions.

December 4, 2017

Page 2

Sincerely,

/s/ Georgia Hancock  
Georgia Hancock, Esq.  
Of Counsel  
Animal Welfare Institute  
[georgia@awionline.org](mailto:georgia@awionline.org)  
mobile: 607-329-8638

cc: Dr. Naomi Rose (via electronic mail)  
Don Baur, Esq. (via electronic mail)

**Mark Graff - NOAA Federal**

---

**From:** Mark Graff NOAA Federal  
**Sent:** Monday, February 12, 2018 2:05 PM  
**To:** Slattery, Elizabeth (Federal)  
**Cc:** O'Brien, Mary (Federal)  
**Subject:** Re: AWI FOIA Answer  
**Attachments:** National Oceanic and Atmospheric Administration Mail AWI Freedom of Information Act Request Follow Up Letter 12.4.17.pdf; National Oceanic and Atmospheric Administration Mail FW\_ AWI Freedom of Information Act Request Follow Up Letter 12.22.17.pdf; National Oceanic and Atmospheric Administration Mail AWI FOIA to NOAA, FWS, MMC 9 29 2017.pdf

Hello Elle,

(looping in Lola and Rob for NOAA FOIA)

(b)(5) [Redacted]

Please let me know if you need anything else on my end

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628 5658 (O)  
(b)(6) [Redacted] (C)

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On Mon, Feb 12, 2018 at 1:53 PM, Slattery, Elizabeth (Federal) <[ESlattery@doc.gov](mailto:ESlattery@doc.gov)> wrote:

Thank you, both. (b)(5) [Redacted]

[Redacted]

[Redacted]

[Redacted]

(b)(5)

I'm attaching copies of the letters just so everyone has them handy (Attachment B and C).

Thanks!

Elle

**From:** Mary O'Brien - NOAA Federal [mailto:[mary.obrien@noaa.gov](mailto:mary.obrien@noaa.gov)]  
**Sent:** Monday, February 12, 2018 1:35 PM  
**To:** Graff, Mark (Federal) <[Mark.Graff@noaa.gov](mailto:Mark.Graff@noaa.gov)>  
**Cc:** Slattery, Elizabeth (Federal) <[ESlattery@doc.gov](mailto:ESlattery@doc.gov)>  
**Subject:** Re: AWI FOIA Answer

The reason I ask r

(b)(5)

?

On Mon, Feb 12, 2018 at 1:24 PM, Mary O'Brien NOAA Federal <[mary.obrien@noaa.gov](mailto:mary.obrien@noaa.gov)> wrote:

I've been watching this conversation with great interest, thanks to both of you. I've learned a lot, at least about what is supposed to happen or what usually happens.

(b)(5)

?

On Mon, Feb 12, 2018 at 1:21 PM, Mark Graff NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)> wrote:

I woul

(b)(5)

Mark H. Graff

FOIA Officer/Bureau Chief Privacy Officer (BCPO)

National Oceanic and Atmospheric Administration

[\(301\) 628 5658](tel:(301)628-5658) (O)

(b)(6) (C)

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On Mon, Feb 12, 2018 at 1:16 PM, Slattery, Elizabeth (Federal) <[ESlattery@doc.gov](mailto:ESlattery@doc.gov)> wrote:

Thank you for the quick response (b)(5)

[Redacted]

Thanks!

Elle

**From:** Mark Graff - NOAA Federal [mailto:[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)]  
**Sent:** Monday, February 12, 2018 1:12 PM  
**To:** Slattery, Elizabeth (Federal) <[ESlattery@doc.gov](mailto:ESlattery@doc.gov)>  
**Cc:** O'Brien, Mary (Federal) <[Mary.Obrien@noaa.gov](mailto:Mary.Obrien@noaa.gov)>  
**Subject:** Re: AWI FOIA Answer

(b)(5)

[Redacted]

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration

[\(301\) 628 5658](tel:3016285658) (O)

(b)(6) (C)

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On Mon, Feb 12, 2018 at 1:10 PM, Slattery, Elizabeth (Federal) <[ESlattery@doc.gov](mailto:ESlattery@doc.gov)> wrote:

Hi, Mark;

(b)(5)  
[Redacted]  
[Redacted]  
[Redacted]?

Thanks,

Elle

**From:** Mark Graff - NOAA Federal [mailto:[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)]  
**Sent:** Monday, February 12, 2018 1:07 PM  
**To:** Slattery, Elizabeth (Federal) <[ESlattery@doc.gov](mailto:ESlattery@doc.gov)>  
**Cc:** O'Brien, Mary (Federal) <[Mary.Obrien@noaa.gov](mailto:Mary.Obrien@noaa.gov)>  
**Subject:** Re: AWI FOIA Answer

Hi Elle

(b)(5)  
[Redacted]  
[Redacted]  
[Redacted].

Requesters can find the FOIA contact for all agencies at [foia.gov](http://foia.gov).

Mark H. Graff

FOIA Officer/Bureau Chief Privacy Officer (BCPO)

National Oceanic and Atmospheric Administration

[\(301\) 628 5658](tel:3016285658) (O)

(b)(6) (C)

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On Mon, Feb 12, 2018 at 12:54 PM, Slattery, Elizabeth (Federal) <[ESlattery@doc.gov](mailto:ESlattery@doc.gov)> wrote:

Mary (or Mark, you might know better...),

(b)(5) [Redacted]  
[Redacted] ?

Thanks!

Elle

**From:** Mary O'Brien - NOAA Federal [mailto:[mary.obrien@noaa.gov](mailto:mary.obrien@noaa.gov)]  
**Sent:** Monday, February 12, 2018 10:08 AM  
**To:** Slattery, Elizabeth (Federal) <[ESlattery@doc.gov](mailto:ESlattery@doc.gov)>  
**Cc:** Graff, Mark (Federal) <[Mark.Graff@noaa.gov](mailto:Mark.Graff@noaa.gov)>  
**Subject:** Re: AWI FOIA Answer

Just to clarify (b)(5) [Redacted]  
[Redacted]  
[Redacted].

On Mon, Feb 12, 2018 at 9:55 AM, Mary O'Brien NOAA Federal <[mary.obrien@noaa.gov](mailto:mary.obrien@noaa.gov)> wrote:

Elle (b)(5) [Redacted]  
[Redacted]  
[Redacted]  
[Redacted].

Mark, could you pleas (b)(5) [redacted]  
[redacted]?

On Mon, Feb 12, 2018 at 9:49 AM, Slattery, Elizabeth (Federal) <[ESlattery@doc.gov](mailto:ESlattery@doc.gov)> wrote:

Thanks, Mary.

Mark, here is a copy of our current answer (b)(5) [redacted]  
[redacted]  
[redacted].

If you want to chat on the phone, I'm at x1296. I should be in my office until 3:30 or so.

Thanks!

Elle

**From:** Mary O'Brien - NOAA Federal [mailto:[mary.obrien@noaa.gov](mailto:mary.obrien@noaa.gov)]  
**Sent:** Monday, February 12, 2018 9:42 AM  
**To:** Slattery, Elizabeth (Federal) <[ESlattery@doc.gov](mailto:ESlattery@doc.gov)>; Graff, Mark (Federal) <[Mark.Graff@noaa.gov](mailto:Mark.Graff@noaa.gov)>  
**Subject:** Re: AWI FOIA Answer

Oops, I just saw this. Still recommen (b)(5) [redacted]  
[redacted].

On Mon, Feb 12, 2018 at 9:38 AM, Slattery, Elizabeth (Federal) <[ESlattery@doc.gov](mailto:ESlattery@doc.gov)> wrote:

Hi, again, Mary;

(b)(5) [redacted]  
[redacted]  
[redacted].



Thanks!

Elle

---

**From:** Slattery, Elizabeth (Federal)  
**Sent:** Monday, February 12, 2018 8:25 AM  
**To:** 'Mary O'Brien - NOAA Federal' <[mary.obrien@noaa.gov](mailto:mary.obrien@noaa.gov)>  
**Subject:** RE: AWI FOIA Answer

Good Morning, Mary;

That's a good question (b)(5) [REDACTED]

[REDACTED]

[REDACTED] ?

Thanks!

Elle

**From:** Mary O'Brien - NOAA Federal [<mailto:mary.obrien@noaa.gov>]  
**Sent:** Friday, February 09, 2018 3:35 PM  
**To:** Slattery, Elizabeth (Federal) <[ESlattery@doc.gov](mailto:ESlattery@doc.gov)>  
**Subject:** Re: AWI FOIA Answer

Hi, Elle (b)(5) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

On Fri, Feb 9, 2018 at 2:15 PM, Slattery, Elizabeth (Federal) <[ESlattery@doc.gov](mailto:ESlattery@doc.gov)> wrote:

Hi, Mary;

(b)(5)

Let me know what you think.

Thanks!

Elle

---

**From:** Slattery, Elizabeth (Federal)  
**Sent:** Thursday, February 08, 2018 3:54 PM  
**To:** O'Brien, Mary (Federal) <[Mary.Obrien@noaa.gov](mailto:Mary.Obrien@noaa.gov)>  
**Subject:** AWI FOIA Answer

Good Afternoon, Mary;

(b)(5)

I'm also attaching a copy of the Complaint, just in case you don't have it handy.

Thank You,

Elle

Elle Slattery

Attorney, Information Law Division

[eslattery@doc.gov](mailto:eslattery@doc.gov) (202) 482 1296

United States Department of Commerce

Office of the General Counsel

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**From:** Bogomolny, Michael (Federal)  
**Sent:** Wednesday, February 07, 2018 9:58 AM  
**To:** O'Brien, Mary (Federal) <[Mary.Obrien@noaa.gov](mailto:Mary.Obrien@noaa.gov)>  
**Cc:** Slattery, Elizabeth (Federal) <[ESlattery@doc.gov](mailto:ESlattery@doc.gov)>  
**Subject:** RE: AWI FOIA case

Mary,

(b)(5)

Thanks,

bogo

-----  
**Michael Bogomolny**

Acting Chief, Information Law Division

[mbogomolny@doc.gov](mailto:mbogomolny@doc.gov) (202) 482-0703

United States Department of Commerce  
Office of the General Counsel

**From:** Mary O'Brien NOAA Federal [<mailto:mary.obrien@noaa.gov>]  
**Sent:** Tuesday, February 06, 2018 11:07 AM  
**To:** Bogomolny, Michael (Federal) <[MBogomolny@doc.gov](mailto:MBogomolny@doc.gov)>  
**Subject:** Re: AWI FOIA case

Not sure if you saw my earlier email:

(b)(5) [REDACTED]  
[REDACTED]?

On Mon, Jan 29, 2018 at 9:18 AM, Mary O'Brien NOAA Federal  
<[mary.obrien@noaa.gov](mailto:mary.obrien@noaa.gov)> wrote:

Hi, Bogo (b)(5) [REDACTED]  
[REDACTED]?

Thanks,

Mary



FOIA Office - NOAA Service Account &lt;foia@noaa.gov&gt;

---

**AWI FOIA to NOAA, FWS, MMC 9-29-2017**

1 message

**Georgia Hancock** <georgia@awionline.org>

Fri, Sep 29, 2017 at 3:41 PM

To: "FOIA@noaa.gov" &lt;FOIA@noaa.gov&gt;, "fwhq\_foia@fws.gov" &lt;fwhq\_foia@fws.gov&gt;, "mmc@mmc.gov" &lt;mmc@mmc.gov&gt;

Cc: "Don Baur (dbaur@perkinscoie.com)" &lt;dbaur@perkinscoie.com&gt;, Naomi Rose &lt;naomi@awionline.org&gt;

On behalf of the Animal Welfare Institute, please see the attached FOIA request.

Very truly yours,

Georgia Hancock

*Of Counsel*

[georgia@awionline.org](mailto:georgia@awionline.org)

mobile: [607-329-8638](tel:607-329-8638)

Animal Welfare Institute

Visit us at [awionline.org](http://awionline.org)

**NOAA NMFS FWS MMC FOIA 9.29.17.pdf**

161K



FOIA Office - NOAA Service Account &lt;foia@noaa.gov&gt;

---

## AWI Freedom of Information Act Request Follow Up Letter

1 message

---

**Pais, Sheri (Perkins Coie)** <SPais@perkinscoie.com>

Mon, Dec 4, 2017 at 8:39 AM

To: "FOIA@noaa.gov" &lt;FOIA@noaa.gov&gt;

Cc: "Georgia Hancock (georgia@awionline.org)" &lt;georgia@awionline.org&gt;, "Naomi Rose (naomi@awionline.org)" &lt;naomi@awionline.org&gt;, "Baur, Don (Perkins Coie)" &lt;DBaur@perkinscoie.com&gt;

NOAA FOIA Officer –

Attached please find the Dec. 4 letter from the Animal Welfare Institute (AWI) pertaining to its September 29, 2017 FOIA Request.

Thank you,

Sheri Pais

**Sheri Pais | Perkins Coie LLP****SENIOR PARALEGAL**

700 Thirteenth Street, N.W. Suite 600

Washington, DC 20005 3960

D. +1.202.654.1735

F. +1.202.654.6211

E. [SPais@perkinscoie.com](mailto:SPais@perkinscoie.com)

---

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**2017.12.04 AWI Letter to NOAA NMFS re Sept 29 2017 FOIA Request.pdf**

36K



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**FW: AWI Freedom of Information Act Request Follow Up Letter**

1 message

---

**Pais, Sheri (Perkins Coie)** <SPais@perkinscoie.com>  
To: "foia@noaa.gov" <foia@noaa.gov>

Fri, Dec 22, 2017 at 11:08 AM

Good morning—

Please confirm receipt.

Thank you.

**Sheri Pais | Perkins Coie LLP****SENIOR PARALEGAL**

700 Thirteenth Street, N.W. Suite 600

Washington, DC 20005 3960

D. +1.202.654.1735

F. +1.202.654.6211

E. [SPais@perkinscoie.com](mailto:SPais@perkinscoie.com)

---

**From:** Pais, Sheri (WDC)**Sent:** Monday, December 04, 2017 8:39 AM**To:** 'FOIA@noaa.gov'**Cc:** Georgia Hancock ([georgia@awionline.org](mailto:georgia@awionline.org)); Naomi Rose ([naomi@awionline.org](mailto:naomi@awionline.org)); Baur, Don (Perkins Coie)**Subject:** AWI Freedom of Information Act Request Follow Up Letter

NOAA FOIA Officer –

Attached please find the Dec. 4 letter from the Animal Welfare Institute (AWI) pertaining to its September 29, 2017 FOIA Request.

Thank you,

Sheri Pais

**Sheri Pais | Perkins Coie LLP**

2/12/2018

National Oceanic and Atmospheric Administration Mail FW: AWI Freedom of Information Act Request Follow Up Letter

**SENIOR PARALEGAL**

700 Thirteenth Street, N.W. Suite 600

Washington, DC 20005 3960

D. [+1.202.654.1735](tel:+12026541735)

F. [+1.202.654.6211](tel:+12026546211)

E. [SPais@perkinscoie.com](mailto:SPais@perkinscoie.com)

---

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**2017.12.04 AWI Letter to NOAA NMFS re Sept 29 2017 FOIA Request.pdf**

36K



**Kate Barfield - NOAA Federal**

---

**From:** Kate Barfield NOAA Federal  
**Sent:** Monday, February 12, 2018 2:19 PM  
**To:** Mark Graff NOAA Federal  
**Subject:** Fwd: FOIA Exemption 4 and Settlement Negotiations  
**Attachments:** FOIA\_Settlement Confidential memo.docx

Mark:

Just one more addition to your tal (b)(5)

Thanks!

Kate

Forwarded message

**From:** Kimberly Katzenbarger - NOAA Federal <[kimberly.katzenbarger@noaa.gov](mailto:kimberly.katzenbarger@noaa.gov)>  
**Date:** Mon, Jan 29, 2018 at 5:45 PM  
**Subject:** Fwd: FOIA Exemption 4 and Settlement Negotiations  
**To:** Mark Graff <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)>, Kate Barfield NOAA Federal <[kate.barfield@noaa.gov](mailto:kate.barfield@noaa.gov)>, Britta Hinrichsen <[britta.hinrichsen@noaa.gov](mailto:britta.hinrichsen@noaa.gov)>

FYI r (b)(5) ...

Forwarded message

**From:** Kimberly Katzenbarger - NOAA Federal <[kimberly.katzenbarger@noaa.gov](mailto:kimberly.katzenbarger@noaa.gov)>  
**Date:** Fri, Jan 26, 2018 at 4:26 PM  
**Subject:** Fwd: FOIA Exemption 4 and Settlement Negotiations  
**To:** Christina Storz NOAA Federal <[christina.storz@noaa.gov](mailto:christina.storz@noaa.gov)>  
**Cc:** Laurie Lee <[Laurie.Lee@noaa.gov](mailto:Laurie.Lee@noaa.gov)>, "Chauncey Kelly," <[chauncey.kelly@noaa.gov](mailto:chauncey.kelly@noaa.gov)>, Christopher Plaisted NOAA Federal <[christopher.plaisted@noaa.gov](mailto:christopher.plaisted@noaa.gov)>, Robert A Taylor NOAA Federal <[robert.a.taylor@noaa.gov](mailto:robert.a.taylor@noaa.gov)>

Hi Christina (b)(5)

[Redacted]

(b)(5)

[Redacted]

[Redacted]

(b)(5)

Kim

Forwarded message

From: **Josh Fortenbery - NOAA Federal** <[joshua.fortenbery@noaa.gov](mailto:joshua.fortenbery@noaa.gov)>

Date: Thu, Jan 19, 2017 at 2:30 PM

Subject: Re: FOIA Exemption 4 and Settlement Negotiations

To: Mark Graff NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)>

Cc: Kimberly Katzenbarger NOAA Federal <[kimberly.katzenbarger@noaa.gov](mailto:kimberly.katzenbarger@noaa.gov)>

Thanks Mark! (b)(5)

On Thu, Jan 19, 2017 at 1:16 PM, Mark Graff NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)> wrote:

(b)(5)

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
[\(301\) 628 5658](tel:3016285658) (O)

(b)(6) (C)

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On Thu, Jan 19, 2017 at 1:11 PM, Kimberly Katzenbarger NOAA Federal <[kimberly.katzenbarger@noaa.gov](mailto:kimberly.katzenbarger@noaa.gov)> wrote:

(b)(5)

(b)(5)

[Redacted text block]

[Redacted text block]

On Thu, Jan 19, 2017 at 12:16 PM, Mark Graff NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)> wrote:  
Hi Kim

(b)(5)

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

(b)(5) [Redacted]

Hope this helps!

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration

(301) 628 5658 (O)

(b)(6) [Redacted] (C)

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On Wed, Jan 18, 2017 at 8:05 PM, Kimberly Katzenbarger NOAA Federal  
<[kimberly.katzenbarger@noaa.gov](mailto:kimberly.katzenbarger@noaa.gov)> wrote:

Thanks Josh, this is a good memo (b)(5) [Redacted]

Mark, any thoughts?

Notes from October 2016 Legal Experts Call:

(b)(5) [Redacted]

[Redacted]

(b)(5) [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]).

(b)(5) [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

[Redacted]  
[Redacted]  
[Redacted].

On Tue, Jan 10, 2017 at 4:04 PM, Josh Fortenbery NOAA Federal <[joshua.fortenbery@noaa.gov](mailto:joshua.fortenbery@noaa.gov)> wrote:

ATTORNEY WORK PRODUCT

Hey Mark,

My name is Josh Fortenbery, and I'm an Honors Attorney with NOAA. We spoke briefly when you gave us a FOIA presentation over the phone (b)(5) [Redacted]

[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted].

Best,

Josh

Josh Fortenbery  
NOAA Office of General Counsel  
U.S. Department of Commerce  
Phone: [301 713 7447](tel:3017137447)

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Kimberly Katzenbarger, Attorney  
National Oceanic and Atmospheric Administration  
Office of General Counsel, Natural Resources Section  
1315 East West Hwy, Suite 15104  
Silver Spring, MD 20910 3282  
Desk: [301 713 7448](tel:3017137448)  
Cel: (b)(6)

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Kimberly Katzenbarger, Attorney  
National Oceanic and Atmospheric Administration  
Office of General Counsel, Natural Resources Section  
1315 East West Hwy, Suite 15104  
Silver Spring, MD 20910 3282  
Desk: [301 713 7448](tel:3017137448)  
Cel: (b)(6)

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**Josh Fortenbery**  
NOAA Office of General Counsel  
U.S. Department of Commerce  
Phone: [301 713 7447](tel:3017137447)

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Kimberly Katzenbarger, Attorney  
National Oceanic and Atmospheric Administration  
Office of General Counsel, Natural Resources Section  
1315 East West Hwy, Suite 15104  
Silver Spring, MD 20910 3282

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Kimberly Katzenbarger, Attorney  
National Oceanic and Atmospheric Administration  
Office of General Counsel, Natural Resources Section  
1315 East West Hwy, Suite 15104  
Silver Spring, MD 20910 3282

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Kate Barfield  
Environmental Attorney  
NOAA Office of General Counsel  
Natural Resources Section  
1315 East West Highway, SSMC3, Room 15107  
Silver Spring, Maryland 20910 3282  
[301 713 7443](tel:3017137443) (office)  
[301 713 1229](tel:3017131229) (fax)

**MEMORANDUM**

**TO:** Laurie Lee, Deputy Section Chief, NOAA GC Natural Resources Section  
**FROM:** Josh Fortenbery, Attorney-Advisor, NOAA GC Natural Resources Section  
**DATE:** January 10, 2017  
**RE:** Settlement confidential disclosures under FOIA

(b) (5)



(b) (5)

(b) (5)

(b) (5)

(b) (5)

## Mark Graff - NOAA Federal

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**From:** Mark Graff NOAA Federal  
**Sent:** Monday, February 12, 2018 4:59 PM  
**To:** Lola Stith NOAA Affiliate  
**Subject:** Re: ACTION REQUIRED: FOIA FAL FOR SIGNATURE DOC NOAA 2018 000302.  
**Attachments:** FAL\_DOC NOAA 2018 000302\_draft GCES mhg.pdf

Looks good no issues. Here is the signed FAL.

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628 5658 (O)  
(b)(6) (C)

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On Mon, Feb 12, 2018 at 3:40 PM, Lola Stith NOAA Affiliate <[lola.m.stith@noaa.gov](mailto:lola.m.stith@noaa.gov)> wrote:

Mark Please find the draft FAL, uploaded responsive records, and completed tasker for the subject FOIA request.

If acceptable, please sign the FAL on behalf of NOAA and return to me so I can process the closeout of this backlogged FOIA request.

Thank you!

Lola

Forwarded message

**From:** Susan Beresford - NOAA Federal <[susan.s.beresford@noaa.gov](mailto:susan.s.beresford@noaa.gov)>  
**Date:** Mon, Feb 12, 2018 at 3:35 PM  
**Subject:** Re: NEW FOIA REQUEST: FOIA Assignment for DOC NOAA 2018 000302.  
**To:** Lola Stith NOAA Affiliate <[lola.m.stith@noaa.gov](mailto:lola.m.stith@noaa.gov)>  
**Cc:** Stephen Lipps NOAA Federal <[stephen.lipps@noaa.gov](mailto:stephen.lipps@noaa.gov)>, Charles Green <[charles.green@noaa.gov](mailto:charles.green@noaa.gov)>

Hi Lola,

Attached is the signed Tasker and documentation of search, as well as an edited FAL. Thanks for taking care of finalizing this FOIA ~ DOC NOAA 2018 000302.

In case you haven't heard, I will be retiring on February 28th. Thanks for all of your FOIAOnline help over the last few years! You were a tremendous help to me.

Susie.

On Mon, Feb 12, 2018 at 2:13 PM, Lola Stith NOAA Affiliate <[lola.m.stith@noaa.gov](mailto:lola.m.stith@noaa.gov)> wrote:

Hi Stephen/Susan (b)(5)

Best,  
Lola

On Fri, Feb 9, 2018 at 3:37 PM, Stephen Lipps NOAA Federal <[stephen.lipps@noaa.gov](mailto:stephen.lipps@noaa.gov)> wrote:

Hi Lola,

(b)(5)

. Stephen

Forwarded message

From: **Susan Beresford - NOAA Federal** <[susan.s.beresford@noaa.gov](mailto:susan.s.beresford@noaa.gov)>

Date: Fri, Feb 9, 2018 at 11:40 AM

Subject: Re: NEW FOIA REQUEST: FOIA Assignment for DOC NOAA 2018 000468

To: Stephen Lipps NOAA Federal <[stephen.lipps@noaa.gov](mailto:stephen.lipps@noaa.gov)>

Stephen,

(b)(5)

? Thanks.

Susie.

On Mon, Jan 29, 2018 at 4:32 PM, Stephen Lipps NOAA Federal <[stephen.lipps@noaa.gov](mailto:stephen.lipps@noaa.gov)> wrote:

Hi Susie,

(b)(5)

?

DOC NOAA 2018 000302 Michael L. Johnson

I request that a copy of the Notice of Violation and Assessment (NOVA). Case NE9803 IA. be provided to me. NOVA Case NE98031A was issued on 14 June 2000 by Charles R. Juliand of the Gloucester. MA Office of the General Council. Enforcement and Litigation (GCEL). I also request a copy of the Notice of Permit Sanction (NOPS) associated with the NOVA for Case NE9803 I A .

On Thu, Jan 25, 2018 at 11:39 AM, Susan Beresford NOAA Federal <[susan.s.beresford@noaa.gov](mailto:susan.s.beresford@noaa.gov)> wrote:

(b)(5) [Redacted]  
[Redacted]  
[Redacted].

On Thu, Jan 25, 2018 at 10:07 AM, Stephen Lipps NOAA Federal <[stephen.lipps@noaa.gov](mailto:stephen.lipps@noaa.gov)> wrote:

I wondered that as wel (b)(5) [Redacted]

[Redacted]  
[Redacted] ? Also copying Susie.

sdl

**From:** Jeff Dillen - NOAA Federal [mailto:[jeff.dillen@noaa.gov](mailto:jeff.dillen@noaa.gov)]  
**Sent:** Thursday, January 25, 2018 10:01 AM  
**To:** Stephen Lipps - NOAA Federal  
**Subject:** Re: NEW FOIA REQUEST: FOIA Assignment for DOC-NOAA-2018-000468

Thanks Stephen (b)(5) [Redacted]  
[Redacted]  
[Redacted].

On Wed, Jan 24, 2018 at 4:45 PM, Stephen Lipps NOAA Federal <[stephen.lipps@noaa.gov](mailto:stephen.lipps@noaa.gov)> wrote:

Jef (b)(5) [Redacted]  
[Redacted] sdl

Forwarded message  
From: **FOIA Office - NOAA Service Account** <[foia@noaa.gov](mailto:foia@noaa.gov)>  
Date: Wed, Jan 10, 2018 at 9:56 AM  
Subject: NEW FOIA REQUEST: FOIA Assignment for DOC NOAA 2018 000468  
To: Stephen Lipps <[stephen.lipps@noaa.gov](mailto:stephen.lipps@noaa.gov)>

FYI

Forwarded message

From: [foia@regulations.gov](mailto:foia@regulations.gov) <[foia@regulations.gov](mailto:foia@regulations.gov)>  
Date: Wed, Jan 10, 2018 at 9:53 AM  
Subject: FOIA Assignment for DOC NOAA 2018 000468  
To: "[foia@noaa.gov](mailto:foia@noaa.gov)" <[foia@noaa.gov](mailto:foia@noaa.gov)>

You have been assigned to the FOIA request DOC NOAA 2018 000468. Additional details for this request are as follows:

- Assigned By: Lola Stith
- Request Tracking Number: DOC NOAA 2018 000468
- Due Date: 02/08/2018
- Requester: Katarina Zimmer
- Request Track: Simple
- Short Description: N/A
- Long Description: December 18, 2017 Dear FOIA Officer: This is a request under the Freedom of Information Act. I hereby request the following records: All records, including but not limited to, reports, memos and communications (electronic, physical and otherwise sent or received by representatives of this agency), regarding an investigation with case number PI1501648. According to a NOAA Public Affairs officer, this investigation was conducted by NOAA's Office of Law Enforcement and forwarded to NOAA's Office of General Counsel, Enforcement Section on March 7, 2017, for consideration of prosecution. The Enforcement Section declined prosecution on December 8, 2017. I do not expect any exemptions to apply to my request as the case is now closed. In the event of any exemptions in my request, please detail the use of any exemptions including references. If any of the above records cannot be provided due to an exemption or other reasons, I request that those records to which this does not apply be provided to me. I also request that fees be waived as I believe this request is in the public interest, as suggested but not stipulated by 1 M.R.S.A. § 408(6). The investigation pertains to a US flagged vessel, and it is in the public interest to know how the United States as a flag state conducts investigations into the ships that fly its flag.

Susan S. Beresford  
Paralegal  
Enforcement Section  
NOAA Office of the General Counsel  
U.S. Department of Commerce  
[1315 East West Highway](#)  
SSMC3, Room 15829  
Silver Spring, MD 20910  
[\(301\) 427 8285](#) Office



[\(301\) 427 2211](tel:3014272211) Fax

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Susan S. Beresford  
Paralegal  
Enforcement Section  
NOAA Office of the General Counsel  
U.S. Department of Commerce  
1315 East West Highway  
SSMC3, Room 15829  
Silver Spring, MD 20910  
[\(301\) 427 8285](tel:3014278285) Office  
[\(301\) 427 2211](tel:3014272211) Fax

Confidentiality Notice: This e mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.

Lola Stith

Contractor - The Ambit Group, LLC

NOAA Office of the Chief Information Officer (OCIO)

( (b)(6) )

[lola.m.stith@noaa.gov](mailto:lola.m.stith@noaa.gov)

Susan S. Beresford

Paralegal

Enforcement Section

NOAA Office of the General Counsel

U.S. Department of Commerce

1315 East West Highway

SSMC3, Room 15829

Silver Spring, MD 20910

[\(301\) 427 8285](tel:(301)4278285) Office

[\(301\) 427 2211](tel:(301)4272211) Fax

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Lola Stith

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( (b)(6) )

[lola.m.stith@noaa.gov](mailto:lola.m.stith@noaa.gov)



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

February 12, 2018

Michael L. Johnson  
3 Oak Ridge Road  
Kensington, NH 03833

**Re: FOIA Request DOC-NOAA-2018-000302**

Dear Mr. Johnson:

This letter is in response to your Freedom of Information Act (FOIA) request which was received by our office on 11/17/2017, in which you requested:

*A copy of the Notice of Violation and Assessment (NOVA), Case NE9803IA, be provided to me. NOVA Case NE9803IA was issued on 14 June 2000 by Charles R. Juliand of the Gloucester, MA, Office of the General Counsel, Enforcement and Litigation (GCEL). I also request a copy of the Notice of Permit Sanction (NOPS) associated with the NOVA for Case NE9803IA .*

We have located one (1) document responsive to your request that is partially redacted under Exemption Citation 5 U.S.C. 552(b)(6), which prohibits from disclosure of records as would invade another individual's personal privacy and under Exemption Citation 5 U.S.C. 552(b)(7)(C), which prohibits from disclosure of records or information compiled for law enforcement purposes. The NOVA and NOPS are for Case NE980310.

You have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must be received within 90 calendar days of the date of this response letter at the following address:

Assistant General Counsel for Litigation, Employment, and Oversight  
U.S. Department of Commerce  
Office of General Counsel  
Room 5875  
14th and Constitution Avenue, N.W.  
Washington, D.C. 20230

An appeal may also be sent by e-mail to [FOIAAppeals@doc.gov](mailto:FOIAAppeals@doc.gov) or by FOIAonline at <https://foiaonline.regulations.gov/foia/action/public/home#> .

For your appeal to be complete, it must include the following items:

- a copy of the original request,
- our response to your request,
- a statement explaining why the withheld records should be made available, and why the denial of the records was in error.
- "Freedom of Information Act Appeal" must appear on your appeal letter. It should also be written on your envelope, e-mail subject line, or your fax cover sheet.

FOIA appeals posted to the e-mail box, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

FOIA grants requesters the right to challenge an agency's final action in federal court. Before doing so, an adjudication of an administrative appeal is ordinarily required.

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

Office of Government Information Services  
National Archives and Records Administration  
Room 2510  
8601 Adelphi Road  
College Park, MD 20740-6001

Email: [ogis@nara.gov](mailto:ogis@nara.gov)

Phone: 301-837-1996

Fax: 301-837-0348

Toll-free: 1-877-684-6448

If you have questions regarding this correspondence please contact Stephen Lipps at [stephen.lipps@noaa.gov](mailto:stephen.lipps@noaa.gov), or the NOAA FOIA Public Liaison Robert Swisher at (301) 628-5755. Please refer to your FOIA request tracking number DOC-NOAA-2018-000302, when contacting us.

Sincerely,

**GRAFF.MARK.HYR**  
**UM.1514447892**

Digitally signed by  
GRAFF.MARK.HYRUM.1514447892  
DN: c US, o U.S. Government, ou DoD,  
ou PKI, ou OTHER,  
cn GRAFF.MARK.HYRUM.1514447892  
Date: 2018.02.12 16:58:07 -05'00'

**Lola Stith - NOAA Affiliate**

---

**From:** Lola Stith NOAA Affiliate  
**Sent:** Monday, February 12, 2018 3:40 PM  
**To:** Mark Graff NOAA Affiliate  
**Subject:** ACTION REQUIRED: FOIA FAL FOR SIGNATURE DOC NOAA 2018 000302.  
**Attachments:** Generic tasker\_produce\_2018 000302 GCES.pdf; FAL\_DOC NOAA 2018 000302\_draft GCES.docx; NE980310 NOVA and NOPS\_Redacted.pdf; NE980310 NOVA and NOPS.pdf

Mark Please find the draft FAL, uploaded responsive records, and completed tasker for the subject FOIA request.

If acceptable, please sign the FAL on behalf of NOAA and return to me so I can process the closeout of this backlogged FOIA request.

Thank you!

Lola

Forwarded message

**From:** Susan Beresford - NOAA Federal <[susan.s.beresford@noaa.gov](mailto:susan.s.beresford@noaa.gov)>  
**Date:** Mon, Feb 12, 2018 at 3:35 PM  
**Subject:** Re: NEW FOIA REQUEST: FOIA Assignment for DOC NOAA 2018 000302.  
**To:** Lola Stith NOAA Affiliate <[lola.m.stith@noaa.gov](mailto:lola.m.stith@noaa.gov)>  
**Cc:** Stephen Lipps NOAA Federal <[stephen.lipps@noaa.gov](mailto:stephen.lipps@noaa.gov)>, Charles Green <[charles.green@noaa.gov](mailto:charles.green@noaa.gov)>

Hi Lola,

Attached is the signed Tasker and documentation of search, as well as an edited FAL. Thanks for taking care of finalizing this FOIA ~ DOC NOAA 2018 000302.

In case you haven't heard, I will be retiring on February 28th. Thanks for all of your FOIAOnline help over the last few years! Your were a tremendous help to me.

Susie.

On Mon, Feb 12, 2018 at 2:13 PM, Lola Stith NOAA Affiliate <[lola.m.stith@noaa.gov](mailto:lola.m.stith@noaa.gov)> wrote:

Hi Stephen/Susan (b)(5)

Best,  
Lola

On Fri, Feb 9, 2018 at 3:37 PM, Stephen Lipps NOAA Federal <[stephen.lipps@noaa.gov](mailto:stephen.lipps@noaa.gov)> wrote:  
Hi Lola,

(b)(5)

. Stephen

Forwarded message

From: **Susan Beresford - NOAA Federal** <[susan.s.beresford@noaa.gov](mailto:susan.s.beresford@noaa.gov)>

Date: Fri, Feb 9, 2018 at 11:40 AM

Subject: Re: NEW FOIA REQUEST: FOIA Assignment for DOC NOAA 2018 000468

To: Stephen Lipps NOAA Federal <[stephen.lipps@noaa.gov](mailto:stephen.lipps@noaa.gov)>

Stephen,

(b)(5)

? Thanks.

Susie.

On Mon, Jan 29, 2018 at 4:32 PM, Stephen Lipps NOAA Federal <[stephen.lipps@noaa.gov](mailto:stephen.lipps@noaa.gov)> wrote:

Hi Susie,

(b)(5)

?

DOC NOAA 2018 000302 Michael L. Johnson

I request that a copy of the Notice of Violation and Assessment (NOVA). Case NE9803 IA. be provided to me. NOVA Case NE98031A was issued on 14 June 2000 by Charles R. Juliand of the Gloucester. MA Office of the General Council. Enforcement and Litigation (GCEL). I also request a copy of the Notice of Permit Sanction (NOPS) associated with the NOVA for Case NE9803 I A .

On Thu, Jan 25, 2018 at 11:39 AM, Susan Beresford NOAA Federal <[susan.s.beresford@noaa.gov](mailto:susan.s.beresford@noaa.gov)> wrote:

(b)(5)

).

On Thu, Jan 25, 2018 at 10:07 AM, Stephen Lipps NOAA Federal <[stephen.lipps@noaa.gov](mailto:stephen.lipps@noaa.gov)> wrote:

I wondered that as well (b)(5). Thanks

John and Chaz. Please see below (b)(5)

(b)(5) ? Also copying Susie.

sdl

**From:** Jeff Dillen - NOAA Federal [mailto:[jeff.dillen@noaa.gov](mailto:jeff.dillen@noaa.gov)]  
**Sent:** Thursday, January 25, 2018 10:01 AM  
**To:** Stephen Lipps - NOAA Federal  
**Subject:** Re: NEW FOIA REQUEST: FOIA Assignment for DOC-NOAA-2018-000468

Thanks Stephen (b)(5)

On Wed, Jan 24, 2018 at 4:45 PM, Stephen Lipps NOAA Federal <[stephen.lipps@noaa.gov](mailto:stephen.lipps@noaa.gov)> wrote:

Jef (b)(5) . sdl

Forwarded message

**From:** FOIA Office - NOAA Service Account <[foia@noaa.gov](mailto:foia@noaa.gov)>  
**Date:** Wed, Jan 10, 2018 at 9:56 AM  
**Subject:** NEW FOIA REQUEST: FOIA Assignment for DOC NOAA 2018 000468  
**To:** Stephen Lipps <[stephen.lipps@noaa.gov](mailto:stephen.lipps@noaa.gov)>

FYI

Forwarded message

**From:** [foia@regulations.gov](mailto:foia@regulations.gov) <[foia@regulations.gov](mailto:foia@regulations.gov)>  
**Date:** Wed, Jan 10, 2018 at 9:53 AM  
**Subject:** FOIA Assignment for DOC NOAA 2018 000468  
**To:** "[foia@noaa.gov](mailto:foia@noaa.gov)" <[foia@noaa.gov](mailto:foia@noaa.gov)>

You have been assigned to the FOIA request DOC NOAA 2018 000468. Additional details for this request are as follows:

- Assigned By: Lola Stith
- Request Tracking Number: DOC NOAA 2018 000468
- Due Date: 02/08/2018

- Requester: Katarina Zimmer
- Request Track: Simple
- Short Description: N/A
- Long Description: December 18, 2017 Dear FOIA Officer: This is a request under the Freedom of Information Act. I hereby request the following records: All records, including but not limited to, reports, memos and communications (electronic, physical and otherwise sent or received by representatives of this agency), regarding an investigation with case number PI1501648. According to a NOAA Public Affairs officer, this investigation was conducted by NOAA's Office of Law Enforcement and forwarded to NOAA's Office of General Counsel, Enforcement Section on March 7, 2017, for consideration of prosecution. The Enforcement Section declined prosecution on December 8, 2017. I do not expect any exemptions to apply to my request as the case is now closed. In the event of any exemptions in my request, please detail the use of any exemptions including references. If any of the above records cannot be provided due to an exemption or other reasons, I request that those records to which this does not apply be provided to me. I also request that fees be waived as I believe this request is in the public interest, as suggested but not stipulated by 1 M.R.S.A. § 408(6). The investigation pertains to a US flagged vessel, and it is in the public interest to know how the United States as a flag state conducts investigations into the ships that fly its flag.

Susan S. Beresford  
Paralegal  
Enforcement Section  
NOAA Office of the General Counsel  
U.S. Department of Commerce  
[1315 East West Highway](#)  
SSMC3, Room 15829  
Silver Spring, MD 20910  
[\(301\) 427 8285](#) Office  
[\(301\) 427 2211](#) Fax

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message.

Susan S. Beresford  
Paralegal  
Enforcement Section  
NOAA Office of the General Counsel  
U.S. Department of Commerce  
1315 East West Highway  
SSMC3, Room 15829  
Silver Spring, MD 20910  
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Lola Stith  
Contractor - The Ambit Group, LLC  
NOAA Office of the Chief Information Officer (OCIO)  
(c (b)(6))  
[lola.m.stith@noaa.gov](mailto:lola.m.stith@noaa.gov)

Susan S. Beresford  
Paralegal  
Enforcement Section

NOAA Office of the General Counsel  
U.S. Department of Commerce  
1315 East West Highway  
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Silver Spring, MD 20910  
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Lola Stith  
Contractor - The Ambit Group, LLC  
NOAA Office of the Chief Information Officer (OCIO)  
( (b)(6) )  
[lola.m.stith@noaa.gov](mailto:lola.m.stith@noaa.gov)



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

September 30, 2020

Michael L. Johnson  
3 Oak Ridge Road  
Kensington, NH 03833

**Re: FOIA Request DOC-NOAA-2018-000302**

Dear Mr. Johnson:

This letter is in response to your Freedom of Information Act (FOIA) request which was received by our office on 11/17/2017, in which you requested:

*A copy of the Notice of Violation and Assessment (NOVA), Case NE9803IA, be provided to me. NOVA Case NE9803IA was issued on 14 June 2000 by Charles R. Juliand of the Gloucester, MA, Office of the General Counsel, Enforcement and Litigation (GCEL). I also request a copy of the Notice of Permit Sanction (NOPS) associated with the NOVA for Case NE9803IA .*

We have located one (1) document responsive to your request that is partially redacted under Exemption Citation 5 U.S.C. 552(b)(6), which prohibits from disclosure of records as would invade another individual's personal privacy and under Exemption Citation 5 U.S.C. 552(b)(7)(C), which prohibits from disclosure of records or information compiled for law enforcement purposes. The NOVA and NOPS are for Case NE980310.

You have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must be received within 90 calendar days of the date of this response letter at the following address:

Assistant General Counsel for Litigation, Employment, and Oversight  
U.S. Department of Commerce  
Office of General Counsel  
Room 5875  
14th and Constitution Avenue, N.W.  
Washington, D.C. 20230

An appeal may also be sent by e-mail to [FOIAAppeals@doc.gov](mailto:FOIAAppeals@doc.gov) or by FOIAonline at <https://foiaonline.regulations.gov/foia/action/public/home#> .

For your appeal to be complete, it must include the following items:

- a copy of the original request,
- our response to your request,
- a statement explaining why the withheld records should be made available, and why the denial of the records was in error.
- "Freedom of Information Act Appeal" must appear on your appeal letter. It should also be written on your envelope, e-mail subject line, or your fax cover sheet.

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FOIA grants requesters the right to challenge an agency's final action in federal court. Before doing so, an adjudication of an administrative appeal is ordinarily required.

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Office of Government Information Services  
National Archives and Records Administration  
Room 2510  
8601 Adelphi Road  
College Park, MD 20740-6001

Email: [ogis@nara.gov](mailto:ogis@nara.gov)

Phone: 301-837-1996

Fax: 301-837-0348

Toll-free: 1-877-684-6448

If you have questions regarding this correspondence please contact Stephen Lipps at [stephen.lipps@noaa.gov](mailto:stephen.lipps@noaa.gov), or the NOAA FOIA Public Liaison Robert Swisher at (301) 628-5755. Please refer to your FOIA request tracking number DOC-NOAA-2018-000302, when contacting us.

Sincerely,





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

February 12, 2018

MEMORANDUM FOR: Stephen Lipps - OGC  
FROM: Lola Stith  
NOAA FOIA Office  
SUBJECT: FOIA Request No. DOC-NOAA-2018-000302

I am forwarding a copy of the attached FOIA request for your immediate attention. Please produce one, or two in the case of withheld documents, set of all documents (retain your originals in accordance with the proper record schedule) that may be responsive to the request and upload into FOIAonline. If processing outside of the FOIAonline system, print a set to send to the FOIA requester. If any documents or parts of documents are withheld, you must keep both the unredacted and redacted versions in FOIAonline with rare exceptions. These documents may include final documents, drafts, notes, informal records, and electronic records. You must search every place that could reasonably be expected to have responsive documents. The search must be documented on the "Document of Search" page (Page 3).

**Make sure that you identify any documents or portions of documents that originated with another office, agency or bureau that need to be referred for disclosure determinations.**

One set of copies (not original documents) should be produced without additional annotation; on the second set, please identify whether you believe the document, or any portion of it, should be withheld from disclosure because it is not an agency record, outside the scope of the request, privileged, confidential, an invasion of personal privacy, or for any other legitimate reason recognized by FOIA. You must include the FOIA exemption next to any information you identify as protected from disclosure. Please ensure that the information withheld under FOIA is **securely redacted**. The office that originated a document must make disclosure determinations for that document.

**The search period is through November 17, 2017. Documents created after this date are not responsive to the request.**

Refer to FOIA Exemptions for Tasker Memo ([http://www.corporateservices.noaa.gov/~foia/sample\\_letters/](http://www.corporateservices.noaa.gov/~foia/sample_letters/)) for list of FOIA exemptions for your use in making disclosure determinations.

We would like to respond in a timely manner, please respond to the requester by **December 18, 2017**.

In accordance with the NAO ([http://www.corporateservices.noaa.gov/ames/administrative\\_orders/chapter\\_205/205-14.html](http://www.corporateservices.noaa.gov/ames/administrative_orders/chapter_205/205-14.html)) Lead Office, please upload the close-out letter and the completed Tasker (this document) into FOIAonline (<https://foiaonline.regulations.gov>) within one day of completion.

Please include in the FOIAonline file documentation of (attached form acceptable):

- 1) Which office(s) originated the documents.
- 2) How the search was conducted (e.g., which data base searched and the search terms). Contact the FOIA Liaison or Office of General Counsel for suggestions and clarification.
- 3) Who in the originating office made the disclosure determination(s).

THIS RESPONSE MUST BE SIGNED BY A SENIOR OFFICIAL IN YOUR OFFICE.

My office closed this request due to non-payment of fees or requester's failure to respond to correspondence (aka administrative close-out).

My office copied for our files and transmitted to the requester all documents in our possession that are responsive and can be released in entirety.

**My office copied, noted the exemption, and held all documents in our possession which are responsive and we have found reason to partially withhold.**

My office copied, noted the exemption, and held all documents in our possession which are responsive and we have found reason to withhold entirely.

My office referred all documents in our possession which are responsive to the originating office, bureau, or federal agency for disclosure determination(s).

My office conducted a search and the records are available online.

My office conducted a search and did not find any responsive documents.

A foreseeable harm review and analysis was not applicable.

A foreseeable harm review and analysis has been completed for all withheld documents and portions of documents and it has been determined that disclosure of the withheld materials would result in harm to an interest protected by the asserted exemption or that disclosure is prohibited by law. If Foreseeable Harm checklist is not provided in FOIAonline, provide the name of the person who completed the foreseeable harm review and analysis

Check **all** exemptions that apply:

(b)(4)

**(b)(6) and (b)(7)(C)**

Interim response

**Final response**

*Susan S. Beresford*

Signature (Senior Official)

Date

Susan S. Beresford, paralegal, for  
Charles Green, Deputy Section Chief

Documentation of Search (add rows as needed)

Office where documents originated	Person recommending Disclosure Determination	Database or physical location searched	Search terms for database queries
(b)(5)			

Y / N Discussed search terms with requester = N

*Susan S. Beresford*  
Signature (contact person)

2/12/18  
Date

Susan S. Beresford



(b)(5)

(4) Take no action, in which case this notice shall become final in accordance with 15 Code of Federal Regulations § 904.104.

For good cause shown, you may, within the 30-day period specified above, request an extension of time to respond.

WARNING: IF YOU SHOULD FAIL TO EXERCISE YOUR RIGHTS WITHIN THIRTY (30) CALENDAR DAYS FOLLOWING RECEIPT OF THIS NOTICE, ALL OF THE ALLEGATIONS AND THE PENALTIES HEREIN WILL BE TAKEN AS ADMITTED AND THESE ASSESSMENTS WILL BECOME FINAL ADMINISTRATIVE ORDERS ENFORCEABLE IN UNITED STATES DISTRICT COURT, as provided in 16 U.S.C. § 1857(1)(A) and the implementing regulations in 15 C.F.R., Part 904, copies of which are attached for your information and guidance.

THE ATTACHED REGULATIONS GOVERN THESE CIVIL PROCEDURES AND EXPLAIN YOUR RIGHTS -- **READ THEM CAREFULLY.**

**FACTS CONSTITUTING VIOLATIONS:**

Count 1 - At or about 23:21 hours, local time, on December 8, 1998 (which equates to 04:21 hours on December 9, 1998, Greenwich Mean Time (GMT)) at or near 41°17.1' North latitude / 66°27.6' West longitude, representatives, employees, or agents of Lobsters, Inc., the owner of the F/V Independence (official number 585811), including Lawrence M. Yacubian, the vessel's Master, being persons subject to the jurisdiction of the United States and named as the Respondents herein, unlawfully entered an area specified in 50 C.F.R. § 648.81(b)(1) during a period in which that area was closed to such entry in violation of 50 CFR §648.14(a)(39); that is, the F/V Independence, a scallop dredge vessel, while operated by the above-named Respondents, was determined by National Marine Fisheries Service (NMFS) enforcement personnel to be approximately 1.36 nautical miles inside Closed Area II on December 8, 1998.

Count 2 - At or about 00:51 hours, local time, on December 11, 1998 (which equates to 05:51 hours on December 11, 1998, Greenwich Mean Time (GMT)) at or near 41°16.75' North latitude / 66°27.6' West longitude, representatives, employees, or agents of Lobsters, Inc., the owner of the F/V Independence (official number 585811), including Lawrence M. Yacubian, the vessel's Master, being persons subject to the jurisdiction of the United States and named as the Respondents herein, unlawfully entered an area specified in 50 C.F.R. § 648.81(b)(1) during a period in which that area was closed to such entry in violation of 50 CFR §648.14(a)(39); that is, the F/V Independence, a scallop dredge vessel, while operated by the above-named Respondents, was determined by United States Coast Guard and NMFS personnel to be approximately .65 of a nautical mile inside Closed Area II on December 11, 1998.

Count 3 - Shortly after 02:07 hours, local time, on December 11, 1998 at or near 41°16.3' North latitude / 66°25.5' West longitude, Lawrence M. Yacubian, the Master of the F/V Independence (official number 585811) and an employee of Lobsters, Inc., being a person subject to the jurisdiction of the United States and named as the Respondent herein, unlawfully made a false oral statement to an authorized officer concerning the harvesting of fish in violation of 50 C.F.R. § 600.725(i); that is, Captain Yacubian told LTJG Timothy Brown of the U.S. Coast Guard that he had only approximately 4 or 5 bushels of scallops per side, and approximately 2,500 pounds of scallops in the vessel's hold, when, in fact, there were 17 bushels of scallops per side and more than 4,100 pounds of scallops in the vessel's hold.

SEIZED ITEM(S): \$25,972.26 worth of Atlantic sea scallops, monkfish tails, other fish and lobsters

ASSESSED PENALTIES: Count 1 - \$110,000  
Count 2 - \$110,000  
Count 3 - \$ 30,000

STATUTE/REGULATIONS/PERMIT VIOLATED:

Magnuson Fishery Conservation and Management Act  
§307(1)(A), 16 USC §1857

Count 1 - 50 CFR §§648.14(a)(39) & 648.81(b)(1)

Count 2 - 50 CFR §§648.14(a)(39) & 648.81(b)(1)

Count 3 - 50 CFR §600.725(i)

CG Documentation No. - 585811

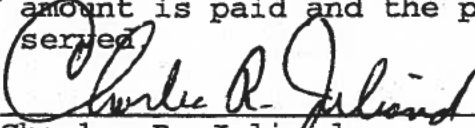
Federal Fisheries Permit No. - 410127

Federal Fisheries Operator's Permit No. - 10000756

FINDINGS, CONCLUSIONS, AND ORDER: Having considered all of the facts and circumstances presented in this notice, I do hereby find and conclude that the Respondents, Lobsters, Inc. and Lawrence M. Yacubian, violated the Magnuson-Stevens Act in every stated particular and that a just and reasonable total assessment for such violations is a civil penalty of \$250,000. IT IS SO ORDERED.

JOINT AND SEVERAL LIABILITY: This ASSESSED PENALTY is imposed on the Respondents jointly and severally. Both Respondents jointly, and each of them individually, are liable for the total ASSESSED PENALTY. Whether one of the Respondents pays the entire amount or both Respondents pay equal or unequal portions of the total ASSESSED PENALTY is for the Respondents to determine. This case will not, however, be closed against either of the Respondents until the total ASSESSED PENALTY amount is paid and the permit sanction time (if applicable) is served.

FOR THE SECRETARY OF COMMERCE:

  
Charles R. Juliard  
Enforcement Attorney, NOAA

DATED: \_\_\_\_\_

SEND REPLY OR MAKE INQUIRY TO: Office of General Counsel,  
National Oceanic and Atmospheric Administration, One Blackburn  
Drive, Gloucester, Massachusetts 01930, Telephone (978) 281-9240,  
Fax (978) 281-9389.



**U.S. DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric  
Administration**

Office of General Counsel/Northeast Region  
One Blackburn Drive  
Gloucester, MA 01930-2298  
Phone: 978-281-9240 Fax: 978-281-9389

RECEIVED

2000 JUL 14 PM 2:01  
ALL DOCUMENTS CENTER  
BALTIMORE, MD

F/V Independence -- NE980310FM/V  
TO SETTLE THE CASE NOW COMPLETE THE FOLLOWING:

In settlement of the violations of the Magnuson-Stevens Fishery Conservation and Management Act, as alleged in the Notice of Violation and Assessment, Lobsters, Inc. and Lawrence M. Yacubian, the Respondents, and the National Oceanic and Atmospheric Administration, United States Department of Commerce (NOAA), do hereby stipulate and agree as follows:

1. Respondents admit the violations alleged in the Notice, agree not to contest the matter and waive their rights to a hearing.
2. Respondents agree to pay to the "Dept. of Commerce/NOAA" a total compromise civil penalty of \$200,000 (Count 1 - \$90,000 / Count 2 - \$90,000 & Count 3 - \$20,000).
3. Respondents agree to, and hereby do, forfeit and relinquish any right, title and interest in the proceeds (i.e. \$25,972.26) from the sale of Atlantic sea scallops, monkfish tails, lobsters and mixed groundfish seized from the Respondents on or about December 11, 1998.
4. NOAA shall accept Respondents' payment, and agreement to permanently give up all federal fisheries permits and to permanently desist from fishing in federal waters in any capacity, as full settlement of all claims, charges, and complaints by the United States arising from the violations described in the NOTICE, EXCEPT THAT the payment of the compromise amount, forfeiture of the seized proceeds, and adherence to the terms of this agreement do not remove from Respondents the requirement to pay any suspended penalties agreed to under any prior settlement agreements. Furthermore, these violations shall constitute prior offenses in NOAA's future consideration of any penalty to be assessed against the Respondents or in any permit sanction to be imposed on the Respondents.
5. Seven days after the Respondents' receipt of written notice of a failure to pay the compromise civil penalty and failure to cure the deficiency, the originally assessed penalty (\$250,000) shall become a final judgment and NOAA shall commence a collection action for the full amount of the civil penalty (\$250,000) charged in the NOTICE.
6. Respondents agree that all rights of appeal are hereby waived and that Respondents shall bear their own fees and other expenses incurred by them in connection with any of the proceedings pertaining to these matters.

7. Respondents acknowledge that the provisions of this Agreement and the legal effects thereof have been explained to them, and they are entering into this Agreement freely and voluntarily, without coercion, duress, or undue influence.

8. The obligations set forth in this Agreement are severable and independent of one another in that the breach of one provision does not (unless expressly stated otherwise) extinguish any duties and rights set forth in any other provision of the Agreement. It is the intent of the parties that if it is determined that any portion of the Agreement is declared invalid, all other provisions shall remain in effect.

9. This Settlement Agreement is effective as of the date it is signed by the both the Respondents or their representative and the National Oceanic and Atmospheric Administration.

ON BEHALF OF Lobsters, Inc.:

\_\_\_\_\_  
Respondent or Authorized Representative

\_\_\_\_\_  
Date

ON BEHALF OF Lawrence M. Yacubian:

\_\_\_\_\_  
Respondent or Authorized Representative

\_\_\_\_\_  
Date

ON BEHALF OF THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION:

\_\_\_\_\_  
Charles R. Juliand  
Senior Enforcement Attorney, NOAA

\_\_\_\_\_  
Date

RECEIVED

2000 JUL 14 PM 12:02

ALJ DOCKETING CENTER  
BALTIMORE, MD

NOTICE OF PERMIT SANCTION (NOPS)

Magnuson-Stevens Fishery Conservation and Management Act

ISSUED TO: Lobsters, Inc. & Lawrence M. Yacubian  
114 MacArthur Drive 1194 Horseneck Road  
New Bedford, MA 02740 Westport, MA 02790

Re: NE980310FM/V - F/V Independence  
Permit Number 410127 (Vessel permit)  
Permit Number 10000756 (Vessel operator permit)

Dear Sirs:

NOTICE IS HEREBY GIVEN that, effective thirty (30) calendar days from your receipt of this notice, the fishing permits identified above are permanently revoked. Fishing in the Exclusive Economic Zone (EEZ) after the effective date of revocation, for any regulated species for which any federal vessel or operator's permit was or should have been issued, will subject the vessel, its owner, and its operator to severe penalties under the Magnuson-Stevens Fishery Conservation and Management Act (the Act), such as forfeiture of the vessel to the United States.

This permit is revoked because, at or about 23:21 hours, local time, on December 8, 1998, the F/V Independence, a scallop dredge vessel, while operated by you, was determined by National Marine Fisheries Service (NMFS) enforcement personnel to be approximately 1.36 nautical miles inside Closed Area II in violation of 50 C.F.R. §648.14(a)(39). Only three days later, the F/V Independence was, again, detected approximately .65 of a nautical mile inside Closed Area II. After being boarded by Coast Guard personnel, Captain Yacubian made false statements to the boarding officer concerning the amount of scallops on board the F/V Independence. In addition, both Lobsters, Inc. and Captain Yacubian have been found to have committed violations of federal fisheries regulations in the past.

You, your attorney, or other representative have thirty (30) days from the date you receive this NOPS to respond. During this time you may request a hearing (like a trial) before an Administrative Law Judge to contest the imposition of the permit sanction. Such request must be dated and in writing, and must be served either in person or by certified or registered mail, return receipt requested, at the address set forth below. The request shall either attach a copy of this NOPS or refer to the case number appearing in the heading of this NOPS.

Your request for a hearing concerning the NOPS may be combined with your request for a hearing on the Notice of Violation and Assessment (NOVA) concerning the underlying violations of the Act. Opportunity for a hearing to deny or contest all, or any part, of the underlying violations charged in the NOVA is considered an opportunity for hearing to contest the NOPS. Failure to use the opportunity for hearing on the NOVA to contest this NOPS will foreclose any opportunity for a hearing on the NOPS. If no request is received within thirty (30) days, both the F/V Independence and Lawrence M. Yacubian will be forbidden to fish in the EEZ for any regulated species requiring the possession of a vessel or operator's permit on a permanent basis.

Any questions you have should be directed to Charles R. Juliard, Office of the General Counsel, Northeast region, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, Massachusetts 01930, telephone (978) 281-9240.

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

  
Charles R. Juliard  
Senior Enforcement Attorney, NOAA

CERTIFIED MAIL NO. P 367 677 755  
RETURN RECEIPT



(b)(5)

(4) Take no action, in which case this notice shall become final in accordance with 15 Code of Federal Regulations § 904.104.

For good cause shown, you may, within the 30-day period specified above, request an extension of time to respond.

WARNING: IF YOU SHOULD FAIL TO EXERCISE YOUR RIGHTS WITHIN THIRTY (30) CALENDAR DAYS FOLLOWING RECEIPT OF THIS NOTICE, ALL OF THE ALLEGATIONS AND THE PENALTIES HEREIN WILL BE TAKEN AS ADMITTED AND THESE ASSESSMENTS WILL BECOME FINAL ADMINISTRATIVE ORDERS ENFORCEABLE IN UNITED STATES DISTRICT COURT, as provided in 16 U.S.C. § 1857(1)(A) and the implementing regulations in 15 C.F.R., Part 904, copies of which are attached for your information and guidance.

THE ATTACHED REGULATIONS GOVERN THESE CIVIL PROCEDURES AND EXPLAIN YOUR RIGHTS -- **READ THEM CAREFULLY.**

**FACTS CONSTITUTING VIOLATIONS:**

Count 1 - At or about 23:21 hours, local time, on December 8, 1998 (which equates to 04:21 hours on December 9, 1998, Greenwich Mean Time (GMT)) at or near 41°17.1' North latitude / 66°27.6' West longitude, representatives, employees, or agents of Lobsters, Inc., the owner of the F/V Independence (official number 585811), including Lawrence M. Yacubian, the vessel's Master, being persons subject to the jurisdiction of the United States and named as the Respondents herein, unlawfully entered an area specified in 50 C.F.R. § 648.81(b)(1) during a period in which that area was closed to such entry in violation of 50 CFR §648.14(a)(39); that is, the F/V Independence, a scallop dredge vessel, while operated by the above-named Respondents, was determined by National Marine Fisheries Service (NMFS) enforcement personnel to be approximately 1.36 nautical miles inside Closed Area II on December 8, 1998.

Count 2 - At or about 00:51 hours, local time, on December 11, 1998 (which equates to 05:51 hours on December 11, 1998, Greenwich Mean Time (GMT)) at or near 41°16.75' North latitude / 66°27.6' West longitude, representatives, employees, or agents of Lobsters, Inc., the owner of the F/V Independence (official number 585811), including Lawrence M. Yacubian, the vessel's Master, being persons subject to the jurisdiction of the United States and named as the Respondents herein, unlawfully entered an area specified in 50 C.F.R. § 648.81(b)(1) during a period in which that area was closed to such entry in violation of 50 CFR §648.14(a)(39); that is, the F/V Independence, a scallop dredge vessel, while operated by the above-named Respondents, was determined by United States Coast Guard and NMFS personnel to be approximately .65 of a nautical mile inside Closed Area II on December 11, 1998.

Count 3 - Shortly after 02:07 hours, local time, on December 11, 1998 at or near 41°16.3' North latitude / 66°25.5' West longitude, Lawrence M. Yacubian, the Master of the F/V Independence (official number 585811) and an employee of Lobsters, Inc., being a person subject to the jurisdiction of the United States and named as the Respondent herein, unlawfully made a false oral statement to an authorized officer concerning the harvesting of fish in violation of 50 C.F.R. § 600.725(i); that is, Captain Yacubian told LTJG Timothy Brown of the U.S. Coast Guard that he had only approximately 4 or 5 bushels of scallops per side, and approximately 2,500 pounds of scallops in the vessel's hold, when, in fact, there were 17 bushels of scallops per side and more than 4,100 pounds of scallops in the vessel's hold.

SEIZED ITEM(S): \$25,972.26 worth of Atlantic sea scallops, monkfish tails, other fish and lobsters

ASSESSED PENALTIES: Count 1 - \$110,000  
Count 2 - \$110,000  
Count 3 - \$ 30,000

STATUTE/REGULATIONS/PERMIT VIOLATED:

Magnuson Fishery Conservation and Management Act  
§307(1)(A), 16 USC §1857

Count 1 - 50 CFR §§648.14(a)(39) & 648.81(b)(1)

Count 2 - 50 CFR §§648.14(a)(39) & 648.81(b)(1)

Count 3 - 50 CFR §600.725(i)

CG Documentation No. - 585811

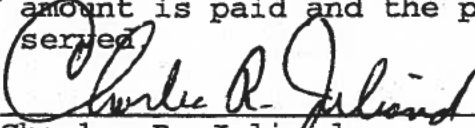
Federal Fisheries Permit No. - 410127

Federal Fisheries Operator's Permit No. - 10000756

FINDINGS, CONCLUSIONS, AND ORDER: Having considered all of the facts and circumstances presented in this notice, I do hereby find and conclude that the Respondents, Lobsters, Inc. and Lawrence M. Yacubian, violated the Magnuson-Stevens Act in every stated particular and that a just and reasonable total assessment for such violations is a civil penalty of \$250,000. IT IS SO ORDERED.

JOINT AND SEVERAL LIABILITY: This ASSESSED PENALTY is imposed on the Respondents jointly and severally. Both Respondents jointly, and each of them individually, are liable for the total ASSESSED PENALTY. Whether one of the Respondents pays the entire amount or both Respondents pay equal or unequal portions of the total ASSESSED PENALTY is for the Respondents to determine. This case will not, however, be closed against either of the Respondents until the total ASSESSED PENALTY amount is paid and the permit sanction time (if applicable) is served.

FOR THE SECRETARY OF COMMERCE:

  
Charles R. Juliard  
Enforcement Attorney, NOAA

DATED: \_\_\_\_\_

SEND REPLY OR MAKE INQUIRY TO: Office of General Counsel,  
National Oceanic and Atmospheric Administration, One Blackburn  
Drive, Gloucester, Massachusetts 01930, Telephone (978) 281-9240,  
Fax (978) 281-9389.



**U.S. DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric  
Administration**

Office of General Counsel/Northeast Region  
One Blackburn Drive  
Gloucester, MA 01930-2298  
Phone: 978-281-9240 Fax: 978-281-9389

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2000 JUL 14 PM 2:01  
ALL DOCUMENTS CENTER  
BALTIMORE, MD

F/V Independence -- NE980310FM/V  
TO SETTLE THE CASE NOW COMPLETE THE FOLLOWING:

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1. Respondents admit the violations alleged in the Notice, agree not to contest the matter and waive their rights to a hearing.
2. Respondents agree to pay to the "Dept. of Commerce/NOAA" a total compromise civil penalty of \$200,000 (Count 1 - \$90,000 / Count 2 - \$90,000 & Count 3 - \$20,000).
3. Respondents agree to, and hereby do, forfeit and relinquish any right, title and interest in the proceeds (i.e. \$25,972.26) from the sale of Atlantic sea scallops, monkfish tails, lobsters and mixed groundfish seized from the Respondents on or about December 11, 1998.
4. NOAA shall accept Respondents' payment, and agreement to permanently give up all federal fisheries permits and to permanently desist from fishing in federal waters in any capacity, as full settlement of all claims, charges, and complaints by the United States arising from the violations described in the NOTICE, EXCEPT THAT the payment of the compromise amount, forfeiture of the seized proceeds, and adherence to the terms of this agreement do not remove from Respondents the requirement to pay any suspended penalties agreed to under any prior settlement agreements. Furthermore, these violations shall constitute prior offenses in NOAA's future consideration of any penalty to be assessed against the Respondents or in any permit sanction to be imposed on the Respondents.
5. Seven days after the Respondents' receipt of written notice of a failure to pay the compromise civil penalty and failure to cure the deficiency, the originally assessed penalty (\$250,000) shall become a final judgment and NOAA shall commence a collection action for the full amount of the civil penalty (\$250,000) charged in the NOTICE.
6. Respondents agree that all rights of appeal are hereby waived and that Respondents shall bear their own fees and other expenses incurred by them in connection with any of the proceedings pertaining to these matters.

7. Respondents acknowledge that the provisions of this Agreement and the legal effects thereof have been explained to them, and they are entering into this Agreement freely and voluntarily, without coercion, duress, or undue influence.

8. The obligations set forth in this Agreement are severable and independent of one another in that the breach of one provision does not (unless expressly stated otherwise) extinguish any duties and rights set forth in any other provision of the Agreement. It is the intent of the parties that if it is determined that any portion of the Agreement is declared invalid, all other provisions shall remain in effect.

9. This Settlement Agreement is effective as of the date it is signed by the both the Respondents or their representative and the National Oceanic and Atmospheric Administration.

ON BEHALF OF Lobsters, Inc.:

\_\_\_\_\_  
Respondent or Authorized Representative

\_\_\_\_\_  
Date

ON BEHALF OF Lawrence M. Yacubian:

\_\_\_\_\_  
Respondent or Authorized Representative

\_\_\_\_\_  
Date

ON BEHALF OF THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION:

\_\_\_\_\_  
Charles R. Juliand  
Senior Enforcement Attorney, NOAA

\_\_\_\_\_  
Date

RECEIVED

2000 JUL 14 PM 12:02

ALJ DOCKETING CENTER  
BALTIMORE, MD

NOTICE OF PERMIT SANCTION (NOPS)

Magnuson-Stevens Fishery Conservation and Management Act

ISSUED TO: Lobsters, Inc. & Lawrence M. Yacubian  
114 MacArthur Drive  
New Bedford, MA 02740

(b)(6) and (b)(7)(C)

Re: NE980310FM/V - F/V Independence  
Permit Number 410127 (Vessel permit)  
Permit Number 10000756 (Vessel operator permit)

Dear Sirs:

NOTICE IS HEREBY GIVEN that, effective thirty (30) calendar days from your receipt of this notice, the fishing permits identified above are permanently revoked. Fishing in the Exclusive Economic Zone (EEZ) after the effective date of revocation, for any regulated species for which any federal vessel or operator's permit was or should have been issued, will subject the vessel, its owner, and its operator to severe penalties under the Magnuson-Stevens Fishery Conservation and Management Act (the Act), such as forfeiture of the vessel to the United States.

This permit is revoked because, at or about 23:21 hours, local time, on December 8, 1998, the F/V Independence, a scallop dredge vessel, while operated by you, was determined by National Marine Fisheries Service (NMFS) enforcement personnel to be approximately 1.36 nautical miles inside Closed Area II in violation of 50 C.F.R. §648.14(a)(39). Only three days later, the F/V Independence was, again, detected approximately .65 of a nautical mile inside Closed Area II. After being boarded by Coast Guard personnel, Captain Yacubian made false statements to the boarding officer concerning the amount of scallops on board the F/V Independence. In addition, both Lobsters, Inc. and Captain Yacubian have been found to have committed violations of federal fisheries regulations in the past.

You, your attorney, or other representative have thirty (30) days from the date you receive this NOPS to respond. During this time you may request a hearing (like a trial) before an Administrative Law Judge to contest the imposition of the permit sanction. Such request must be dated and in writing, and must be served either in person or by certified or registered mail, return receipt requested, at the address set forth below. The request shall either attach a copy of this NOPS or refer to the case number appearing in the heading of this NOPS.

Your request for a hearing concerning the NOPS may be combined with your request for a hearing on the Notice of Violation and Assessment (NOVA) concerning the underlying violations of the Act. Opportunity for a hearing to deny or contest all, or any part, of the underlying violations charged in the NOVA is considered an opportunity for hearing to contest the NOPS. Failure to use the opportunity for hearing on the NOVA to contest this NOPS will foreclose any opportunity for a hearing on the NOPS. If no request is received within thirty (30) days, both the F/V Independence and Lawrence M. Yacubian will be forbidden to fish in the EEZ for any regulated species requiring the possession of a vessel or operator's permit on a permanent basis.

Any questions you have should be directed to Charles R. Juliard, Office of the General Counsel, Northeast region, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, Massachusetts 01930, telephone (978) 281-9240.

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

  
Charles R. Juliard  
Senior Enforcement Attorney, NOAA

CERTIFIED MAIL NO. P 367 677 755  
RETURN RECEIPT



**Mark Graff - NOAA Federal**

---

**From:** Mark Graff NOAA Federal  
**Sent:** Tuesday, February 13, 2018 10:04 AM  
**To:** Stacey Nathanson NOAA Federal; Samuel Dixon NOAA Affiliate; Robert Hogan  
**Cc:** Velna Bullock NOAA Federal; Devin Brakob NOAA Federal; Lola Stith NOAA Affiliate  
**Subject:** Fwd: New FOIA lawsuit over red snapper  
**Attachments:** 17 1394 IR3 FR 1 of 1.pdf; 3rd IR FAL Full Release.docx

Hi Guys,

(b)(5)  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628 5658 (O)  
(b)(6) (C)

Confidentiality Notice: This e mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.

Forwarded message

**From:** Velna Bullock - NOAA Federal <[velna.l.bullock@noaa.gov](mailto:velna.l.bullock@noaa.gov)>  
**Date:** Thu, Feb 8, 2018 at 1:43 PM  
**Subject:** Re: New FOIA lawsuit over red snapper  
**To:** Mark Graff NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)>

You are welcome

On Thu, Feb 8, 2018 at 1:38 PM, Mark Graff NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)> wrote:

Thank you Velna!

Stacey/Capt Brakob (b)(5)  
[Redacted]  
[Redacted]  
[Redacted] ?

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
[\(301\) 628 5658](tel:3016285658) (O)  
**(b)(6)** (C)

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On Thu, Feb 8, 2018 at 1:29 PM, Velna Bullock NOAA Federal <[velna.l.bullock@noaa.gov](mailto:velna.l.bullock@noaa.gov)> wrote:  
Hey Mark,

The records I uploaded are releasable

On Wed, Jan 24, 2018 at 9:44 AM, Mark Graff NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)> wrote:  
Good Morning All,

**(b) (5)**

**(b)(5)**. Thanks guys

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
[\(301\) 628 5658](tel:3016285658) (O)  
**(b)(6)** (C)

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Forwarded message

From: **Kristen Gustafson - NOAA Federal** <[kristen.l.gustafson@noaa.gov](mailto:kristen.l.gustafson@noaa.gov)>

Date: Tue, Jan 23, 2018 at 5:35 PM

Subject: New FOIA lawsuit over red snapper

To: Mark Graff NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)>

Hi Mark,

I wanted to make sure that you were aware of the new lawsuit filed by Ocean Conservancy in District Court in Maryland challenging NOAA's failure to produce documents in response to a FOIA request on the red snapper season reopening. I asked our SE Section attorneys about the status of the production, and here's the response I received:

(b) (5)

Kristen

Kristen L. Gustafson  
Deputy General Counsel  
General Counsel's Office  
National Oceanic and Atmospheric Administration  
U.S. Department of Commerce  
[Kristen.L.Gustafson@noaa.gov](mailto:Kristen.L.Gustafson@noaa.gov)  
Office: 202-482-1588  
Cell (b)(6)



United States Senate  
WASHINGTON, DC 20540-5000

May 4, 2017

Mr. Benjamin Friedmann  
Acting Administrator  
National Oceanic and Atmospheric Administration  
1401 Constitution Avenue NW, Room 5128  
Washington, DC 20230

Dear Acting Administrator Friedmann,

We are writing regarding this week's announcement that the 2017 Gulf of Mexico red snapper fishing season will be nearly a week shorter than last year's season. For the anglers, boat captains, and related industries dependent on access to this fishery, this is deeply concerning.

According to the National Marine Fisheries Service (NMFS), the 2017 Gulf of Mexico red snapper federal season will be limited to just three days for recreational fishermen and 49 days for charter fishermen. We also understand that NMFS is likely to keep the South Atlantic closed for another season as well.

In years past, we have raised concern that setting a rigid fishing season of consecutive days may put anglers in harm's way due to Florida's unpredictable and frequent summer storms. We continue to believe that allowing more flexibility in the season to accommodate dangerous weather would help fishermen avoid hazardous conditions.

Once again, we ask that you consider incorporating all available reliable data to ensure anglers can safely fish for an appropriate season, which contributes valuable tourism revenue to coastal economies and ensures access to this public resource.

Sincerely,

  
Bill Nelson  
U.S. Senator

  
Marco Rubio  
U.S. Senator

**Congress of the United States**  
Washington, DC 20515

March 21, 2017

The Honorable Wilbur Ross  
Secretary  
U.S. Department of Commerce  
1401 Constitution Avenue, N.W.  
Washington, D.C. 20230

Dear Mr. Secretary:

Congratulations on your confirmation as the Secretary of the Department of Commerce. We are pleased to have a fellow Gulf State resident heading a Department that is so important to our region.

As you know, commercial and recreational fishing in state and federal Gulf of Mexico (Gulf) waters is very important to the national and regional economy and the Gulf region's customs, cultures and traditions. Access to these fishing resources is vital for our communities.

In particular, the Gulf red snapper fishery is an economic powerhouse. According to a report released by the American Sportfishing Association, the recreational red snapper fishery alone supported upwards of 2,600 jobs and generated \$395 million in economic output in our region in 2011.<sup>1</sup> Despite such importance, the National Marine Fisheries Service (NMFS) has used outdated and one-dimensional science to manage the red snapper fishery in federal waters. Specifically, the lack of real-time and use of state-generated data along with inadequate coordination with the Gulf states in general, has led us to believe that federal government is under-counting this fishery resource. The result has been a significantly reduced number of recreational fishing days in federal waters. As an example, there were 193 days in 2006<sup>2</sup> compared to eleven days last year.<sup>3</sup>

This declining trend is especially troubling as the Gulf red snapper fishery experienced an all-time high quota set at 14.3 million pounds for 2015.<sup>4</sup> We believe that the federal government can take immediate administrative steps to help benefit red snapper recreational fishing opportunities as we continue to work with stakeholders on a long term solution. As such, we respectfully urge you to work towards the following:

- allow the Gulf States, through the Gulf States Marine Fisheries Commission, to act as the entity responsible for providing the stock assessment for the Gulf of Mexico Fishery Management Council for fisheries managed under the Reef Fish Plan;<sup>5</sup>
- direct NMFS – in conjunction with the Gulf States, the Gulf of Mexico Council, and the charter and recreational fishing sectors – to certify existing state programs<sup>6</sup> such as L.A. creel, Mississippi's Tails n' Scares, and Alabama's Snapper Check;

<sup>1</sup> American Sportfishing Association: *The Economic Gains from Reallocating Specific Saltwater Fisheries*. May 12, 2015.

<sup>2</sup> Gulf of Mexico Fishery Management Council: *The History of Recreational Red Snapper Management*. February 16, 2012.

<sup>3</sup> 81 FR 38110. June 13, 2016.

<sup>4</sup> Gulf of Mexico Fishery Management Council: *Framework Action to the Fishery Management Plan for the Reef Fish Resources in the Gulf of Mexico Including Environmental Assessment, Regulatory Impact Review, and Regulatory Flexibility Act Analysis*. March 2015.


<sup>5</sup> H.R. 1335, *Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act*, Section 18, introduced by Congressman Don Young on March 4, 2015.

The Hon. Wilbur Ross  
March 21, 2017  
Page 2

- reevaluate the counting of red snapper mortality that is a result of the removal of offshore oil rigs against the total allowable catch of that fish and from counting those fish toward the quota for U.S. fishermen for the purposes of closing the fishery when the quota has been reached;<sup>7</sup> and
- direct NMFS to expand upon existing partnerships with states to develop best practices for implementing state recreational fisheries programs and to develop guidance that detail best practices for administering state programs.<sup>8</sup>

We welcome the opportunity to work with you on these initial administrative common sense reforms that would greatly improve the science and management of all species in the Gulf, including red snapper. We also respectfully urge you to use any and all means within your purview to ensure that our recreational anglers are afforded the maximum amount of time on the water for the 2017 federal recreational red snapper season.

Sincerely,



Gabeel Graves  
Member of Congress




Randy Weber  
Member of Congress




Bradley Byrne  
Member of Congress



Steven Palazzo  
Member of Congress




Daniel Webster  
Member of Congress



Clay Higgins  
Member of Congress



John Carter  
Member of Congress



Mike Johnson  
Member of Congress

<sup>6</sup> Id. at 5, Sec. 13.  
<sup>7</sup> Id. at 5, Sec. 21.  
<sup>8</sup> Id. at 5, Sec. 17.



Christopher Holmes - NOAA Federal <christopher.holmes@noaa.gov>

**Byrne Letter on Red Snapper**

2 messages

Mon, May 15, 2017 at 5:13 PM

**Topher Holmes** <christopher.holmes@noaa.gov>  
To: Linda Belton <linda.belton@noaa.gov>  
Cc: Robert Moller <robert.moller@noaa.gov>, "Branson, Ross (Federal)" <RBranson@doc.gov>

Hi Linda - Rep. Bradley Byrne's (AL-01) staff sent a co-signed letter on red snapper management, attached, to Earl, Ross, and me. It's addressed to the Secretary, and asks that he re-evaluate the Gulf red snapper season for private anglers.

Since it's addressed to the Secretary, could you please control with Exec Sec?

Co-signed by Repps, Graves, Weber, Palazzo, and Carter (TX).

Thanks!

---  
Christopher (Topher) Holmes  
Congressional Affairs Specialist  
NOAA Office of Legislative and Intergovernmental Affairs  
P: (202) 482-2272 C: (240) 723-6319  
christopher.holmes@noaa.gov

Follow up letter to Secretary Ross.pdf  
957K

**Linda Belton - NOAA Federal** <linda.belton@noaa.gov>  
To: Topher Holmes <christopher.holmes@noaa.gov>

Mon, May 15, 2017 at 5:24 PM

Will do, thanks  
[Quoted text hidden]

---  
Linda D. Belton  
Policy Advisor for Intergovernmental Affairs and Tribal Liaison  
NOAA Office of Legislative and Intergovernmental Affairs  
U.S. Department of Commerce  
1401 Constitution Avenue, NW  
6th Floor, Room 62006RB  
Washington, DC 20230

linda.belton@noaa.gov  
202-482-5447 (office)  
202-302-7148 (mobile)





**Congress of the United States**  
Washington, DC 20515

May 15, 2017

The Honorable Wilbur Ross  
Secretary  
U.S. Department of Commerce  
1401 Constitution Avenue, N.W.  
Washington, D.C. 20230

Dear Mr. Secretary:

We write today to express our disappointment in the recent announcement from the National Marine Fisheries Service (NMFS) of a three day recreational Red Snapper season. It is unacceptable. We ask that you reevaluate this decision and extend the number of days for the 2017 season.

On March 21st, we wrote to you about the importance of access to adequate fishing resources in the Gulf of Mexico, and namely Red Snapper. You responded that the Red Snapper fishery is a high priority for you and your department, and therefore it is time for more than three days.

Our recreational fishermen are being penalized by NOAA for a statistical anomaly. Currently, NOAA's data says that recreational fishermen exceeded last year's quota by 129,906 pounds. However, 129,000 pounds represents less than .02 percent of the recreational quota. This decision has no bearing on the health of the stock, and there is no chance NOAA is representing the number with any degree of accuracy.

At the state level, we continue to see report numbers that do not match NMFS's data, caused by the lack of real-time information. For example, in Alabama, preliminary estimates for 2016 show a total of approximately 821,000 pounds counted by Alabama's Snapper Check Program. NOAA's estimates for the same time show approximately 2 million pounds accounted for. Mississippi's data shows the opposite problem. According to data from Mississippi's Tails n' Scales Program, almost 40,000 pounds were accounted for, yet NOAA's data claims there were zero pounds taken. It is time for recreational anglers to stop being penalized for NOAA's bad science and lack of coordination.

In short, there is serious doubt that federal data is accurately reflecting the number of Red Snapper in the Gulf. For that reason, we feel reevaluating your agency's decision for the 2017 season is warranted, and we urge you to continue working with us to develop a long-term solution to address these issues impacting our recreational fishermen and coastal communities.

Thank you for your attention to this matter. We look forward to hearing from you.



Bradley Byrne  
Member of Congress



Jarrod Graves  
Member of Congress



Randy Weber  
Member of Congress



John Carter  
Member of Congress



Steven Palazzo  
Member of Congress

(b) (5)

4. Roy Crabtree
5. Andy Strelcheck
6. George Kelly
7. Earl Comstock
8. Bonnie Ponwith
9. Patrick Lynch
10. Emily Menashes
11. Benjamin Friedman
12. Lindsey Kraatz

#### Request Scope Clarification and Modification

On July 11, 2017, pursuant to your telephone call with Jack McGovern, Ph.D., Assistant Regional Administrator, Sustainable Fisheries Division, and Beverly Smith, FOIA Coordinator, Southeast Region (SER), you clarified that you seek information regarding the private angler 39-day season and not the 3-day season.

On July 17, 2017, pursuant to his telephone conversation with Ms. Smith, you clarified that that you seek the e-mail records that concern discussions with SER's Information Technology Branch on the set-up of the auto response for the GOM recreational Red Snapper comments e-mail address. You advised that you seek all of these records.

#### FOIA Response Due Date Extension

On July 17, 2017, pursuant to your conversation with Ms. Smith, you agreed to extend the response due date to August 11, 2017.

We have provided the following interim responses to you:

- 70 pages (38 records) on October 12, 2017.
- 69 pages (19 records) on February 13, 2018

This is a third interim response concerning your request.

We are releasing 7 pages (1 record) that are responsive to your request. These records are available to you in FOIAonline and are released in their entirety. Please note that NOAA does not consider a discretionary release to be a waiver of FOIA exemptions.

#### FOIA Processing Fees

You have been granted a full waiver of fees for the processing of this request.

You have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must be received within 90 calendar days of the date of this response letter at the following address:

Assistant General Counsel for Litigation, Employment, and Oversight  
Freedom of Information Act Appeal  
U.S. Department of Commerce  
Office of General Counsel

Room 5875  
14th Street and Constitution Avenue, N.W.  
Washington, DC 20230

An appeal may also be sent by e-mail to [FOIAAppeals@doc.gov](mailto:FOIAAppeals@doc.gov), or by FOIAonline at <https://foiaonline.regulations.gov/foia/action/public/home#>.

For your appeal to be complete, it must include the following items:

- A copy of the original request.
- Our response to your request.
- A statement explaining why the withheld records should be made available, and why the denial of the records was in error.
- “Freedom of Information Act Appeal” must appear on your appeal letter. It should also be written on your envelope, or e-mail subject line.

FOIA appeals posted to the e-mail box, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

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

Office of Government Information Services  
National Archives and Records Administration  
Room 2510  
8601 Adelphi Road  
College Park, MD 20740-6001  
Email: [ogis@nara.gov](mailto:ogis@nara.gov)

Phone: 202-741-5770  
Fax: 202-741-5769  
Toll-free: 1-877-684-6448

If you have any questions regarding this correspondence, please do not hesitate to contact Mark Graff at 727-551-5762 or [mark.graff@noaa.gov](mailto:mark.graff@noaa.gov), or the NOAA FOIA Public Liaison, Robert Swisher, at (301) 628-5755.

Sincerely,

Mark H. Graff  
NOAA FOIA Officer

Enclosure (as stated above)



## Mark Graff - NOAA Federal

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**From:** Mark Graff NOAA Federal  
**Sent:** Tuesday, February 13, 2018 11:36 AM  
**To:** Daniel Pollak NOAA Federal  
**Cc:** Stacey Nathanson NOAA Federal  
**Subject:** NRDC v. EPA (Transition Request)  
**Attachments:** NRDC NOAA Transition Team FOIA (4).pdf; NRDC v. EPA\_ Complaint.pdf

In line with our other discussio (b)(5)

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Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628 5658 (O)  
(b)(6) (C)

Confidentiality Notice: This e mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.





December 22, 2016

Via FOIA Online

**Re: FOIA request for communications between the President-elect's transition team and NOAA staff**

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Commerce regulations at 15 C.F.R. § 4.1-4.11.

**I. Description of Records Sought**

Please produce records<sup>1</sup> the Department of Commerce's possession, custody, or control that are, include, or reflect communications between National Oceanic and Atmospheric Administration's (NOAA's) staff and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Wilbur Ross, Ray Washburne, David Bohigian, Joan Maginnis, George Sifakis, William Gaynor, A. Mark Neuman, and Tom Leppert.

**II. Request for a Fee Waiver**

NRDC requests that NOAA waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 15 C.F.R. § 4.11(l). The requested disclosure would meet both of these

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<sup>1</sup> "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any NOAA office, including, but not limited to, NOAA Headquarters offices, and specifically including NOAA offices in possession of responsive records.

requirements. In addition, NRDC qualifies as “a representative of the news media” entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 15 C.F.R. § 4.11(c)(1), (d).

#### **A. NRDC Satisfies the First Fee Waiver Requirement**

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 15 C.F.R. § 4.11(l)(1)(i). Each of the four factors used by NOAA to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 15 C.F.R. § 4.11(l)(2).

##### *1. Subject of the request*

The records requested here reflect communications between NOAA and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 15 C.F.R. § 4.11(l)(2)(i).

##### *2. Informative value of the information to be disclosed*

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 15 C.F.R. § 4.11(l)(2)(ii). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, [http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html?\\_r=0](http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html?_r=0). There may be similar communications with NOAA that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at NOAA, as further discussed below. However, if NOAA were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

##### *3. Contribution to an understanding of the subject by the public is likely to result from disclosure*

Because NRDC is a “representative of the news media,” as explained in Part II.C below, NOAA must presume that this disclosure is likely to contribute to public understanding of its subject. 15 C.F.R. § 4.11(l)(2)(iii).

However, even if NRDC were not a media requester, NRDC’s expertise in matters concerning NOAA staffing and policy, extensive communications capabilities, and proven

history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject matter. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are "a broad audience of persons interested in the subject" of the transition of power at NOAA, and when combined with NRDC's communications to the public at large, the likely audience of interested persons to be reached is certainly "reasonably broad." 15 C.F.R. § 4.11(l)(2)(iii). As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, “The requirement to rebuild US fish stocks: Is it working?” *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 13);
- Article, “Waves of phony charges over new clean water safeguards,” *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
- Article, “Don’t Buy the Smear of the EPA,” *L.A. Times*, June 3, 2014 (by NRDC President Frances Beinecke) (Att. 15);
- Transcript, “Conservationists Call For Quiet: The Ocean Is Too Loud!” Nat’l Pub. Radio, *All Things Considered*, July 28, 2013 (featuring NRDC Marine Mammal Protection Program Director Michael Jasny) (Att. 16);
- Testimony of David Doniger, NRDC Climate and Air Program Policy Director and Senior Attorney, before the United States House Subcommittee on Energy and Power, June 19, 2012 (Att. 17);
- Article, “Pollution Still a Hazard to U.S. Beaches,” CBS, *CBS NEWS*, July 29, 2009 (featuring former NRDC Water Program Co-Director Nancy Stoner) (Att. 18);
- Conference brochure, “World Business Summit on Climate Change,” May 24-26, 2009 (featuring former NRDC Director for Market Innovation Rick Duke at 9) (Att. 19);
- Article, “Is there a ‘proper level’ of compliance with environmental law?” *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall) (Att. 20);
- NRDC Document Bank, <http://docs.nrdc.org/> (Att. 21).

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 22). *See also* Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing NRDC’s report) (Att. 23).

- (2) NRDC obtained, through FOIA, FDA review documents on the nontherapeutic use of antibiotic additives in livestock and poultry feed. In January 2014, NRDC published a report, titled *Playing Chicken with Antibiotics*, which is based on the documents obtained, and reveals decades of hesitancy on FDA's part to ensure the safety of these drug additives (Att. 24). *See also* P.J. Huffstutter and Brian Grow, "Drug critic slams FDA over antibiotic oversight in meat production," *Reuters*, Jan. 27, 2014 (discussing NRDC's report) (Att. 25).
- (3) NRDC has used White House documents obtained through FOIA and from other sources to inform the public about EPA's decision not to protect wildlife and workers from the pesticide atrazine in the face of industry pressure to keep atrazine on the market. *See Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, <http://www.nrdc.org/health/atrazine/files/atrazine10.pdf> (Apr. 2010) (update to 2009 report) (Att. 26); *see also* William Souder, "It's Not Easy Being Green: Are Weed-Killers Turning Frogs Into Hermaphrodites?" *Harper's Bazaar*, Aug. 1, 2006 (referencing documents obtained and posted online by NRDC) (Att. 27).
- (4) NRDC incorporated information obtained through FOIA into a report, available at <http://www.nrdc.org/wildlife/marine/sound/contents.asp>, on the impacts of military sonar and other industrial noise pollution on marine life. *See Sounding the Depths II: The Rising Toll of Sonar, Shipping and Industrial Ocean Noise on Marine Life* (Nov. 2005) (update to 1999 report) (Att. 28). The report also relied upon and synthesized information from other sources. Since the report's publication, the sonar issue has continued to attract widespread public attention. *See, e.g.*, "Protest Raised over New Tests of Naval Sonar," *Nat'l Pub. Radio, All Things Considered*, July 24, 2007 (transcript at Att. 29).
- (5) NRDC scientists have used information obtained through FOIA to publish analyses of the United States' and other nations' nuclear weapons programs. In 2004, for example, NRDC scientists incorporated information obtained through FOIA into a feature article on the United States' plans to deploy a ballistic missile system and the implications for global security. *See* Hans M. Kristensen, Matthew G. McKinzie, and Robert S. Norris, "The Protection Paradox," *Bulletin of Atomic Scientists*, Mar./Apr. 2004 (Att. 30).
- (6) NRDC obtained through FOIA, and made public, records of the operations of the Bush administration's Energy Task Force, along with analysis of selected excerpts and links to the administration's index of withheld documents (Att. 31). NRDC's efforts cast light on an issue of considerable public interest. *See, e.g.*, Elizabeth Shogren, "Bush Gets One-Two Punch on Energy," *L.A. Times*, Mar. 28, 2002, at A22 (Att. 32).

- (7) Through FOIA, NRDC obtained a memorandum by ExxonMobil, advocating the replacement of the sitting head of the Intergovernmental Panel on Climate Change, and used the document to help inform the public about what may have been behind the Bush administration's decision to replace Dr. Robert Watson. See NRDC Press Release and attached Exxon memorandum, "Confidential Papers Show Exxon Hand in White House Move to Oust Top Scientist from International Global Warming Panel," Apr. 3, 2002 (Att. 33); Elizabeth Shogren, "Charges Fly Over Science Panel Pick," *L.A. Times*, Apr. 4, 2002, at A19 (Att. 34).
- (8) Through FOIA and other sources, NRDC obtained information on nationwide levels of arsenic in drinking water and used it in a report, *Arsenic and Old Laws* (2000), available in print and online at <http://www.nrdc.org/water/drinking/arsenic/aolinx.asp> (Att. 35). The report guided interested members of the public on how to learn more about arsenic in their own drinking water supplies. *Id.*; see also Steve LaRue, "EPA Aims to Cut Levels of Arsenic in Well Water," *San Diego Union-Tribune*, June 5, 2000, at B1 (referencing NRDC report) (Att. 36).<sup>2</sup>

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public's understanding of the subject.

#### 4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: the transition of power at NOAA and the communications between the President-elect's transition team and NOAA staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate NOAA's response to any such requests. Thus, disclosure here would significantly contribute to the public's understanding of government operations or activities. See 15 C.F.R. § 4.11(l)(2)(iv).

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<sup>2</sup> There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, "Science Panel Issues Report on Exposure to Pollutant," *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, "Draft of Air Rule is Said to Exempt Many Old Plants," *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., "E-Mail Suggests Energy Official Encouraged Lobbyist on Policy," *N.Y. Times*, Apr. 27, 2002 (Att. 39).

## B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 15 C.F.R. § 4.11(l)(1)(ii). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env’tl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by NOAA on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

## C. NRDC Is a Media Requester

Even if NOAA denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and the Department of Commerce FOIA regulations, 15 C.F.R. § 4.11(c), (d); see also 15 C.F.R. § 4.11(b)(6) (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep’t of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. See 15 C.F.R. § 4.11(b)(6) (stating that examples of news media include . . . publishers of periodicals). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. See OPEN Government Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and

media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).<sup>3</sup>

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

### III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with the Department of Commerce’s FOIA regulations for all or a portion of the requested records. *See* 15 C.F.R. § 4.11. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

### IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; NOAA’s search for—or deliberations concerning—certain records should not delay the production of others that NOAA has already retrieved and elected to produce. *See generally* 15 C.F.R. § 4.7. If NOAA concludes that any of the records requested here are publicly available, please let me know.

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<sup>3</sup> To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.



Please do not hesitate to call or email with questions. Thank you.

Sincerely,

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415-875-6184

Enclosures (sent via FOIA Online):

Attachments 1 through 42 (single .pdf file)

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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NATURAL RESOURCES DEFENSE  
COUNCIL, INC.,

Plaintiff,

v.

U.S. ENVIRONMENTAL PROTECTION  
AGENCY; U.S. FOOD AND DRUG  
ADMINISTRATION; NATIONAL  
OCEANIC AND ATMOSPHERIC  
ADMINISTRATION; WHITE HOUSE  
OFFICE OF MANAGEMENT AND  
BUDGET; U.S. DEPARTMENT OF THE  
INTERIOR; BUREAU OF LAND  
MANAGEMENT; BUREAU OF  
RECLAMATION; U.S. FISH AND  
WILDLIFE SERVICE; OFFICE OF  
SURFACE MINING RECLAMATION  
AND ENFORCEMENT; U.S. FOREST  
SERVICE; and U.S. DEPARTMENT OF  
JUSTICE,

Defendants.

Case No. 17-cv-4084  
ECF Case

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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

## INTRODUCTION

1. Plaintiff Natural Resources Defense Council, Inc. (NRDC) brings this suit to compel the federal government to disclose communications between then-President-elect Donald Trump's transition team and several federal agencies charged with safeguarding the environment and public health. The defendant agencies' failure to release responsive records violates the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and deprives the public of critical information regarding the administration's policies with respect to implementation and enforcement of bedrock health and environmental laws.

2. The transition of power from one President to another is a pivotal time in our democratic system. During this period, the incoming administration sets the foundation for future policymaking, integrates the new President's likely appointees, and ensures the continuation of vital federal functions. The transition is primarily paid for by American taxpayers.

3. Between the November 2016 election and Trump's inauguration in January 2017, members of Trump's transition team communicated with federal agency officials to gather information and lay the groundwork for the new administration's policy priorities. In early December 2016, the Washington Post reported that the transition team asked the Department of Energy for a list of names of employees who had participated in international climate talks or worked

on domestic efforts to cut carbon output.<sup>1</sup> Approximately a week after that, the Post reported that the Trump transition team requested that the Department of State report how much money the department contributes annually to “international environmental organizations in which the department participates.”<sup>2</sup>

4. The press has also reported that the Trump transition team included “secret” members who played a role in defining the Trump administration’s priorities and producing an “action plan” for the U.S. Environmental Protection Agency.<sup>3</sup> Climate change denier and JunkScience.com attorney-blogger Steve Milloy was one of the “secret” members.<sup>4</sup>

5. To date, most of the activities of Trump’s transition team and the list of “secret” members comprising the team have not been publicly disclosed.

6. On December 22 and 23, 2016, NRDC submitted FOIA requests to several federal agencies seeking records of their communications with Trump’s transition team. These agencies include: U.S. Environmental Protection Agency; U.S. Food and Drug Administration; National Oceanic and Atmospheric Administration; White House Office of Management and Budget; U.S. Department

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<sup>1</sup> Steven Mufson & Juliet Eilperin, *Trump transition team for Energy Department seeks names of employees involved in climate meetings*, Wash. Post (Dec. 9, 2016), <http://wapo.st/2hbSDU0?tid=ss tw&utm term=.605e7ffea158>.

<sup>2</sup> Juliet Eilperin & Carol Morello, *Trump team asks State Dept. what it spends on international environmental efforts*, Wash. Post (Dec. 20, 2016), <http://wapo.st/2hnfZpb?tid=ss tw&utm term=.4a2e9aed48f4>.

<sup>3</sup> Sean Reilly & Amanda Reilly, *Trump team kept some transition members secret*, E&E News (Feb. 24, 2017), <https://www.eenews.net/stories/1060050546/>.

<sup>4</sup> *Id.*

of the Interior and certain of its components and agencies; U.S. Forest Service; and U.S. Department of Justice.

7. The agencies' responses to NRDC's FOIA requests are past due. Agencies are generally required to respond to FOIA requests within twenty working days. *See* 5 U.S.C. § 552(a)(6)(A)(i). The twentieth working day following NRDC's submission of its FOIA requests was January 24, 2017 (for requests sent by e-mail on December 22, 2016); January 25, 2017 (for requests sent by e-mail on December 23, 2016); or January 27, 2017 (for a request sent by certified mail on December 22, 2016, and received by the agency on December 28, 2016).

8. In "unusual circumstances," an agency may extend this time limit by up to ten working days. *Id.* § 552(a)(6)(B)(i). The thirtieth working day following NRDC's submission of its FOIA requests was February 7, 2017 (for requests sent by e-mail on December 22, 2016); February 8, 2017 (for requests sent by e-mail on December 23, 2016); or February 10, 2017 (for a request sent by certified mail on December 22, 2016, and received by the agency on December 28, 2016). In some "unusual circumstances," an agency may ask that a FOIA requester narrow a request or agree to a longer response schedule. *See id.* § 552(a)(6)(B)(ii). NRDC has not agreed to a longer schedule with any of the agencies, and no unusual circumstances justify the agencies' continuing failure to provide final responses.

9. Long after these statutory deadlines passed, only one of the defendant agencies has started to produce responsive records. None of the defendant agencies

has provided a final response indicating whether and why records are being withheld.

10. The public has a pressing interest in the Trump administration's efforts to redirect the activities of federal agencies. The failure to release responsive records violates FOIA and deprives the public of critical information regarding the administration's assaults on the nation's bedrock health and environmental laws.

11. NRDC is entitled to immediate processing of its FOIA requests and the release of all responsive records.

#### JURISDICTION AND VENUE

12. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

13. Venue is proper in this district because plaintiff NRDC resides and has its principal place of business in this judicial district. 5 U.S.C. § 552(a)(4)(B).

#### PARTIES

14. Plaintiff NRDC is a national, not-for-profit environmental and public health membership organization with hundreds of thousands of members nationwide. NRDC engages in research, advocacy, public education, and litigation related to protecting public health and the environment. NRDC also publishes in several media channels, including online and in print, and regularly communicates newsworthy information to the public, including information obtained under FOIA.

15. Defendant U.S. Environmental Protection Agency (EPA) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

16. Defendant U.S. Food and Drug Administration (FDA) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

17. Defendant National Oceanic and Atmospheric Administration (NOAA) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

18. Defendant White House Office of Management and Budget (OMB) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

19. Defendant U.S. Department of the Interior (DOI) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks. The Office of the Secretary of the Department of the Interior is a component of DOI. The Office of the Solicitor of the Department of the Interior is a component of DOI.

20. Defendant Bureau of Land Management (BLM) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

21. Defendant Bureau of Reclamation (Reclamation) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

22. Defendant U.S. Fish and Wildlife Service (Wildlife Service) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

23. Defendant Office of Surface Mining Reclamation and Enforcement (Surface Mining) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

24. Defendant U.S. Forest Service (Forest Service) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

25. Defendant U.S. Department of Justice (DOJ) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks. The Environment and Natural Resources Division of the Department of Justice is a component of DOJ.

#### FACTUAL BACKGROUND

26. On December 22, 2016, as detailed below, NRDC filed FOIA requests with EPA, FDA, NOAA, and OMB, for records in each agency's possession, custody, or control that are, include, or reflect communications between agency staff and any member of the transition team of President-elect Donald Trump or Vice-President-elect Mike Pence. Each request explained that "transition team(s)" includes, but is



not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 *note*. These requests were submitted via an online FOIA portal or sent by certified mail, in accordance with each agency's FOIA regulations and guidance.

27. NRDC submitted a FOIA request to EPA via EPA's online FOIA portal on December 22, 2016 (Att. A). EPA's final response was due by January 24, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 40 C.F.R. § 2.104(a). EPA granted NRDC's fee waiver request on December 29, 2016. On January 17, 2017, EPA notified NRDC that it needed an extension until February 13 for its response. On February 9, 2017, EPA notified NRDC that EPA needed another extension of time. NRDC did not agree to either request. EPA's February 9, 2017 email stated that "it is difficult to predict with certainty how many records may be involved," but "EPA estimates it will be able to complete an initial records search and retrieval for your request by 31 March 2017" and that "[o]f course, we will be working diligently on the request and will provide information to you on a rolling basis, if necessary." In a letter dated March 1, 2017, and transmitted to NRDC by email on March 6, 2017, EPA produced certain materials and reiterated its estimate that it would complete its records search and retrieval by March 31, 2017. EPA's online FOIA portal continues to list March 31, 2017, as the agency's "estimated date of completion."<sup>5</sup> Almost two months after that date, EPA still has not provided a final response to NRDC's FOIA request.

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<sup>5</sup> *See* FOIA Online, <https://foiaonline.regulations.gov/foia/action/public/view/request?objectId=090004d2810b9e80#> (last accessed May 31, 2017).

28. NRDC submitted a FOIA request to FDA via the agency's online FOIA portal on December 22, 2016 (Att. B). FDA's final response was due by January 24, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 21 C.F.R. § 20.41(b). FDA has not sent a final response to NRDC's FOIA request or produced any records.

29. NRDC submitted a FOIA request to NOAA via the agency's online FOIA portal on December 22, 2016 (Att. C). NOAA's final response was due by January 24, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 15 C.F.R. § 4.6(b). NOAA granted NRDC's fee waiver request on January 5, 2017. On February 21, 2017, NOAA sent NRDC an email indicating that the tracking number for the FOIA request had been changed, "which is normally due to the request being transferred to another agency." Neither NOAA nor the Department of Commerce, the cabinet-level agency under which NOAA is housed, has sent a final response to NRDC's request or produced any records.

30. NRDC submitted a FOIA request to OMB via certified mail on December 22, 2016 (Att. D). OMB received the request on December 28, 2016 (Att. E), and its final response was due by January 27, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 5 C.F.R. § 1303.10(c). (The U.S. Postal Service confirmed delivery on December 28, 2016. The certified mail return receipt is signed January 12, 2017 (Att. F).) On January 13, 2017, OMB sent NRDC an e-mail indicating that the FOIA request had been logged. OMB has not sent a final response to NRDC's request or produced any records.

31. On December 23, 2016, as detailed below, NRDC filed FOIA requests with the Department of the Interior and several of its components and agencies (including BLM, Reclamation, Wildlife Service, Surface Mining, and the Office of the Solicitor), the Forest Service, and DOJ, for records in each agency's possession, custody, or control that are, include, or reflect communications between agency staff and any member of the transition team of President-elect Donald Trump or Vice-President-elect Mike Pence. Each request explained that "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 *note*. These FOIA requests were sent by e-mail or certified mail, in accordance with each agency's FOIA regulations and guidance.

32. NRDC submitted a FOIA request to BLM via e-mail on December 23, 2016 (Att. G). BLM's final response was due by January 25, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 43 C.F.R. § 2.16. On December 28, 2016, BLM informed NRDC that the FOIA request was designated as "Normal track," meaning it "can be processed in six to twenty workdays." BLM has not sent a final response to NRDC's request or produced any records. *See* 43 C.F.R. § 2.24.

33. NRDC submitted a FOIA request to Reclamation via e-mail on December 23, 2016 (Att. H). Reclamation's final response was due by January 25, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 43 C.F.R. § 2.16. On December 28, 2016, Reclamation informed NRDC that the request was placed on the "Complex" track for processing "in twenty-one to sixty workdays." On January 25, 2017, Reclamation

informed NRDC that the FOIA request was being consolidated with others and referred to the DOI Office of the Secretary. Neither Reclamation nor the DOI Office of the Secretary has sent a final response to NRDC's request or produced any records. *See* 43 C.F.R. §§ 2.13, 2.16(b).

34. NRDC submitted a FOIA request to Wildlife Service via e-mail on December 23, 2016 (Att. I). Wildlife Service's final response was due by January 25, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 43 C.F.R. § 2.16. On December 27, 2016, Wildlife Service informed NRDC that the FOIA request was being consolidated with others and referred to the DOI Office of the Secretary. Neither Wildlife Service nor the DOI Office of the Secretary has sent a final response to NRDC's request or produced any records. *See* 43 C.F.R. §§ 2.13, 2.16(b).

35. NRDC submitted a FOIA request to Surface Mining via e-mail on December 23, 2016 (Att. J). Surface Mining's final response was due by January 25, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 43 C.F.R. § 2.16. Surface Mining has not sent a final response to NRDC's request or produced any records.

36. NRDC submitted a FOIA request to the DOI Office of the Solicitor (DOI-Solicitor) via e-mail on December 23, 2016 (Att. K). DOI-Solicitor's final response was due by January 25, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 43 C.F.R. § 2.16. DOI-Solicitor notified NRDC on December 28, 2016, that NRDC was being classified as an "other use" requester under 43 C.F.R. § 2.39, and that the agency may charge for duplication fees but would not charge review costs. On January 6, 2017, DOI-Solicitor informed NRDC that the DOI Office of the Secretary would be responding

on its behalf to this request. Neither DOI-Solicitor nor the DOI Office of the Secretary has sent a final response to NRDC's request or produced any records. *See id.* § 2.24.

37. NRDC submitted a FOIA request to the Forest Service via e-mail on December 23, 2016 (Att. L). The Forest Service's final response was due by January 25, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 7 C.F.R. § 1.7(a). On January 6, 2017, the Forest Service notified NRDC that the agency was referring the request to the U.S. Department of Agriculture's FOIA Service Center. NRDC exchanged several e-mails with a U.S. Department of Agriculture employee in January and February, clarifying the scope of the FOIA request. Neither the Forest Service nor the U.S. Department of Agriculture has sent a final response to NRDC's request or produced any records.

38. NRDC submitted a FOIA request to DOJ, through DOJ's Environment and Natural Resources Division, via e-mail on December 23, 2016 (Att. M). DOJ's final response was due by January 25, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 28 C.F.R. § 16.5(c). DOJ has not sent a final response to NRDC's request or produced any records.

39. With each of these FOIA requests, NRDC sought from each agency a waiver of document search, review, and duplication fees on the grounds that disclosure of the requested records is in the public interest because it is "likely to contribute significantly to public understanding of the operations or activities of the government" and is not in NRDC's commercial interest. 5 U.S.C. § 552(a)(4)(A)(iii);

*see also* 40 C.F.R. § 2.107(*l*) (EPA); 21 C.F.R. § 20.46 (FDA); 15 C.F.R. 4.11(*l*) (NOAA); 5 C.F.R. § 1303.70 (OMB); 43 C.F.R. § 2.45 (DOI); 7 C.F.R. pt. 1, subpart A, app. A, § 6 (Forest Service); 28 C.F.R. § 16.10(k) (DOJ).

40. NRDC also sought a fee waiver because it qualifies as a “representative of the news media” and the records are not for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 40 C.F.R. § 2.107(b)(6), (c)(1)(iii) (EPA); 21 C.F.R. § 20.45(a)(2) (FDA); 15 C.F.R. § 4.11(b)(6), (c) (NOAA); 5 C.F.R. § 1303.50(c) (OMB); 43 C.F.R. §§ 2.39, 2.70 (DOI); 7 C.F.R. pt. 1, subpart A, app. A, § 5(c) (Forest Service); 28 C.F.R. § 16.10(b)(6), (c) (DOJ).

#### CLAIM FOR RELIEF

41. Plaintiff incorporates by reference all preceding paragraphs.

42. NRDC has a statutory right under FOIA to obtain immediately all records responsive to its requests that are not exempt from disclosure.

43. Each defendant agency has violated its statutory duty under FOIA, 5 U.S.C. § 552(a), and the applicable implementing regulations, to release all non-exempt, responsive records to NRDC.

44. Each defendant agency has violated its statutory duty under FOIA, 5 U.S.C. § 552(a)(3)(C), to make a reasonable effort to search for responsive records.

45. Because the defendant agencies failed to comply with FOIA’s statutory deadlines, NRDC has a right to obtain responsive records without being assessed any search or duplication fees. 5 U.S.C. § 552(a)(4)(A)(viii)(I).

## REQUEST FOR RELIEF

NRDC respectfully requests that the Court enter judgment against the defendant agencies as follows:

- A. Declaring that the agencies have violated FOIA by failing to produce non-exempt records responsive to NRDC's FOIA requests by the statutory deadlines;
- B. Ordering the agencies to disclose the requested records to NRDC without further delay, and without charging search or duplication costs;
- C. Ordering defendants FDA, OMB, BLM, Reclamation, Wildlife Service, Surface Mining, Forest Service, and DOJ, to grant NRDC's fee waiver requests;
- D. Retaining jurisdiction over this case to rule on any assertions by any agency that certain responsive records are exempt from disclosure;
- E. Ordering the agencies to produce an index identifying any documents or parts thereof that the agencies withheld and the basis for the withholding, in the event that any agency determines that certain responsive records are exempt from disclosure;
- F. Awarding NRDC its costs and reasonable attorneys' fees; and
- G. Granting such other relief that the Court considers just and proper.

Dated: May 31, 2017

Respectfully submitted,

*/s/ Vivian H.W. Wang*

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Counsel for Plaintiff



## Attachment A

# NRDC

December 22, 2016

## Via FOIA Online

**Re: FOIA request for communications between the President-elect's transition team and EPA staff**

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Environmental Protection Agency (EPA) regulations at 40 C.F.R. § 2.100-2.406.

### **I. Description of Records Sought**

Please produce records<sup>1</sup> in EPA's possession, custody, or control that are, include, or reflect communications between EPA staff and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Scott Pruitt, Myron Ebell, David Kreutzer, Austin Lipari, David Schnare, David Stevenson, George Sugiyama, Amy Oliver Cooke, Christopher Horner, and Harlan Watson.

### **II. Request for a Fee Waiver**

NRDC requests that EPA waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 40 C.F.R. § 2.107(l)(1). The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled

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<sup>1</sup> "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any EPA office, including, but not limited to, EPA Headquarters offices, and specifically including EPA offices in possession of responsive records.

to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 40 C.F.R. § 2.107(c)(1)(iii).

**A. NRDC Satisfies the First Fee Waiver Requirement**

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(l)(1). Each of the four factors used by EPA to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 40 C.F.R. § 2.107(l)(2).

*1. Subject of the request*

The records requested here reflect communications between EPA and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 40 C.F.R. § 2.107(l)(2)(i).

*2. Informative value of the information to be disclosed*

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 40 C.F.R. § 2.107(l)(2)(ii). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, [http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html?\\_r=0](http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html?_r=0). There may be similar communications with EPA that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at EPA, as further discussed below. However, if EPA were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

*3. Contribution to an understanding of the subject by the public is likely to result from disclosure*

Because NRDC is a “representative of the news media,” as explained in Part II.C below, EPA must presume that this disclosure is likely to contribute to public understanding of its subject. 40 C.F.R. § 2.107(l)(2)(iii).

However, even if NRDC were not a media requester, NRDC’s expertise in matters concerning EPA staffing and policy, extensive communications capabilities, and proven history

of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject matter. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are "a broad audience of persons interested in the subject" of the transition of power at EPA, 40 C.F.R. § 2.107(l)(2)(iii), and when combined with NRDC's communications to the public at large, the likely audience of interested persons to be reached is certainly "reasonably broad." 40 C.F.R. § 2.107(l)(2)(iii). As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, “The requirement to rebuild US fish stocks: Is it working?” *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 13);
- Article, “Waves of phony charges over new clean water safeguards,” *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
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- Testimony of David Doniger, NRDC Climate and Air Program Policy Director and Senior Attorney, before the United States House Subcommittee on Energy and Power, June 19, 2012 (Att. 17);
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NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 22). *See also* Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing NRDC’s report) (Att. 23).

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- (3) NRDC has used White House documents obtained through FOIA and from other sources to inform the public about EPA's decision not to protect wildlife and workers from the pesticide atrazine in the face of industry pressure to keep atrazine on the market. *See Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, <http://www.nrdc.org/health/atrazine/files/atrazine10.pdf> (Apr. 2010) (update to 2009 report) (Att. 26); *see also* William Souder, "It's Not Easy Being Green: Are Weed-Killers Turning Frogs Into Hermaphrodites?" *Harper's Bazaar*, Aug. 1, 2006 (referencing documents obtained and posted online by NRDC) (Att. 27).
- (4) NRDC incorporated information obtained through FOIA into a report, available at <http://www.nrdc.org/wildlife/marine/sound/contents.asp>, on the impacts of military sonar and other industrial noise pollution on marine life. *See Sounding the Depths II: The Rising Toll of Sonar, Shipping and Industrial Ocean Noise on Marine Life* (Nov. 2005) (update to 1999 report) (Att. 28). The report also relied upon and synthesized information from other sources. Since the report's publication, the sonar issue has continued to attract widespread public attention. *See, e.g.*, "Protest Raised over New Tests of Naval Sonar," *Nat'l Pub. Radio, All Things Considered*, July 24, 2007 (transcript at Att. 29).
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- (7) Through FOIA, NRDC obtained a memorandum by ExxonMobil, advocating the replacement of the sitting head of the Intergovernmental Panel on Climate Change, and used the document to help inform the public about what may have been behind the Bush administration's decision to replace Dr. Robert Watson. See NRDC Press Release and attached Exxon memorandum, "Confidential Papers Show Exxon Hand in White House Move to Oust Top Scientist from International Global Warming Panel," Apr. 3, 2002 (Att. 33); Elizabeth Shogren, "Charges Fly Over Science Panel Pick," *L.A. Times*, Apr. 4, 2002, at A19 (Att. 34).
- (8) Through FOIA and other sources, NRDC obtained information on nationwide levels of arsenic in drinking water and used it in a report, *Arsenic and Old Laws* (2000), available in print and online at <http://www.nrdc.org/water/drinking/arsenic/aolinx.asp> (Att. 35). The report guided interested members of the public on how to learn more about arsenic in their own drinking water supplies. *Id.*; see also Steve LaRue, "EPA Aims to Cut Levels of Arsenic in Well Water," *San Diego Union-Tribune*, June 5, 2000, at B1 (referencing NRDC report) (Att. 36).<sup>2</sup>

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public's understanding of the subject.

#### 4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: the transition of power at EPA and the communications between the President-elect's transition team and EPA staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate EPA's response to any such requests. Thus, disclosure here would significantly contribute to the public's understanding of government operations or activities. 40 C.F.R. § 2.107(l)(2)(iv).

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<sup>2</sup> There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, "Science Panel Issues Report on Exposure to Pollutant," *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, "Draft of Air Rule is Said to Exempt Many Old Plants," *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., "E-Mail Suggests Energy Official Encouraged Lobbyist on Policy," *N.Y. Times*, Apr. 27, 2002 (Att. 39).

## B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(l)(1), (3). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env'tl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by EPA on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

## C. NRDC Is a Media Requester

Even if EPA denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and EPA's FOIA regulations, 40 C.F.R. § 2.107(c)(1)(iii); see also 40 C.F.R. § 2.107(b)(6) (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep't of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. See 40 C.F.R. § 2.107(b)(6) (“Examples of news media include . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. See OPEN Government Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and



media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).<sup>3</sup>

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

### III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with EPA’s FOIA regulations at 40 C.F.R. § 2.107(c)(1)(iv) for all or a portion of the requested records. *See* 40 C.F.R. § 2.107(l)(4). Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

### IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; EPA’s search for—or deliberations concerning—certain records should not delay the production of others that EPA has already retrieved and elected to produce. *See generally* 40 C.F.R. § 2.104. If EPA concludes that any of the records requested here are publicly available, please let me know.

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<sup>3</sup> To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange  
Staff Attorney  
Natural Resources Defense Council, Inc.  
111 Sutter St., 21st Floor  
San Francisco, CA 94104  
[jprange@nrdc.org](mailto:jprange@nrdc.org)  
415-875-6184

Enclosures (sent via FOIA Online):

Attachments 1 through 42 (single .pdf file)

## Attachment B



December 22, 2016

Via Online FDA FOIA Portal

Re: FOIA request for communications between the President-elect's transition team and FDA staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Food and Drug Administration (FDA) regulations at 21 C.F.R. § 20.1-20.120.

**I. Description of Records Sought**

Please produce records<sup>1</sup> in FDA's possession, custody, or control that are, include, or reflect communications between FDA staff in the Office of Foods and Veterinary Medicine (including the Center for Food Safety and Applied Nutrition and the Center for Veterinary Medicine) and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Peter Thiel, Marie Meszaros, John Brooks, Andrew Bremberg, Renee Amooore, Scott Gottlieb, Eric Hargan, Nina Owcharenko Schaefer, Kamran Daravi, Ed Haislmaier, Maggie Wynne, and Paula Stannard.

**II. Request for a Fee Waiver**

NRDC requests that FDA waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 21 C.F.R. § 20.46(a). The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 21 C.F.R. § 20.45(a)(2).

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<sup>1</sup> "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any FDA office, including, but not limited to, FDA Headquarters offices, and specifically including FDA offices in possession of responsive records.

**A. NRDC Satisfies the First Fee Waiver Requirement**

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 21 C.F.R. § 20.46(a)(1). Each of the four factors used by FDA to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 21 C.F.R. § 20.46(b).

*1. Subject of the request*

The records requested here reflect communications between FDA and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 21 C.F.R. § 20.46(b)(1).

*2. Informative value of the information to be disclosed*

The requested records would “reveal any meaningful information about Government operations or activities that is not already public knowledge.” 21 C.F.R. § 20.46(b)(2). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, [http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html?\\_r=0](http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html?_r=0). There may be similar communications with FDA that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at FDA, as further discussed below. However, if FDA were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

*3. Contribution to an understanding of the subject by the public is likely to result from disclosure*

Because NRDC is a “representative of the news media,” as explained in Part II.C below, that is sufficient evidence that this disclosure is likely to contribute to public understanding of its subject. 21 C.F.R. § 20.46(b)(3).

However, even if NRDC were not a media requester, NRDC’s expertise in matters concerning FDA staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the

records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject matter. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request. *See* 21 C.F.R. § 20.46(b)(3).

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, “The requirement to rebuild US fish stocks: Is it working?” *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 13);
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Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate FDA’s response to any such requests. Thus, disclosure here would significantly contribute to the public’s understanding of government operations or activities. 21 C.F.R. § 20.46(b)(4).

#### **B. NRDC Satisfies the Second Fee Waiver Requirement**

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 21 C.F.R. § 20.46(c). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res.*

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<sup>2</sup> There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, “Science Panel Issues Report on Exposure to Pollutant,” *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, “Draft of Air Rule is Said to Exempt Many Old Plants,” *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., “E-Mail Suggests Energy Official Encouraged Lobbyist on Policy,” *N.Y. Times*, Apr. 27, 2002 (Att. 39).

*Def. Council v. United States Envtl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by FDA on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

### C. NRDC Is a Media Requester

Even if FDA denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and FDA's FOIA regulations, 21 C.F.R. § 20.45(a)(2). A representative of the news media is "any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii); *see also Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a "non-profit public interest organization" qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep't of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on "Twitter" and "Facebook," and through content distributed to outlets such as Medium. *See* OPEN Government Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that "as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities"). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements "are regularly

granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the ACLU).<sup>3</sup>

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

### III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with FDA’s FOIA regulations for all or a portion of the requested records. *See* 21 C.F.R. § 20.45. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

### IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; FDA’s search for—or deliberations concerning—certain records should not delay the production of others that FDA has already retrieved and elected to produce. *See generally* 21 C.F.R. § 20.22, 20.43. If FDA concludes that any of the records requested here are publicly available, please let me know.

Please do not hesitate to call or email with questions. Thank you.

Sincerely,

Jaclyn H. Prange, Staff Attorney  
Natural Resources Defense Council, Inc.  
111 Sutter St., 21st Floor  
San Francisco, CA 94104  
[jprange@nrdc.org](mailto:jprange@nrdc.org), 415-875-6184

Enclosures (sent via FOIA Online): Attachments 1 through 42 (single .pdf file)

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<sup>3</sup> To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media.

## Attachment C



December 22, 2016

Via FOIA Online

**Re: FOIA request for communications between the President-elect's transition team and NOAA staff**

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Commerce regulations at 15 C.F.R. § 4.1-4.11.

**I. Description of Records Sought**

Please produce records<sup>1</sup> the Department of Commerce's possession, custody, or control that are, include, or reflect communications between National Oceanic and Atmospheric Administration's (NOAA's) staff and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Wilbur Ross, Ray Washburne, David Bohigian, Joan Maginnis, George Sifakis, William Gaynor, A. Mark Neuman, and Tom Leppert.

**II. Request for a Fee Waiver**

NRDC requests that NOAA waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 15 C.F.R. § 4.11(l). The requested disclosure would meet both of these

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<sup>1</sup> "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any NOAA office, including, but not limited to, NOAA Headquarters offices, and specifically including NOAA offices in possession of responsive records.

requirements. In addition, NRDC qualifies as “a representative of the news media” entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 15 C.F.R. § 4.11(c)(1), (d).

#### A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 15 C.F.R. § 4.11(l)(1)(i). Each of the four factors used by NOAA to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 15 C.F.R. § 4.11(l)(2).

##### 1. *Subject of the request*

The records requested here reflect communications between NOAA and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 15 C.F.R. § 4.11(l)(2)(i).

##### 2. *Informative value of the information to be disclosed*

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 15 C.F.R. § 4.11(l)(2)(ii). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, [http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html?\\_r=0](http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html?_r=0). There may be similar communications with NOAA that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at NOAA, as further discussed below. However, if NOAA were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

##### 3. *Contribution to an understanding of the subject by the public is likely to result from disclosure*

Because NRDC is a “representative of the news media,” as explained in Part II.C below, NOAA must presume that this disclosure is likely to contribute to public understanding of its subject. 15 C.F.R. § 4.11(l)(2)(iii).

However, even if NRDC were not a media requester, NRDC’s expertise in matters concerning NOAA staffing and policy, extensive communications capabilities, and proven



history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject matter. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are "a broad audience of persons interested in the subject" of the transition of power at NOAA, and when combined with NRDC's communications to the public at large, the likely audience of interested persons to be reached is certainly "reasonably broad." 15 C.F.R. § 4.11(l)(2)(iii). As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, “The requirement to rebuild US fish stocks: Is it working?” *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 13);
- Article, “Waves of phony charges over new clean water safeguards,” *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
- Article, “Don’t Buy the Smear of the EPA,” *L.A. Times*, June 3, 2014 (by NRDC President Frances Beinecke) (Att. 15);
- Transcript, “Conservationists Call For Quiet: The Ocean Is Too Loud!” Nat’l Pub. Radio, *All Things Considered*, July 28, 2013 (featuring NRDC Marine Mammal Protection Program Director Michael Jasny) (Att. 16);
- Testimony of David Doniger, NRDC Climate and Air Program Policy Director and Senior Attorney, before the United States House Subcommittee on Energy and Power, June 19, 2012 (Att. 17);
- Article, “Pollution Still a Hazard to U.S. Beaches,” CBS, *CBS NEWS*, July 29, 2009 (featuring former NRDC Water Program Co-Director Nancy Stoner) (Att. 18);
- Conference brochure, “World Business Summit on Climate Change,” May 24-26, 2009 (featuring former NRDC Director for Market Innovation Rick Duke at 9) (Att. 19);
- Article, “Is there a ‘proper level’ of compliance with environmental law?” *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall) (Att. 20);
- NRDC Document Bank, <http://docs.nrdc.org/> (Att. 21).

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 22). *See also* Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing NRDC’s report) (Att. 23).



- (2) NRDC obtained, through FOIA, FDA review documents on the nontherapeutic use of antibiotic additives in livestock and poultry feed. In January 2014, NRDC published a report, titled *Playing Chicken with Antibiotics*, which is based on the documents obtained, and reveals decades of hesitancy on FDA's part to ensure the safety of these drug additives (Att. 24). *See also* P.J. Huffstutter and Brian Grow, "Drug critic slams FDA over antibiotic oversight in meat production," *Reuters*, Jan. 27, 2014 (discussing NRDC's report) (Att. 25).
- (3) NRDC has used White House documents obtained through FOIA and from other sources to inform the public about EPA's decision not to protect wildlife and workers from the pesticide atrazine in the face of industry pressure to keep atrazine on the market. *See Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, <http://www.nrdc.org/health/atrazine/files/atrazine10.pdf> (Apr. 2010) (update to 2009 report) (Att. 26); *see also* William Souder, "It's Not Easy Being Green: Are Weed-Killers Turning Frogs Into Hermaphrodites?" *Harper's Bazaar*, Aug. 1, 2006 (referencing documents obtained and posted online by NRDC) (Att. 27).
- (4) NRDC incorporated information obtained through FOIA into a report, available at <http://www.nrdc.org/wildlife/marine/sound/contents.asp>, on the impacts of military sonar and other industrial noise pollution on marine life. *See Sounding the Depths II: The Rising Toll of Sonar, Shipping and Industrial Ocean Noise on Marine Life* (Nov. 2005) (update to 1999 report) (Att. 28). The report also relied upon and synthesized information from other sources. Since the report's publication, the sonar issue has continued to attract widespread public attention. *See, e.g.*, "Protest Raised over New Tests of Naval Sonar," *Nat'l Pub. Radio, All Things Considered*, July 24, 2007 (transcript at Att. 29).
- (5) NRDC scientists have used information obtained through FOIA to publish analyses of the United States' and other nations' nuclear weapons programs. In 2004, for example, NRDC scientists incorporated information obtained through FOIA into a feature article on the United States' plans to deploy a ballistic missile system and the implications for global security. *See* Hans M. Kristensen, Matthew G. McKinzie, and Robert S. Norris, "The Protection Paradox," *Bulletin of Atomic Scientists*, Mar./Apr. 2004 (Att. 30).
- (6) NRDC obtained through FOIA, and made public, records of the operations of the Bush administration's Energy Task Force, along with analysis of selected excerpts and links to the administration's index of withheld documents (Att. 31). NRDC's efforts cast light on an issue of considerable public interest. *See, e.g.*, Elizabeth Shogren, "Bush Gets One-Two Punch on Energy," *L.A. Times*, Mar. 28, 2002, at A22 (Att. 32).

- (7) Through FOIA, NRDC obtained a memorandum by ExxonMobil, advocating the replacement of the sitting head of the Intergovernmental Panel on Climate Change, and used the document to help inform the public about what may have been behind the Bush administration's decision to replace Dr. Robert Watson. See NRDC Press Release and attached Exxon memorandum, "Confidential Papers Show Exxon Hand in White House Move to Oust Top Scientist from International Global Warming Panel," Apr. 3, 2002 (Att. 33); Elizabeth Shogren, "Charges Fly Over Science Panel Pick," *L.A. Times*, Apr. 4, 2002, at A19 (Att. 34).
- (8) Through FOIA and other sources, NRDC obtained information on nationwide levels of arsenic in drinking water and used it in a report, *Arsenic and Old Laws* (2000), available in print and online at <http://www.nrdc.org/water/drinking/arsenic/aolinx.asp> (Att. 35). The report guided interested members of the public on how to learn more about arsenic in their own drinking water supplies. *Id.*; see also Steve LaRue, "EPA Aims to Cut Levels of Arsenic in Well Water," *San Diego Union-Tribune*, June 5, 2000, at B1 (referencing NRDC report) (Att. 36).<sup>2</sup>

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public's understanding of the subject.

#### 4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: the transition of power at NOAA and the communications between the President-elect's transition team and NOAA staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate NOAA's response to any such requests. Thus, disclosure here would significantly contribute to the public's understanding of government operations or activities. See 15 C.F.R. § 4.11(l)(2)(iv).

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<sup>2</sup> There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, "Science Panel Issues Report on Exposure to Pollutant," *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, "Draft of Air Rule is Said to Exempt Many Old Plants," *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., "E-Mail Suggests Energy Official Encouraged Lobbyist on Policy," *N.Y. Times*, Apr. 27, 2002 (Att. 39).

## B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 15 C.F.R. § 4.11(l)(1)(ii). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env'tl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by NOAA on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

## C. NRDC Is a Media Requester

Even if NOAA denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and the Department of Commerce FOIA regulations, 15 C.F.R. § 4.11(c), (d); see also 15 C.F.R. § 4.11(b)(6) (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep't of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. See 15 C.F.R. § 4.11(b)(6) (stating that examples of news media include . . . publishers of periodicals). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. See OPEN Government Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and

media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).<sup>3</sup>

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

### III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with the Department of Commerce’s FOIA regulations for all or a portion of the requested records. *See* 15 C.F.R. § 4.11. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

### IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; NOAA’s search for—or deliberations concerning—certain records should not delay the production of others that NOAA has already retrieved and elected to produce. *See generally* 15 C.F.R. § 4.7. If NOAA concludes that any of the records requested here are publicly available, please let me know.

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<sup>3</sup> To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

Please do not hesitate to call or email with questions. Thank you.

Sincerely,

Jaclyn H. Prange  
Staff Attorney  
Natural Resources Defense Council, Inc.  
111 Sutter St., 21st Floor  
San Francisco, CA 94104  
[jprange@nrdc.org](mailto:jprange@nrdc.org)  
415-875-6184

Enclosures (sent via FOIA Online):

Attachments 1 through 42 (single .pdf file)

## Attachment D



December 22, 2016

**Via Certified Mail**

Dionne Hardy, FOIA Officer  
Office of Management and Budget  
725 17th Street NW, Room 9026  
Washington, DC 20503

**Re: FOIA request for communications between the President-elect's transition team and OMB staff**

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Office of Management and Budget (OMB) regulations at 5 C.F.R. § 1303.1-1303.70.

**I. Description of Records Sought**

Please produce records<sup>1</sup> in OMB's possession, custody, or control that are, include, or reflect communications between OMB staff and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Edwin Meese, Dan Kowalski, Russ Vought, Justin Bogie, Karen Evans, Pat Pizzella, Mark Robbins, Paul Winfree, Linda Springer, and David Burton.

**II. Request for a Fee Waiver**

NRDC requests that OMB waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 5 C.F.R. § 1303.70. The requested disclosure would meet both of these

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<sup>1</sup> "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any OMB office, including, but not limited to, OMB Headquarters offices, and specifically including OMB offices in possession of responsive records.



requirements. In addition, NRDC qualifies as “a representative of the news media” entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 5 C.F.R. § 1303.50(c).

**A. NRDC Satisfies the First Fee Waiver Requirement**

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 5 C.F.R. § 1303.70.

*1. Subject of the request*

The records requested here reflect communications between OMB and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the Government.” 5 C.F.R. § 1303.70.

*2. Informative value of the information to be disclosed*

The requested records are “likely to contribute significantly to” the public’s understanding of government operations and activities. 5 C.F.R. § 1303.70. The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, [http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html?\\_r=0](http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html?_r=0). There may be similar communications with OMB that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at OMB, as further discussed below. However, if OMB were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

*3. Contribution to an understanding of the subject by the public is likely to result from disclosure*

NRDC’s expertise in matters concerning OMB staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject matter. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a



requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are a broad audience of persons interested in the subject of the transition of power at OMB. As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, "The requirement to rebuild US fish stocks: Is it working?" *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);

- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 13);
- Article, “Waves of phony charges over new clean water safeguards,” *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
- Article, “Don’t Buy the Smear of the EPA,” *L.A. Times*, June 3, 2014 (by NRDC President Frances Beinecke) (Att. 15);
- Transcript, “Conservationists Call For Quiet: The Ocean Is Too Loud!” Nat’l Pub. Radio, *All Things Considered*, July 28, 2013 (featuring NRDC Marine Mammal Protection Program Director Michael Jasny) (Att. 16);
- Testimony of David Doniger, NRDC Climate and Air Program Policy Director and Senior Attorney, before the United States House Subcommittee on Energy and Power, June 19, 2012 (Att. 17);
- Article, “Pollution Still a Hazard to U.S. Beaches,” CBS, *CBS NEWS*, July 29, 2009 (featuring former NRDC Water Program Co-Director Nancy Stoner) (Att. 18);
- Conference brochure, “World Business Summit on Climate Change,” May 24-26, 2009 (featuring former NRDC Director for Market Innovation Rick Duke at 9) (Att. 19);
- Article, “Is there a ‘proper level’ of compliance with environmental law?” *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall) (Att. 20);
- NRDC Document Bank, <http://docs.nrdc.org/> (Att. 21).

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 22). *See also* Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing NRDC’s report) (Att. 23).
- (2) NRDC obtained, through FOIA, FDA review documents on the nontherapeutic use of antibiotic additives in livestock and poultry feed. In January 2014, NRDC published a report, titled *Playing Chicken with Antibiotics*, which is based on the documents obtained, and reveals decades of hesitancy on FDA’s part to ensure the safety of these drug additives (Att. 24). *See also* P.J. Huffstutter and Brian Grow, “Drug critic slams FDA over antibiotic oversight in meat production,” *Reuters*, Jan. 27, 2014 (discussing NRDC’s report) (Att. 25).

- (3) NRDC has used White House documents obtained through FOIA and from other sources to inform the public about EPA's decision not to protect wildlife and workers from the pesticide atrazine in the face of industry pressure to keep atrazine on the market. See *Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, <http://www.nrdc.org/health/atrazine/files/atrazine10.pdf> (Apr. 2010) (update to 2009 report) (Att. 26); see also William Souder, "It's Not Easy Being Green: Are Weed-Killers Turning Frogs Into Hermaphrodites?" *Harper's Bazaar*, Aug. 1, 2006 (referencing documents obtained and posted online by NRDC) (Att. 27).
- (4) NRDC incorporated information obtained through FOIA into a report, available at <http://www.nrdc.org/wildlife/marine/sound/contents.asp>, on the impacts of military sonar and other industrial noise pollution on marine life. See *Sounding the Depths II: The Rising Toll of Sonar, Shipping and Industrial Ocean Noise on Marine Life* (Nov. 2005) (update to 1999 report) (Att. 28). The report also relied upon and synthesized information from other sources. Since the report's publication, the sonar issue has continued to attract widespread public attention. See, e.g., "Protest Raised over New Tests of Naval Sonar," Nat'l Pub. Radio, *All Things Considered*, July 24, 2007 (transcript at Att. 29).
- (5) NRDC scientists have used information obtained through FOIA to publish analyses of the United States' and other nations' nuclear weapons programs. In 2004, for example, NRDC scientists incorporated information obtained through FOIA into a feature article on the United States' plans to deploy a ballistic missile system and the implications for global security. See Hans M. Kristensen, Matthew G. McKinzie, and Robert S. Norris, "The Protection Paradox," *Bulletin of Atomic Scientists*, Mar./Apr. 2004 (Att. 30).
- (6) NRDC obtained through FOIA, and made public, records of the operations of the Bush administration's Energy Task Force, along with analysis of selected excerpts and links to the administration's index of withheld documents (Att. 31). NRDC's efforts cast light on an issue of considerable public interest. See, e.g., Elizabeth Shogren, "Bush Gets One-Two Punch on Energy," *L.A. Times*, Mar. 28, 2002, at A22 (Att. 32).
- (7) Through FOIA, NRDC obtained a memorandum by ExxonMobil, advocating the replacement of the sitting head of the Intergovernmental Panel on Climate Change, and used the document to help inform the public about what may have been behind the Bush administration's decision to replace Dr. Robert Watson. See NRDC Press Release and attached Exxon memorandum, "Confidential Papers Show Exxon Hand in White House Move to Oust Top Scientist from International Global Warming Panel," Apr. 3, 2002 (Att. 33); Elizabeth Shogren, "Charges Fly Over Science Panel Pick," *L.A. Times*, Apr. 4, 2002, at A19 (Att. 34).

- (8) Through FOIA and other sources, NRDC obtained information on nationwide levels of arsenic in drinking water and used it in a report, *Arsenic and Old Laws* (2000), available in print and online at <http://www.nrdc.org/water/drinking/arsenic/aolinx.asp> (Att. 35). The report guided interested members of the public on how to learn more about arsenic in their own drinking water supplies. *Id.*; see also Steve LaRue, “EPA Aims to Cut Levels of Arsenic in Well Water,” *San Diego Union-Tribune*, June 5, 2000, at B1 (referencing NRDC report) (Att. 36).<sup>2</sup>

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public’s understanding of the subject.

#### *4. Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: the transition of power at OMB and the communications between the President-elect’s transition team and OMB staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate OMB’s response to any such requests. Thus, disclosure here would significantly contribute to the public’s understanding of government operations or activities. See 5 C.F.R. § 1303.70.

#### **B. NRDC Satisfies the Second Fee Waiver Requirement**

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 5 C.F.R. § 1303.70. NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Envtl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by OMB on the transition relates to a matter

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<sup>2</sup> There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, “Science Panel Issues Report on Exposure to Pollutant,” *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, “Draft of Air Rule is Said to Exempt Many Old Plants,” *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., “E-Mail Suggests Energy Official Encouraged Lobbyist on Policy,” *N.Y. Times*, Apr. 27, 2002 (Att. 39).

of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

### C. NRDC Is a Media Requester

Even if OMB denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and OMB's FOIA regulations, 5 C.F.R. § 1303.50(c); *see also* 5 C.F.R. § 1303.30(j) (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); *see also Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, U.S. Dep’t of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. *See* 5 C.F.R. § 1303.30(j) (“Examples of news media include . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on Twitter and Facebook, and through content distributed to outlets such as Medium. *See* OPEN Gov’t Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (accord[ing] media requester status to the ACLU).<sup>3</sup>

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<sup>3</sup> To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media.



Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC's publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm'n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

### III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with OMB's FOIA regulations for all or a portion of the requested records. *See* 5 C.F.R. § 1303.40. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

### IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; OMB's search for—or deliberations concerning—certain records should not delay the production of others that OMB has already retrieved and elected to produce. If OMB concludes that any of the records requested here are publicly available, please let me know.

Please do not hesitate to call or email with questions. Thank you.

Sincerely,

Jaclyn H. Prange  
Staff Attorney  
Natural Resources Defense Council, Inc.  
111 Sutter St., 21st Floor  
San Francisco, CA 94104  
[jprange@nrdc.org](mailto:jprange@nrdc.org)  
415-875-6184

Enclosures (sent via FOIA Online): Attachments 1 through 42 (single .pdf file)

## Attachment E

# USPS Tracking® Results

FAQs > (<http://faq.usps.com/?articleId=220900>)

**Track Another Package +**

Remove X

**Tracking Number:** 70161970000023486185

 **Delivered**

**Updated Delivery Day:** Wednesday, December 28, 2016 ⓘ

## Product & Tracking Information

[See Available Actions](#)

**Postal Product:**  
Priority Mail™

**Features:**  
Certified Mail™  
Return Receipt  
Up to \$50 insurance included  
Restrictions Apply ⓘ

**See tracking for related item:**  
[9590940304065163920575 \(/go/TrackConfirmAction?tLabels=9590940304065163920575\)](#)

DATE & TIME	STATUS OF ITEM	LOCATION
<b>December 28, 2016, 4:25 am</b>	<b>Delivered</b>	<b>WASHINGTON, DC 20500</b>



Your item was delivered at 4:25 am on December 28, 2016 in WASHINGTON, DC 20500.

December 27, 2016, 11:18 am	Available for Pickup	WASHINGTON, DC 20500
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DATE & TIME	STATUS OF ITEM	LOCATION
December 27, 2016, 10:53 am	Arrived at Unit	WASHINGTON, DC 20018
December 25, 2016, 10:17 pm	In Transit to Destination	

[See More](#) 

## Available Actions

[See Less](#) 

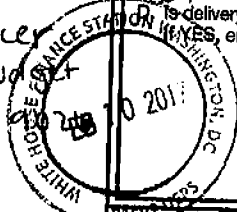
## Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

**[FAQs \(http://faq.usps.com/?articleId=220900\)](http://faq.usps.com/?articleId=220900)**

## Attachment F

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	A. Signature X <i>Dionne Hardy</i>	<input type="checkbox"/> Agent <input type="checkbox"/> Addressee
1. Article Addressed to: Dionne Hardy, FOIA Officer Office of Management + Budget 725 19th St. NW, Room 6185 Washington, DC 20503	B. Received by (Printed Name) DIONNE HARDY	C. Date of Delivery 01/12/17
 9590 9403 0406 5163 9205 75	D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No, enter delivery address below:	
2. (Transfer from service label) 7016 1970 0000 2348 6185	Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery	
PS Form 3811, April 2015 PSN 7530-02-000-9033		Domestic Return Receipt



UNITED STATES POSTAL SERVICE  
SAN FRANCISCO DISTRICT  
MD 207  
30 FEB '17  
PM 3 1



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4® in this box•  
Jackie Prange  
NRDC  
111 Sutter St, 21st Floor  
San Francisco, CA 94104

USPS TRACKING#



9590 9403 0406 5163 9205 75

## Attachment G

# NRDC

December 23, 2016

Via email

blm wo foia@blm.gov

**Re: FOIA request for communications between the President-elect's transition team and DOI staff**

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Interior (DOI) regulations at 43 C.F.R. § 2.1-2.290.

## I. Description of Records Sought

Please produce records<sup>1</sup> in DOI's possession, custody, or control that are, include, or reflect communications between DOI staff in the Bureau of Land Management and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Ryan Zinke, Doug Domenech, David Bernhardt, Scott Cameron, Daniel Jorjani, Kathy Benedetto, Mary Bomar, Karen Budd-Falen, and Ned Mamula.

## II. Request for a Fee Waiver

NRDC requests that DOI waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 43 C.F.R. § 2.45. The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 43 C.F.R. § 2.39.

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<sup>1</sup> "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any DOI office, including, but not limited to, DOI Headquarters offices, and specifically including DOI offices in possession of responsive records.

**A. NRDC Satisfies the First Fee Waiver Requirement**

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(1). Each of the factors used by DOI to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 43 C.F.R. § 2.48.

*1. Subject of the request*

The records requested here reflect communications between DOI and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 43 C.F.R. § 2.48(a)(1).

*2. Informative value of the information to be disclosed*

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 43 C.F.R. § 2.48(a)(2). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, [http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html?\\_r=0](http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html?_r=0). There may be similar communications with DOI that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

As described below in section II.A.3, disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, and NRDC’s identity, vocation, qualifications, and expertise regarding the requested information explain how NRDC plans to disclose the information to a broad audience of persons. Further, because NRDC is a “representative of the news media,” as explained in Part II.C below, DOI must presume that NRDC has the ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject. 43 C.F.R. § 2.48(a)(2)(v).

*3. Contribution to an understanding of the subject by the public is likely to result from disclosure*

NRDC’s expertise in matters concerning DOI staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject

matter. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are a broad audience of persons interested in the subject of the transition of power at DOI, and when combined with NRDC's communications to the public at large, the likely audience of interested persons to be reached is certainly "reasonably broad." 43 C.F.R. § 2.48(a)(3). As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

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- (6) NRDC obtained through FOIA, and made public, records of the operations of the Bush administration’s Energy Task Force, along with analysis of selected excerpts and links to the administration’s index of withheld documents (Att. 31). NRDC’s efforts cast light on an issue of considerable public interest. *See, e.g.*, Elizabeth Shogren, “Bush Gets One-Two Punch on Energy,” *L.A. Times*, Mar. 28, 2002, at A22 (Att. 32).
- (7) Through FOIA, NRDC obtained a memorandum by ExxonMobil, advocating the replacement of the sitting head of the Intergovernmental Panel on Climate Change, and used the document to help inform the public about what may have been behind the Bush administration’s decision to replace Dr. Robert Watson. *See* NRDC Press Release and attached Exxon memorandum, “Confidential Papers Show Exxon Hand in White House Move to Oust Top Scientist from

International Global Warming Panel,” Apr. 3, 2002 (Att. 33); Elizabeth Shogren, “Charges Fly Over Science Panel Pick,” *L.A. Times*, Apr. 4, 2002, at A19 (Att. 34).

- (8) Through FOIA and other sources, NRDC obtained information on nationwide levels of arsenic in drinking water and used it in a report, *Arsenic and Old Laws* (2000), available in print and online at <http://www.nrdc.org/water/drinking/arsenic/aolinx.asp> (Att. 35). The report guided interested members of the public on how to learn more about arsenic in their own drinking water supplies. *Id.*; see also Steve LaRue, “EPA Aims to Cut Levels of Arsenic in Well Water,” *San Diego Union-Tribune*, June 5, 2000, at B1 (referencing NRDC report) (Att. 36).<sup>2</sup>

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public’s understanding of the subject.

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at DOI, as further discussed below. However, if DOI were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

#### 4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: the transition of power at DOI and the communications between the President-elect’s transition team and DOI staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate DOI’s response to any such requests. Thus, disclosure of these records would contribute significantly to the public’s understanding of the subject in question. See 43 C.F.R. § 2.48(a)(4).

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<sup>2</sup> There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, “Science Panel Issues Report on Exposure to Pollutant,” *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, “Draft of Air Rule is Said to Exempt Many Old Plants,” *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., “E-Mail Suggests Energy Official Encouraged Lobbyist on Policy,” *N.Y. Times*, Apr. 27, 2002 (Att. 39).

## B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.48(b). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env’tl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by DOI on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

Also, because NRDC is a representative of the news media, as described below, DOI must presume that the public interest outweighs any commercial interest. 43 C.F.R. § 2.48(b)(3)(ii).

## C. NRDC Is a Media Requester

Even if DOI denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and DOI’s FOIA regulations, 43 C.F.R. § 2.39; see also 43 C.F.R. § 2.70 (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep’t of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. See 43 C.F.R. § 2.70 (“Examples of news media [include] . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. See OPEN Government

Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).<sup>3</sup>

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

### III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with DOI’s FOIA regulations for all or a portion of the requested records. *See* 43 C.F.R. § 2.38-2.44. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

### IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; DOI’s search for—or deliberations concerning—certain records should not delay the production of others that DOI has already retrieved and elected to produce. *See generally* 43 C.F.R. § 2.21-2.25. If DOI concludes that any of the records requested here are publicly available, please let me know.

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<sup>3</sup> To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange  
Staff Attorney  
Natural Resources Defense Council, Inc.  
111 Sutter St., 21st Floor  
San Francisco, CA 94104  
[jprange@nrdc.org](mailto:jprange@nrdc.org)  
415-875-6184

**Enclosures:**

Attachments 1 through 42 (in two emails)



## Attachment H



# NRDC

December 23, 2016

Via email  
[bor\\_foia@usbr.gov](mailto:bor_foia@usbr.gov)

**Re: FOIA request for communications between the President-elect's transition team and DOI staff**

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Interior (DOI) regulations at 43 C.F.R. § 2.1-2.290.

## I. Description of Records Sought

Please produce records<sup>1</sup> in DOI's possession, custody, or control that are, include, or reflect communications between DOI staff in the Bureau of Reclamation (BOR) and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Ryan Zinke, Doug Domenech, David Bernhardt, Scott Cameron, Daniel Jorjani, Kathy Benedetto, Mary Bomar, Karen Budd-Falen, and Ned Mamula.

## II. Request for a Fee Waiver

NRDC requests that DOI waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 43 C.F.R. § 2.45. The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 43 C.F.R. § 2.39.

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<sup>1</sup> "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any DOI office, including, but not limited to, DOI Headquarters offices, and specifically including DOI offices in possession of responsive records.

**A. NRDC Satisfies the First Fee Waiver Requirement**

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(1). Each of the factors used by DOI to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 43 C.F.R. § 2.48.

*1. Subject of the request*

The records requested here reflect communications between DOI and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 43 C.F.R. § 2.48(a)(1).

*2. Informative value of the information to be disclosed*

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 43 C.F.R. § 2.48(a)(2). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, <http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html? r 0>. There may be similar communications with DOI that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

As described below in section II.A.3, disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, and NRDC’s identity, vocation, qualifications, and expertise regarding the requested information explain how NRDC plans to disclose the information to a broad audience of persons. Further, because NRDC is a “representative of the news media,” as explained in Part II.C below, DOI must presume that NRDC has the ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject. 43 C.F.R. § 2.48(a)(2)(v).

*3. Contribution to an understanding of the subject by the public is likely to result from disclosure*

NRDC’s expertise in matters concerning DOI staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject

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#### 4. *Significance of the contribution to public understanding*

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Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate DOI’s response to any such requests. Thus, disclosure of these records would contribute significantly to the public’s understanding of the subject in question. See 43 C.F.R. § 2.48(a)(4).

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<sup>2</sup> There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, “Science Panel Issues Report on Exposure to Pollutant,” *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, “Draft of Air Rule is Said to Exempt Many Old Plants,” *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., “E-Mail Suggests Energy Official Encouraged Lobbyist on Policy,” *N.Y. Times*, Apr. 27, 2002 (Att. 39).

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Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.48(b). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env'tl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by DOI on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

Also, because NRDC is a representative of the news media, as described below, DOI must presume that the public interest outweighs any commercial interest. 43 C.F.R. § 2.48(b)(3)(ii).

## C. NRDC Is a Media Requester

Even if DOI denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and DOI's FOIA regulations, 43 C.F.R. § 2.39; see also 43 C.F.R. § 2.70 (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep't of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

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Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).<sup>3</sup>

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

### III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with DOI’s FOIA regulations for all or a portion of the requested records. *See* 43 C.F.R. § 2.38-2.44. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

### IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; DOI’s search for—or deliberations concerning—certain records should not delay the production of others that DOI has already retrieved and elected to produce. *See generally* 43 C.F.R. § 2.21-2.25. If DOI concludes that any of the records requested here are publicly available, please let me know.

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<sup>3</sup> To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.



Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange  
Staff Attorney  
Natural Resources Defense Council, Inc.  
111 Sutter St., 21st Floor  
San Francisco, CA 94104  
[jprange@nrdc.org](mailto:jprange@nrdc.org)  
415-875-6184

**Enclosures:**

Attachments 1 through 42 (in two emails)



## Attachment I

# NRDC

December 23, 2016

Via email  
[fwhq.foia@fws.gov](mailto:fwhq.foia@fws.gov)

**Re: FOIA request for communications between the President-elect's transition team and DOI staff**

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Interior (DOI) regulations at 43 C.F.R. § 2.1-2.290.

## I. Description of Records Sought

Please produce records<sup>1</sup> in DOI's possession, custody, or control that are, include, or reflect communications between DOI staff in the United States Fish and Wildlife Service (FWS) and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Ryan Zinke, Doug Domenech, David Bernhardt, Scott Cameron, Daniel Jorjani, Kathy Benedetto, Mary Bomar, Karen Budd-Falen, and Ned Mamula.

## II. Request for a Fee Waiver

NRDC requests that DOI waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 43 C.F.R. § 2.45. The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 43 C.F.R. § 2.39.

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<sup>1</sup> "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any DOI office, including, but not limited to, DOI Headquarters offices, and specifically including DOI offices in possession of responsive records.

**A. NRDC Satisfies the First Fee Waiver Requirement**

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(1). Each of the factors used by DOI to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 43 C.F.R. § 2.48.

*1. Subject of the request*

The records requested here reflect communications between DOI and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 43 C.F.R. § 2.48(a)(1).

*2. Informative value of the information to be disclosed*

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 43 C.F.R. § 2.48(a)(2). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, [http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html?\\_r=0](http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html?_r=0). There may be similar communications with DOI that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

As described below in section II.A.3, disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, and NRDC’s identity, vocation, qualifications, and expertise regarding the requested information explain how NRDC plans to disclose the information to a broad audience of persons. Further, because NRDC is a “representative of the news media,” as explained in Part II.C below, DOI must presume that NRDC has the ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject. 43 C.F.R. § 2.48(a)(2)(v).

*3. Contribution to an understanding of the subject by the public is likely to result from disclosure*

NRDC’s expertise in matters concerning DOI staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject

matter. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are a broad audience of persons interested in the subject of the transition of power at DOI, and when combined with NRDC's communications to the public at large, the likely audience of interested persons to be reached is certainly "reasonably broad." 43 C.F.R. § 2.48(a)(3). As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, “The requirement to rebuild US fish stocks: Is it working?” *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 13);
- Article, “Waves of phony charges over new clean water safeguards,” *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
- Article, “Don’t Buy the Smear of the EPA,” *L.A. Times*, June 3, 2014 (by NRDC President Frances Beinecke) (Att. 15);
- Transcript, “Conservationists Call For Quiet: The Ocean Is Too Loud!” Nat’l Pub. Radio, *All Things Considered*, July 28, 2013 (featuring NRDC Marine Mammal Protection Program Director Michael Jasny) (Att. 16);
- Testimony of David Doniger, NRDC Climate and Air Program Policy Director and Senior Attorney, before the United States House Subcommittee on Energy and Power, June 19, 2012 (Att. 17);
- Article, “Pollution Still a Hazard to U.S. Beaches,” CBS, *CBS NEWS*, July 29, 2009 (featuring former NRDC Water Program Co-Director Nancy Stoner) (Att. 18);
- Conference brochure, “World Business Summit on Climate Change,” May 24-26, 2009 (featuring former NRDC Director for Market Innovation Rick Duke at 9) (Att. 19);
- Article, “Is there a ‘proper level’ of compliance with environmental law?” *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall) (Att. 20);
- NRDC Document Bank, <http://docs.nrdc.org/> (Att. 21).

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 22). *See also* Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing NRDC’s report) (Att. 23).
- (2) NRDC obtained, through FOIA, FDA review documents on the nontherapeutic use of antibiotic additives in livestock and poultry feed. In January 2014, NRDC published a report, titled *Playing Chicken with Antibiotics*, which is based on the documents obtained, and reveals decades of hesitancy on FDA’s part to ensure

the safety of these drug additives (Att. 24). *See also* P.J. Huffstutter and Brian Grow, “Drug critic slams FDA over antibiotic oversight in meat production,” *Reuters*, Jan. 27, 2014 (discussing NRDC’s report) (Att. 25).

- (3) NRDC has used White House documents obtained through FOIA and from other sources to inform the public about EPA’s decision not to protect wildlife and workers from the pesticide atrazine in the face of industry pressure to keep atrazine on the market. *See Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, <http://www.nrdc.org/health/atrazine/files/atrazine10.pdf> (Apr. 2010) (update to 2009 report) (Att. 26); *see also* William Souder, “It’s Not Easy Being Green: Are Weed-Killers Turning Frogs Into Hermaphrodites?” *Harper’s Bazaar*, Aug. 1, 2006 (referencing documents obtained and posted online by NRDC) (Att. 27).
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Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).<sup>3</sup>

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

### III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with DOI’s FOIA regulations for all or a portion of the requested records. *See* 43 C.F.R. § 2.38-2.44. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

### IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; DOI’s search for—or deliberations concerning—certain records should not delay the production of others that DOI has already retrieved and elected to produce. *See generally* 43 C.F.R. § 2.21-2.25. If DOI concludes that any of the records requested here are publicly available, please let me know.

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<sup>3</sup> To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange  
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415-875-6184

**Enclosures:**

Attachments 1 through 42 (in two emails)



## Attachment J

# NRDC

December 23, 2016

Via email

[osm-foia@osmre.gov](mailto:osm-foia@osmre.gov)

**Re: FOIA request for communications between the President-elect's transition team and DOI staff**

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Interior (DOI) regulations at 43 C.F.R. § 2.1-2.290.

## I. Description of Records Sought

Please produce records<sup>1</sup> in DOI's possession, custody, or control that are, include, or reflect communications between DOI staff in the Office of Surface Mining Reclamation and Enforcement (OSMRE) and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Ryan Zinke, Doug Domenech, David Bernhardt, Scott Cameron, Daniel Jorjani, Kathy Benedetto, Mary Bomar, Karen Budd-Falen, and Ned Mamula.

## II. Request for a Fee Waiver

NRDC requests that DOI waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 43 C.F.R. § 2.45. The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 43 C.F.R. § 2.39.

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<sup>1</sup> "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any DOI office, including, but not limited to, DOI Headquarters offices, and specifically including DOI offices in possession of responsive records.

**A. NRDC Satisfies the First Fee Waiver Requirement**

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(1). Each of the factors used by DOI to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 43 C.F.R. § 2.48.

*1. Subject of the request*

The records requested here reflect communications between DOI and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 43 C.F.R. § 2.48(a)(1).

*2. Informative value of the information to be disclosed*

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 43 C.F.R. § 2.48(a)(2). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, <http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html? r 0>. There may be similar communications with DOI that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

As described below in section II.A.3, disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, and NRDC’s identity, vocation, qualifications, and expertise regarding the requested information explain how NRDC plans to disclose the information to a broad audience of persons. Further, because NRDC is a “representative of the news media,” as explained in Part II.C below, DOI must presume that NRDC has the ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject. 43 C.F.R. § 2.48(a)(2)(v).

*3. Contribution to an understanding of the subject by the public is likely to result from disclosure*

NRDC’s expertise in matters concerning DOI staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject



matter. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are a broad audience of persons interested in the subject of the transition of power at DOI, and when combined with NRDC's communications to the public at large, the likely audience of interested persons to be reached is certainly "reasonably broad." 43 C.F.R. § 2.48(a)(3). As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, “The requirement to rebuild US fish stocks: Is it working?” *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 13);
- Article, “Waves of phony charges over new clean water safeguards,” *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
- Article, “Don’t Buy the Smear of the EPA,” *L.A. Times*, June 3, 2014 (by NRDC President Frances Beinecke) (Att. 15);
- Transcript, “Conservationists Call For Quiet: The Ocean Is Too Loud!” Nat’l Pub. Radio, *All Things Considered*, July 28, 2013 (featuring NRDC Marine Mammal Protection Program Director Michael Jasny) (Att. 16);
- Testimony of David Doniger, NRDC Climate and Air Program Policy Director and Senior Attorney, before the United States House Subcommittee on Energy and Power, June 19, 2012 (Att. 17);
- Article, “Pollution Still a Hazard to U.S. Beaches,” CBS, *CBS NEWS*, July 29, 2009 (featuring former NRDC Water Program Co-Director Nancy Stoner) (Att. 18);
- Conference brochure, “World Business Summit on Climate Change,” May 24-26, 2009 (featuring former NRDC Director for Market Innovation Rick Duke at 9) (Att. 19);
- Article, “Is there a ‘proper level’ of compliance with environmental law?” *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall) (Att. 20);
- NRDC Document Bank, <http://docs.nrdc.org/> (Att. 21).

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 22). *See also* Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing NRDC’s report) (Att. 23).
- (2) NRDC obtained, through FOIA, FDA review documents on the nontherapeutic use of antibiotic additives in livestock and poultry feed. In January 2014, NRDC published a report, titled *Playing Chicken with Antibiotics*, which is based on the documents obtained, and reveals decades of hesitancy on FDA’s part to ensure

the safety of these drug additives (Att. 24). *See also* P.J. Huffstutter and Brian Grow, “Drug critic slams FDA over antibiotic oversight in meat production,” *Reuters*, Jan. 27, 2014 (discussing NRDC’s report) (Att. 25).

- (3) NRDC has used White House documents obtained through FOIA and from other sources to inform the public about EPA’s decision not to protect wildlife and workers from the pesticide atrazine in the face of industry pressure to keep atrazine on the market. *See Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, <http://www.nrdc.org/health/atrazine/files/atrazine10.pdf> (Apr. 2010) (update to 2009 report) (Att. 26); *see also* William Souder, “It’s Not Easy Being Green: Are Weed-Killers Turning Frogs Into Hermaphrodites?” *Harper’s Bazaar*, Aug. 1, 2006 (referencing documents obtained and posted online by NRDC) (Att. 27).
- (4) NRDC incorporated information obtained through FOIA into a report, available at <http://www.nrdc.org/wildlife/marine/sound/contents.asp>, on the impacts of military sonar and other industrial noise pollution on marine life. *See Sounding the Depths II: The Rising Toll of Sonar, Shipping and Industrial Ocean Noise on Marine Life* (Nov. 2005) (update to 1999 report) (Att. 28). The report also relied upon and synthesized information from other sources. Since the report’s publication, the sonar issue has continued to attract widespread public attention. *See, e.g.*, “Protest Raised over New Tests of Naval Sonar,” Nat’l Pub. Radio, *All Things Considered*, July 24, 2007 (transcript at Att. 29).
- (5) NRDC scientists have used information obtained through FOIA to publish analyses of the United States’ and other nations’ nuclear weapons programs. In 2004, for example, NRDC scientists incorporated information obtained through FOIA into a feature article on the United States’ plans to deploy a ballistic missile system and the implications for global security. *See* Hans M. Kristensen, Matthew G. McKinzie, and Robert S. Norris, “The Protection Paradox,” *Bulletin of Atomic Scientists*, Mar./Apr. 2004 (Att. 30).
- (6) NRDC obtained through FOIA, and made public, records of the operations of the Bush administration’s Energy Task Force, along with analysis of selected excerpts and links to the administration’s index of withheld documents (Att. 31). NRDC’s efforts cast light on an issue of considerable public interest. *See, e.g.*, Elizabeth Shogren, “Bush Gets One-Two Punch on Energy,” *L.A. Times*, Mar. 28, 2002, at A22 (Att. 32).
- (7) Through FOIA, NRDC obtained a memorandum by ExxonMobil, advocating the replacement of the sitting head of the Intergovernmental Panel on Climate Change, and used the document to help inform the public about what may have been behind the Bush administration’s decision to replace Dr. Robert Watson. *See* NRDC Press Release and attached Exxon memorandum, “Confidential Papers Show Exxon Hand in White House Move to Oust Top Scientist from

International Global Warming Panel,” Apr. 3, 2002 (Att. 33); Elizabeth Shogren, “Charges Fly Over Science Panel Pick,” *L.A. Times*, Apr. 4, 2002, at A19 (Att. 34).

- (8) Through FOIA and other sources, NRDC obtained information on nationwide levels of arsenic in drinking water and used it in a report, *Arsenic and Old Laws* (2000), available in print and online at <http://www.nrdc.org/water/drinking/arsenic/aolinx.asp> (Att. 35). The report guided interested members of the public on how to learn more about arsenic in their own drinking water supplies. *Id.*; see also Steve LaRue, “EPA Aims to Cut Levels of Arsenic in Well Water,” *San Diego Union-Tribune*, June 5, 2000, at B1 (referencing NRDC report) (Att. 36).<sup>2</sup>

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public’s understanding of the subject.

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at DOI, as further discussed below. However, if DOI were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

#### 4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: the transition of power at DOI and the communications between the President-elect’s transition team and DOI staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate DOI’s response to any such requests. Thus, disclosure of these records would contribute significantly to the public’s understanding of the subject in question. See 43 C.F.R. § 2.48(a)(4).

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<sup>2</sup> There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, “Science Panel Issues Report on Exposure to Pollutant,” *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, “Draft of Air Rule is Said to Exempt Many Old Plants,” *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., “E-Mail Suggests Energy Official Encouraged Lobbyist on Policy,” *N.Y. Times*, Apr. 27, 2002 (Att. 39).

## B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.48(b). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env'tl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by DOI on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

Also, because NRDC is a representative of the news media, as described below, DOI must presume that the public interest outweighs any commercial interest. 43 C.F.R. § 2.48(b)(3)(ii).

## C. NRDC Is a Media Requester

Even if DOI denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and DOI's FOIA regulations, 43 C.F.R. § 2.39; see also 43 C.F.R. § 2.70 (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep't of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. See 43 C.F.R. § 2.70 (“Examples of news media [include] . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. See OPEN Government



Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).<sup>3</sup>

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

### III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with DOI’s FOIA regulations for all or a portion of the requested records. *See* 43 C.F.R. § 2.38-2.44. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

### IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; DOI’s search for—or deliberations concerning—certain records should not delay the production of others that DOI has already retrieved and elected to produce. *See generally* 43 C.F.R. § 2.21-2.25. If DOI concludes that any of the records requested here are publicly available, please let me know.

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<sup>3</sup> To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange  
Staff Attorney  
Natural Resources Defense Council, Inc.  
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415-875-6184

**Enclosures:**

Attachments 1 through 42 (in two emails)





## Attachment K

# NRDC

December 23, 2016

Via email

sol.foia@sol.doi.gov

**Re: FOIA request for communications between the President-elect's transition team and DOI staff**

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Interior (DOI) regulations at 43 C.F.R. § 2.1-2.290.

## I. Description of Records Sought

Please produce records<sup>1</sup> in DOI's possession, custody, or control that are, include, or reflect communications between DOI staff in the Office of the Solicitor (SOL) and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Ryan Zinke, Doug Domenech, David Bernhardt, Scott Cameron, Daniel Jorjani, Kathy Benedetto, Mary Bomar, Karen Budd-Falen, and Ned Mamula.

## II. Request for a Fee Waiver

NRDC requests that DOI waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 43 C.F.R. § 2.45. The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 43 C.F.R. § 2.39.

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<sup>1</sup> "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any DOI office, including, but not limited to, DOI Headquarters offices, and specifically including DOI offices in possession of responsive records.

**A. NRDC Satisfies the First Fee Waiver Requirement**

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(1). Each of the factors used by DOI to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 43 C.F.R. § 2.48.

*1. Subject of the request*

The records requested here reflect communications between DOI and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 43 C.F.R. § 2.48(a)(1).

*2. Informative value of the information to be disclosed*

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 43 C.F.R. § 2.48(a)(2). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, <http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html? r 0>. There may be similar communications with DOI that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

As described below in section II.A.3, disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, and NRDC’s identity, vocation, qualifications, and expertise regarding the requested information explain how NRDC plans to disclose the information to a broad audience of persons. Further, because NRDC is a “representative of the news media,” as explained in Part II.C below, DOI must presume that NRDC has the ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject. 43 C.F.R. § 2.48(a)(2)(v).

*3. Contribution to an understanding of the subject by the public is likely to result from disclosure*

NRDC’s expertise in matters concerning DOI staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject

matter. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are a broad audience of persons interested in the subject of the transition of power at DOI, and when combined with NRDC's communications to the public at large, the likely audience of interested persons to be reached is certainly "reasonably broad." 43 C.F.R. § 2.48(a)(3). As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
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- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

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NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, “The requirement to rebuild US fish stocks: Is it working?” *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
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- Transcript, “Conservationists Call For Quiet: The Ocean Is Too Loud!” Nat’l Pub. Radio, *All Things Considered*, July 28, 2013 (featuring NRDC Marine Mammal Protection Program Director Michael Jasny) (Att. 16);
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- Article, “Is there a ‘proper level’ of compliance with environmental law?” *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall) (Att. 20);
- NRDC Document Bank, <http://docs.nrdc.org/> (Att. 21).

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 22). *See also* Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing NRDC’s report) (Att. 23).
- (2) NRDC obtained, through FOIA, FDA review documents on the nontherapeutic use of antibiotic additives in livestock and poultry feed. In January 2014, NRDC published a report, titled *Playing Chicken with Antibiotics*, which is based on the documents obtained, and reveals decades of hesitancy on FDA’s part to ensure

the safety of these drug additives (Att. 24). *See also* P.J. Huffstutter and Brian Grow, “Drug critic slams FDA over antibiotic oversight in meat production,” *Reuters*, Jan. 27, 2014 (discussing NRDC’s report) (Att. 25).

- (3) NRDC has used White House documents obtained through FOIA and from other sources to inform the public about EPA’s decision not to protect wildlife and workers from the pesticide atrazine in the face of industry pressure to keep atrazine on the market. *See Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, <http://www.nrdc.org/health/atrazine/files/atrazine10.pdf> (Apr. 2010) (update to 2009 report) (Att. 26); *see also* William Souder, “It’s Not Easy Being Green: Are Weed-Killers Turning Frogs Into Hermaphrodites?” *Harper’s Bazaar*, Aug. 1, 2006 (referencing documents obtained and posted online by NRDC) (Att. 27).
- (4) NRDC incorporated information obtained through FOIA into a report, available at <http://www.nrdc.org/wildlife/marine/sound/contents.asp>, on the impacts of military sonar and other industrial noise pollution on marine life. *See Sounding the Depths II: The Rising Toll of Sonar, Shipping and Industrial Ocean Noise on Marine Life* (Nov. 2005) (update to 1999 report) (Att. 28). The report also relied upon and synthesized information from other sources. Since the report’s publication, the sonar issue has continued to attract widespread public attention. *See, e.g.*, “Protest Raised over New Tests of Naval Sonar,” Nat’l Pub. Radio, *All Things Considered*, July 24, 2007 (transcript at Att. 29).
- (5) NRDC scientists have used information obtained through FOIA to publish analyses of the United States’ and other nations’ nuclear weapons programs. In 2004, for example, NRDC scientists incorporated information obtained through FOIA into a feature article on the United States’ plans to deploy a ballistic missile system and the implications for global security. *See* Hans M. Kristensen, Matthew G. McKinzie, and Robert S. Norris, “The Protection Paradox,” *Bulletin of Atomic Scientists*, Mar./Apr. 2004 (Att. 30).
- (6) NRDC obtained through FOIA, and made public, records of the operations of the Bush administration’s Energy Task Force, along with analysis of selected excerpts and links to the administration’s index of withheld documents (Att. 31). NRDC’s efforts cast light on an issue of considerable public interest. *See, e.g.*, Elizabeth Shogren, “Bush Gets One-Two Punch on Energy,” *L.A. Times*, Mar. 28, 2002, at A22 (Att. 32).
- (7) Through FOIA, NRDC obtained a memorandum by ExxonMobil, advocating the replacement of the sitting head of the Intergovernmental Panel on Climate Change, and used the document to help inform the public about what may have been behind the Bush administration’s decision to replace Dr. Robert Watson. *See* NRDC Press Release and attached Exxon memorandum, “Confidential Papers Show Exxon Hand in White House Move to Oust Top Scientist from



International Global Warming Panel,” Apr. 3, 2002 (Att. 33); Elizabeth Shogren, “Charges Fly Over Science Panel Pick,” *L.A. Times*, Apr. 4, 2002, at A19 (Att. 34).

- (8) Through FOIA and other sources, NRDC obtained information on nationwide levels of arsenic in drinking water and used it in a report, *Arsenic and Old Laws* (2000), available in print and online at <http://www.nrdc.org/water/drinking/arsenic/aolinx.asp> (Att. 35). The report guided interested members of the public on how to learn more about arsenic in their own drinking water supplies. *Id.*; see also Steve LaRue, “EPA Aims to Cut Levels of Arsenic in Well Water,” *San Diego Union-Tribune*, June 5, 2000, at B1 (referencing NRDC report) (Att. 36).<sup>2</sup>

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public’s understanding of the subject.

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at DOI, as further discussed below. However, if DOI were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

#### 4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: the transition of power at DOI and the communications between the President-elect’s transition team and DOI staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate DOI’s response to any such requests. Thus, disclosure of these records would contribute significantly to the public’s understanding of the subject in question. See 43 C.F.R. § 2.48(a)(4).

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<sup>2</sup> There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, “Science Panel Issues Report on Exposure to Pollutant,” *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, “Draft of Air Rule is Said to Exempt Many Old Plants,” *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., “E-Mail Suggests Energy Official Encouraged Lobbyist on Policy,” *N.Y. Times*, Apr. 27, 2002 (Att. 39).

## B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.48(b). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env'tl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by DOI on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

Also, because NRDC is a representative of the news media, as described below, DOI must presume that the public interest outweighs any commercial interest. 43 C.F.R. § 2.48(b)(3)(ii).

## C. NRDC Is a Media Requester

Even if DOI denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and DOI's FOIA regulations, 43 C.F.R. § 2.39; see also 43 C.F.R. § 2.70 (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep't of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. See 43 C.F.R. § 2.70 (“Examples of news media [include] . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. See OPEN Government



Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).<sup>3</sup>

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

### III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with DOI’s FOIA regulations for all or a portion of the requested records. *See* 43 C.F.R. § 2.38-2.44. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

### IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; DOI’s search for—or deliberations concerning—certain records should not delay the production of others that DOI has already retrieved and elected to produce. *See generally* 43 C.F.R. § 2.21-2.25. If DOI concludes that any of the records requested here are publicly available, please let me know.

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<sup>3</sup> To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange  
Staff Attorney  
Natural Resources Defense Council, Inc.  
111 Sutter St., 21st Floor  
San Francisco, CA 94104  
[jprange@nrdc.org](mailto:jprange@nrdc.org)  
415-875-6184

**Enclosures:**

Attachments 1 through 42 (in two emails)



## Attachment L

# NRDC

December 23, 2016

Via Email

wo foia@fs.fed.us

**Re: FOIA request for communications between the President-elect's transition team and Forest Service staff**

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Agriculture regulations at 7 C.F.R. § 1.1-1.25.

## I. Description of Records Sought

Please produce records<sup>1</sup> in the Forest Service's possession, custody, or control that are, include, or reflect communications between Forest Service staff and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Joel Leftwich and Brian Klippenstein.

## II. Request for a Fee Waiver

NRDC requests that the Forest Service waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a). The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the

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<sup>1</sup> "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any Forest Service office, including, but not limited to, Forest Service Headquarters offices, and specifically including Forest Service offices in possession of responsive records.

news media” entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 5(c).

**A. NRDC Satisfies the First Fee Waiver Requirement**

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a). Each of the factors used by the Forest Service to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a).

*1. Subject of the request*

The records requested here reflect communications between the Forest Service and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a)(1)(i).

*2. Informative value of the information to be disclosed*

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a)(1)(ii). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, [http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html?\\_r=0](http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html?_r=0). There may be similar communications with the Forest Service that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at the Forest Service, as further discussed below. However, if the Forest Service were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

*3. Contribution to an understanding of the subject by the public is likely to result from disclosure*

NRDC’s expertise in matters concerning Forest Service staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons

with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject matter. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

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- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 13);
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- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 22). *See also* Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing NRDC’s report) (Att. 23).



- (2) NRDC obtained, through FOIA, FDA review documents on the nontherapeutic use of antibiotic additives in livestock and poultry feed. In January 2014, NRDC published a report, titled *Playing Chicken with Antibiotics*, which is based on the documents obtained, and reveals decades of hesitancy on FDA's part to ensure the safety of these drug additives (Att. 24). *See also* P.J. Huffstutter and Brian Grow, "Drug critic slams FDA over antibiotic oversight in meat production," *Reuters*, Jan. 27, 2014 (discussing NRDC's report) (Att. 25).
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As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public's understanding of the subject.

#### 4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: the transition of power at the Forest Service and the communications between the President-elect's transition team and Forest Service staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate the Forest Service's response to any such requests. Thus, disclosure here would significantly contribute to the public's understanding of government operations or activities. See 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a)(1)(iv).

#### 5. *NRDC does not have a commercial interest in the disclosure*

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested

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<sup>2</sup> There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, "Science Panel Issues Report on Exposure to Pollutant," *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, "Draft of Air Rule is Said to Exempt Many Old Plants," *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., "E-Mail Suggests Energy Official Encouraged Lobbyist on Policy," *N.Y. Times*, Apr. 27, 2002 (Att. 39).

disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a)(1)(v), (vi). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); *see Natural Res. Def. Council v. United States Env'tl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by the Forest Service on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

### **B. NRDC is a non-profit organization designed to further public health safety**

The Department’s FOIA regulations also give the Forest Service the ability to waive fees if the requester is “engaged in a nonprofit activity designed for the public safety, health, or welfare.” 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a)(3)(ii). NRDC is a non-profit organization whose mission is to “to safeguard the earth—its people, its plants and animals, and the natural systems on which all life depends.” As described in the sections above, NRDC is engaged in nonprofit activity designed to further public health and safety. Therefore, the Forest Service should waive any fees on this basis as well.

### **C. NRDC Is a Media Requester**

Even if the Forest Service denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and the Forest Service’s FOIA regulations, 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 5(c); *see also* 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 5(c)(1) (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); *see also Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep’t of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. *See* 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 5(c)(3) (“Examples of news media

entities include . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. *See* OPEN Government Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).<sup>3</sup>

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

### III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with the Forest Service’s FOIA regulations for all or a portion of the requested records. *See* 7 C.F.R. Pt. 1, Subpt. A, App. A. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

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<sup>3</sup> To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

#### IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; the Forest Service's search for—or deliberations concerning—certain records should not delay the production of others that the Forest Service has already retrieved and elected to produce. *See generally* 7 C.F.R. § 1.7. If the Forest Service concludes that any of the records requested here are publicly available, please let me know.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange  
Staff Attorney  
Natural Resources Defense Council, Inc.  
111 Sutter St., 21st Floor  
San Francisco, CA 94104  
[jprange@nrdc.org](mailto:jprange@nrdc.org)  
415-875-6184

Enclosures (sent via two emails): Attachments 1 through 40

## Attachment M

# NRDC

December 23, 2016

Via Email

FOIARouting.enrd@usdoj.gov

**Re: FOIA request for communications between the President-elect's transition team and ENRD staff**

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Justice regulations at 28 C.F.R. § 16.1-16.301.

## I. Description of Records Sought

Please produce records<sup>1</sup> in the Environment and Natural Resources Division's (ENRD's) possession, custody, or control that are, include, or reflect communications between ENRD staff and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Jeff Sessions, Brian Benczkowski, Zina Bash, Greg Katsas, James Burnham, William Cleveland, David Higbee, J. Patrick Rowan, Jessie Liu, Ronald Tenpas, Lizette Benedi Herraiz, Steven Engel, Thomas Wheeler, Stefani Carter, James Burnham, Michael Battle, and Edmund Searby.

## II. Request for a Fee Waiver

NRDC requests that ENRD waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. §

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<sup>1</sup> "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any ENRD office, including, but not limited to, ENRD Headquarters offices, and specifically including ENRD offices in possession of responsive records.



552(a)(4)(A)(iii); *see also* 28 C.F.R. § 16.10(k)(1)(i), (ii). The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as “a representative of the news media” entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 28 C.F.R. § 16.10(c)(1)(i), (d)(1).

**A. NRDC Satisfies the First Fee Waiver Requirement**

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 28 C.F.R. § 16.10(k)(1)(i). Each of the four factors used by ENRD to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 28 C.F.R. § 16.10(k)(2).

*1. Subject of the request*

The records requested here reflect communications between ENRD and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 28 C.F.R. § 16.10(k)(2)(i).

*2. Informative value of the information to be disclosed*

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 28 C.F.R. § 16.10(k)(2)(ii). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, [http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html?\\_r=0](http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html?_r=0). There may be similar communications with ENRD that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at ENRD, as further discussed below. However, if ENRD were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

*3. Contribution to an understanding of the subject by the public is likely to result from disclosure*

Because NRDC is a “representative of the news media,” as explained in Part II.C below, ENRD must presume that this disclosure is likely to contribute to public understanding of its subject. 28 C.F.R. § 16.10(k)(2)(iii).



However, even if NRDC were not a media requester, NRDC's expertise in matters concerning ENRD staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject matter. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are a "broad audience of persons interested in the subject" of the transition of power at ENRD, and when combined with NRDC's communications to the public at large, the likely audience of interested persons to be reached is certainly "reasonably broad." 28 C.F.R. § 16.10(k)(2)(iii). As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters

and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, “The requirement to rebuild US fish stocks: Is it working?” *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 13);
- Article, “Waves of phony charges over new clean water safeguards,” *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
- Article, “Don’t Buy the Smear of the EPA,” *L.A. Times*, June 3, 2014 (by NRDC President Frances Beinecke) (Att. 15);
- Transcript, “Conservationists Call For Quiet: The Ocean Is Too Loud!” Nat’l Pub. Radio, *All Things Considered*, July 28, 2013 (featuring NRDC Marine Mammal Protection Program Director Michael Jasny) (Att. 16);
- Testimony of David Doniger, NRDC Climate and Air Program Policy Director and Senior Attorney, before the United States House Subcommittee on Energy and Power, June 19, 2012 (Att. 17);
- Article, “Pollution Still a Hazard to U.S. Beaches,” CBS, *CBS NEWS*, July 29, 2009 (featuring former NRDC Water Program Co-Director Nancy Stoner) (Att. 18);
- Conference brochure, “World Business Summit on Climate Change,” May 24-26, 2009 (featuring former NRDC Director for Market Innovation Rick Duke at 9) (Att. 19);
- Article, “Is there a ‘proper level’ of compliance with environmental law?” *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall) (Att. 20);
- NRDC Document Bank, <http://docs.nrdc.org/> (Att. 21).

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

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Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate ENRD's response to any such requests. Thus, disclosure here would significantly contribute to the public's understanding of government operations or activities. See 28 C.F.R. § 16.10(k)(2)(iv).

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<sup>2</sup> There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, "Science Panel Issues Report on Exposure to Pollutant," *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, "Draft of Air Rule is Said to Exempt Many Old Plants," *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., "E-Mail Suggests Energy Official Encouraged Lobbyist on Policy," *N.Y. Times*, Apr. 27, 2002 (Att. 39).

## B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 28 C.F.R. § 16.10(k)(3). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env’t. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by ENRD on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

## C. NRDC Is a Media Requester

Even if ENRD denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and ENRD’s FOIA regulations, 28 C.F.R. § 16.10(c)(1), (d)(1); see also 28 C.F.R. § 16.10(b)(6) (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep’t of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. See 28 C.F.R. § 16.10(b) (“Examples of news media entities include . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. See OPEN



Government Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (accord[ing] media requester status to the American Civil Liberties Union).<sup>3</sup>

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

### III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with ENRD’s FOIA regulations for all or a portion of the requested records. *See* 28 C.F.R. § 16.10. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

### IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; ENRD’s search for—or deliberations concerning—certain records should not delay the production of others that ENRD has already retrieved and elected to produce. *See generally* 28 C.F.R. § 16.5-16.6. If ENRD concludes that any of the records requested here are publicly available, please let me know.

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<sup>3</sup> To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange  
Staff Attorney  
Natural Resources Defense Council, Inc.  
111 Sutter St., 21st Floor  
San Francisco, CA 94104  
[jprange@nrdc.org](mailto:jprange@nrdc.org)  
415-875-6184

Enclosures: Attachments 1 through 40 (sent via two emails)

**Mark Graff - NOAA Federal**

---

**From:** Mark Graff NOAA Federal  
**Sent:** Monday, February 12, 2018 5:22 PM  
**To:** Jackie Rolleri NOAA Federal  
**Subject:** Re: question re exemption 6

Hey Jackie

(b)(5)  
[Redacted]

Let me know if you want to discuss further

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628 5658 (O)  
(b)(6) (C)

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On Mon, Feb 12, 2018 at 10:51 AM, Jackie Rolleri NOAA Federal <[jackie.rolleri@noaa.gov](mailto:jackie.rolleri@noaa.gov)> wrote:  
ATTORNEY-CLIENT COMMUNICATION

Hi Mark,

(b)(5)  
[Redacted]

[Redacted]



(b)(5)

[Redacted]

[Redacted]

- [Redacted]

[Redacted]

- [Redacted]
- [Redacted]

[Redacted]

- [Redacted]

[Redacted]

[Redacted]

[Redacted]

Thanks,  
Jackie

--

Jackie Rolleri, Attorney-Advisor  
Oceans and Coasts Section  
Office of the General Counsel  
National Oceanic and Atmospheric Administration  
[1305 East-West Highway](#)  
SSMC4, Suite 6111  
Silver Spring, MD 20910  
[301-713-7387](#) (office)  
(b)(6) (cell) (Telework Tues. and Fri)

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**Jackie Rolleri - NOAA Federal**

---

**From:** Jackie Rolleri NOAA Federal  
**Sent:** Tuesday, February 13, 2018 7:52 AM  
**To:** Mark Graff NOAA Federal  
**Subject:** Re: question re exemption 6

Great. Thanks, Mark!

On Mon, Feb 12, 2018 at 5:22 PM, Mark Graff NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)> wrote:  
Hey Jackie

(b)(5)  
[Redacted]

Let me know if you want to discuss further

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
[\(301\) 628 5658](tel:3016285658) (O)  
(b)(6) (C)

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On Mon, Feb 12, 2018 at 10:51 AM, Jackie Rolleri NOAA Federal <[jackie.rolleri@noaa.gov](mailto:jackie.rolleri@noaa.gov)> wrote:  
ATTORNEY-CLIENT COMMUNICATION

Hi Mark,

(b)(5)  
[Redacted]

[Redacted]

(b)(5)

[Redacted text block]

[Redacted text block]

[Redacted text block]

- [Redacted list item]

[Redacted text block]

- [Redacted list item]

- [Redacted list item]

[Redacted text block]

- [Redacted list item]

[Redacted text block]

[Redacted text block]

[Redacted text block]

Thanks,  
Jackie

--

Jackie Rolleri, Attorney-Advisor  
Oceans and Coasts Section  
Office of the General Counsel  
National Oceanic and Atmospheric Administration  
[1305 East-West Highway](#)  
SSMC4, Suite 6111  
Silver Spring, MD 20910  
[301-713-7387](#) (office)  
**(b)(6)** (cell) (Telework Tues. and Fri)

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Jackie Rolleri, Attorney-Advisor  
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1305 East-West Highway  
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**Mark Graff - NOAA Federal**

---

**From:** Mark Graff NOAA Federal  
**Sent:** Tuesday, February 13, 2018 8:28 AM  
**To:** Bogomolny, Michael (Federal); Devin Brakob NOAA Federal; Velna Bullock NOAA Federal; Scott Smullen NOAA Federal; Toland, Michael; Stacey Nathanson NOAA Federal  
**Cc:** Robert Swisher NOAA Federal; Lola Stith NOAA Affiliate; Samuel Dixon NOAA Affiliate; Robert Hogan; Ed Kearns NOAA Federal  
**Subject:** AWI v. NOAA Second IR for Release  
**Attachments:** 2018.01.08 AWI Complaint.pdf; AWI Original Request.pdf

Hello All,

(b)(5) [Redacted]  
[Redacted]  
[Redacted]

[Redacted]  
[Redacted]

(b) (5) [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628 5658 (O)  
(b)(6) [Redacted] (C)

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ANIMAL WELFARE INSTITUTE )  
900 Pennsylvania Avenue, SE )  
Washington, D.C. 20003, )  
 )  
Plaintiff, )  
v. ) Civ. No.  
 )  
NATIONAL OCEANIC AND ATMOSPHERIC )  
ADMINISTRATION, )  
1401 Constitution Avenue, NW, Room 5128 )  
Washington, D.C. 20230 )  
 )  
and )  
 )  
NATIONAL MARINE FISHERIES SERVICE, )  
1315 East-West Highway )  
Silver Spring, MD 20910, )  
 )  
Defendants. )  
\_\_\_\_\_ )

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1. The Animal Welfare Institute brings this action against defendants National Oceanic and Atmospheric Administration and National Marine Fisheries Service for violations of the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”).

**PARTIES**

2. Plaintiff Animal Welfare Institute (“AWI”) is a 501(c)(3) non-profit organization that seeks to protect animals from human inflicted suffering. In particular, AWI has advocated for the protection of whales and other marine life from life from human activities such as harmful fishing practices, hunting, underwater noise production, and inhumane practices resulting from captive maintenance for purposes of public display and scientific research. AWI is the requester of the records at issue.



3. Defendant National Oceanic and Atmospheric Administration (“NOAA”) is an agency of the federal government within the U.S. Department of Commerce that focuses on the conditions of the oceans and the atmosphere, including marine wildlife.

4. Defendant National Marine Fisheries Service (“NMFS”) is an agency of the federal government within NOAA that has jurisdiction over whales under the Marine Mammal Protection Act (“MMPA”), 16 U.S.C. §§ 1361 - 1423h, and is in possession of the records requested by AWI.

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B).

6. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B).

### **FACTS GIVING RISE TO PLAINTIFF’S CLAIM**

#### **A. FOIA Requirements**

7. The purpose of FOIA is to “pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny.” *Public Citizen, Inc. v. Office of Management and Budget*, 598 F.3d 865, 869 (D.C. Cir. 2010) (quotations omitted). In enacting FOIA, Congress intended the primary objective of the Act to be the full disclosure of federal agency records so long as information is not exempted by clearly delineated statutory language. *Id.*

8. FOIA establishes a broad right of public access to federal agency records, subject only to nine delineated exemptions. 5 U.S.C. § 552(b). “Each agency, upon any request” for enumerated records must “determine within 20 days (excepting Saturdays, Sundays, and legal holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such a request” of the “determination and the reasons therefor . . . .” *Id.* § 552(a)(6)(A)(i). A requester “shall be deemed to have exhausted [its]

administrative remedies” and hence may file suit under the Act’s citizen suit provision “with respect to [a] request if the agency fails to comply with the . . . time limit” set forth in the statute for a substantive response. *Id.* § 552(a)(6)(C)(i).

9. The federal regulations implementing FOIA for NOAA and NMFS are located at 15 C.F.R. § 4.1, *et seq.* 15 C.F.R. § 4.6 codifies the requirement that NOAA/NMFS respond within 20 working days of receiving a FOIA request with a determination of compliance.

**B. The Public Interest Need for the Documents Subject to the FOIA Request**

10. In 2013, the documentary film *Blackfish* drew public attention to the plight of Tilikum, an orca held in captivity by SeaWorld Parks & Entertainment (“SeaWorld”), and other orcas now maintained in aquariums and theme parks around the world. *Blackfish* set off a strong negative public reaction to SeaWorld and the conditions under which orcas are held in captivity.

11. On March 8, 2016, SeaWorld released a video on its website describing Tilikum’s declining health and indicating that he was not expected to survive.

12. Beginning in October 2016, the People for the Ethical Treatment of Animals (“PETA”) initiated the first of what would be several meetings and communications with NOAA/NMFS regarding Tilikum. AWI joined this effort by December 2016. In anticipation of Tilikum’s death, NOAA/NMFS was presented with a draft legal opinion explaining why the 1992 MMPA permit authorizing the importation of Tilikum requires SeaWorld to submit to NOAA/NMFS the necropsy report and clinical history for Tilikum in the event of his death. In these meetings and communications, and through the draft legal opinion, AWI (with PETA) sought NOAA/NMFS input and comments on the applicability of the necropsy and clinical history permit requirement.

13. In the following months, AWI also presented its views on the necropsy and clinical history requirements of MMPA permits to the other federal agencies with jurisdiction over marine mammals — the U.S. Fish and Wildlife Service (“FWS”), the Marine Mammal Commission (“MMC”), and the U.S. Department of Agriculture’s Animal and Plant Health Inspection Service (“APHIS”).<sup>1</sup>

14. In these agency meetings and communications, AWI repeatedly stressed the importance of necropsy reports and clinical histories for purposes of scientific research, medical care (including for free-ranging, stranded individuals), animal husbandry, and public education, and demonstrated that the benefits resulting from this information applied to whales held both in captivity and in the wild.

15. In these meetings and communications, NOAA/NMFS never took a position on whether SeaWorld had to comply with the necropsy and clinical history requirements of Tilikum’s permit.

16. Tilikum died on January 6, 2017 at SeaWorld’s Orlando facility. AWI and other animal welfare organizations immediately notified NOAA/NMFS that Tilikum’s MMPA permit required SeaWorld to submit the necropsy and clinical history report within 30 days. Based on information and belief, SeaWorld never submitted the necropsy and clinical history report required by the permit to NOAA/NMFS.

17. On March 10, 2017, NOAA/NMFS responded to the animal welfare organizations’ notice with an email stating that it was willing to meet to discuss the issue but that it had concluded that the necropsy and clinical history provisions of Tilikum’s permit had been

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<sup>1</sup> Under the MMPA, NOAA/NMFS has jurisdiction over whales, dolphins and seals. FWS has jurisdiction over polar bears, manatees, walrus and sea otters. 16 U.S.C. § 1362(12)(A). The MMC serves in an independent advisory and oversight role. *Id.* §§ 1401-1407. APHIS jurisdiction is not under the MMPA but applies to marine mammals in certain captive maintenance facilities under the Animal Welfare Act. 7 U.S.C. §§ 2131-2159.

extinguished by amendments to the MMPA in 1994 and that “the legal analysis supporting this determination is exempt from disclosure under the attorney-client privilege, and we will not be discussing it in any detail at the meeting.” Thus, after months of effort to engage NOAA/NMFS in a collaborative dialogue regarding the permit requirements for SeaWorld to release Tilikum’s health records, AWI and the other organizations had no explanation from NOAA/NMFS for the legal conclusion, contrary to the plain language of the permit, that the necropsy and clinical history requirement did not apply and were told that none would be provided.

18. AWI contacted SeaWorld directly by email on March 25, 2017 asking for voluntary release of Tilikum’s records. SeaWorld refused to do so in an April 13, 2017 email. Five animal welfare organizations sent a letter to SeaWorld on August 8, 2017, again asking for voluntary compliance. SeaWorld has not replied and continues to withhold the documents.

19. On July 24, 2017, Tilikum’s granddaughter Kyara died at SeaWorld’s San Antonio facility. The draft legal opinion previously provided to NOAA/NMFS confirmed that Kyara was covered by the necropsy and clinical history provision of Tilikum’s permit.

20. On July 31, 2017, AWI and other animal welfare organizations wrote to NOAA/NMFS asking for enforcement of the necropsy and clinical history provision of Tilikum’s permit for Kyara’s records. Counsel to AWI submitted a revised version of the draft legal opinion supporting this conclusion to NOAA/NMFS on August 14, 2017.

21. NOAA/NMFS responded on September 7, 2017, simply restating its March 10, 2017 email message that the permit had been extinguished by the 1994 MMPA amendments.

22. On August 15, 2017, Kasatka, an orca held at SeaWorld’s San Diego facility, was euthanized due to a bacterial infection. Kasatka’s 1978 MMPA permit included a necropsy and clinical history requirement. AWI, and the other organizations promptly requested

NOAA/NMFS to enforce the permit, by letter dated August 25, 2017, and by an updated version of the legal opinion, by letter from counsel dated August 30, 2017.

23. By letter dated October 18, 2017, NOAA/NMFS issued the same response as in its March 10, 2017 email on Tilikum's death and its September 7, 2017 letter on Kyara's death, stating that the necropsy and clinical history requirement in Kasatka's permit had been extinguished. Again, NOAA/NMFS provided no explanation for its legal conclusion.

24. After the death of three SeaWorld orcas over a seven-month period, NOAA/NMFS has refused to release or disclose the legal rationale for its conclusion that SeaWorld can ignore clearly stated permit requirements and withhold information that would shed light on the cause of death and medical condition of these whales during their lives in captivity and benefit science and marine mammal husbandry, stranding response, and medical care. SeaWorld refuses to release the whales' clinical histories or necropsy reports.

### **C. The AWI FOIA Request**

25. By letters sent by email on September 29, 2017, AWI submitted FOIA requests to NOAA/NMFS, FWS, and MMC for all documents from January 1, 2017 to May 1, 2017 regarding NMFS' March 10, 2017 determination that the necropsy and clinical history requirements of Public Display Permit No. 774 for Tilikum were extinguished by the 1994 MMPA amendments. Exhibit 1, Declaration of Donald C. Baur, dated January 8, 2018 ("Baur Decl.") at ¶ 2, Attachment A. On the same date, AWI submitted a FOIA request to APHIS, asking for "all requests that APHIS has submitted since January 1, 1994 under 9 C.F.R. § 3.110(g) requesting necropsy records for marine mammals that have died in captivity, and all necropsy records that APHIS has received in response to those requests."

26. Under FOIA, the deadline for agency response to the requests was October 30, 2017.

27. By letter to AWI dated October 5, 2017, APHIS's FOIA Director confirmed receipt of the FOIA request. The letter identified an anticipated response date of October 30, 2017. On December 8, 2017, APHIS responded to AWI's FOIA request.<sup>2</sup>

28. By voice message on October 4, 2017, the MMC confirmed receipt of AWI's FOIA request. In a letter sent by email, dated December 18, 2017, Michael L. Gosliner, MMC General Counsel, responded to the FOIA request with a partial release of documents. In the MMC response letter, Mr. Gosliner stated:

I am sympathetic to the position that your organization finds itself in — the responsible agency (NMFS) has given you its legal conclusion that the 1994 amendments to the MMPA extinguished the permit terms and conditions related to necropsies and clinical histories, but has declined to provide you with its rationale for this conclusion. I can see where that agency would not want to share its draft legal analysis outside of the government, but once a conclusion has been reached, its final position no longer is pre-decisional.<sup>3</sup>

The MMC also stated that it could not release its own documents that would shed light on the NOAA/NMFS legal position without concurrence from NOAA/NMFS.<sup>4</sup>

---

<sup>2</sup> APHIS confirmed that, since 1994, it has not required licensees to submit necropsy reports for any marine mammals. As a result, it had no documents to release.

<sup>3</sup> The MMC's FOIA response indicates that NOAA/NMFS had not completed its consultation with its sister agencies on the legal question at the time it announced its conclusion on March 10, 2017.

<sup>4</sup> The MMC request revealed the limited nature of the AWI request, by identifying only nine responsive documents withheld based on the NOAA/NMFS position. The MMC letter also confirmed that it had coordinated its response "with the other agencies," indicating that NOAA/NMFS is aware of the FOIA request.

29. By email on September 29, 2017, FWS's Headquarters FOIA Office acknowledged receipt of the FOIA request. The email stated that the request was forwarded to the Division of Management Authority for processing.

30. The initial FOIA request letter to NMFS was confirmed delivered to NOAA/NMFS by AWI email on September 29, 2017. A follow-up letter was also sent by email to NMFS on December 4, 2017, asking for a response by December 15, 2017. Baur Decl. ¶ 3, Attachment B. Finally, on December 22, 2017, a copy of the December 4 letter was sent again by email, with a specific request that NMFS acknowledge receipt. *Id.* ¶ 4, Attachment C.

31. As of the date of this complaint, NOAA/NMFS has never even acknowledged receipt of the September 29, 2017 request, the December 4, 2017 follow-up letter, or the December 22, 2017 email confirmation request.

32. To date, more than three months after AWI's initial letter, and more than two months after the statutory deadline, NOAA/NMFS has not responded in any way to the September 29, 2017 AWI FOIA request. Nor has the Agency provided AWI with any explanation for the ongoing delay. The other agencies have either responded in full (APHIS and MMC) or acknowledged receipt and confirmed that review is underway (FWS).

### **CLAIM FOR RELIEF**

33. AWI has a statutory right to the requested records. NOAA/NMFS, in violation of FOIA and AWI's rights under FOIA, has failed to provide the records, or any substantive determination regarding them, by the mandatory deadline set forth in 5 U.S.C. § 552(a)(6)(A)(i).

### **REQUESTED RELIEF**

34. AWI respectfully requests that the Court grant the following relief:

- a. Declare that NMFS is in violation of FOIA;

- b. Enjoin NMFS from continuing to withhold the requested records and order NMFS immediately to release the records in full to AWI;
- c. Make a written finding pursuant to 5 U.S.C. § 552(a)(4)(F)(i) that the “circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding . . . .”;
- d. Award Plaintiff its attorneys’ fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E);
- e. Award any other relief this Court finds just and proper.

Dated this 9th day of January, 2018

Respectfully submitted,

/s/Donald C. Baur  
Donald C. Baur  
D.C. Bar No. 393621  
Perkins Coie LLP  
700 13th Street, NW, Suite 600  
Washington, D.C. 20005-3960  
(202) 654-6200  
DBaur@perkinscoie.com

Sunny Tsou  
(*pro hac vice* application pending)  
Perkins Coie LLP  
505 Howard Street  
Suite 1000  
San Francisco, CA 94105  
(415) 344-7000  
STsou@perkinscoie.com

Counsel for Plaintiff



**From:** [Georgia Hancock](#)  
**To:** [FOIA@noaa.gov](mailto:FOIA@noaa.gov); [fwhq\\_foia@fws.gov](mailto:fwhq_foia@fws.gov); [mmc@mmc.gov](mailto:mmc@mmc.gov)  
**Cc:** [Baur, Don \(WDC\)](#); [Naomi Rose](#)  
**Subject:** AWI FOIA to NOAA, FWS, MMC 9-29-2017  
**Attachments:** [NOAA NMFS FWS MMC FOIA 9.29.17.pdf](#)

---

On behalf of the Animal Welfare Institute, please see the attached FOIA request.

Very truly yours,

Georgia Hancock  
*Of Counsel*  
[georgia@awionline.org](mailto:georgia@awionline.org)  
mobile: 607-329-8638  
Animal Welfare Institute  
Visit us at [awionline.org](http://awionline.org)



# Animal Welfare Institute

903 Pennsylvania Avenue, SE, Washington, DC 20003  
awionline.org phone: (202) 397-2332 fax: (202) 446-2031

September 29, 2017

## VIA OVERNIGHT MAIL AND EMAIL

National Oceanic and Atmospheric Administration  
Public Reference Facility (SOU1000)  
1315 East-West Highway (SSMC3)  
Room 9719  
Silver Spring, Maryland 20910  
FOIA@noaa.gov

Carrie Hyde-Michaels  
FWS FOIA Officer  
U.S. Fish and Wildlife Service  
5275 Leesburg Pike  
MS:IRTM  
Falls Church, VA 22041  
fwhq\_foia@fws.gov

Michael Gosliner  
Marine Mammal Commission  
4340 East-West Highway, Room 700  
Bethesda, Maryland 20814  
mmc@mmc.gov

## Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq.*, and the regulations of the Department of Commerce, 15 C.F.R., Part 4; the regulations of the Department of the Interior, 43 C.F.R., Part 2; and the regulations of the Marine Mammal Commission, 50 C.F.R., Part 520; I am writing on behalf of the Animal Welfare Institute ("AWI") to request from the National Oceanic and Atmospheric Administration ("NOAA"), the National Marine Fisheries Service ("NMFS"), the Fish and Wildlife Service ("FWS"), and the Marine Mammal Commission ("MMC"), certain documents related to the Public Display Permit that NMFS issued under the Marine Mammal Protection Act ("MMPA") for Tilikum the orca whale (Permit No. 774).

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Specifically, I request all documents from each of the aforementioned agencies between January 1, 2017 and May 1, 2017 related to NMFS' March 10, 2017 determination that the necropsy/clinical history requirements of Permit No. 774 were effectively extinguished by the 1994 amendments to the MMPA.

For purposes of this FOIA request, "all documents" encompass: (i) any written, printed, or typed material of any kind, including without limitation to all correspondence, memoranda, notes, meeting minutes, emails from or to official or personal e-mail accounts, spreadsheets, reports, calendars; (ii) any electronically, magnetically, or mechanically stored records, such as materials stored on a compact disk, digital video disk, microfiche, regardless of form; (iii) any audio, visual, aural, or video records, including but not limited to photographs, videotapes, microfilm; and (iv) any other records preserved by any other means for documenting thought or expression.

In the event that the requested documents cannot be disclosed in their entirety, AWI requests that you release any material that can be reasonably segregated. Should any documents or portions thereof be withheld, AWI requests that the agency state with specificity the description of the withheld document or portions thereof, and the legal and factual grounds for doing so.

AWI requests that any fees associated with responding to this FOIA request be waived. *See* 15 C.F.R. § 4.11; 43 C.F.R. § 2.45; 50 C.F.R. § 520.7. AWI is a non-profit, charitable institution that was founded over 50 years ago and is dedicated to protecting animals from suffering caused by human action. The documents that AWI is requesting concern the terms of Public Display Permit No. 774, the agencies' interpretation of those terms, and the level of input that NMFS received from other agencies to interpret those terms. Releasing the documents covered by this request will significantly enhance the public's understanding of the necropsy and clinical history requirements of MMPA public display permits issued before 1994 and the agencies' procedures for evaluating those permits. This information will help the public determine whether additional changes to the MMPA permitting processes are needed in order to achieve the goals of the statute.

Disclosure of the requested documents will benefit a broad audience of people interested in the MMPA and public display permits. AWI is an institute with significant expertise in marine mammals and animal welfare and is well suited to convey the information learned from the documents to the public. As a non-profit organization, AWI's primary goal is to increase awareness of human mistreatment of animals and releasing the documents it obtains in response to this FOIA request will further that goal. The documents AWI is requesting are not yet publicly available and thus the release of these documents will significantly enhance the public's understanding of the public display permits at issue.

AWI does not have any commercial interest that will be furthered by releasing the requested documents.

Please contact me if you have any questions.

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Sincerely,

/s/ Georgia Hancock  
Georgia Hancock, Esq.  
Of Counsel  
Animal Welfare Institute  
[georgia@awionline.org](mailto:georgia@awionline.org)  
mobile: 607-329-8638

cc: Dr. Naomi Rose (via electronic mail)  
Don Baur, Esq. (via electronic mail)

**Mark Graff - NOAA Federal**

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**From:** Mark Graff NOAA Federal  
**Sent:** Tuesday, February 13, 2018 11:30 AM  
**To:** Daniel Pollak NOAA Federal  
**Cc:** Stacey Nathanson NOAA Federal; Ellen Sebastian NOAA Federal; Peaches Hodge Tonic NOAA Federal  
**Subject:** NRDC Complaint on Summer Flounder  
**Attachments:** NRDC FOIA Request\_7 26 2017\_Dept. of Commerce (1).pdf; NRDC v. DOC Summer Flounder FOIA Complaint Final 1.23.18 (Needs ECF Number).pdf; DOC NOAA 2017 001606 Signed Interim 2 Letter.pdf

Hey Dan,

(b)(5)

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Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628 5658 (O)

(b)(6) (C)

Confidentiality Notice: This e mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
Silver Spring, MD 20910

Molly Masterson  
Natural Resources Defense Council  
40 W. 20<sup>th</sup> St.  
New York, NY 10011

NOV 28 2017

Re: FOIA Request DOC-NOAA-2017-001606

Dear Ms. Masterson:

This letter is in response to your Freedom of Information Act (FOIA) request, which was received by our office on July 26, 2017, in which you requested:

"...records regarding the Secretary of Commerce's decision determining that the state of New Jersey was in compliance with regard to management of its recreational summer flounder fishery under the Atlantic Coastal Fisheries Cooperative Management Act.

1. Decision memoranda, letters, emails, situation summaries, discussion documents, or briefing documents that discuss summer flounder and New Jersey's 2017 recreational season;
  2. Communications pertaining to New Jersey's recreational management of summer flounder during the 2017 season, including communications within the Department or any of its subdivisions, and communications between Department staff (or staff of any Department subdivision) and any outside entity;
  3. Proposals, recommendations, or factual information submitted to the Department or any of its subdivisions regarding New Jersey's recreational management of summer flounder during the 2017 season;
  4. Technical analysis, including projections or estimates of harvest, discard mortality, overages, and "conservation equivalency," submitted to or produced by the Department or any of its subdivisions, regarding New Jersey's recreational management of summer flounder during the 2017 season; and
  5. Scientific research or studies that support or explain the Secretary's decision.
- The temporal scope of this request is limited to records created or obtained on or after February 2, 2017."

On August 25, 2016, you further clarified the scope to include:

Decision documents, decision memoranda, letters, discussion or briefing documents, technical analyses (including projections or estimates of harvest, discard mortality, overages, and "conservation equivalency"), or scientific studies that were submitted to, considered by, or relied upon by the Secretary, or created for the purposes of the Secretary's compliance review; and





Communications that were created as the result of or for the purposes of the Secretary's compliance review, including communications within the Department or any of its subdivisions, and communications between Department staff (or staff of any Department subdivision) and any outside entity.

This is Interim Release Two.

We have located 40 records responsive to your request for this second interim release. (In the first interim release, we released 118 full release (or full grant) records.)

--39 records responsive to your request are fully releasable and are being released in their entirety.

--1 record is partially redacted under 5 U.S.C.552(b)(6), which prohibits from prohibits from disclosure "information that, if disclosed, would invade another individual's personal privacy."

You have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must be received within 90 calendar days of the date of this response letter at the following address:

Assistant General Counsel for Litigation, Employment, and Oversight  
U.S. Department of Commerce  
Office of General Counsel  
Room 5875  
14<sup>th</sup> and Constitution Avenue, N.W.  
Washington, D.C. 20230

An appeal may also be sent by e-mail to [FOIAAppeals@doc.gov](mailto:FOIAAppeals@doc.gov) or by FOIAonline at <https://foiaonline.regulations.gov/foia/action/public/home#>.

For your appeal to be complete, it must include the following items:

- a copy of the original request,
- our response to your request,
- a statement explaining why the withheld records should be made available, and why the denial of the records was in error.
- "Freedom of Information Act Appeal" must appear on your appeal letter. It should also be written on your envelope, e-mail subject line, or your fax cover sheet.

FOIA appeals posted to the e-mail box, fax machine, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

FOIA grants requesters the right to challenge an agency's final action in federal court. Before doing so, an adjudication of an administrative appeal is ordinarily required.

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

Office of Government Information Services  
National Archives and Records Administration  
Room 2510  
8601 Adelphi Road  
College Park, MD 20740-6001

Email: [ogis@nara.gov](mailto:ogis@nara.gov)

Phone: 301-837-1996

Fax: 301-837-0348

Toll-free: 1-877-684-6448

If you have questions regarding this correspondence please contact Jeff Lonergan at [jeff.lonergan@noaa.gov](mailto:jeff.lonergan@noaa.gov) or by phone at 301-427-8577, or the NOAA FOIA Public Liaison Robert Swisher at (301) 628-5755.

Sincerely,



Allan Risenhoover,  
Acting Deputy Assistant Administrator  
for Regulatory Programs





July 26, 2017

**Via Certified U.S. Mail (with enclosures) and Electronic Mail to:**

Michael Toland, Ph.D.  
Departmental FOIA Officer  
Office of Privacy and Open Government  
Department of Commerce  
14th and Constitution Avenue NW  
Mail Stop 52010FB  
Washington, DC 20230  
Email: mtoland@doc.gov

**Re: FOIA Request for Records Regarding Department of Commerce Determination of Compliance for New Jersey Summer Flounder Fishery**

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (2012), and applicable Department of Commerce (Department) regulations at 15 C.F.R. §§ 4.1-4.11 (2017).

**I. Description of Records Sought**

Please produce all records<sup>1</sup> in the Department's possession, custody, or control that support, explain, or otherwise relate to the Secretary of Commerce's (Secretary's) decision dated July 10, 2017, and final notice published on July 20, 2017,<sup>2</sup> determining that the state of New Jersey was in compliance with regard to management of its recreational summer flounder fishery under the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), 16 U.S.C. §§ 5101-5108 (2012). Requested records include, but are not limited to, any of the following:

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<sup>1</sup> "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any Department of Commerce office, including, but not limited to, Department of Commerce Headquarters offices, the Office of the Secretary, the Office of General Counsel, the National Oceanic and Atmospheric Administration ("NOAA"), and all of NOAA's subsidiary offices.

<sup>2</sup> National Marine Fisheries Service (NMFS), Dept. of Commerce, *Atlantic Coastal Fisheries Cooperative Management Act Provisions; Summer Flounder Fishery, Notice of Determination of Compliance for the State of New Jersey*, 82 Fed. Reg. 33,481 (July 20, 2017).

1. Decision memoranda, letters, emails, situation summaries, discussion documents, or briefing documents that discuss summer flounder and New Jersey's 2017 recreational season;
2. Communications pertaining to New Jersey's recreational management of summer flounder during the 2017 season, including communications within the Department or any of its subdivisions, and communications between Department staff (or staff of any Department subdivision) and any outside entity;
3. Proposals, recommendations, or factual information submitted to the Department or any of its subdivisions regarding New Jersey's recreational management of summer flounder during the 2017 season;
4. Technical analysis, including projections or estimates of harvest, discard mortality, overages, and "conservation equivalency," submitted to or produced by the Department or any of its subdivisions, regarding New Jersey's recreational management of summer flounder during the 2017 season; and
5. Scientific research or studies that support or explain the Secretary's decision.

The temporal scope of this request is limited to records created or obtained on or after February 2, 2017.

## **II. Request for a Fee Waiver**

NRDC requests that the Department waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 15 C.F.R. § 4.11(l)(1). The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 15 C.F.R. §§ 4.11 (b)(6), (d)(1).

### **A. NRDC Satisfies the First Fee Waiver Requirement**

The disclosure requested here would be "likely to contribute significantly to public understanding of the operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii); 15 C.F.R. § 4.11(l)(1)(i). Each of the four factors used by the Department to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 15 C.F.R. § 4.11(l)(2)(i)-(iv).

#### *1. Subject of the request*

The records requested here relate to an issue of regional and national impact: conservation and management of the summer flounder fishery, one of the most recreationally and commercially important fisheries along the Atlantic coast. Summer flounder is currently subject to overfishing and at risk of becoming overfished if effective catch limits are not implemented. The records also relate to the Department's understanding of what actions are needed to conserve summer flounder, and the Department's role in carrying out the cooperative management duties of the ACFCMA, *see* 16 U.S.C. § 5106. The Department of Commerce (including its subdivisions) is a government

agency. The requested records thus directly concern “the operations or activities of the [g]overnment.” 15 C.F.R. § 4.11(l)(2)(i).

2. *Informative value of the information to be disclosed*

The requested records are “likely to contribute to” the public’s understanding of government operations and activities, *id.* § 4.11(l)(2)(ii). The public does not currently possess comprehensive information regarding the Department’s evaluation of compliance for New Jersey’s management of summer flounder, or the Department’s ultimate decision that New Jersey was in compliance pursuant to the ACFCMA. As noted above, the Department’s decision has regional and national impacts. The issue of summer flounder management has been elevated to a point of broad public interest, as demonstrated by extensive media coverage in state, regional, and national media outlets. Thus, there is more than a reasonable likelihood that records regarding the Department’s decision have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

To the best of our knowledge, the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the Department’s actions and understanding of what actions are needed to conserve summer flounder, as further discussed below. However, if the Department were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

3. *Contribution to an understanding of the subject by the public is likely to result from disclosure.*

Because NRDC is a “representative of the news media,” as explained in Part II.C below, the Department must presume that this disclosure is likely to contribute to public understanding of its subject. *See* 15 C.F.R. § 4.11(l)(2)(iii). However, even if NRDC were not a media requester, NRDC’s expertise in fisheries management and marine conservation, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability and will to use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject matter. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC’s more than two million members and online activists are “a broad audience of persons interested in the subject[s]” of preventing overfishing and protecting marine resources, and when combined with NRDC’s communications to the public at large, the likely audience of interested persons to be reached is certainly “reasonably broad.” 15 C.F.R. § 4.11(l)(2)(iii). As NRDC’s long

history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.5 million members and online activists who receive regular communications on urgent environmental issues (sample email at Att. 2). This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, "The requirement to rebuild US fish stocks: Is it working?" *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, "The Untapped Potential of California's Water Supply: Efficiency, Reuse, and Stormwater," June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* "Saving Water in California," *N.Y. Times*, July 9, 2014 (discussing the report's estimates) (Att. 13);
- Article, "Waves of phony charges over new clean water safeguards," *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
- Article, "Don't Buy the Smear of the EPA," *L.A. Times*, June 3, 2014 (by NRDC President Frances Beinecke) (Att. 15);
- Transcript, "Conservationists Call For Quiet: The Ocean Is Too Loud!" Nat'l Pub. Radio, *All Things Considered*, July 28, 2013 (featuring NRDC Marine Mammal Protection Program Director Michael Jasny) (Att. 16);

- Testimony of David Doniger, NRDC Climate and Air Program Policy Director and Senior Attorney, before the United States House Subcommittee on Energy and Power, June 19, 2012 (Att. 17);
- Article, “Pollution Still a Hazard to U.S. Beaches,” CBS, *CBS NEWS*, July 29, 2009 (featuring former NRDC Water Program Co-Director Nancy Stoner) (Att. 18);
- Conference brochure, “World Business Summit on Climate Change,” May 24-26, 2009 (featuring former NRDC Director for Market Innovation Rick Duke at 9) (Att. 19);
- Article, “Is there a ‘proper level’ of compliance with environmental law?” *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall) (Att. 20);
- NRDC Document Bank, <http://docs.nrdc.org/> (Att. 21).

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 22). *See also* Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing NRDC’s report) (Att. 23).
- (2) NRDC obtained, through FOIA, FDA review documents on the nontherapeutic use of antibiotic additives in livestock and poultry feed. In January 2014, NRDC published a report, titled *Playing Chicken with Antibiotics*, which is based on the documents obtained, and reveals decades of hesitancy on FDA’s part to ensure the safety of these drug additives (Att. 24). *See also* P.J. Huffstutter and Brian Grow, “Drug critic slams FDA over antibiotic oversight in meat production,” *Reuters*, Jan. 27, 2014 (discussing NRDC’s report) (Att. 25).
- (3) NRDC has used White House documents obtained through FOIA and from other sources to inform the public about EPA’s decision not to protect wildlife and workers from the pesticide atrazine in the face of industry pressure to keep atrazine on the market. *See Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, <http://www.nrdc.org/health/atrazine/files/atrazine10.pdf> (Apr. 2010) (update to 2009 report) (Att. 26); *see also* William Souder, “It’s Not Easy Being Green: Are Weed-Killers Turning Frogs Into Hermaphrodites?” *Harper’s Bazaar*, Aug. 1, 2006 (referencing documents obtained and posted online by NRDC) (Att. 27).
- (4) NRDC incorporated information obtained through FOIA into a report, available at <http://www.nrdc.org/wildlife/marine/sound/contents.asp>, on the impacts of

military sonar and other industrial noise pollution on marine life. *See Sounding the Depths II: The Rising Toll of Sonar, Shipping and Industrial Ocean Noise on Marine Life* (Nov. 2005) (update to 1999 report) (Att. 28). The report also relied upon and synthesized information from other sources. Since the report's publication, the sonar issue has continued to attract widespread public attention. *See, e.g.*, "Protest Raised over New Tests of Naval Sonar," Nat'l Pub. Radio, *All Things Considered*, July 24, 2007 (transcript at Att. 29).

- (5) NRDC scientists have used information obtained through FOIA to publish analyses of the United States' and other nations' nuclear weapons programs. In 2004, for example, NRDC scientists incorporated information obtained through FOIA into a feature article on the United States' plans to deploy a ballistic missile system and the implications for global security. *See* Hans M. Kristensen, Matthew G. McKinzie, and Robert S. Norris, "The Protection Paradox," *Bulletin of Atomic Scientists*, Mar./Apr. 2004 (Att. 30).
- (6) NRDC obtained through FOIA, and made public, records of the operations of the Bush administration's Energy Task Force, along with analysis of selected excerpts and links to the administration's index of withheld documents (Att. 31). NRDC's efforts cast light on an issue of considerable public interest. *See, e.g.*, Elizabeth Shogren, "Bush Gets One-Two Punch on Energy," *L.A. Times*, Mar. 28, 2002, at A22 (Att. 32).
- (7) Through FOIA, NRDC obtained a memorandum by ExxonMobil, advocating the replacement of the sitting head of the Intergovernmental Panel on Climate Change, and used the document to help inform the public about what may have been behind the Bush administration's decision to replace Dr. Robert Watson. *See* NRDC Press Release and attached Exxon memorandum, "Confidential Papers Show Exxon Hand in White House Move to Oust Top Scientist from International Global Warming Panel," Apr. 3, 2002 (Att. 33); Elizabeth Shogren, "Charges Fly Over Science Panel Pick," *L.A. Times*, Apr. 4, 2002, at A19 (Att. 34).
- (8) Through FOIA and other sources, NRDC obtained information on nationwide levels of arsenic in drinking water and used it in a report, *Arsenic and Old Laws* (2000), available in print and online at <http://www.nrdc.org/water/drinking/arsenic/aolinx.asp> (Att. 35). The report guided interested members of the public on how to learn more about arsenic in their own drinking water supplies. *Id.*; *see also* Steve LaRue, "EPA Aims to Cut Levels of Arsenic in Well Water," *San Diego Union-Tribune*, June 5, 2000, at B1 (referencing NRDC report) (Att. 36).<sup>3</sup>

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<sup>3</sup> There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. *See, e.g.*, Felicity Barringer, "Science Panel Issues Report on Exposure to Pollutant," *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, "Draft of Air Rule is Said to Exempt Many Old Plants," *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., "E Mail Suggests Energy Official Encouraged Lobbyist on Policy," *N.Y. Times*, Apr. 27, 2002 (Att. 39).

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public's understanding of the subject.

#### 4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: conservation and management of the summer flounder fishery, and agency views on what management measures are necessary to achieve conservation of this important species. Recent overfishing of the summer flounder stock, and subsequent coastwide catch reductions implemented by NOAA and the Department of Commerce have received significant media coverage in 2016 and 2017. In recent weeks, the Atlantic States Marine Fisheries Commission's (ASMFC) noncompliance finding for the State of New Jersey, and the Department's determination of compliance, have also received significant coverage regional and national media outlets and other public forums. Examples of recent media coverage on this issue include:

- (1) Staff Report, *Recreational summer flounder season runs through Sept. 5*, NJToday.Net (July 21, 2017) (Exhibit A).
- (2) Dave Monti, *Fishing Report: U.S., fisheries panel disagrees on flounder targets*, Providence Journal (July 20, 2017) (Exhibit B).
- (3) *ASMFC Blasts Secretary Ross Decision on Summer Flounder in Favor of New Jersey's Recreational Sector, Saving Seafood* (Republished from Seafood News) (July 18, 2017) (Exhibit C).
- (4) Blog: Charles Witek, *Commerce Department's Summer Flounder Decision Undermines ASMFC's Authority To Manage Fish Stocks*, Marine Fish Conservation Network (July 18, 2017) (Exhibit D).
- (5) Associated Press, *Group: Trump Official's Fish Ruling Could Harm Conservation*, New York Times (July 17, 2017) (Exhibit E).
- (6) Associated Press, *Fish fight: managers say NJ flounder flap harms conservation*, Washington Post (July 17, 2017) (Exhibit F).
- (7) David Madden, *NJ Prevails In Fish Fight with Federal Government*, CBS Philly (July 15, 2017) (Exhibit G).
- (8) Press Release, *Department of Commerce Decision May Impact ASMFC's Ability to Conserve Atlantic Coastal Fisheries*, Atlantic States Marine Fisheries Commission (July 14, 2017) (Exhibit H).
- (9) Kate King, *New Jersey Wins in Effort to Ease Summer Flounder Quotas*, Wall Street Journal (July 12, 2017) (Exhibit I).
- (10) Daniel Radel, *NJ's fluke season saved after US secretary approves regulations*, App.com (part of USA Today Network) (July 11, 2017) (Exhibit J).
- (11) Claire Lowe, *New Jersey ruled out of compliance on summer flounder, moratorium possible*, Press of Atlantic City (June 2, 2017) (Exhibit K).
- (12) Daniel Hampton, *Summer flounder season begins in N.J., but there's a catch this year*, NJ.com (May 25, 2017) (Exhibit L).
- (13) Blog: John McMurray, *The Hard Truth About Summer Flounder*, Marine Fish Conservation Network (Exhibit M).

Public understanding of the Department's opinion of what actions are needed to conserve summer flounder and its role in carrying out the cooperative management duties of the ACFCMA, would be significantly enhanced by disclosure of the requested records concerning the Secretary's compliance decision. *See* 15 C.F.R. § 4.11(l)(2)(iv). Disclosure would help the public to more effectively evaluate the Department's conclusion that the management measures New Jersey declined to implement are not necessary for conservation of the summer flounder fishery. Disclosure would also help the public to better understand and evaluate the Department's actions on summer flounder conservation and management, particularly with respect to its decision that a moratorium in New Jersey state waters was not warranted.

## **B. NRDC Satisfies the Second Fee Waiver Requirement**

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 15 C.F.R. § 4.11(l)(3). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. "Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters." *Rossotti*, 326 F.3d at 1312 (internal citation omitted); *see Natural Res. Def. Council v. United States Emvtl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about conservation and management of the summer flounder fishery. As noted at Part II.A, any work done by the Department on summer flounder management relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of summer flounder management and associated implications for marine conservation.

## **C. NRDC Is a Media Requester**

Even if the Department denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and the Department's FOIA regulations, 15 C.F.R. § 4.11(d)(1); *see also* 15 C.F.R. § 4.11(b)(6) (defining "[r]epresentative of the news media"). A representative of the news media is "any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii); *see also Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a "non-profit public interest organization" qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep't of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than



two million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. *See* 15 C.F.R. § 4.11(b)(6) (“Examples of news-media entities are . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. *See* 5 U.S.C. § 552(a)(4)(A)(ii) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (accorded media requester status to the American Civil Liberties Union).<sup>4</sup>

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

### **III. Request for Expedited Processing**

NRDC requests expedited processing of this request. FOIA and relevant Department regulations allow for an expedited response, of less than 20 days, in cases where the requester is “primarily engaged in disseminating information” and demonstrates that there is an “urgency to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(I), (II); 15 C.F.R. § 4.6(f)(1)(iv). The following explains NRDC’s basis for requesting expedited processing, based on information that we certify to be true and correct, to the best of our knowledge and belief.

As explained in Part II.C above, NRDC is a “representative of the news media,” *see* 5 U.S.C. § 552(a)(4)(A)(ii); 15 C.F.R. § 4.11(b)(6), and a key purpose of the organization’s work is to gather

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<sup>4</sup> To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

and publish or transmit current and accurate news to the public. *See Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (holding that organization was “primarily engaged in disseminating information” where its mission involved serving as site of record for relevant and up-to-the minute civil rights news and information). Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. Further, as discussed in Part II.A.3 above, NRDC has the ability and will to use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. Dissemination of information need not be an organization’s “sole occupation” in order to meet this first requirement. 15 C.F.R. § 4.6(f)(1)(iv). Thus, it is appropriate to conclude that NRDC is “primarily engaged in disseminating information” with regard to this request.

This is also a case that presents an urgency to inform the public regarding activities of the Federal Government. *See* 15 C.F.R. § 4.6(f)(1)(iv). The Secretary’s July 2017 decision is unprecedented in that it is the first time in the existence of the ACFCMA that the Department of Commerce has rejected a noncompliance finding by the ASMFC. By allowing New Jersey to use management measures that are noncompliant with the coastal management plan, the decision is likely to result in the fishery exceeding its coastwide recreational harvest limit and increase the risk of the summer flounder stock becoming overfished. Importantly, the Secretary’s final decision was not accompanied with any publicly available technical analysis or projections that support the conclusion that the management measures New Jersey failed to implement were not necessary for the conservation of summer flounder. Given that the recreational summer flounder season is currently underway and will end in just over one month (on September 5, 2017), it is critical that the public be informed about the Department’s opinion of what actions are (or are not) needed to achieve conservation of summer flounder in the 2017 fishing season. This information has important implications for the conservation of the summer flounder stock and management approaches in other states. As discussed in Part II.A.4 above, significant public attention and media coverage of the initial noncompliance finding for New Jersey, and the Secretary’s determination of compliance, indicates the public is closely following this issue and wants to better understand the basis for the Secretary’s decision. *See infra* p. 7; Exhibits A-M.

#### **IV. Willingness to Pay Fees Under Protest**

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with the Department’s FOIA regulations at 15 C.F.R. § 4.11(c) for all or a portion of the requested records. *See* 15 C.F.R. §4.11(l)(4). Please contact me before doing anything that would cause the fee to exceed \$500. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

#### **IV. Conclusion**

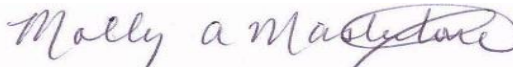
Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; the Department’s search for—or deliberations concerning—certain records should not delay the production of others that the

Department has already retrieved and elected to produce. *See generally* 15 C.F.R. § 4.6. If the Department concludes that any of the records requested here are publicly available, please let me know.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

A handwritten signature in purple ink that reads "Molly A. Masterton". The signature is written in a cursive style and is placed over a light pink rectangular background.

Molly A. Masterton  
Oceans Project Attorney  
Natural Resources Defense Council  
40 West 20th Street  
New York, NY 10011  
Tel.: 212-727-4451  
Fax: 212-727-1773  
Email: mmasterton@nrdc.org

**cc:** Mark H. Graff, FOIA Officer, National Oceanic and Atmospheric Administration;  
Bobbie Parsons, Immediate Office of the Secretary, Office of Privacy and Open  
Government, Department of Commerce

**Enclosures (sent via Certified U.S. Mail on CD):**

Attachments 1 through 40 (single .pdf file)

Exhibits A through M (single .pdf file)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

NATURAL RESOURCES DEFENSE	)	
COUNCIL, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
UNITED STATES DEPARTMENT OF	)	18-cv-583
COMMERCE,	)	ECF Case
	)	
Defendant.	)	
	)	

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**INTRODUCTION**

1. Defendant United States Department of Commerce (Commerce) has violated the Freedom of Information Act (FOIA), 5 U.S.C. § 552, by failing to fully disclose records relating to a July 2017 determination by the Secretary of Commerce that New Jersey had complied with its obligation to implement management measures aimed at conserving summer flounder. Plaintiff Natural Resources Defense Council (NRDC) requested these records from Commerce six months ago.

2. Commerce's National Oceanic and Atmospheric Administration (NOAA), regional fishery management councils, and the interstate Atlantic States Marine Fisheries Commission (the Fisheries Commission or Commission) work together to conserve and manage various fish populations along the Atlantic coast. As part of these efforts, the Fisheries Commission adopts management plans to protect certain fish species against depletion. Under Federal law, the Commission

identifies Atlantic coastal states to be included in its various management plans and then works to ensure that those states implement and enforce the plans.

3. In June 2017, the Fisheries Commission determined that New Jersey was out of compliance with the Commission's management plan for summer flounder, a fish species that is currently subject to overfishing. In July 2017, contrary to the Commission's determination, the Secretary of Commerce found that the summer flounder management measures New Jersey had failed to implement were not necessary for the conservation of summer flounder. The Secretary's determination allowed New Jersey's recreational summer flounder fishing season to proceed.

4. On July 26, 2017, NRDC submitted a FOIA request to Commerce for documents related to the Secretary's finding that the summer flounder management plan measures New Jersey had failed to implement were unnecessary for conserving summer flounder.

5. In October and November, Commerce via NOAA (a component of Commerce) provided NRDC with two "interim" releases of responsive documents. These interim releases consisted solely of documents from NOAA's files, and nothing from other Commerce components or the Office of the Secretary.

6. After the most recent interim release, Commerce informed NRDC that there were no more responsive documents in NOAA's files. Commerce further informed NRDC that it was unable to provide an update regarding the status of its

search for additional responsive documents outside of NOAA, other than noting a “significant logjam” due to the volume of Commerce FOIA requests.

7. Although Commerce has had six months to search for and produce responsive documents, it has not provided NRDC with any records from components of Commerce other than NOAA. Nor has Commerce provided NRDC with a final determination as to whether it will comply with NRDC’s request. The statutory deadline for such a final determination was, at the latest, September 11, 2017, with the final production of documents due promptly thereafter.

8. It is important that NRDC receives these documents in a timely manner. The Commission has already begun setting management measures for the 2018 summer flounder recreational fishing season, and the Commission and individual states will make key management decisions over the next four months prior to the opening of the season in May 2018. Particularly if New Jersey or other states choose not to comply with the relevant management plan for the 2018 fishing season, the requested documents could provide critical information to NRDC and the public in making advocacy decisions.

9. NRDC seeks a declaration that Commerce has violated FOIA by failing to provide a final determination as to whether it will comply with NRDC’s request, and by failing to produce all non-exempt responsive records, by the statutory deadline. NRDC seeks an injunction ordering Commerce to disclose at no cost and without further delay all non-exempt, responsive records to NRDC.

## THE PARTIES

10. Plaintiff NRDC is a national, non-profit environmental and public health membership organization with hundreds of thousands of members nationwide. NRDC engages in research, advocacy, public education, and litigation related to protecting public health and the environment. The organization's work includes efforts to end overfishing and promote the long-term sustainability of fishing practices in the United States.

11. Defendant Commerce is a federal agency within the meaning of FOIA, 5 U.S.C. § 551(1), and has possession or control of the records that NRDC seeks.

## JURISDICTION AND VENUE

12. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

13. Venue is proper in this court because plaintiff NRDC resides and has its principal place of business in this judicial district. 5 U.S.C. § 552(a)(4)(B).

## STATUTORY AND REGULATORY FRAMEWORK

14. FOIA requires that federal agencies release, upon request, information to the public, 5 U.S.C. § 552(a)(3), unless one of nine statutory exemptions applies, *id.* § 552(b).

15. Within 20 business days of an agency's receipt of a FOIA request, the agency must "determine . . . whether to comply with such request," *id.* § 552(a)(6)(A)(i); *see also* 15 C.F.R. § 4.6(b) (Commerce FOIA regulation), and "immediately notify the person making such request of . . . such determination and

the reasons therefor,” 5 U.S.C. § 552(a)(6)(A)(i). If the agency determines that it will comply with the request, it must “promptly” release responsive, non-exempt records to the requester. *Id.* § 552(a)(6)(C)(i); *see also* 15 C.F.R. § 4.7(c).

16. In “unusual circumstances,” an agency may extend the time limit for responding to a FOIA request by up to 10 business days. 5 U.S.C. § 552(a)(6)(B)(i).

17. If the agency fails to comply with the statutory time limits, the requester is deemed to have exhausted her administrative remedies and may immediately file suit “to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld.” 5 U.S.C. §§ 552(a)(4)(B), 552(a)(6)(C)(i).

#### **FACTUAL BACKGROUND**

18. Summer flounder is an important fish for commercial and recreational fishing industries along the Mid-Atlantic coast, and is found in waters from Nova Scotia, Canada, to the east coast of Florida. Despite conservation efforts, the summer flounder population is below target levels and is currently subject to overfishing.

19. Summer flounder and the fishing of summer flounder collectively known as the summer flounder fishery are jointly managed by NOAA (a component of Commerce), the Mid-Atlantic Fishery Management Council, and the Fisheries Commission. Together, these entities seek to conserve summer flounder and prevent depletion of the species.



20. Under the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act), 16 U.S.C. §§ 5101-5108, the Fisheries Commission is tasked with developing management plans to conserve summer flounder (as well as other fish species in the Atlantic coastal region), *see id.* § 5104(a). The Atlantic Coastal Act provides that, for each management plan, the Commission must identify the states that are required to implement and enforce the plan. *Id.* § 5104(a)(1). Under some management plans, the Commission allows states to implement their own management measures, so long as the state's measures achieve the same level of conservation as the Commission's plan.

21. If the Fisheries Commission finds that a state has failed to implement or enforce measures in compliance with the Commission's management plan for a particular fish species, the Atlantic Coastal Act requires the Commission to make a formal non-compliance determination. *Id.* § 5105(a). This determination is subject to review by the Secretary of Commerce, who makes an independent compliance determination. *Id.* § 5106(a)(1). If the Secretary agrees that the state has failed to implement and enforce the measures contained in the management plan, and also that such measures are "necessary for the conservation of the fishery," the Secretary must declare a moratorium on fishing that species in the waters of the non-complying state. *Id.* § 5106(a), (c)(1).

22. In February 2017, in response to new science indicating the declining population status of summer flounder, the Fisheries Commission tightened measures in its summer flounder management plan applicable to recreational

fishing. These stricter measures included increased minimum size requirements and a reduction in the maximum number of summer flounder allowed to be caught and kept by any one person.

23. State officials from New Jersey—one of several states required to implement and enforce the Commission’s summer flounder management plan—vocally opposed these stricter measures. Soon after the Fisheries Commission voted on the new restrictions, the New Jersey Department of Environmental Protection Commissioner wrote a letter to the Secretary of Commerce, asking the Secretary to stop them from going into effect, claiming the restrictions would lead to the “destruction of” New Jersey’s recreational summer flounder industry.

24. New Jersey ultimately proposed its own summer flounder recreational management measures, instead of implementing the new measures adopted by the Commission. Although the Commission’s summer flounder management plan allowed New Jersey to do so if the measures would achieve the same level of conservation as the Commission’s plan, after reviewing the measures proposed by New Jersey, the Commission found that the measures would not sufficiently protect summer flounder and were therefore inconsistent with the Commission’s plan.

25. New Jersey nonetheless implemented its own measures, prompting a formal non-compliance determination by the Fisheries Commission on June 1, 2017.

26. In July 2017, for the first time in the twenty-four-year history of the Atlantic Coastal Act, the Secretary of Commerce made a finding contrary to the Commission’s non-compliance determination, allowing New Jersey’s recreational

summer flounder season to proceed. Specifically, the Secretary found that the measures New Jersey failed to implement were “not necessary for the conservation of summer flounder.” 82 Fed. Reg. 33,481 (July 20, 2017). The notice announcing the Secretary’s compliance determination was brief and devoid of any substantive explanation. *See id.*

27. On July 26, 2017, NRDC served a FOIA request on Commerce, seeking records supporting, explaining, or otherwise relating to the Secretary’s finding that the summer flounder management measures New Jersey failed to implement were not necessary for the conservation of summer flounder. NRDC also requested a fee waiver.

28. NRDC received an email notification indicating that the request would be processed by NOAA, a component of Commerce. NRDC also received a letter from NOAA on August 4, 2017, acknowledging receipt of the request and stating that the agency was invoking the statutory ten-day extension applicable in “unusual circumstances.” In its letter, NOAA stated that it anticipated completing NRDC’s request by September 7, 2017.

29. On August 23, NRDC received a letter from NOAA recommending that NRDC narrow the scope of its request. After a phone call with NRDC on August 24 and an additional email from NRDC on August 25, NOAA agreed to move forward with the request. Around the same time, Commerce granted NRDC’s fee waiver request.

30. NOAA provided NRDC with two “interim releases” of responsive documents in October and November, but did not provide a final date for Commerce’s completion of NRDC’s request. The interim releases consisted solely of documents from NOAA’s files, and a NOAA representative confirmed that NOAA itself has no other responsive documents. NOAA further informed NRDC that it was unable to provide more information regarding the status of Commerce’s search for additional responsive documents, other than noting a “significant logjam” due to the volume of Commerce FOIA requests.

31. It has been six months since NRDC served its FOIA request on Commerce, and more than four months since the statutory deadline passed, yet Commerce has failed to provide NRDC with a final response to its request.

#### **CLAIM FOR RELIEF**

32. Plaintiff incorporates by reference all preceding paragraphs.

33. NRDC has a statutory right under FOIA to obtain without further delay all records responsive to its request that are not exempt from disclosure.

34. Commerce violated its duty under FOIA, 5 U.S.C. § 552(a), to release by the statutory deadline all non-exempt, responsive records to NRDC.

#### **REQUEST FOR RELIEF**

Plaintiff respectfully requests that this Court enter judgment against Commerce as follows:

A. Declaring that Commerce has violated FOIA by failing to produce all non-exempt records responsive to NRDC’s FOIA request by the statutory deadline;

- B. Ordering that Commerce disclose the remaining requested records to NRDC at no cost and without further delay;
- C. Ordering that Commerce produce an index identifying any documents or parts thereof that it withholds and the basis for the withholdings, in the event Commerce determines that certain responsive records are exempt from disclosure;
- D. Retaining jurisdiction over this case to rule on any challenged assertions by Commerce that certain responsive records are exempt from disclosure;
- E. Awarding NRDC its costs and reasonable attorneys' fees; and
- F. Granting such other relief that the Court considers just and proper.

Respectfully submitted,

/s/ Catherine Marlantes Rahm  
Catherine Marlantes Rahm  
Natural Resources Defense Council  
40 West 20th Street, 11th Floor  
New York, NY 10011  
(212) 727-4628  
crahm@nrdc.org

*Counsel for Plaintiff*

Dated: January 23, 2018

## Adam Carlesco

---

**From:** Adam Carlesco  
**Sent:** Wednesday, February 14, 2018 1:08 PM  
**To:** FOIA@noaa.gov; mark.graff@noaa.gov  
**Subject:** Employee Violence FOIA  
**Attachments:** 2018 NOAA DOC request\_employee violence.pdf

Dear FOIA Officer,

Please find attached PEER's FOIA request seeking records related to incidences of violence against agency employees. I look forward to hearing back from the agency.

Adam

Adam Carlesco, Staff Counsel  
Public Employees for Environmental Responsibility (PEER)  
962 Wayne Ave., Suite 610  
Silver Spring, Maryland 20910  
Main Office: 202.265.PEER (7337) / Direct: 240.247.0298  
Fax: 202.265.4192  
[acarlesco@peer.org](mailto:acarlesco@peer.org)  
[www.peer.org](http://www.peer.org)

**CAUTION:** If you attempt to send an email with a total attachment size exceeding 8 MB, it will not come through, and neither of us will receive a "failed delivery" message. Please contact me directly for alternate instructions for sending large files.

This message may contain information that is confidential or legally privileged. If you are not the intended recipient, please immediately advise the sender by reply email and delete this email from your system. The unauthorized review and/or dissemination of this email is strictly prohibited. The transmission of this email shall not be deemed to constitute a waiver of any privileges or confidences.



# Public Employees for Environmental Responsibility

962 Wayne Avenue, Suite 610 • Silver Spring, MD 20910

Phone: (202) 265-PEER • Fax: (202) 265-4192

Email: [info@peer.org](mailto:info@peer.org) • Web: <http://www.peer.org>

February 14, 2017

National Oceanic and Atmospheric Administration  
Public Reference Facility (SOU1000)  
1315 East-West Highway (SSMC3), Room 9719  
Silver Spring, Maryland 20910

U.S. Department of Commerce  
1401 Constitution Ave NW  
Washington, DC 20230

## **RE: FREEDOM OF INFORMATION ACT REQUEST**

### **VIA U.S. MAIL & EMAIL**

Dear NOAA and DOC FOIA Officers:

Each year, my organization submits requests under the Freedom of Information Act (5 U.S.C. 552, as amended) seeking information from major federal agencies about the incidence of violence and threats against their employees.

Accordingly, Public Employees for Environmental Responsibility (PEER) now asks that, as you have done in years past, you provide information for **calendar year 2017**. Specifically, we request the following records and/or documents concerning acts of violence or threats against National Oceanic and Atmospheric Administration (NOAA) employees and professional observer contractor employees as follows:

A summary of all incidents of violence, threats, or harassment against **NOAA employees** that occurred in **calendar year 2017**. The summary should include the date, location, and nature of the incident or threat together with a summary of what, if any, outcomes stemmed from the incident or threat (e.g., arrest, conviction, ongoing investigation).

A summary of all incidents of violence, threats, or harassment against **professional observers**, including government contractors, that occurred in **calendar year 2017**. The summary should include incidents against observers aboard NOAA vessels or while otherwise carrying out their duties as NOAA contractors, and include the date, location, and nature of the incident or threat together with a summary of what, if any, outcomes stemmed from the incident or threat (e.g., arrest, conviction, ongoing investigation).

In the past, there was some confusion over whether NOAA or the Department of Commerce should handle our request as to *professional observers*. Thus, I am sending this request to both NOAA and DOC, and I trust that the respective FOIA officers will work out amongst themselves the most expeditious way of responding, involving NMFS if necessary.

**Please note** that your past responses have indicated severe inaccuracies. For example, for our calendar year 2013 request pertaining to violence against professional observers, DOC's Office of Security reported only one responsive incident, yet a report by the NMFS Office for Law Enforcement's Alaska Enforcement Division stated that observers had reported 38 incidents of violence, threats, or harassment in the first two quarters of 2013 in *Alaska alone*. We do not know who within NOAA or DOC keeps track of these numbers, but we ask your assistance and cooperation in ensuring that the appropriate people respond to our request to provide a **complete and accurate response**.

We greatly appreciate your efforts in providing this important information, which will contribute to our ongoing study of the extent of violence and intimidation directed against public resource employees. Release of the requested information is in the interest of the general public, in order for the public to understand the true dimensions of, and motivations for, confrontations with public resource agencies.

For any documents or portions of documents that you claim specific FOIA exemption(s), please provide an index itemizing and describing the documents or portions of documents withheld. The index should, pursuant to the holding of *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974), provide a detailed justification for claiming a particular exemption explaining why each such exemption applies to the document or portion of a document withheld.

PEER requests that all fees be waived because "disclosure of the information is in the public interest . . . and is not primarily in the commercial interest of the requestor" (5 U.S.C. 552 (a) (4)(A)). Disclosure of the above requested information is in the public interest because disclosure would contribute significantly to public understanding of the difficulties encountered by NOAA employees working to manage public resources.

Disclosure is in no way connected with any commercial interest of the requestor. PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation's resources and with supporting professional integrity within public land management and pollution control agencies. To that end, PEER is designated as a tax-exempt organization under section 501(c)(3) of the Internal Revenue code.

If you have any questions about this FOIA request, please contact me at (202) 265-7337. I look forward to receiving the agency's final response within twenty working days.

Respectfully submitted,



Adam Carlesco, Staff Counsel



Public Employees for Environmental Responsibility  
962 Wayne Ave, Suite 610  
Silver Spring, MD 20910  
Tel: 202.265.7337  
Fax: 202.265.4192  
Email: [acarlesco@peer.org](mailto:acarlesco@peer.org)

**From:** postmaster@DOCGOV.onmicrosoft.com  
**Sent:** Wednesday, February 14, 2018 6:02 PM  
**To:** Mark.Graff@noaa.gov  
**Subject:** Undeliverable: Weekly FOIA Incoming and High Visibility Requests  
**Attachments:** details.txt; Weekly FOIA Incoming and High Visibility Requests



Your message to [cholmes@doc.gov](mailto:cholmes@doc.gov) couldn't be delivered.

**cholmes** wasn't found at **doc.gov**.

Mark.Graff	Office 365	cholmes
<b>Action Required</b>		Recipient
Unknown To address		

### How to Fix It

The address may be misspelled or may not exist. Try one or more of the following:

- Send the message again following these steps: In Outlook, open this non-delivery report (NDR) and choose **Send Again** from the Report ribbon. In Outlook on the web, select this NDR, then select the link "**To send this message again, click here.**" Then delete and retype the entire recipient address. If prompted with an Auto-Complete List suggestion don't select it. After typing the complete address, click **Send**.
- Contact the recipient (by phone, for example) to check that the address exists and is correct.
- The recipient may have set up email forwarding to an incorrect address. Ask them to check that any forwarding they've set up is working correctly.
- Clear the recipient Auto-Complete List in Outlook or Outlook on the web by following the steps in this article: [Fix email delivery issues for error code 5.1.10 in Office 365](#), and then send the message again. Retype the entire recipient address before selecting **Send**.

If the problem continues, forward this message to your email admin. If you're an email admin, refer to the **More Info for Email Admins** section below.

Was this helpful? [Send feedback to Microsoft.](#)

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## More Info for Email Admins

Status code: 550 5.1.10

This error occurs because the sender sent a message to an email address hosted by Office 365 but the address is incorrect or doesn't exist at the destination domain. The error is reported by the recipient domain's email server, but most often it must be fixed by the person who sent the message. If the steps in the **How to Fix It** section above don't fix the problem, and you're the email admin for the recipient, try one or more of the following:

**The email address exists and is correct** Confirm that the recipient address exists, is correct, and is accepting messages.

**Synchronize your directories** If you have a hybrid environment and are using directory synchronization make sure the recipient's email address is synced correctly in both Office 365 and in your on premises directory.

**Errant forwarding rule** Check for forwarding rules that aren't behaving as expected.

Forwarding can be set up by an admin via mail flow rules or mailbox forwarding address settings, or by the recipient via the Inbox Rules feature.

**Recipient has a valid license** Make sure the recipient has an Office 365 license assigned to them. The recipient's email admin can use the Office 365 admin center to assign a license (Users > Active Users > select the recipient > Assigned License > Edit).

**Mail flow settings and MX records are not correct** Misconfigured mail flow or MX record settings can cause this error. Check your Office 365 mail flow settings to make sure your domain and any mail flow connectors are set up correctly. Also, work with your domain registrar to make sure the MX records for your domain are configured correctly.

For more information and additional tips to fix this issue, see [Fix email delivery issues for error code 5.1.10 in Office 365](#).

## Original Message Details

Created Date: 2/14/2018 9:26:25 PM  
Sender Address: Mark.Graff@noaa.gov  
Recipient Address: cholmes@doc.gov  
Subject: Weekly FOIA Incoming and High Visibility Requests

## Error Details

Reported error: 550 5.1.10 RESOLVER.ADR.RecipientNotFound; Recipient cholmes@doc.gov not found by SMTP address lookup  
DSN generated by: BY2PR09MB1016.namprd09.prod.outlook.com

## Message Hops

HOP	TIME (UTC)	FROM	TO	WITH	RELAY TIME
1	2/14/2018 9:26:25 PM		10.200.39.179	HTTP	*
2	2/14/2018 11:02:01 PM		mail qk0 x244.google.com	SMTP	1 hr, 35 min, 36 sec
3	2/14/2018 11:02:01 PM	mail qk0 x244.google.com	CY1GCC01FT010.mail.protection.outlook.com	Microsoft SMTP Server (version=TLS1 2, cipher=TLS ECDHE RSA WITH AES 256 CBC SHA P384)	*
4	2/14/2018 11:02:01 PM	CY1GCC01FT010.eop gcc01.prod.protection.outlook.com	CY4PR09CA0001.outlook.office365.com	Microsoft SMTP Server (version=TLS1 2, cipher=TLS ECDHE RSA WITH AES 256 CBC SHA384)	*
5	2/14/2018 11:02:01 PM	CY4PR09CA0001.namprd09.prod.outlook.com	BY2PR09MB1016.namprd09.prod.outlook.com	Microsoft SMTP Server (version=TLS1 2, cipher=TLS ECDHE RSA WITH AES 256 CBC SHA384 P256)	*

## Original Message Headers

Received: from CY4PR09CA0001.namprd09.prod.outlook.com (10.172.65.11) by BY2PR09MB1016.namprd09.prod.outlook.com (10.166.115.146) with Microsoft SMTP Server (version=TLS1 2, cipher=TLS ECDHE RSA WITH AES 256 CBC SHA384 P256) id 15.20.506.18; Wed, 14 Feb 2018 23:02:01 +0000  
Received: from CY1GCC01FT010.eop gcc01.prod.protection.outlook.com (2a01:111:f400:7d02::203) by CY4PR09CA0001.outlook.office365.com (2603:10b6:910:2::11) with Microsoft SMTP Server (version=TLS1 2, cipher=TLS ECDHE RSA WITH AES 256 CBC SHA384) id 15.20.506.18 via Frontend Transport; Wed, 14 Feb 2018 23:02:01 +0000  
Authentication Results: spf=pass (sender IP is 2607:f8b0:400d:c09::244) smtp.mailfrom=noaa.gov; doc.gov; dkim=pass (signature was verified) header.d=noaa.gov.20150623.gappssmtp.com;doc.gov; dmarc=bestguesspass action=none header.from=noaa.gov;  
Received SPF: Pass (protection.outlook.com: domain of noaa.gov designates 2607:f8b0:400d:c09::244 as permitted sender) receiver=protection.outlook.com; client ip=2607:f8b0:400d:c09::244; helo=mail qk0 x244.google.com;  
Received: from mail qk0 x244.google.com (2607:f8b0:400d:c09::244) by CY1GCC01FT010.mail.protection.outlook.com (2a01:111:e400:7d00:fc15:b4ff:fe10:2158) with Microsoft SMTP Server (version=TLS1 2, cipher=TLS ECDHE RSA WITH AES 256 CBC SHA P384) id 15.20.485.12 via Frontend Transport; Wed, 14 Feb 2018 23:02:01 +0000  
Received: by mail qk0 x244.google.com with SMTP id s198sol2650104qke.5 for <cholmes@doc.gov>; Wed, 14 Feb 2018 15:02:01 0800 (PST)  
DKIM Signature: v=1; a=rsa sha256; c=relaxed/relaxed; d=noaa.gov.20150623.gappssmtp.com; s=20150623; h=mime version:from:date:message id:subject:to:cc; bh=TSBFVvSftF7TETLMB3414acBrjxLcElVbEL10zPeH4Y=;

b=PDq6GOrnBwH+8mNj4p0DVdz7Zf7XgJIXSb+73i0TsmIuiw30vBH+Riq8PxeVZVCBWR  
gmV7Kfq/aJQGuWnQtBTpGXR0W20s1jsY3A3EzGXQbaeQtqFhophIiv4tE7elIx3gONWw  
CNkM74t9pm/KnVzIzQWXCxGQ9mqIdVqPgxZyghXiaqphgU3sutID3L5wnxrQ6tov5Lu  
ZUM9m4gYzdKbaixz/5M+LfsAEWLqUUU3j41818nMYuBwntKv/gMEarTh1fW/it+6w12O  
iytuG/ANRrxanPHssPZ6rrfpyEr3ncGD4jjYPFs10aQKrchQLIEhbpD2A2UTUBjjgHB8py  
r20A==

X Google DKIM Signature: v=1; a=rsa sha256; c=relaxed/relaxed;

d=le100.net; s=20161025;

h=x gm message state:mime version:from:date:message id:subject:to:cc;

hh=TSBFVvSftF7TETLMB3414acBrjXlCvEL10zPeH4Y=;

b=AwaUztrFfncFoYwPuQACQlwmvgQorHW9bJaLHAPCzI9zZoPlzZvEOLw3Tr4swiLYn  
ABrYf+QpYFgnB8WnSut6VGzI4SdSJa54+SU59YJt1KDBxCCiMP4pecTZiPCHTQGBXNCC  
y9AfgKAuXn4C8GJMhgvB37G3RLOVqjJmAPeE6a3E84VJKOT2U/9As3Znj0aUbCFXsnF9  
1zIuL+jO22a0JvcUYChdLXq477U6Dodjh5YspFACFUJaUFSU7WpWR555kcKAFmjdt67  
xxz4EJIGdY0LEDwyEoTvO/g8750x6E/0Qw1+UNRIYUS/xLDXuZ4v94Lnof/4szzAlpmc  
CANw==

X Gm Message State: APflxPD2HLPhnbNlk1wjYUWTQUB+btJmE/f5T9pMTNaMGxrzvpDPCte

W7k8rpnZs6Ya4ddyU/XpsYcGch0JtDSGOQcYDOENA==

X Google SmtP Source: AH8x227m6VjS8wV8e/W8W8LNzGeMN3hvGHW9cV7XX/LIiheKne0WqQtVvtrcDXE+iBfY8IngZbkRvICzXJKPOafAqY=

X Received: by 10.55.17.75 with SMTP id b72mr664818qkh.337.1518643627766; Wed,  
14 Feb 2018 13:27:07 0800 (PST)

MIME Version: 1.0

Received: by 10.200.39.179 with HTTP; Wed, 14 Feb 2018 13:26:25 0800 (PST)

From: Mark Graff NOAA Federal <mark.graff@noaa.gov> Date: Wed, 14 Feb 2018 16:26:25 0500

Message ID: <CAFW6A9J0 3wOC7KrwOAdkBmLmbV5DhPzRiuwMLhPh3gxAb=g@mail.gmail.com> Subject: Weekly FOIA Incoming and High Visibilit  
y Requests

To: Stephen Lipps NOAA Federal <stephen.lipps@noaa.gov>, "Holmes, Colin" <cholmes@doc.gov>,  
Scott Smullen NOAA Federal <scott.smullen@noaa.gov>, Jeff Dillen NOAA Federal <jeff.dillen@noaa.gov>,  
Kristen Gustafson NOAA Federal <kristen.l.gustafson@noaa.gov>, Robert Hogan <robert.j.hogan@noaa.gov>,  
DUS Staff <duso.staff@noaa.gov>,

Tanya Dobrzynski NOAA Federal <tanya.dobrzynski@noaa.gov>,

Stuart Levenbach NOAA Federal <Stuart.levenbach@noaa.gov>,

Kevin Wheeler NOAA Federal <Kevin.Wheeler@noaa.gov>,

Brandon Elsner NOAA Federal <Brandon.Elsner@noaa.gov>,

Taylor Jordan NOAA Federal <Taylor.Jordan@noaa.gov>, Erik Noble NOAA Federal <erik.noble@noaa.gov>,

Wendy Lewis NOAA Federal <Wendy.Lewis@noaa.gov>CC: Tom Taylor <tom.taylor@noaa.gov>,

Kimberly Katzenbarger NOAA FEDERAL <kimberly.katzenbarger@noaa.gov>, Charles <charles.green@noaa.gov>,

Dennis Morgan NOAA Federal <dennis.morgan@noaa.gov>,

Stacey Nathanson NOAA Federal <stacey.nathanson@noaa.gov>,

Robert Swisher NOAA Federal <robert.swisher@noaa.gov>,

Steven Goodman NOAA Federal <Steven.Goodman@noaa.gov>,

Samuel Dixon NOAA Affiliate <samuel.dixon@noaa.gov>, Lola Stith NOAA Affiliate <lola.m.stith@noaa.gov>,

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Nkolika Ndubisi NOAA Federal <nkolika.ndubisi@noaa.gov>,

Jeri Dockett NOAA Affiliate <jeri.dockett@noaa.gov>,

Lawrence Charters NOAA Federal <lawrence.charters@noaa.gov>,

Allison Soussi Tanani NOAA Federal <Allison.Soussi.Tanani@noaa.gov>,

"Bogomolny, Michael (Federal)" <MBogomolny@doc.gov>,

Roxie Allison Holman NOAA Federal <roxie.allison.holman@noaa.gov>,

John Almeida NOAA Federal <john.almeida@noaa.gov>,

Michael Weiss NOAA Federal <michael.weiss@noaa.gov>,

Maria Williams NOAA Federal <Maria.Williams@noaa.gov>,

Shawn Martin NOAA Federal <shawn.martin@noaa.gov>,

Kathryn Kempton NOAA Federal <kathryn.kempton@noaa.gov>, Ed Kearns NOAA Federal <ed.kearns@noaa.gov>,

Cheryl Scannell NOAA Federal <cheryl.scannell@noaa.gov>,

Devin Brakob NOAA Federal <devin.r.brakob@noaa.gov>, OCIO GPD <ocio.gpd@noaa.gov>,

Darone Jones NOAA Federal <darone.jones@noaa.gov>,

Christina Storz NOAA Federal <christina.storz@noaa.gov> Content Type: multipart/mixed; boundary="001a11474350fa7ccf056532c585"

Return Path: mark.graff@noaa.gov

X EOPAttributedMessage: 0

X EOPTenantAttributedMessage: 44cf3ec3 840c 4086 b7de e3bc9a6c2db4:0

X MS Office365 Filtering HT: Tenant

X Forefront Antispam Report: CIP:2607:f8b0:400d:c09::244; IPV:NLI; CTRY:; EFV:NLI;

X Microsoft Exchange Diagnostics: 1;CY1GCC01FT010;1:KwnzIEatOepNXrAsXecKunbVsfLQqaWxfiFiSnTRF9LBBswP60FmsEES4OmpSa3OHRpyeVzKfkYP  
J92VzIwlsBHWMIiGLEWUK/NLydsrL8GZk5ddCvoWvuB1HslSSPGP

X MS PublicTrafficType: Email

X MS Office365 Filtering Correlation Id: a1f0a78f d0be 420c b67e 08d573fef50e

X Microsoft Antispam:

UriScan::BCL:0;PCL:0;RULEID:(7020095)(205092)(5600026)(4604075)(4605076)(4608076)(49563074)(1401068)(1402041);SRVR:BY2PR09MB1016

X Microsoft Exchange Diagnostics:

1;BY2PR09MB1016;3:sx+G80lbBviVlP4eZbi+b99Jhh203zL4dXF3iV+M/aoAs2fIInnqS3dGdWwoHsgGQHndmQPv/xyB/WpPPTHgp+7/LtwrbiwKlAzOI5az6WKUTW  
jJLw2PJUENRKIE8are7HN02FpoSFTcxw7SOzg66z8GzFr1MbwssPVFGqgFipgJg7UpPIpxqVusHvn0804CF/1VANV0Jb2CF+9yzFhFCSNpsAhh8+QjSq11KmDPzeri4t  
Dac1Ei45q1U8xliL9lSk/8Fj2K0UFbDqV1CXR52Wbczq+mdTQKLUD0MSzaohEHqgJlIFXolsNVdygGdGC816aGwMJLx3zfcz30FD1TnOrmnB5hcgULiC0uIaBiHqV7  
LQGVRE5mt43S+z90Fc;25:ZckMLn3SFAoCvuuFalMrTyBn8ACZkzrNmF+13vXjmd55JvVLUW8u83UvIWSVpn+qg4HazYxiFCguh/d5klSaFlpD3CzTmBRTPe/bz1G/NKx  
6Z+dCEUrhwcAuWXPBriMHYvHrQ7veiLM8uTk1GuEmxWb1SbhXyrPRVPgDt41LDKMCFCj6aJc7Sju5Yov11b0GM2t5xUNclYvF3Nng72gHjBokfQvsiICwCPIHfQe6T  
hStCrTCxoSGiYwinwojKRPNHJXK70A6guPgu/HvPjgTqfj/Kc9rIQjbdqHJfo6UqcQpr120QdRwclT9qiTLHOYXefGQq66eevIIv1fvZ+cRA==

X MS TrafficTypeDiagnostic: BY2PR09MB1016:

Reporting-MTA: dns;BY2PR09MB1016.namprd09.prod.outlook.com  
Received-From-MTA: dns;mail-qk0-x244.google.com  
Arrival-Date: Wed, 14 Feb 2018 23:02:01 +0000

Final-Recipient: rfc822;cholmes@doc.gov

Action: failed

Status: 5.1.10

Diagnostic-Code: smtp;550 5.1.10 RESOLVER.ADR.RecipientNotFound; Recipient cholmes@doc.gov  
not found by SMTP address lookup

X-Display-Name: Holmes, Colin

**From:** Mark Graff - NOAA Federal <mark.graff@noaa.gov>  
**Sent:** Wed, 14 Feb 2018 16:26:25 -0500  
**Subject:** Weekly FOIA Incoming and High Visibility Requests  
**To:** Stephen Lipps - NOAA Federal <stephen.lipps@noaa.gov>, "Holmes, Colin" <cholmes@doc.gov>, Scott Smullen - NOAA Federal <scott.smullen@noaa.gov>, Jeff Dillen - NOAA Federal <jeff.dillen@noaa.gov>, Kristen Gustafson - NOAA Federal <kristen.l.gustafson@noaa.gov>, Robert Hogan <robert.j.hogan@noaa.gov>, \_DUS Staff <duso.staff@noaa.gov>, Tanya Dobrzynski - NOAA Federal <tanya.dobrzynski@noaa.gov>, Stuart Levenbach - NOAA Federal <Stuart.levenbach@noaa.gov>, Kevin Wheeler - NOAA Federal <Kevin.Wheeler@noaa.gov>, Brandon Elsner - NOAA Federal <Brandon.Elsner@noaa.gov>, Taylor Jordan - NOAA Federal <Taylor.Jordan@noaa.gov>, Erik Noble - NOAA Federal <erik.noble@noaa.gov>, Wendy Lewis - NOAA Federal <Wendy.Lewis@noaa.gov>  
**Cc:** Tom Taylor <tom.taylor@noaa.gov>, Kimberly Katzenbarger - NOAA FEDERAL <kimberly.katzenbarger@noaa.gov>, Charles <charles.green@noaa.gov>, Dennis Morgan - NOAA Federal <dennis.morgan@noaa.gov>, Stacey Nathanson - NOAA Federal <stacey.nathanson@noaa.gov>, Robert Swisher - NOAA Federal <robert.swisher@noaa.gov>, Steven Goodman - NOAA Federal <Steven.Goodman@noaa.gov>, Samuel Dixon - NOAA Affiliate <samuel.dixon@noaa.gov>, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>, Zachary Goldstein - NOAA Federal <Zachary.Goldstein@noaa.gov>, Douglas Perry - NOAA Federal <Douglas.A.Perry@noaa.gov>, Nkolika Ndubisi - NOAA Federal <nkolika.ndubisi@noaa.gov>, Jeri Dockett - NOAA Affiliate <jeri.dockett@noaa.gov>, Lawrence Charters - NOAA Federal <lawrence.charters@noaa.gov>, Allison Soussi-Tanani - NOAA Federal <Allison.Soussi-Tanani@noaa.gov>, "Bogomolny, Michael (Federal)" <MBogomolny@doc.gov>, Roxie Allison-Holman - NOAA Federal <roxie.allison-holman@noaa.gov>, John Almeida - NOAA Federal <john.almeida@noaa.gov>, Michael Weiss - NOAA Federal <michael.weiss@noaa.gov>, Maria Williams - NOAA Federal <Maria.Williams@noaa.gov>, Shawn Martin - NOAA Federal <shawn.martin@noaa.gov>, Kathryn Kempton - NOAA Federal <kathryn.kempton@noaa.gov>, Ed Kearns - NOAA Federal <ed.kearns@noaa.gov>, Cheryl Scannell - NOAA Federal <cheryl.scannell@noaa.gov>, Devin Brakob - NOAA Federal <devin.r.brakob@noaa.gov>, \_OCIO GPD <ocio.gpd@noaa.gov>, Darone Jones - NOAA Federal <darone.jones@noaa.gov>, Christina Storz - NOAA Federal <christina.storz@noaa.gov>  
[NRDC v. DOI and DOC Original Complaint.pdf](#)  
[Original NRDC FOIA Request re EO 13795.pdf](#)  
[2018.01.08 AWI Complaint.pdf](#)  
[AWI Original Request.pdf](#)  
[Weekly FOIA Incoming and High Visibility Requests 2.8 to 2.14.18.xls](#)

Good Afternoon,  
Attached is this week's report.

One request was received from the Natural Resources Defense Council. The request seeks records regarding the decision, following Right Whale sightings, to create a Dynamic Management Area off the coast of Virginia. (DOC-NOAA-2018-000716). NRDC has filed suit three times against the Department within the last year, including the new lawsuit referenced below.

In litigation, NRDC filed suit in SDNY premised on the constructive denial of their FOIA request seeking records regarding the implementation of EO 13795. (b)(5)

Additionally, in the *AWI v. NOAA* litigation, NOAA issued its second interim response. The original request sought all records regarding the orca Tilicum, which was the subject of the movie Blackfish. A copy of the original request and the Complaint filed in DDC are both attached.

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628-5658 (O)  
(b)(6) (C)

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

NATURAL RESOURCES DEFENSE COUNCIL, INC.,	)	
	)	
Plaintiff,	)	
v.	)	
	)	
U.S. DEPARTMENT OF THE INTERIOR	)	Civil Action No. 18-cv-650
and	)	
	)	
U.S. DEPARTMENT OF COMMERCE,	)	
	)	
Defendants.	)	
	)	

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**INTRODUCTION**

1. Plaintiff Natural Resources Defense Council, Inc. (NRDC or Plaintiff), brings this case to compel Defendants, the U.S. Department of the Interior (Interior Department) and the U.S. Department of Commerce (Commerce Department) (collectively, Defendants), to disclose records relating to the agencies’ reviews of certain national monuments.

2. Over the course of the past year, Defendants have conducted controversial “reviews” of at least twenty-seven national monuments established by former Presidents Clinton, G.W. Bush, and Obama including the Bears Ears National Monument in Utah, the Grand Staircase-Escalante National Monument in

Utah, and the Northeast Canyons and Seamounts Marine National Monument in the Atlantic Ocean for the purpose of making recommendations to the President about whether to preserve those monuments, or to dismantle them and open them to industrial resource extraction and other destructive uses. Despite an outpouring of popular support for preserving existing national monuments, the President has already acted to revoke national monument protections for huge swaths of Bears Ears and Grand Staircase-Escalante.

3. In September and October 2017, NRDC sought production under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, of records relating to the agencies' review processes. As explained below, NRDC sought records relating to the public comments that Defendants received, the meetings and communications Defendants' leadership had with non-governmental individuals and entities (including industry groups), and the criteria by which Defendants weighed the information they gathered. NRDC, its members, and the American public at large have a right to know who is influencing the federal government's decisions about the fate of these iconic American lands and waters.

4. FOIA required Defendants to respond within twenty business days. Yet Defendants did not respond substantively by that deadline, and they still have not done so. Their failure to timely disclose the requested records violates FOIA.

5. NRDC seeks a declaration that Defendants violated FOIA by failing to provide a final determination by the statutory deadline as to whether they will comply with NRDC's requests, and by failing to produce any responsive documents



promptly thereafter. NRDC seeks an injunction ordering that Defendants disclose, without further delay, all non-exempt, responsive records and portions of records to NRDC. NRDC also seeks a declaration that, pursuant to FOIA, it is entitled to a fee waiver in connection with its FOIA requests to the Interior Department.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question) and 5 U.S.C. § 552(a)(4)(B) (FOIA).

7. Venue is proper in the U.S. District Court for the Southern District of New York because NRDC resides and has its principal place of business in this judicial district. 5 U.S.C. § 552(a)(4)(B); 28 U.S.C. § 1391(e)(1).

### **THE PARTIES**

8. Plaintiff NRDC is a national nonprofit advocacy organization with hundreds of thousands of members nationwide. On behalf of its members, NRDC engages in research, advocacy, public education, and litigation to protect public health and the environment. NRDC has a long history of disseminating information of public interest, including information obtained from FOIA requests.

9. Defendant Interior Department is an agency within the meaning of 5 U.S.C. §§ 551(1) and 552(f)(1), and it has possession or control of documents NRDC seeks. The Office of the Secretary of the Interior is a component of the Interior Department.

10. Defendant Commerce Department is an agency within the meaning of 5 U.S.C. §§ 551(1) and 552(f)(1), and it has possession or control of documents

NRDC seeks. The Office of the Secretary of Commerce is a component of the Commerce Department.

### **STATUTORY AND REGULATORY FRAMEWORK**

11. FOIA requires federal agencies to release records to the public upon request, unless one of nine statutory exemptions from disclosure applies. 5 U.S.C. § 552(a)-(b).

12. Within twenty business days of an agency's receipt of a FOIA request, the agency must "determine . . . whether to comply" with the request. *Id.* § 552(a)(6)(A)(i); *see also* 43 C.F.R. § 2.16(a) (Interior FOIA regulation); 15 C.F.R. § 4.6(b) (Commerce FOIA regulation). The agency must "immediately notify" the requester of "such determination and the reasons therefor." 5 U.S.C. § 552(a)(6)(A)(i)(I); 43 C.F.R. § 2.21(b) (requiring Interior Department to "immediately" send a written acknowledgement and tracking number if a request will take longer than ten workdays to process).

13. Once an agency determines that it will comply with a FOIA request, it must "promptly" release responsive, non-exempt records to the requester. 5 U.S.C. § 552(a)(6)(C)(i); *see also* 43 C.F.R. § 2.22(c) (Interior FOIA regulation); 15 C.F.R. § 4.7(c) (Commerce FOIA regulation).

14. In "unusual circumstances," an agency may extend the twenty-day time limit for responding to a FOIA request by up to ten working days. 5 U.S.C. § 552(a)(6)(B)(i); *see also* 43 C.F.R. § 2.19(a)(1) (Interior FOIA regulation); 15 C.F.R. § 4.6(b) (Commerce FOIA regulation).

15. The agency must provide requested records at no or reduced cost “if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”

5 U.S.C. § 552(a)(4)(A)(iii); *see also* 43 C.F.R. § 2.45(a) (Interior FOIA regulation);

15 C.F.R. § 4.11(l) (Commerce FOIA regulation).

16. If the agency fails to notify the requester of its determination within the statutory time limit, the requester is “deemed to have exhausted his administrative remedies” and may immediately file suit. 5 U.S.C. § 552(a)(6)(C)(i).

17. FOIA grants federal district courts authority to “enjoin [an] agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” *Id.* § 552(a)(4)(B).

## FACTS

18. On April 26, 2017, President Donald J. Trump issued Executive Order 13,792, titled “Review of Designations Under the Antiquities Act,” which directed Secretary of the Interior Ryan Zinke to conduct a review of twenty-seven national monuments created by President Trump’s predecessors. Exec. Order 13,792, 82 Fed. Reg. 20,429 (Apr. 26, 2017). The Executive Order directed Secretary Zinke to provide “recommendations for such Presidential actions, legislative proposals, or other actions consistent with the law as the Secretary may consider appropriate” to

“balance the protection of . . . objects against the appropriate use of Federal lands and the effects on surrounding lands and communities.” *Id.*

19. Two days later, on April 28, 2017, President Trump issued another executive order, this one titled “Implementing an America-First Offshore Energy Strategy.” Exec. Order 13,795, 82 Fed. Reg. 20,815 (April 28, 2017). The order, among other things, directed Secretary of Commerce Wilbur Ross to review marine national monuments and national marine sanctuaries that had been designated or expanded within the previous ten years. The executive order required the Secretary of Commerce to “report the results of the review” within 180 days. *Id.*

20. The Interior Department and the Commerce Department subsequently accepted public comments regarding the covered national monuments and marine sanctuaries. *See* 82 Fed. Reg. 22,016 (May 11, 2017) (Interior review); 82 Fed. Reg. 28,827 (June 26, 2017) (Commerce review). On information and belief, Secretaries Zinke and Ross and other agency officials also met with a variety of stakeholders, including representatives of industry groups expressing interest in commercial exploitation of the national monuments and marine sanctuaries under review.

21. On information and belief, Defendants collectively received over three million public comments during their review period, and the overwhelming majority of those comments called on Defendants and the Trump Administration to preserve existing national monuments and marine sanctuaries.

22. Plaintiff NRDC submitted comments to the Interior and Commerce Departments in support of national monuments in general, and in support of Bears

Ears National Monument, Grand Staircase-Escalante National Monument, and Northeast Canyons and Seamounts Marine National Monument in particular. In addition, tens of thousands of NRDC's individual members submitted comments to the Interior and Commerce Departments in support of national monuments and marine sanctuaries.

23. On August 24, 2017, Interior Secretary Zinke submitted his final report to the President. Neither Secretary Zinke nor President Trump released the report publicly at the time, but national news reporters obtained what appears to be a leaked copy of the report, and Secretary Zinke released a substantially similar version to the public on December 5, 2017. Both versions of the Interior report recommended that the President unilaterally revoke or substantially weaken protections for several national monuments, including the Bears Ears National Monument, the Grand Staircase-Escalante National Monument, and the Northeast Canyons and Seamounts Marine National Monument.

24. On October 25, 2017, Secretary Ross's report describing the results of the Commerce review was due to be completed and submitted to the President. To date, neither Secretary Ross nor any other government official has released the Commerce report publicly.

25. On December 4, 2017, President Trump issued two proclamations dismantling Bears Ears National Monument and Grand Staircase-Escalante National Monument. President Trump and other federal officials have indicated that additional proclamations dismantling other national monuments would follow.

26. The American public has a strong interest in understanding the Interior and Commerce Departments' monument review processes and the basis for the Secretaries' reports and recommendations to the President. That includes understanding the criteria by which Interior and Commerce Department officials reviewed, weighed, or discounted the public comments they received; the contents of those comments; and the identities of industry representatives with whom Interior and Commerce Department officials met and the contents of those meetings.

27. The Interior and Commerce Departments' reviews of national monuments and marine sanctuaries have generated intense, widespread, and sustained public interest and concern. NRDC and its members are particularly keenly interested in these review processes and their outcomes. Yet, despite the public's desire for transparency and input into the Administration's review process, Defendants have made very little information publicly available about their information-gathering and review processes.

28. To better inform the American public at large, and NRDC members in particular, about a topic of intense public concern, NRDC submitted the following FOIA requests to the Interior Department and the Commerce Department.

**NRDC's first FOIA request to the Interior Department**

**# OS-2017-01247**

29. According to the Regulations.gov website, the Interior Department received more than 2.8 million public comments through its online portal relating to the Department's national monument review. Only 782,460 comments less than a

third of the total count of online submissions were made publicly available online as of the close of the comment period. The Regulations.gov website notes that “agencies may choose to redact, or withhold, certain submissions . . . such as those containing private or proprietary information . . . or duplicate/near duplicate examples of a mass-mail campaign.”

30. Interior Secretary Zinke’s report to President Trump acknowledged that the public “[c]omments received were overwhelmingly in favor of maintaining existing monuments.” Memorandum for the President from Secretary Zinke, “Final Report Summarizing Findings of the Review of Designations Under the Antiquities Act” at 3 (Aug. 24, 2017). Secretary Zinke nevertheless opined that the overwhelming public support for national monuments reflected not genuine popular will, but rather, in his words, “a well-orchestrated national campaign organized by multiple organizations.” *Id.* The report went on to dismiss what it called “form comments associated with NGO-organized campaigns, which far outnumbered individual comments,” opining that “[t]oo often it is the local stakeholders who lack the organization, funding, and institutional support to compete with well-funded NGOs.” *Id.* at 3, 8.

31. On September 22, 2017, in an effort to better understand the Interior Department’s review process and the information underlying Secretary Zinke’s report and recommendations, NRDC submitted a FOIA request to the Interior Department. *See Exhibit A.*

32. NRDC's request sought the following records:
- a. "Any and all comments the [Interior] Department received on or after April 26, 2017 (whether via online submission, by mail, or by any other means) that relate to national monuments, and that are not among the 782,460 comments publicly available on the Regulations.gov website. This includes but is not limited to comments that include "private or proprietary information" or that are considered "duplicate/near duplicate examples of a mass-mail campaign." If you determine that any such comments (or any portions thereof) are exempt from disclosure, please produce a detailed ledger explaining the basis for each withheld comment or portion thereof.
  - b. "Any and all records created or transmitted on or after April 26, 2017, that contain or relate to the Department's or the Secretary's directives, policies, standards, or procedures for reviewing or analyzing public comments relating to national monuments.
  - c. "Any and all records created or transmitted on or after April 26, 2017, that contain or relate to the Department's or the Secretary's review of, assessment of, or findings about public comments relating to national monuments.
  - d. "Any and all records created or transmitted on or after April 26, 2017, that contain or relate to the Department's or the Secretary's inquiry into or findings about "NGO-organized campaigns" relating to the



Department's monument review, or directions or instructions concerning such inquiry or findings.

- e. "Any and all records created or transmitted on or after April 26, 2017, that contain or relate to the basis for the Secretary's statement that there was "a well-orchestrated national campaign organized by multiple organizations" to submit public comments.
- f. "Any records created or transmitted by the Department (or any official or staff-member thereof) on or after April 26, 2017, that relate to the Natural Resources Defense Council (NRDC)." *Id.*

33. NRDC explained that, for purposes of its request, the term "records" is consistent with the meaning of the term under FOIA, including "documents of any kind, including electronic as well as paper documents, e-mails, memoranda, letters, writings (handwritten, typed, electronic or otherwise produced, reproduced, or stored), reports, summaries, notes, meeting notes or minutes, text messages, and any other compilations of data from which information can be obtained." *Id.*

34. NRDC also requested that the Interior Department waive any fees for the search and production of the requested records. NRDC is entitled to a waiver of all fees pursuant to FOIA's fee waiver provisions and the agency's regulations. *See* 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(a).

35. NRDC submitted its request to the Interior Department's Office of the Secretary via the Interior Department's online FOIA portal, in accordance with the agency's FOIA regulations and guidance.

36. The Interior Department's online portal sent NRDC an automated e-mail response acknowledging receipt of the request on September 22, 2017.

37. The Interior Department's response was due within twenty business days of the request i.e., by October 23, 2017. *See* 5 U.S.C. § 552(a)(6)(A)(i). NRDC received no response of any kind by that date.

38. On October 24, 2017 the day after FOIA's statutory deadline had run a FOIA Officer from the Interior Department's Office of the Secretary e-mailed an acknowledgement letter to NRDC's counsel. That letter stated that NRDC's "request was received in the Office of the Secretary FOIA office on September 22, 2017, and assigned control number OS-2017-01247."

39. The letter further stated: "Because we will need to consult with one or more bureaus of the Department in order to properly process your request, the Office of the Secretary FOIA office is taking a 10-workday extension under 43 C.F.R. § 2.19. For the same reason, we are placing your request under the 'Complex' processing track. *See* 43 C.F.R. § 2.15."

40. Finally, the letter stated that the Interior Department had "classified [NRDC's] request as an 'other-use request.'" Seeking clarification, NRDC's counsel asked the FOIA Officer by e-mail whether this meant the Interior Department had denied NRDC's fee waiver request. In an e-mail dated November 1, 2017, the FOIA Officer responded: "It is not a denial of your fee waiver request. We are waiting to determine if a fee waiver i[s] necessary depending on whether there will be any fees."

41. NRDC never received any further communications from the Interior Department relating to its FOIA request.

42. Even accounting for the belated ten-day extension, the Interior Department's response was due on November 7, 2017.

43. To date, the Interior Department still has not substantively responded to NRDC's FOIA request, produced any responsive records, claimed any exemptions, or made a determination on NRDC's fee waiver request.

**NRDC's second FOIA request to the Interior Department**

**# OS-2018-00232**

44. On October 29, 2017, NRDC submitted a second FOIA request to the Interior Department, this time seeking records relating to meetings between Secretary Zinke or other Interior Department leadership and outside groups or individuals regarding national monuments. *See* Exhibit B.

45. Specifically, NRDC sought the following records:

- a. "[A]ny and all records in the possession, custody, or control of the [Interior] Department . . . that pertain to meetings on or after January 20, 2017, attended by Secretary Ryan Zinke, Scott Hommel, Lori Mashburn, James Cason, Doug Domenech, and/or Downey Magallanes, relating to any national monument and/or to the Department's review of national monuments under Executive Order No. 13792, including:
- b. "Any calendar entries, invitations, itineraries, or communications referencing such meetings;

- c. “Any agendas, minutes, attendee lists, or presentations relating to such meetings;
- d. “Any records of individuals who attended these meetings or accompanied the above-named officials on any of these occasions, excluding current career federal employees;
- e. “Any briefings, summaries, or materials prepared or transmitted in relation to such meeting, whether before, during, or after the meeting itself; and
- f. “Any notes taken by any federal employee, including the above-named officials.” *Id.*

46. NRDC explained that, for purposes of its request, the term “records” is consistent with the meaning of the term under FOIA, including “documents of any kind, including electronic and paper documents, emails, memoranda, letters, writings (handwritten, typed, electronic or otherwise produced, reproduced, or stored), reports, summaries, notes, meeting notes or minutes, text messages, and any other compilations of data from which information can be obtained.” *Id.*

47. NRDC also requested that the Interior Department waive any fees for the search and production of the requested records. NRDC is entitled to a waiver of all fees pursuant to FOIA’s fee waiver provisions and the agency’s regulations. *See* 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(a).

48. NRDC submitted its request to the Interior Department's Office of the Secretary via the Interior Department's online FOIA portal, in accordance with the agency's FOIA regulations and guidance.

49. The Interior Department's online portal sent NRDC an automated e-mail response acknowledging receipt of the request on October 29, 2017.

50. The Interior Department's response was due within twenty business days of the request i.e., by November 28, 2017. *See* 5 U.S.C. § 552(a)(6)(A)(i).

51. On November 21, 2017, a FOIA Officer from the Interior Department's Office of the Secretary e-mailed an acknowledgement letter to NRDC's counsel. That letter stated that NRDC's "request was received in the Office of the Secretary FOIA office on October 29, 2017, and assigned control number OS-2018-00232."

52. The letter further stated: "Because we will need to consult with one or more bureaus of the Department in order to properly process your request, the Office of the Secretary FOIA office is taking a 10-workday extension under 43 C.F.R. § 2.19. For the same reason, we are placing your request under the 'Complex' processing track. *See* 43 C.F.R. § 2.15."

53. Finally, the letter stated that the Interior Department had "classified [NRDC's] request as an 'other-use request,'" and went on to explain: "[W]e are in the process of determining whether or not your entitlements are sufficient to enable us to process your request, or if we will need to issue a formal determination on your request for a fee waiver."

54. NRDC never received any further communications from the Interior Department relating to its FOIA request.

55. Accounting for a ten-day extension, the Interior Department's response was due on December 12, 2017.

56. To date, the Interior Department still has not substantively responded to NRDC's FOIA request, produced any responsive records, claimed any exemptions, or made a determination on NRDC's fee waiver request.

**NRDC's FOIA request to the Commerce Department**

**# DOC-IOI-2018-000178**

57. Also on October 29, 2017, NRDC submitted a FOIA request to the Commerce Department, seeking records relating to meetings between Secretary Ross or another member of the Commerce Department's leadership and outside groups or individuals regarding national marine monuments or sanctuaries. *See* Exhibit C.

58. Specifically, NRDC requested the following records:

- a. "[A]ny and all records in the possession, custody, or control of the [Commerce] Department . . . that pertain to meetings on or after January 20, 2017, attended by Secretary Wilbur Ross and/or Earl Comstock, relating to any national marine sanctuary or marine national monument and/or to the Department's review of national marine sanctuaries and monuments under Executive Order No. 13795, including:

- b. “Any calendar entries, invitations, itineraries, or communications referencing such meetings;
- c. “Any agendas, minutes, attendee lists, or presentations relating to such meetings;
- d. “Any records of individuals who attended these meetings or accompanied Secretary Ross or Mr. Comstock on any of these occasions, excluding current career federal employees;
- e. “Any briefings, summaries, or materials prepared or transmitted in relation to such meeting, whether before, during, or after the meeting itself; and
- f. “Any notes taken by any federal employee, including Secretary Ross or Mr. Comstock.” *Id.*

59. NRDC explained that, for purposes of its request, the term “records” is consistent with the meaning of the term under FOIA, including “documents of any kind, including electronic as well as paper documents, e-mails, memoranda, letters, writings (handwritten, typed, electronic or otherwise produced, reproduced, or stored), reports, summaries, notes, meeting notes or minutes, text messages, and any other compilations of data from which information can be obtained.” *Id.*

60. In its request, NRDC requested that the Commerce Department waive any fees for the search and production of the requested records, pursuant to FOIA’s and the agency’s fee waiver provisions. *See* 5 U.S.C. § 552(a)(4)(A)(iii); 15 C.F.R. § 4.11(*l*).

61. NRDC submitted its request to the Commerce Department's Office of the Secretary via the federal government's online FOIA portal, in accordance with the agency's FOIA regulations and guidance.

62. The federal government's online FOIA portal sent NRDC an automated e-mail response acknowledging receipt of the request on October 29, 2017, and assigning it tracking number # DOC-OS-2018-000178.

63. On October 31, 2017, NRDC's counsel received another e-mail from the federal government's online FOIA portal advising that the request's tracking number had been changed to # DOC-IOS-2018-000178.

64. The Commerce Department's response was due within twenty business days of the request i.e., by November 28, 2017. *See* 5 U.S.C. § 552(a)(6)(A)(i).

65. On November 14, 2017, the Commerce Department sent NRDC's counsel an e-mail advising that NRDC's fee waiver request had been "fully granted." Exhibit K. The Commerce Department did not respond substantively to NRDC's FOIA request by the statutory deadline, however.

66. To date, the Commerce Department still has not substantively responded to NRDC's FOIA request, produced any responsive records, or claimed any exemptions.

\* \* \*



67. NRDC seeks a declaration that Defendants have violated the FOIA by failing to respond to NRDC's FOIA requests and failing to promptly release all responsive, non-exempt records. NRDC also seeks an injunction ordering Defendants to provide the requested records without further delay.

68. NRDC brings this action on behalf of itself and its members. NRDC and its members have been and continue to be injured by Defendants' failure to provide responsive records. The requested relief will redress these injuries.

### **CLAIM FOR RELIEF**

#### **COUNT ONE**

#### **5 U.S.C. § 552(a) (FOIA)**

#### ***All Defendants***

69. NRDC incorporates by reference all preceding paragraphs.

70. NRDC has a statutory right under FOIA to the records it seeks.

71. Defendants have violated their statutory duties under FOIA, 5 U.S.C. § 552(a), and the applicable implementing regulations, to release all non-exempt, responsive records to NRDC. Defendants have identified no basis, let alone any valid basis, for withholding or partially withholding the records that are responsive to NRDC's FOIA requests.

72. NRDC is entitled to all non-exempt responsive documents at no cost because disclosure of the requested records would contribute significantly to public understanding and is not primarily in NRDC's commercial interest. 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(a); 15 C.F.R. § 4.11(l).

73. NRDC is being harmed by Defendants' unlawful withholding of the requested records, and it will continue to be harmed unless Defendants are compelled to comply with FOIA's statutory requirements.

### **REQUEST FOR RELIEF**

NRDC respectfully requests that this Court enter a judgment against Defendants as follows:

A. Declare that Defendants have violated FOIA by failing to provide a final determination as to whether they will comply with NRDC's FOIA requests and by failing to produce non-exempt records responsive to NRDC's FOIA requests by the statutory deadline;

B. Declare that Defendant Interior Department has violated FOIA by failing to make a determination as to NRDC's fee waiver requests;

C. Order Defendants to release to NRDC, without further delay and at no cost to NRDC, all responsive, non-exempt records in their possession, custody, or control;

D. If either Defendant contends that any responsive records are exempt or partially exempt from disclosure under FOIA, order that Defendant to produce a log identifying any such records or parts thereof and the basis for the withholdings, and require Defendant to prove that its decision to withhold or redact any such records is justified by law;

E. Order Defendant Interior Department to grant NRDC's fee waiver in full;

F. Award NRDC its reasonable costs and attorneys' fees; and

G. Grant such other and further relief as the Court deems just and proper.

Dated: January 24, 2018

Respectfully submitted,

/s/ Nancy S. Marks

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Counsel for NRDC

# Exhibit C

# NRDC

October 29, 2017

## Via online submission

Department of Commerce  
FOIA Officer

**Re: FOIA Request for Records Relating to Meetings Relating  
to National Marine Sanctuaries and Monuments**

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.*, and applicable Department of Commerce regulations, 15 C.F.R. § 4.1-4.11.

### **I. Description of Records Sought**

Please produce any and all records in the possession, custody, or control of the Department of Commerce (“the Department”) that pertain to meetings on or after January 20, 2017, attended by Secretary Wilbur Ross and/or Earl Comstock, relating to any national marine sanctuary or marine national monument and/or to the Department’s review of national marine sanctuaries and monuments under Executive Order No. 13795, including:

- Any calendar entries, invitations, itineraries, or communications referencing such meetings;
- Any agendas, minutes, attendee lists, or presentations relating to such meetings;
- Any records of individuals who attended these meetings or accompanied Secretary Ross or Mr. Comstock on any of these occasions, excluding current career federal employees;
- Any briefings, summaries, or materials prepared or transmitted in relation to such meeting, whether before, during, or after the meeting itself; and
- Any notes taken by any federal employee, including Secretary Ross or Mr. Comstock.

For purposes of this request, the term “records” is consistent with the meaning of the term under FOIA. This includes, but is not limited to,

documents of any kind, including electronic as well as paper documents, e-mails, memoranda, letters, writings (handwritten, typed, electronic or otherwise produced, reproduced, or stored), reports, summaries, notes, meeting notes or minutes, text messages, and any other compilations of data from which information can be obtained.

Under FOIA, you are obligated to provide records in a readily-accessible electronic format and in the format requested. *See, e.g.*, 5 U.S.C. § 552(a)(3)(B) (“In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.”). We request that you provide the responsive records in electronic .pdf format without “profiles” or “embedded files.” Please do not provide the records in a single or “batched” .pdf file. To the extent that a subset of the requested records is readily available, please provide that subset immediately while you continue to search for additional records to complete your response.

If you decide to invoke any FOIA exemptions in response to this request, please include in your response sufficient information for us to assess the basis for the exemption(s), including any interest(s) that would be harmed by release. Please include a detailed ledger which includes (1) basic factual material about each withheld record, including the originator, date, length, general subject matter, and location of each item; and (2) complete explanations and justifications for the withholding, including the specific exemption(s) under which the record (or portion thereof) was withheld and a full explanation of how each exemption applies to the withheld material. Such statements will be helpful in deciding whether to appeal an adverse determination. Your written justification may help to avoid litigation.

If you determine that portions of any requested records are exempt from disclosure, the FOIA requires that you produce any reasonably segregable non-exempt portions within the statutory time limit. *See* 5 U.S.C. § 552(b). *See, e.g., Gatore v. U.S. Dep’t of Homeland Sec.*, 177 F. Supp. 3d 46, 53 (D.D.C. 2016); *Gosen v. U.S. Citizenship & Immigration Servs.*, 118 F. Supp. 3d 232, 243-44 (D.D.C. 2015).

Please produce the records on a rolling basis. The Department’s search for or deliberations concerning certain records should not delay the production of others that the Department has already retrieved and elected to produce. *See generally* 15 C.F.R. § 4.7. If the Department takes the position that any of these records are publicly available, please indicate where each of them may be found.

## II. Request for a Fee Waiver

NRDC asks that the Department waive any fee it would otherwise charge for the search and production of the records described above. FOIA provides that a requester is entitled to a fee waiver when “disclosure of the information is in the public interest because it [A] is likely to contribute significantly to public understanding of the operations or activities of the government and [B] is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 15 C.F.R. § 4.11(l). The disclosure NRDC seeks here meets both these requirements.

### A. Disclosure is likely to contribute significantly to public understanding of the operations or activities of the government

First, the disclosure requested here is “likely to contribute significantly to public understanding of the operations or activities of the government,” 5 U.S.C. § 552(a)(4)(A)(iii), based on the following factors. *See* 15 C.F.R. § 4.11(l)(2)(i)-(iv) (describing factors to be considered).

#### 1. Subject of the request (15 C.F.R. § 4.11(l)(2)(i))

The requested records directly concern “the operations or activities of the Government.” 15 C.F.R. § 4.11(l)(2)(i). The records pertain to the Department’s “review of all designations and expansions of National Marine Sanctuaries, and of all designations and expansions of Marine National Monuments under the Antiquities Act of 1906 . . . designated or expanded within the 10-year period prior to the date of this order” and the Department’s resulting report. Executive Order No. 13795, section 4(b)(i)-(ii). Disclosure of the records will provide context for the Department’s report and help the public to evaluate the Department’s recommendations and whatever actions the President, Congress, or other federal government officials take with respect to the affected sanctuaries and monuments.

#### 2. Informative value of the information to be disclosed (15 C.F.R. § 4.11(l)(2)(ii))

Disclosure of the requested records is “likely to contribute’ to an understanding of Government operations or activities.” 15 C.F.R. § 4.11(l)(2)(ii). The records are relevant to the Department’s review of national marine sanctuaries and monuments, and therefore they are likely to be “meaningfully informative” in providing context for the Department’s report and for any actions the Administration may take with respect to those sanctuaries or monuments. *Id.* Because the Department’s review has

attracted broad public attention (as explained below), and because the requested records have not previously been made available, disclosure will “contribute’ to an increased public understanding of those operations or activities.” *Id.*

**3. Contribution to public understanding of the subject  
(15 C.F.R. § 4.11(l)(2)(iii))**

Because NRDC is a “representative of the news media,” as explained in Part III below, the Department must presume that this disclosure is likely to contribute to public understanding of the subject of the disclosure. 15 C.F.R. § 4.11(l)(2)(iii). However, even if NRDC were not a media requester, NRDC satisfies the requirement that disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in the subject.” *Id.*

NRDC does not seek the requested records for its own benefit. Rather, it seeks the records to provide new information to the public about the Department’s review process and its resulting report and recommendations. Disclosure of this information will make possible a more complete public understanding of the federal government’s decision-making process and intentions regarding the national marine sanctuaries and monuments at issue. *See* 15 C.F.R. § 4.11(l)(2)(iii) (requiring requester to show that disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester”). There is more than a reasonable likelihood that disclosure of the requested records will significantly increase public understanding of the government’s review process and actions among a broad audience of interested people. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

NRDC has both the ability and the intent to disseminate the information obtained through this request “in a manner that will be informative to the understanding of a reasonably broad audience of persons interested in the subject.” 43 C.F.R. § 2.48(a)(2)(iv); *see also id.* § 2.48(a)(2)(v) (considering requester’s “ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject”). NRDC has more than two million members and online activists, tens of thousands of whom have responded to action alerts relating to the Department’s monument review in particular. And, as detailed below, NRDC has extensive communications capabilities and a proven history of disseminating information of public interest, including information obtained from FOIA requests. NRDC has both the capability and the intent to broadly disseminate the information it seeks here to its members and to the



general public, thereby contributing to a better general understanding of the Department's review process and its ultimate findings.

NRDC uses numerous modes of communication to disseminate information to its members and to the public at large. These include:

- (1) NRDC's website (<http://www.nrdc.org>), which is updated daily and draws approximately 1.7 million page views and 1.5 million unique page views per month, and which features NRDC staff blogs, original reporting on environmental news stories, and in-depth analyses on topics of public interest;
- (2) NRDC's Activist email list, which includes more than 2.4 million subscribers who receive regular communications on urgent environmental issues;
- (3) *NRDC Insider* (<http://www.nrdc.org/newsletter>), a monthly electronic environmental newsletter distributed by email to more than 1.47 million subscribers;
- (4) NRDC's Facebook page, with 909,921 likes and 872,632 followers;
- (5) NRDC's Twitter handle, with 274,922 followers;
- (6) NRDC's Instagram feed, with 111,024 followers;
- (7) NRDC's YouTube channel (<https://www.youtube.com/user/NRDCflix>), with 21,050 subscribers; and
- (8) online media outlets like Medium (<https://medium.com/natural-resources-defense-council>) and Huffington Post (<http://www.huffingtonpost.com/topic/natural-resources-defense-council>).

NRDC also publishes legal and scientific analyses, policy documents, and reports; issues press releases; and directs and produces movies (including *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*). NRDC has more than fifty staff members dedicated to communications work.

In addition, NRDC employees and representatives are widely quoted in the news media; participate in interviews on television, radio, and web broadcasts; appear at conferences; provide congressional testimony; and contribute articles and op-eds to numerous national newspapers, magazines, academic journals, and books. See, e.g., Zoe Carpenter, *After Promising a "Fair Hearing" on Monuments, Secretary Zinke Shuts Out the Public*, THE NATION (May 18, 2017) (quoting NRDC Land and Wildlife Program Director

Sharon Buccino); Op-Ed, *Don't Take Bears Ears Away from Us*, SALT LAKE TRIBUNE (May 6, 2017) (contributed by NRDC trustee Robert Redford); Research Article, *The Requirement To Rebuild U.S. Fish Stocks: Is It Working?* MARINE POLICY (July 2014) (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell); Transcript, *Conservationists Call for Quiet: The Ocean Is Too Loud*, ALL THINGS CONSIDERED (July 28, 2013) (featuring NRDC Marine Mammal Protection Program Director Michael Jasny); Testimony of Johanna Wald, NRDC Senior Attorney, before the U.S. Senate Committee on Energy and Natural Resources, Hearing on the California Desert Protection Act of 2010 (May 20, 2010).

NRDC's legal and scientific experts routinely analyze information obtained through FOIA and use it to inform the public about a variety of environmental issues. *See, e.g.*, Theo Spencer, *The Fight to Stop a Strip Mine Near Bryce Canyon: A History*, NRDC Blog (June 5, 2017) (analyzing documents obtained through partner organization's FOIA request regarding a proposed expansion of an open pit strip mine in Utah); Kevin Bogardus *et al.*, "Homework Assignment": *How Pebble Lobbied Trump's EPA*, E&E NEWS (June 8, 2017) (quoting NRDC staff discussing results of a FOIA seeking communications between EPA and Pebble Mine developers); Tom Neltner *et al.*, *Generally Recognized as Secret: Chemicals Added to Food in the United States*, NRDC Report (2014) (analyzing FOIA documents relating to potentially unsafe chemicals added to food); Carmen Cordova, *Playing Chicken with Antibiotics*, NRDC Issue Brief (2014) (describing FDA records, obtained through FOIA, which show widespread violations of the agency's safety standards for antibiotic feed additives); Dan Flynn, *NRDC Releases FSIS Inspection Reports on Foster Farms*, FOOD SAFETY NEWS (Sept. 12, 2014) (reporting on documents NRDC obtained through FOIA relating to safety violations by poultry company, and linking to the documents); Mae Wu *et al.*, *Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, NRDC Report (2010) (analyzing White House documents obtained through FOIA and from other sources to inform the public about EPA's decision not to protect wildlife and workers from the pesticide atrazine).

In sum, NRDC has a proven ability to digest, synthesize, and disseminate information obtained through FOIA to a broad audience of interested persons. NRDC's more than two million members and activists, when combined with the members of the general public who read NRDC's communications online and in the news media, clearly constitute "a reasonably broad audience of persons interested in the subject." 15 C.F.R. § 4.11(l)(2)(iii). NRDC intends to disseminate any newsworthy information in the released records to this large audience in a manner that will

meaningfully enhance the public's understanding of the federal government's decision-making process. NRDC does not seek records that have been previously disclosed to the public. *See id.* Disclosure may therefore confirm, clarify, or contradict documents or statements in the public domain or actions taken by the federal government, and it will enable the public to better evaluate the federal government's actions.

#### **4. Significance of the contribution to public understanding (15 C.F.R. § 4.11(l)(2)(iv))**

Finally, the records requested will shed significant light on a matter of considerable public interest and concern. *See* 15 C.F.R. § 4.11(l)(2)(iv).

The American public has demonstrated a strong interest in the Department's review of national marine sanctuaries and monuments. According to the Regulations.gov website, nearly 100,000 non-duplicative public comments relating to the Department's review of national marine sanctuaries and monuments were submitted online. *See* <https://www.regulations.gov/docket?D=NOAA-NOS-2017-0066> (last visited Sept. 29, 2017). The Department's review has also prompted many letters to the editor and op-eds, widespread social media activism, and numerous media reports in local and national publications. *See, e.g.,* Guy Kovner, *Marine Sanctuaries that Protect California Coast Get Strong Public Support, Conservationists Say*, THE PRESS-DEMOCRAT (Aug. 17, 2017); Zack Klyver, *Op-Ed: Marine Monument Vital for a Healthy, Bountiful Ocean*, BANGOR DAILY NEWS (Aug. 3, 2017); David Helvarg, *Op-Ed: Time Is Running Out to Stop Trump From Opening California Marine Sanctuaries to Oil Drilling*, LOS ANGELES TIMES (July 7, 2017); Marine Conservation Institute, *Blog: Analysis Shows Overwhelming Public Support for Marine Monuments and Sanctuaries* (Aug. 15, 2017), at <https://blog.marine-conservation.org/2017/08/overwhelming-support-for-marine-monuments-and-sanctuaries.html>.

Despite this strong showing of public interest and concern, very little information is publicly available about the Department's information-gathering and review process. Disclosure of the requested records concerning the Department's meetings with outside individuals and groups will significantly contribute to public understanding of the Department's review process. Disclosure will also provide valuable context for understanding the Department's report, and will enable the public more effectively to evaluate the legal and factual bases for the Department's assertions and recommendations.

For these reasons, NRDC has met the first prerequisite for a fee waiver request under the FOIA.

**B. Disclosure is not primarily in NRDC's commercial interest**

Second, NRDC has no commercial interests that would be furthered by the requested disclosure. *See* 5 U.S.C. § 552(a)(4)(A)(iii); 15 C.F.R. § 4.11(l)(1)(ii). Therefore, it satisfies the second prerequisite for a fee waiver request under the FOIA.

NRDC is a not-for-profit organization. It does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (internal citation omitted); *see also Better Gov't Ass'n v. Dep't of State*, 780 F.2d 86, 88-89 (D.C. Cir. 1986) (recognizing that “[the fee waiver] provision was added to FOIA in an attempt to prevent government agencies from using high fees to discourage certain types of requesters and requests, in particular those from journalists, scholars and nonprofit public interest groups.” (internal quotation marks omitted)). Requesters wish to serve the public by reviewing, analyzing, and disseminating newsworthy and presently non-public information about the federal government's decision-making process with respect to national marine sanctuaries and monuments, and this is precisely the sort of “investigation[]” of “governmental choices and highlighting [of] possible abuses” for which the fee waiver was enacted. *Better Gov't Ass'n*, 780 F.2d at 93.

Access to government records, disclosure forms, and similar materials through FOIA requests is essential to NRDC's role of educating its members, activists, and the general public. NRDC has no commercial interest in the disclosure of the records, and it will realize no commercial benefit or profit from the disclosure of the requested records. For these reasons, NRDC is entitled to a fee waiver under the FOIA.

**III. Request for a Reduction of Fees**

In the alternative, even if the Department denies NRDC's fee waiver request, NRDC qualifies as a “representative of the news media” that is entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and applicable regulations, 15 C.F.R. § 4.11(c), (d); *see also id.* § 4.11(b)(6) (defining “[r]epresentative of the news media”).

A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its

editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); *see also Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep’t of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described in detail in Section II above, NRDC publishes original reports and analyses on conservation-related topics on its website, in its newsletter, and in blog posts; it contributes articles and op-eds to a variety of online and print platforms; and it maintains free online libraries of documents, publications, and other information of interest to the general public. These types of publications and media sources constitute news media outlets for purposes of FOIA. *See* OPEN Government Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”); *see also* 15 C.F.R. § 4.11(b)(6) (“Examples of news-media entities are . . . publishers of periodicals . . . including news organizations that disseminate solely on the Internet.”).

Public interest organizations performing these sorts of public communication functions “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-89 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union); *see also Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 164 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”).

NRDC intends to review the records it obtains through this FOIA request and, if the information is appropriately newsworthy, to analyze them, synthesize them with information from other sources, and create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of its publications or other suitable media channels. NRDC will not resell the information obtained through this FOIA request to other media organizations. For these reasons, even if the Department denies NRDC’s fee waiver request, it should grant a fee reduction consistent with 5 U.S.C. § 552(a)(4)(A)(ii).

#### **IV. Willingness to Pay Fees Under Protest**

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with the Department's FOIA regulations. *See* 15 C.F.R. § 4.11. Please contact me, however, before doing anything that would cause the fee to exceed \$250. NRDC reserves the right to seek administrative or judicial review of any fee waiver denial.

#### **V. Conclusion**

Please email the requested records or, if it is not possible to email, mail a CD of electronic copies of the requested records to me at the address listed below. Please call or email me with any questions. Thank you for your time.

Sincerely,

/s/ Katherine Desormeau  
Katherine Desormeau  
Natural Resources Defense Council, Inc.  
111 Sutter Street, 21<sup>st</sup> Floor  
San Francisco, CA 94104  
Tel: (415) 875-6158  
kdesormeau@nrdc.org

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ANIMAL WELFARE INSTITUTE	)	
900 Pennsylvania Avenue, SE	)	
Washington, D.C. 20003,	)	
	)	
Plaintiff,	)	
v.	)	Civ. No.
	)	
NATIONAL OCEANIC AND ATMOSPHERIC	)	
ADMINISTRATION,	)	
1401 Constitution Avenue, NW, Room 5128	)	
Washington, D.C. 20230	)	
	)	
and	)	
	)	
NATIONAL MARINE FISHERIES SERVICE,	)	
1315 East-West Highway	)	
Silver Spring, MD 20910,	)	
	)	
Defendants.	)	
_____	)	

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1. The Animal Welfare Institute brings this action against defendants National Oceanic and Atmospheric Administration and National Marine Fisheries Service for violations of the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”).

**PARTIES**

2. Plaintiff Animal Welfare Institute (“AWI”) is a 501(c)(3) non-profit organization that seeks to protect animals from human inflicted suffering. In particular, AWI has advocated for the protection of whales and other marine life from life from human activities such as harmful fishing practices, hunting, underwater noise production, and inhumane practices resulting from captive maintenance for purposes of public display and scientific research. AWI is the requester of the records at issue.



3. Defendant National Oceanic and Atmospheric Administration (“NOAA”) is an agency of the federal government within the U.S. Department of Commerce that focuses on the conditions of the oceans and the atmosphere, including marine wildlife.

4. Defendant National Marine Fisheries Service (“NMFS”) is an agency of the federal government within NOAA that has jurisdiction over whales under the Marine Mammal Protection Act (“MMPA”), 16 U.S.C. §§ 1361 - 1423h, and is in possession of the records requested by AWI.

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B).

6. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B).

### **FACTS GIVING RISE TO PLAINTIFF’S CLAIM**

#### **A. FOIA Requirements**

7. The purpose of FOIA is to “pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny.” *Public Citizen, Inc. v. Office of Management and Budget*, 598 F.3d 865, 869 (D.C. Cir. 2010) (quotations omitted). In enacting FOIA, Congress intended the primary objective of the Act to be the full disclosure of federal agency records so long as information is not exempted by clearly delineated statutory language. *Id.*

8. FOIA establishes a broad right of public access to federal agency records, subject only to nine delineated exemptions. 5 U.S.C. § 552(b). “Each agency, upon any request” for enumerated records must “determine within 20 days (excepting Saturdays, Sundays, and legal holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such a request” of the “determination and the reasons therefor . . . .” *Id.* § 552(a)(6)(A)(i). A requester “shall be deemed to have exhausted [its]



administrative remedies” and hence may file suit under the Act’s citizen suit provision “with respect to [a] request if the agency fails to comply with the . . . time limit” set forth in the statute for a substantive response. *Id.* § 552(a)(6)(C)(i).

9. The federal regulations implementing FOIA for NOAA and NMFS are located at 15 C.F.R. § 4.1, *et seq.* 15 C.F.R. § 4.6 codifies the requirement that NOAA/NMFS respond within 20 working days of receiving a FOIA request with a determination of compliance.

#### **B. The Public Interest Need for the Documents Subject to the FOIA Request**

10. In 2013, the documentary film *Blackfish* drew public attention to the plight of Tilikum, an orca held in captivity by SeaWorld Parks & Entertainment (“SeaWorld”), and other orcas now maintained in aquariums and theme parks around the world. *Blackfish* set off a strong negative public reaction to SeaWorld and the conditions under which orcas are held in captivity.

11. On March 8, 2016, SeaWorld released a video on its website describing Tilikum’s declining health and indicating that he was not expected to survive.

12. Beginning in October 2016, the People for the Ethical Treatment of Animals (“PETA”) initiated the first of what would be several meetings and communications with NOAA/NMFS regarding Tilikum. AWI joined this effort by December 2016. In anticipation of Tilikum’s death, NOAA/NMFS was presented with a draft legal opinion explaining why the 1992 MMPA permit authorizing the importation of Tilikum requires SeaWorld to submit to NOAA/NMFS the necropsy report and clinical history for Tilikum in the event of his death. In these meetings and communications, and through the draft legal opinion, AWI (with PETA) sought NOAA/NMFS input and comments on the applicability of the necropsy and clinical history permit requirement.

13. In the following months, AWI also presented its views on the necropsy and clinical history requirements of MMPA permits to the other federal agencies with jurisdiction over marine mammals — the U.S. Fish and Wildlife Service (“FWS”), the Marine Mammal Commission (“MMC”), and the U.S. Department of Agriculture’s Animal and Plant Health Inspection Service (“APHIS”).<sup>1</sup>

14. In these agency meetings and communications, AWI repeatedly stressed the importance of necropsy reports and clinical histories for purposes of scientific research, medical care (including for free-ranging, stranded individuals), animal husbandry, and public education, and demonstrated that the benefits resulting from this information applied to whales held both in captivity and in the wild.

15. In these meetings and communications, NOAA/NMFS never took a position on whether SeaWorld had to comply with the necropsy and clinical history requirements of Tilikum’s permit.

16. Tilikum died on January 6, 2017 at SeaWorld’s Orlando facility. AWI and other animal welfare organizations immediately notified NOAA/NMFS that Tilikum’s MMPA permit required SeaWorld to submit the necropsy and clinical history report within 30 days. Based on information and belief, SeaWorld never submitted the necropsy and clinical history report required by the permit to NOAA/NMFS.

17. On March 10, 2017, NOAA/NMFS responded to the animal welfare organizations’ notice with an email stating that it was willing to meet to discuss the issue but that it had concluded that the necropsy and clinical history provisions of Tilikum’s permit had been

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<sup>1</sup> Under the MMPA, NOAA/NMFS has jurisdiction over whales, dolphins and seals. FWS has jurisdiction over polar bears, manatees, walrus and sea otters. 16 U.S.C. § 1362(12)(A). The MMC serves in an independent advisory and oversight role. *Id.* §§ 1401-1407. APHIS jurisdiction is not under the MMPA but applies to marine mammals in certain captive maintenance facilities under the Animal Welfare Act. 7 U.S.C. §§ 2131-2159.

extinguished by amendments to the MMPA in 1994 and that “the legal analysis supporting this determination is exempt from disclosure under the attorney-client privilege, and we will not be discussing it in any detail at the meeting.” Thus, after months of effort to engage NOAA/NMFS in a collaborative dialogue regarding the permit requirements for SeaWorld to release Tilikum’s health records, AWI and the other organizations had no explanation from NOAA/NMFS for the legal conclusion, contrary to the plain language of the permit, that the necropsy and clinical history requirement did not apply and were told that none would be provided.

18. AWI contacted SeaWorld directly by email on March 25, 2017 asking for voluntary release of Tilikum’s records. SeaWorld refused to do so in an April 13, 2017 email. Five animal welfare organizations sent a letter to SeaWorld on August 8, 2017, again asking for voluntary compliance. SeaWorld has not replied and continues to withhold the documents.

19. On July 24, 2017, Tilikum’s granddaughter Kyara died at SeaWorld’s San Antonio facility. The draft legal opinion previously provided to NOAA/NMFS confirmed that Kyara was covered by the necropsy and clinical history provision of Tilikum’s permit.

20. On July 31, 2017, AWI and other animal welfare organizations wrote to NOAA/NMFS asking for enforcement of the necropsy and clinical history provision of Tilikum’s permit for Kyara’s records. Counsel to AWI submitted a revised version of the draft legal opinion supporting this conclusion to NOAA/NMFS on August 14, 2017.

21. NOAA/NMFS responded on September 7, 2017, simply restating its March 10, 2017 email message that the permit had been extinguished by the 1994 MMPA amendments.

22. On August 15, 2017, Kasatka, an orca held at SeaWorld’s San Diego facility, was euthanized due to a bacterial infection. Kasatka’s 1978 MMPA permit included a necropsy and clinical history requirement. AWI, and the other organizations promptly requested

NOAA/NMFS to enforce the permit, by letter dated August 25, 2017, and by an updated version of the legal opinion, by letter from counsel dated August 30, 2017.

23. By letter dated October 18, 2017, NOAA/NMFS issued the same response as in its March 10, 2017 email on Tilikum's death and its September 7, 2017 letter on Kyara's death, stating that the necropsy and clinical history requirement in Kasatka's permit had been extinguished. Again, NOAA/NMFS provided no explanation for its legal conclusion.

24. After the death of three SeaWorld orcas over a seven-month period, NOAA/NMFS has refused to release or disclose the legal rationale for its conclusion that SeaWorld can ignore clearly stated permit requirements and withhold information that would shed light on the cause of death and medical condition of these whales during their lives in captivity and benefit science and marine mammal husbandry, stranding response, and medical care. SeaWorld refuses to release the whales' clinical histories or necropsy reports.

### **C. The AWI FOIA Request**

25. By letters sent by email on September 29, 2017, AWI submitted FOIA requests to NOAA/NMFS, FWS, and MMC for all documents from January 1, 2017 to May 1, 2017 regarding NMFS' March 10, 2017 determination that the necropsy and clinical history requirements of Public Display Permit No. 774 for Tilikum were extinguished by the 1994 MMPA amendments. Exhibit 1, Declaration of Donald C. Baur, dated January 8, 2018 ("Baur Decl.") at ¶ 2, Attachment A. On the same date, AWI submitted a FOIA request to APHIS, asking for "all requests that APHIS has submitted since January 1, 1994 under 9 C.F.R. § 3.110(g) requesting necropsy records for marine mammals that have died in captivity, and all necropsy records that APHIS has received in response to those requests."

26. Under FOIA, the deadline for agency response to the requests was October 30, 2017.

27. By letter to AWI dated October 5, 2017, APHIS's FOIA Director confirmed receipt of the FOIA request. The letter identified an anticipated response date of October 30, 2017. On December 8, 2017, APHIS responded to AWI's FOIA request.<sup>2</sup>

28. By voice message on October 4, 2017, the MMC confirmed receipt of AWI's FOIA request. In a letter sent by email, dated December 18, 2017, Michael L. Gosliner, MMC General Counsel, responded to the FOIA request with a partial release of documents. In the MMC response letter, Mr. Gosliner stated:

I am sympathetic to the position that your organization finds itself in — the responsible agency (NMFS) has given you its legal conclusion that the 1994 amendments to the MMPA extinguished the permit terms and conditions related to necropsies and clinical histories, but has declined to provide you with its rationale for this conclusion. I can see where that agency would not want to share its draft legal analysis outside of the government, but once a conclusion has been reached, its final position no longer is pre-decisional.<sup>3</sup>

The MMC also stated that it could not release its own documents that would shed light on the NOAA/NMFS legal position without concurrence from NOAA/NMFS.<sup>4</sup>

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<sup>2</sup> APHIS confirmed that, since 1994, it has not required licensees to submit necropsy reports for any marine mammals. As a result, it had no documents to release.

<sup>3</sup> The MMC's FOIA response indicates that NOAA/NMFS had not completed its consultation with its sister agencies on the legal question at the time it announced its conclusion on March 10, 2017.

<sup>4</sup> The MMC request revealed the limited nature of the AWI request, by identifying only nine responsive documents withheld based on the NOAA/NMFS position. The MMC letter also confirmed that it had coordinated its response "with the other agencies," indicating that NOAA/NMFS is aware of the FOIA request.

29. By email on September 29, 2017, FWS's Headquarters FOIA Office acknowledged receipt of the FOIA request. The email stated that the request was forwarded to the Division of Management Authority for processing.

30. The initial FOIA request letter to NMFS was confirmed delivered to NOAA/NMFS by AWI email on September 29, 2017. A follow-up letter was also sent by email to NMFS on December 4, 2017, asking for a response by December 15, 2017. Baur Decl. ¶ 3, Attachment B. Finally, on December 22, 2017, a copy of the December 4 letter was sent again by email, with a specific request that NMFS acknowledge receipt. *Id.* ¶ 4, Attachment C.

31. As of the date of this complaint, NOAA/NMFS has never even acknowledged receipt of the September 29, 2017 request, the December 4, 2017 follow-up letter, or the December 22, 2017 email confirmation request.

32. To date, more than three months after AWI's initial letter, and more than two months after the statutory deadline, NOAA/NMFS has not responded in any way to the September 29, 2017 AWI FOIA request. Nor has the Agency provided AWI with any explanation for the ongoing delay. The other agencies have either responded in full (APHIS and MMC) or acknowledged receipt and confirmed that review is underway (FWS).

### **CLAIM FOR RELIEF**

33. AWI has a statutory right to the requested records. NOAA/NMFS, in violation of FOIA and AWI's rights under FOIA, has failed to provide the records, or any substantive determination regarding them, by the mandatory deadline set forth in 5 U.S.C. § 552(a)(6)(A)(i).

### **REQUESTED RELIEF**

34. AWI respectfully requests that the Court grant the following relief:

- a. Declare that NMFS is in violation of FOIA;

- b. Enjoin NMFS from continuing to withhold the requested records and order NMFS immediately to release the records in full to AWI;
- c. Make a written finding pursuant to 5 U.S.C. § 552(a)(4)(F)(i) that the “circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding . . . .”;
- d. Award Plaintiff its attorneys’ fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E);
- e. Award any other relief this Court finds just and proper.

Dated this 9th day of January, 2018

Respectfully submitted,

/s/Donald C. Baur

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Counsel for Plaintiff

**From:** [Georgia Hancock](#)  
**To:** [FOIA@noaa.gov](mailto:FOIA@noaa.gov); [fwhq\\_foia@fws.gov](mailto:fwhq_foia@fws.gov); [mmc@mmc.gov](mailto:mmc@mmc.gov)  
**Cc:** [Baur, Don \(WDC\)](#); [Naomi Rose](#)  
**Subject:** AWI FOIA to NOAA, FWS, MMC 9-29-2017  
**Attachments:** [NOAA NMFS FWS MMC FOIA 9.29.17.pdf](#)

---

On behalf of the Animal Welfare Institute, please see the attached FOIA request.

Very truly yours,

Georgia Hancock  
*Of Counsel*  
[georgia@awionline.org](mailto:georgia@awionline.org)  
mobile: 607-329-8638  
Animal Welfare Institute  
Visit us at [awionline.org](http://awionline.org)





# Animal Welfare Institute

903 Pennsylvania Avenue, SE, Washington, DC 20003  
awionline.org phone: (202) 397-2332 fax: (202) 446-2031

September 29, 2017

## VIA OVERNIGHT MAIL AND EMAIL

National Oceanic and Atmospheric Administration  
Public Reference Facility (SOU1000)  
1315 East-West Highway (SSMC3)  
Room 9719  
Silver Spring, Maryland 20910  
FOIA@noaa.gov

Carrie Hyde-Michaels  
FWS FOIA Officer  
U.S. Fish and Wildlife Service  
5275 Leesburg Pike  
MS:IRTM  
Falls Church, VA 22041  
fwhq\_foia@fws.gov

Michael Gosliner  
Marine Mammal Commission  
4340 East-West Highway, Room 700  
Bethesda, Maryland 20814  
mmc@mmc.gov

## Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq.*, and the regulations of the Department of Commerce, 15 C.F.R., Part 4; the regulations of the Department of the Interior, 43 C.F.R., Part 2; and the regulations of the Marine Mammal Commission, 50 C.F.R., Part 520; I am writing on behalf of the Animal Welfare Institute ("AWI") to request from the National Oceanic and Atmospheric Administration ("NOAA"), the National Marine Fisheries Service ("NMFS"), the Fish and Wildlife Service ("FWS"), and the Marine Mammal Commission ("MMC"), certain documents related to the Public Display Permit that NMFS issued under the Marine Mammal Protection Act ("MMPA") for Tilikum the orca whale (Permit No. 774).

September 29, 2017

Page 2

Specifically, I request all documents from each of the aforementioned agencies between January 1, 2017 and May 1, 2017 related to NMFS' March 10, 2017 determination that the necropsy/clinical history requirements of Permit No. 774 were effectively extinguished by the 1994 amendments to the MMPA.

For purposes of this FOIA request, "all documents" encompass: (i) any written, printed, or typed material of any kind, including without limitation to all correspondence, memoranda, notes, meeting minutes, emails from or to official or personal e-mail accounts, spreadsheets, reports, calendars; (ii) any electronically, magnetically, or mechanically stored records, such as materials stored on a compact disk, digital video disk, microfiche, regardless of form; (iii) any audio, visual, aural, or video records, including but not limited to photographs, videotapes, microfilm; and (iv) any other records preserved by any other means for documenting thought or expression.

In the event that the requested documents cannot be disclosed in their entirety, AWI requests that you release any material that can be reasonably segregated. Should any documents or portions thereof be withheld, AWI requests that the agency state with specificity the description of the withheld document or portions thereof, and the legal and factual grounds for doing so.

AWI requests that any fees associated with responding to this FOIA request be waived. *See* 15 C.F.R. § 4.11; 43 C.F.R. § 2.45; 50 C.F.R. § 520.7. AWI is a non-profit, charitable institution that was founded over 50 years ago and is dedicated to protecting animals from suffering caused by human action. The documents that AWI is requesting concern the terms of Public Display Permit No. 774, the agencies' interpretation of those terms, and the level of input that NMFS received from other agencies to interpret those terms. Releasing the documents covered by this request will significantly enhance the public's understanding of the necropsy and clinical history requirements of MMPA public display permits issued before 1994 and the agencies' procedures for evaluating those permits. This information will help the public determine whether additional changes to the MMPA permitting processes are needed in order to achieve the goals of the statute.

Disclosure of the requested documents will benefit a broad audience of people interested in the MMPA and public display permits. AWI is an institute with significant expertise in marine mammals and animal welfare and is well suited to convey the information learned from the documents to the public. As a non-profit organization, AWI's primary goal is to increase awareness of human mistreatment of animals and releasing the documents it obtains in response to this FOIA request will further that goal. The documents AWI is requesting are not yet publicly available and thus the release of these documents will significantly enhance the public's understanding of the public display permits at issue.

AWI does not have any commercial interest that will be furthered by releasing the requested documents.

Please contact me if you have any questions.

September 29, 2017  
Page 3

Sincerely,

/s/ Georgia Hancock  
Georgia Hancock, Esq.  
Of Counsel  
Animal Welfare Institute  
[georgia@awionline.org](mailto:georgia@awionline.org)  
mobile: 607-329-8638

cc: Dr. Naomi Rose (via electronic mail)  
Don Baur, Esq. (via electronic mail)

<b>Tracking Number</b>	<b>Type</b>	<b>Requester</b>	<b>Requester Organization</b>
DOC-NOAA-2018-000752	Request	david swatland	
DOC-NOAA-2018-000740	Request	Doug Gillie	Parks & Solar, LLP
DOC-NOAA-2018-000731	Request	Rose Santos	FOIA GROUP INC
DOC-NOAA-2018-000730	Request	Rose Santos	FOIA GROUP INC
DOC-NOAA-2018-000749	Request	Alan Abend	University of Massachusetts Boston
DOC-NOAA-2018-000727	Request	Tia Justice	Logansport Historical Preservation Committee
DOC-NOAA-2018-000716	Request	Vivian Wang	Natural Resources Defense Council

**Custom Report - 02/14/2018 03**

<b>Submitted</b>	<b>Received</b>	<b>Assigned To</b>	<b>Case File Assigned To</b>	<b>Perfected?</b>	<b>Due</b>
02/13/2018	02/13/2018	NOS	NOS	Yes	03/15/2018
02/13/2018	02/13/2018	NMFS	NMFS	Yes	03/15/2018
02/12/2018	02/12/2018	AGO	AGO	Yes	03/15/2018
02/12/2018	02/12/2018	AGO	AGO	Yes	03/15/2018
02/12/2018	02/12/2018	NMFS	NMFS	Yes	03/15/2018
02/11/2018	02/12/2018	NWS	NWS	Yes	03/14/2018
02/08/2018	02/08/2018	Amanda J. Patterson	Amanda J. Patterson	Yes	03/14/2018



## Detail

1) Any and all reports, results, etc. provided to Ms. Athline Clark, the Office of National Marine Sanctuaries' NOAA : Emails or other communications between the National Oceanic and Atmospheric Administration (&quot;NOAA&qu [Reference FGI 18- 56254] relevant to DOCST133017CQ0061 we seek the following: (1) Contract sections A-M ar [Reference FGI 18- 56253] relevant to DOCDG133W12CQ0010 we seek the following: (1) Contract sections A-M : A copy of Marine Mammal Rescue Nantucket (MMRACK) Stranding Agreement application.

This is a request for all documentation (up to and including studies, research, and notations) concerning the affects Please produce records in the National Marine Fisheries Service's possession, custody, or control pertaining to the

Superintendent of Papahānaumokuākea Marine National Monument, associated with her 360 evaluation  
ot;) and the Food and Drug Administration (&quot;FDA&quot;) concerning testing of canned tuna for con  
rd all attachments, including SOW.  
and all attachments, including SOW.

s and effects of wind turbines and commercial/industrial wind farms on radar used by NOAA/NWS for an  
: agency's decision, after reports of right whale sightings, to create a Dynamic Management Area off the



1) conducted by Edge Training Systems, Inc. between July 1, 2017 and the present. 2) Any and all raw data in compliance with the prescribed weight standard of fill (21 C.F.R. § 161.190(c)); • Any communications, m

any and all purposes, with a primary interest in weather prediction, storm mapping/tracking over populated coast of Virginia in which vessel speeds are restricted to ten knots or slower. (see attached letter)

ata submitted to Edge Training Systems (ETS) by the respondents in response to ETS's invitation to part  
memoranda, policy statements, or other documents relating to the enforcement of the pressed weight sta

l and un-populated areas including hazards, injuries, and any/all cases where turbines/wind farms have

icipate in the evaluation. Specifically, this raw data consists of 11 pages of feedback provided by each re  
indard of fill, 21 C.F.R. &sect; 161.190(c), including but not limited to any recommendations to bring an €

impeded the function of radar. This request also encompasses any and all documentation (up to and inc

espo  
enforcement proceeding or recommendations no

cluding studies, res













## Mark Graff - NOAA Federal

---

**From:** Mark Graff NOAA Federal  
**Sent:** Wednesday, February 14, 2018 4:26 PM  
**To:** Stephen Lipps NOAA Federal; Holmes, Colin; Scott Smullen NOAA Federal; Jeff Dillen NOAA Federal; Kristen Gustafson NOAA Federal; Robert Hogan; \_DUS Staff; Tanya Dobrzynski NOAA Federal; Stuart Levenbach NOAA Federal; Kevin Wheeler NOAA Federal; Brandon Elsner NOAA Federal; Taylor Jordan NOAA Federal; Erik Noble NOAA Federal; Wendy Lewis NOAA Federal  
**Cc:** Tom Taylor; Kimberly Katzenbarger NOAA FEDERAL; Charles; Dennis Morgan NOAA Federal; Stacey Nathanson NOAA Federal; Robert Swisher NOAA Federal; Steven Goodman NOAA Federal; Samuel Dixon NOAA Affiliate; Lola Stith NOAA Affiliate; Zachary Goldstein NOAA Federal; Douglas Perry NOAA Federal; Nkolika Ndubisi NOAA Federal; Jeri Dockett NOAA Affiliate; Lawrence Charters NOAA Federal; Allison Soussi Tanani NOAA Federal; Bogomolny, Michael (Federal); Roxie Allison Holman NOAA Federal; John Almeida NOAA Federal; Michael Weiss NOAA Federal; Maria Williams NOAA Federal; Shawn Martin NOAA Federal; Kathryn Kempton NOAA Federal; Ed Kearns NOAA Federal; Cheryl Scannell NOAA Federal; Devin Brakob NOAA Federal; \_OCIO GPD; Darone Jones NOAA Federal; Christina Storz NOAA Federal  
**Subject:** Weekly FOIA Incoming and High Visibility Requests  
**Attachments:** NRDC v. DOI and DOC Original Complaint.pdf; Original NRDC FOIA Request re EO 13795.pdf; 2018.01.08 AWI Complaint.pdf; AWI Original Request.pdf; Weekly FOIA Incoming and High Visibility Requests 2.8 to 2.14.18.xls

Good Afternoon,

Attached is this week's report.

One request was received from the Natural Resources Defense Council. The request seeks records regarding the decision, following Right Whale sightings, to create a Dynamic Management Area off the coast of Virginia. (DOC NOAA 2018 000716). NRDC has filed suit three times against the Department within the last year, including the new lawsuit referenced below.

In litigation, NRDC filed suit in SDNY premised on the constructive denial of their FOIA request seeking records regarding the implementation of EO 13795 (b)(5)

Additionally, in the *AWI v. NOAA* litigation, NOAA issued its second interim response. The original request sought all records regarding the orca Tilicum, which was the subject of the movie *Blackfish*. A copy of the original request and the Complaint filed in DDC are both attached.

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration

(301) 628 5658 (O)

(b)(6) (C)

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ANIMAL WELFARE INSTITUTE	)	
900 Pennsylvania Avenue, SE	)	
Washington, D.C. 20003,	)	
	)	
Plaintiff,	)	
v.	)	Civ. No.
	)	
NATIONAL OCEANIC AND ATMOSPHERIC	)	
ADMINISTRATION,	)	
1401 Constitution Avenue, NW, Room 5128	)	
Washington, D.C. 20230	)	
	)	
and	)	
	)	
NATIONAL MARINE FISHERIES SERVICE,	)	
1315 East-West Highway	)	
Silver Spring, MD 20910,	)	
	)	
Defendants.	)	
_____	)	

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1. The Animal Welfare Institute brings this action against defendants National Oceanic and Atmospheric Administration and National Marine Fisheries Service for violations of the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”).

**PARTIES**

2. Plaintiff Animal Welfare Institute (“AWI”) is a 501(c)(3) non-profit organization that seeks to protect animals from human inflicted suffering. In particular, AWI has advocated for the protection of whales and other marine life from life from human activities such as harmful fishing practices, hunting, underwater noise production, and inhumane practices resulting from captive maintenance for purposes of public display and scientific research. AWI is the requester of the records at issue.

3. Defendant National Oceanic and Atmospheric Administration (“NOAA”) is an agency of the federal government within the U.S. Department of Commerce that focuses on the conditions of the oceans and the atmosphere, including marine wildlife.

4. Defendant National Marine Fisheries Service (“NMFS”) is an agency of the federal government within NOAA that has jurisdiction over whales under the Marine Mammal Protection Act (“MMPA”), 16 U.S.C. §§ 1361 - 1423h, and is in possession of the records requested by AWI.

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B).

6. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B).

### **FACTS GIVING RISE TO PLAINTIFF’S CLAIM**

#### **A. FOIA Requirements**

7. The purpose of FOIA is to “pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny.” *Public Citizen, Inc. v. Office of Management and Budget*, 598 F.3d 865, 869 (D.C. Cir. 2010) (quotations omitted). In enacting FOIA, Congress intended the primary objective of the Act to be the full disclosure of federal agency records so long as information is not exempted by clearly delineated statutory language. *Id.*

8. FOIA establishes a broad right of public access to federal agency records, subject only to nine delineated exemptions. 5 U.S.C. § 552(b). “Each agency, upon any request” for enumerated records must “determine within 20 days (excepting Saturdays, Sundays, and legal holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such a request” of the “determination and the reasons therefor . . . .” *Id.* § 552(a)(6)(A)(i). A requester “shall be deemed to have exhausted [its]

administrative remedies” and hence may file suit under the Act’s citizen suit provision “with respect to [a] request if the agency fails to comply with the . . . time limit” set forth in the statute for a substantive response. *Id.* § 552(a)(6)(C)(i).

9. The federal regulations implementing FOIA for NOAA and NMFS are located at 15 C.F.R. § 4.1, *et seq.* 15 C.F.R. § 4.6 codifies the requirement that NOAA/NMFS respond within 20 working days of receiving a FOIA request with a determination of compliance.

#### **B. The Public Interest Need for the Documents Subject to the FOIA Request**

10. In 2013, the documentary film *Blackfish* drew public attention to the plight of Tilikum, an orca held in captivity by SeaWorld Parks & Entertainment (“SeaWorld”), and other orcas now maintained in aquariums and theme parks around the world. *Blackfish* set off a strong negative public reaction to SeaWorld and the conditions under which orcas are held in captivity.

11. On March 8, 2016, SeaWorld released a video on its website describing Tilikum’s declining health and indicating that he was not expected to survive.

12. Beginning in October 2016, the People for the Ethical Treatment of Animals (“PETA”) initiated the first of what would be several meetings and communications with NOAA/NMFS regarding Tilikum. AWI joined this effort by December 2016. In anticipation of Tilikum’s death, NOAA/NMFS was presented with a draft legal opinion explaining why the 1992 MMPA permit authorizing the importation of Tilikum requires SeaWorld to submit to NOAA/NMFS the necropsy report and clinical history for Tilikum in the event of his death. In these meetings and communications, and through the draft legal opinion, AWI (with PETA) sought NOAA/NMFS input and comments on the applicability of the necropsy and clinical history permit requirement.

13. In the following months, AWI also presented its views on the necropsy and clinical history requirements of MMPA permits to the other federal agencies with jurisdiction over marine mammals — the U.S. Fish and Wildlife Service (“FWS”), the Marine Mammal Commission (“MMC”), and the U.S. Department of Agriculture’s Animal and Plant Health Inspection Service (“APHIS”).<sup>1</sup>

14. In these agency meetings and communications, AWI repeatedly stressed the importance of necropsy reports and clinical histories for purposes of scientific research, medical care (including for free-ranging, stranded individuals), animal husbandry, and public education, and demonstrated that the benefits resulting from this information applied to whales held both in captivity and in the wild.

15. In these meetings and communications, NOAA/NMFS never took a position on whether SeaWorld had to comply with the necropsy and clinical history requirements of Tilikum’s permit.

16. Tilikum died on January 6, 2017 at SeaWorld’s Orlando facility. AWI and other animal welfare organizations immediately notified NOAA/NMFS that Tilikum’s MMPA permit required SeaWorld to submit the necropsy and clinical history report within 30 days. Based on information and belief, SeaWorld never submitted the necropsy and clinical history report required by the permit to NOAA/NMFS.

17. On March 10, 2017, NOAA/NMFS responded to the animal welfare organizations’ notice with an email stating that it was willing to meet to discuss the issue but that it had concluded that the necropsy and clinical history provisions of Tilikum’s permit had been

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<sup>1</sup> Under the MMPA, NOAA/NMFS has jurisdiction over whales, dolphins and seals. FWS has jurisdiction over polar bears, manatees, walrus and sea otters. 16 U.S.C. § 1362(12)(A). The MMC serves in an independent advisory and oversight role. *Id.* §§ 1401-1407. APHIS jurisdiction is not under the MMPA but applies to marine mammals in certain captive maintenance facilities under the Animal Welfare Act. 7 U.S.C. §§ 2131-2159.

extinguished by amendments to the MMPA in 1994 and that “the legal analysis supporting this determination is exempt from disclosure under the attorney-client privilege, and we will not be discussing it in any detail at the meeting.” Thus, after months of effort to engage NOAA/NMFS in a collaborative dialogue regarding the permit requirements for SeaWorld to release Tilikum’s health records, AWI and the other organizations had no explanation from NOAA/NMFS for the legal conclusion, contrary to the plain language of the permit, that the necropsy and clinical history requirement did not apply and were told that none would be provided.

18. AWI contacted SeaWorld directly by email on March 25, 2017 asking for voluntary release of Tilikum’s records. SeaWorld refused to do so in an April 13, 2017 email. Five animal welfare organizations sent a letter to SeaWorld on August 8, 2017, again asking for voluntary compliance. SeaWorld has not replied and continues to withhold the documents.

19. On July 24, 2017, Tilikum’s granddaughter Kyara died at SeaWorld’s San Antonio facility. The draft legal opinion previously provided to NOAA/NMFS confirmed that Kyara was covered by the necropsy and clinical history provision of Tilikum’s permit.

20. On July 31, 2017, AWI and other animal welfare organizations wrote to NOAA/NMFS asking for enforcement of the necropsy and clinical history provision of Tilikum’s permit for Kyara’s records. Counsel to AWI submitted a revised version of the draft legal opinion supporting this conclusion to NOAA/NMFS on August 14, 2017.

21. NOAA/NMFS responded on September 7, 2017, simply restating its March 10, 2017 email message that the permit had been extinguished by the 1994 MMPA amendments.

22. On August 15, 2017, Kasatka, an orca held at SeaWorld’s San Diego facility, was euthanized due to a bacterial infection. Kasatka’s 1978 MMPA permit included a necropsy and clinical history requirement. AWI, and the other organizations promptly requested



NOAA/NMFS to enforce the permit, by letter dated August 25, 2017, and by an updated version of the legal opinion, by letter from counsel dated August 30, 2017.

23. By letter dated October 18, 2017, NOAA/NMFS issued the same response as in its March 10, 2017 email on Tilikum's death and its September 7, 2017 letter on Kyara's death, stating that the necropsy and clinical history requirement in Kasatka's permit had been extinguished. Again, NOAA/NMFS provided no explanation for its legal conclusion.

24. After the death of three SeaWorld orcas over a seven-month period, NOAA/NMFS has refused to release or disclose the legal rationale for its conclusion that SeaWorld can ignore clearly stated permit requirements and withhold information that would shed light on the cause of death and medical condition of these whales during their lives in captivity and benefit science and marine mammal husbandry, stranding response, and medical care. SeaWorld refuses to release the whales' clinical histories or necropsy reports.

### **C. The AWI FOIA Request**

25. By letters sent by email on September 29, 2017, AWI submitted FOIA requests to NOAA/NMFS, FWS, and MMC for all documents from January 1, 2017 to May 1, 2017 regarding NMFS' March 10, 2017 determination that the necropsy and clinical history requirements of Public Display Permit No. 774 for Tilikum were extinguished by the 1994 MMPA amendments. Exhibit 1, Declaration of Donald C. Baur, dated January 8, 2018 ("Baur Decl.") at ¶ 2, Attachment A. On the same date, AWI submitted a FOIA request to APHIS, asking for "all requests that APHIS has submitted since January 1, 1994 under 9 C.F.R. § 3.110(g) requesting necropsy records for marine mammals that have died in captivity, and all necropsy records that APHIS has received in response to those requests."

26. Under FOIA, the deadline for agency response to the requests was October 30, 2017.

27. By letter to AWI dated October 5, 2017, APHIS's FOIA Director confirmed receipt of the FOIA request. The letter identified an anticipated response date of October 30, 2017. On December 8, 2017, APHIS responded to AWI's FOIA request.<sup>2</sup>

28. By voice message on October 4, 2017, the MMC confirmed receipt of AWI's FOIA request. In a letter sent by email, dated December 18, 2017, Michael L. Gosliner, MMC General Counsel, responded to the FOIA request with a partial release of documents. In the MMC response letter, Mr. Gosliner stated:

I am sympathetic to the position that your organization finds itself in — the responsible agency (NMFS) has given you its legal conclusion that the 1994 amendments to the MMPA extinguished the permit terms and conditions related to necropsies and clinical histories, but has declined to provide you with its rationale for this conclusion. I can see where that agency would not want to share its draft legal analysis outside of the government, but once a conclusion has been reached, its final position no longer is pre-decisional.<sup>3</sup>

The MMC also stated that it could not release its own documents that would shed light on the NOAA/NMFS legal position without concurrence from NOAA/NMFS.<sup>4</sup>

---

<sup>2</sup> APHIS confirmed that, since 1994, it has not required licensees to submit necropsy reports for any marine mammals. As a result, it had no documents to release.

<sup>3</sup> The MMC's FOIA response indicates that NOAA/NMFS had not completed its consultation with its sister agencies on the legal question at the time it announced its conclusion on March 10, 2017.

<sup>4</sup> The MMC request revealed the limited nature of the AWI request, by identifying only nine responsive documents withheld based on the NOAA/NMFS position. The MMC letter also confirmed that it had coordinated its response "with the other agencies," indicating that NOAA/NMFS is aware of the FOIA request.

29. By email on September 29, 2017, FWS's Headquarters FOIA Office acknowledged receipt of the FOIA request. The email stated that the request was forwarded to the Division of Management Authority for processing.

30. The initial FOIA request letter to NMFS was confirmed delivered to NOAA/NMFS by AWI email on September 29, 2017. A follow-up letter was also sent by email to NMFS on December 4, 2017, asking for a response by December 15, 2017. Baur Decl. ¶ 3, Attachment B. Finally, on December 22, 2017, a copy of the December 4 letter was sent again by email, with a specific request that NMFS acknowledge receipt. *Id.* ¶ 4, Attachment C.

31. As of the date of this complaint, NOAA/NMFS has never even acknowledged receipt of the September 29, 2017 request, the December 4, 2017 follow-up letter, or the December 22, 2017 email confirmation request.

32. To date, more than three months after AWI's initial letter, and more than two months after the statutory deadline, NOAA/NMFS has not responded in any way to the September 29, 2017 AWI FOIA request. Nor has the Agency provided AWI with any explanation for the ongoing delay. The other agencies have either responded in full (APHIS and MMC) or acknowledged receipt and confirmed that review is underway (FWS).

### **CLAIM FOR RELIEF**

33. AWI has a statutory right to the requested records. NOAA/NMFS, in violation of FOIA and AWI's rights under FOIA, has failed to provide the records, or any substantive determination regarding them, by the mandatory deadline set forth in 5 U.S.C. § 552(a)(6)(A)(i).

### **REQUESTED RELIEF**

34. AWI respectfully requests that the Court grant the following relief:

- a. Declare that NMFS is in violation of FOIA;

- b. Enjoin NMFS from continuing to withhold the requested records and order NMFS immediately to release the records in full to AWI;
- c. Make a written finding pursuant to 5 U.S.C. § 552(a)(4)(F)(i) that the “circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding . . . .”;
- d. Award Plaintiff its attorneys’ fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E);
- e. Award any other relief this Court finds just and proper.

Dated this 9th day of January, 2018

Respectfully submitted,

/s/Donald C. Baur

Donald C. Baur  
D.C. Bar No. 393621  
Perkins Coie LLP  
700 13th Street, NW, Suite 600  
Washington, D.C. 20005-3960  
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San Francisco, CA 94105  
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STsou@perkinscoie.com

Counsel for Plaintiff

**From:** [Georgia Hancock](#)  
**To:** [FOIA@noaa.gov](mailto:FOIA@noaa.gov); [fwhq\\_foia@fws.gov](mailto:fwhq_foia@fws.gov); [mmc@mmc.gov](mailto:mmc@mmc.gov)  
**Cc:** [Baur, Don \(WDC\)](#); [Naomi Rose](#)  
**Subject:** AWI FOIA to NOAA, FWS, MMC 9-29-2017  
**Attachments:** [NOAA NMFS FWS MMC FOIA 9.29.17.pdf](#)

---

On behalf of the Animal Welfare Institute, please see the attached FOIA request.

Very truly yours,

Georgia Hancock  
*Of Counsel*  
[georgia@awionline.org](mailto:georgia@awionline.org)  
mobile: 607-329-8638  
Animal Welfare Institute  
Visit us at [awionline.org](http://awionline.org)



# Animal Welfare Institute

903 Pennsylvania Avenue, SE, Washington, DC 20003  
awionline.org phone: (202) 397-2332 fax: (202) 446-2031

September 29, 2017

## VIA OVERNIGHT MAIL AND EMAIL

National Oceanic and Atmospheric Administration  
Public Reference Facility (SOU1000)  
1315 East-West Highway (SSMC3)  
Room 9719  
Silver Spring, Maryland 20910  
FOIA@noaa.gov

Carrie Hyde-Michaels  
FWS FOIA Officer  
U.S. Fish and Wildlife Service  
5275 Leesburg Pike  
MS:IRTM  
Falls Church, VA 22041  
fwhq\_foia@fws.gov

Michael Gosliner  
Marine Mammal Commission  
4340 East-West Highway, Room 700  
Bethesda, Maryland 20814  
mmc@mmc.gov

## Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq.*, and the regulations of the Department of Commerce, 15 C.F.R., Part 4; the regulations of the Department of the Interior, 43 C.F.R., Part 2; and the regulations of the Marine Mammal Commission, 50 C.F.R., Part 520; I am writing on behalf of the Animal Welfare Institute ("AWI") to request from the National Oceanic and Atmospheric Administration ("NOAA"), the National Marine Fisheries Service ("NMFS"), the Fish and Wildlife Service ("FWS"), and the Marine Mammal Commission ("MMC"), certain documents related to the Public Display Permit that NMFS issued under the Marine Mammal Protection Act ("MMPA") for Tilikum the orca whale (Permit No. 774).

September 29, 2017

Page 2

Specifically, I request all documents from each of the aforementioned agencies between January 1, 2017 and May 1, 2017 related to NMFS' March 10, 2017 determination that the necropsy/clinical history requirements of Permit No. 774 were effectively extinguished by the 1994 amendments to the MMPA.

For purposes of this FOIA request, "all documents" encompass: (i) any written, printed, or typed material of any kind, including without limitation to all correspondence, memoranda, notes, meeting minutes, emails from or to official or personal e-mail accounts, spreadsheets, reports, calendars; (ii) any electronically, magnetically, or mechanically stored records, such as materials stored on a compact disk, digital video disk, microfiche, regardless of form; (iii) any audio, visual, aural, or video records, including but not limited to photographs, videotapes, microfilm; and (iv) any other records preserved by any other means for documenting thought or expression.

In the event that the requested documents cannot be disclosed in their entirety, AWI requests that you release any material that can be reasonably segregated. Should any documents or portions thereof be withheld, AWI requests that the agency state with specificity the description of the withheld document or portions thereof, and the legal and factual grounds for doing so.

AWI requests that any fees associated with responding to this FOIA request be waived. *See* 15 C.F.R. § 4.11; 43 C.F.R. § 2.45; 50 C.F.R. § 520.7. AWI is a non-profit, charitable institution that was founded over 50 years ago and is dedicated to protecting animals from suffering caused by human action. The documents that AWI is requesting concern the terms of Public Display Permit No. 774, the agencies' interpretation of those terms, and the level of input that NMFS received from other agencies to interpret those terms. Releasing the documents covered by this request will significantly enhance the public's understanding of the necropsy and clinical history requirements of MMPA public display permits issued before 1994 and the agencies' procedures for evaluating those permits. This information will help the public determine whether additional changes to the MMPA permitting processes are needed in order to achieve the goals of the statute.

Disclosure of the requested documents will benefit a broad audience of people interested in the MMPA and public display permits. AWI is an institute with significant expertise in marine mammals and animal welfare and is well suited to convey the information learned from the documents to the public. As a non-profit organization, AWI's primary goal is to increase awareness of human mistreatment of animals and releasing the documents it obtains in response to this FOIA request will further that goal. The documents AWI is requesting are not yet publicly available and thus the release of these documents will significantly enhance the public's understanding of the public display permits at issue.

AWI does not have any commercial interest that will be furthered by releasing the requested documents.

Please contact me if you have any questions.

September 29, 2017  
Page 3

Sincerely,

/s/ Georgia Hancock  
Georgia Hancock, Esq.  
Of Counsel  
Animal Welfare Institute  
[georgia@awionline.org](mailto:georgia@awionline.org)  
mobile: 607-329-8638

cc: Dr. Naomi Rose (via electronic mail)  
Don Baur, Esq. (via electronic mail)



**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

_____	)	
NATURAL RESOURCES DEFENSE	)	
COUNCIL, INC.,	)	
	)	
Plaintiff,	)	
v.	)	
	)	
U.S. DEPARTMENT OF THE INTERIOR	)	Civil Action No. 18-cv-650
	)	
and	)	
	)	
U.S. DEPARTMENT OF COMMERCE,	)	
	)	
Defendants.	)	
_____	)	

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**INTRODUCTION**

1. Plaintiff Natural Resources Defense Council, Inc. (NRDC or Plaintiff), brings this case to compel Defendants, the U.S. Department of the Interior (Interior Department) and the U.S. Department of Commerce (Commerce Department) (collectively, Defendants), to disclose records relating to the agencies’ reviews of certain national monuments.

2. Over the course of the past year, Defendants have conducted controversial “reviews” of at least twenty-seven national monuments established by former Presidents Clinton, G.W. Bush, and Obama including the Bears Ears National Monument in Utah, the Grand Staircase-Escalante National Monument in

Utah, and the Northeast Canyons and Seamounts Marine National Monument in the Atlantic Ocean for the purpose of making recommendations to the President about whether to preserve those monuments, or to dismantle them and open them to industrial resource extraction and other destructive uses. Despite an outpouring of popular support for preserving existing national monuments, the President has already acted to revoke national monument protections for huge swaths of Bears Ears and Grand Staircase-Escalante.

3. In September and October 2017, NRDC sought production under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, of records relating to the agencies' review processes. As explained below, NRDC sought records relating to the public comments that Defendants received, the meetings and communications Defendants' leadership had with non-governmental individuals and entities (including industry groups), and the criteria by which Defendants weighed the information they gathered. NRDC, its members, and the American public at large have a right to know who is influencing the federal government's decisions about the fate of these iconic American lands and waters.

4. FOIA required Defendants to respond within twenty business days. Yet Defendants did not respond substantively by that deadline, and they still have not done so. Their failure to timely disclose the requested records violates FOIA.

5. NRDC seeks a declaration that Defendants violated FOIA by failing to provide a final determination by the statutory deadline as to whether they will comply with NRDC's requests, and by failing to produce any responsive documents

promptly thereafter. NRDC seeks an injunction ordering that Defendants disclose, without further delay, all non-exempt, responsive records and portions of records to NRDC. NRDC also seeks a declaration that, pursuant to FOIA, it is entitled to a fee waiver in connection with its FOIA requests to the Interior Department.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question) and 5 U.S.C. § 552(a)(4)(B) (FOIA).

7. Venue is proper in the U.S. District Court for the Southern District of New York because NRDC resides and has its principal place of business in this judicial district. 5 U.S.C. § 552(a)(4)(B); 28 U.S.C. § 1391(e)(1).

### **THE PARTIES**

8. Plaintiff NRDC is a national nonprofit advocacy organization with hundreds of thousands of members nationwide. On behalf of its members, NRDC engages in research, advocacy, public education, and litigation to protect public health and the environment. NRDC has a long history of disseminating information of public interest, including information obtained from FOIA requests.

9. Defendant Interior Department is an agency within the meaning of 5 U.S.C. §§ 551(1) and 552(f)(1), and it has possession or control of documents NRDC seeks. The Office of the Secretary of the Interior is a component of the Interior Department.

10. Defendant Commerce Department is an agency within the meaning of 5 U.S.C. §§ 551(1) and 552(f)(1), and it has possession or control of documents

NRDC seeks. The Office of the Secretary of Commerce is a component of the Commerce Department.

### **STATUTORY AND REGULATORY FRAMEWORK**

11. FOIA requires federal agencies to release records to the public upon request, unless one of nine statutory exemptions from disclosure applies. 5 U.S.C. § 552(a)-(b).

12. Within twenty business days of an agency's receipt of a FOIA request, the agency must "determine . . . whether to comply" with the request. *Id.* § 552(a)(6)(A)(i); *see also* 43 C.F.R. § 2.16(a) (Interior FOIA regulation); 15 C.F.R. § 4.6(b) (Commerce FOIA regulation). The agency must "immediately notify" the requester of "such determination and the reasons therefor." 5 U.S.C. § 552(a)(6)(A)(i)(I); 43 C.F.R. § 2.21(b) (requiring Interior Department to "immediately" send a written acknowledgement and tracking number if a request will take longer than ten workdays to process).

13. Once an agency determines that it will comply with a FOIA request, it must "promptly" release responsive, non-exempt records to the requester. 5 U.S.C. § 552(a)(6)(C)(i); *see also* 43 C.F.R. § 2.22(c) (Interior FOIA regulation); 15 C.F.R. § 4.7(c) (Commerce FOIA regulation).

14. In "unusual circumstances," an agency may extend the twenty-day time limit for responding to a FOIA request by up to ten working days. 5 U.S.C. § 552(a)(6)(B)(i); *see also* 43 C.F.R. § 2.19(a)(1) (Interior FOIA regulation); 15 C.F.R. § 4.6(b) (Commerce FOIA regulation).

15. The agency must provide requested records at no or reduced cost “if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”

5 U.S.C. § 552(a)(4)(A)(iii); *see also* 43 C.F.R. § 2.45(a) (Interior FOIA regulation);

15 C.F.R. § 4.11(l) (Commerce FOIA regulation).

16. If the agency fails to notify the requester of its determination within the statutory time limit, the requester is “deemed to have exhausted his administrative remedies” and may immediately file suit. 5 U.S.C. § 552(a)(6)(C)(i).

17. FOIA grants federal district courts authority to “enjoin [an] agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” *Id.* § 552(a)(4)(B).

## FACTS

18. On April 26, 2017, President Donald J. Trump issued Executive Order 13,792, titled “Review of Designations Under the Antiquities Act,” which directed Secretary of the Interior Ryan Zinke to conduct a review of twenty-seven national monuments created by President Trump’s predecessors. Exec. Order 13,792, 82 Fed. Reg. 20,429 (Apr. 26, 2017). The Executive Order directed Secretary Zinke to provide “recommendations for such Presidential actions, legislative proposals, or other actions consistent with the law as the Secretary may consider appropriate” to

“balance the protection of . . . objects against the appropriate use of Federal lands and the effects on surrounding lands and communities.” *Id.*

19. Two days later, on April 28, 2017, President Trump issued another executive order, this one titled “Implementing an America-First Offshore Energy Strategy.” Exec. Order 13,795, 82 Fed. Reg. 20,815 (April 28, 2017). The order, among other things, directed Secretary of Commerce Wilbur Ross to review marine national monuments and national marine sanctuaries that had been designated or expanded within the previous ten years. The executive order required the Secretary of Commerce to “report the results of the review” within 180 days. *Id.*

20. The Interior Department and the Commerce Department subsequently accepted public comments regarding the covered national monuments and marine sanctuaries. *See* 82 Fed. Reg. 22,016 (May 11, 2017) (Interior review); 82 Fed. Reg. 28,827 (June 26, 2017) (Commerce review). On information and belief, Secretaries Zinke and Ross and other agency officials also met with a variety of stakeholders, including representatives of industry groups expressing interest in commercial exploitation of the national monuments and marine sanctuaries under review.

21. On information and belief, Defendants collectively received over three million public comments during their review period, and the overwhelming majority of those comments called on Defendants and the Trump Administration to preserve existing national monuments and marine sanctuaries.

22. Plaintiff NRDC submitted comments to the Interior and Commerce Departments in support of national monuments in general, and in support of Bears

Ears National Monument, Grand Staircase-Escalante National Monument, and Northeast Canyons and Seamounts Marine National Monument in particular. In addition, tens of thousands of NRDC's individual members submitted comments to the Interior and Commerce Departments in support of national monuments and marine sanctuaries.

23. On August 24, 2017, Interior Secretary Zinke submitted his final report to the President. Neither Secretary Zinke nor President Trump released the report publicly at the time, but national news reporters obtained what appears to be a leaked copy of the report, and Secretary Zinke released a substantially similar version to the public on December 5, 2017. Both versions of the Interior report recommended that the President unilaterally revoke or substantially weaken protections for several national monuments, including the Bears Ears National Monument, the Grand Staircase-Escalante National Monument, and the Northeast Canyons and Seamounts Marine National Monument.

24. On October 25, 2017, Secretary Ross's report describing the results of the Commerce review was due to be completed and submitted to the President. To date, neither Secretary Ross nor any other government official has released the Commerce report publicly.

25. On December 4, 2017, President Trump issued two proclamations dismantling Bears Ears National Monument and Grand Staircase-Escalante National Monument. President Trump and other federal officials have indicated that additional proclamations dismantling other national monuments would follow.

26. The American public has a strong interest in understanding the Interior and Commerce Departments' monument review processes and the basis for the Secretaries' reports and recommendations to the President. That includes understanding the criteria by which Interior and Commerce Department officials reviewed, weighed, or discounted the public comments they received; the contents of those comments; and the identities of industry representatives with whom Interior and Commerce Department officials met and the contents of those meetings.

27. The Interior and Commerce Departments' reviews of national monuments and marine sanctuaries have generated intense, widespread, and sustained public interest and concern. NRDC and its members are particularly keenly interested in these review processes and their outcomes. Yet, despite the public's desire for transparency and input into the Administration's review process, Defendants have made very little information publicly available about their information-gathering and review processes.

28. To better inform the American public at large, and NRDC members in particular, about a topic of intense public concern, NRDC submitted the following FOIA requests to the Interior Department and the Commerce Department.

**NRDC's first FOIA request to the Interior Department**

**# OS-2017-01247**

29. According to the Regulations.gov website, the Interior Department received more than 2.8 million public comments through its online portal relating to the Department's national monument review. Only 782,460 comments less than a



third of the total count of online submissions were made publicly available online as of the close of the comment period. The Regulations.gov website notes that “agencies may choose to redact, or withhold, certain submissions . . . such as those containing private or proprietary information . . . or duplicate/near duplicate examples of a mass-mail campaign.”

30. Interior Secretary Zinke’s report to President Trump acknowledged that the public “[c]omments received were overwhelmingly in favor of maintaining existing monuments.” Memorandum for the President from Secretary Zinke, “Final Report Summarizing Findings of the Review of Designations Under the Antiquities Act” at 3 (Aug. 24, 2017). Secretary Zinke nevertheless opined that the overwhelming public support for national monuments reflected not genuine popular will, but rather, in his words, “a well-orchestrated national campaign organized by multiple organizations.” *Id.* The report went on to dismiss what it called “form comments associated with NGO-organized campaigns, which far outnumbered individual comments,” opining that “[t]oo often it is the local stakeholders who lack the organization, funding, and institutional support to compete with well-funded NGOs.” *Id.* at 3, 8.

31. On September 22, 2017, in an effort to better understand the Interior Department’s review process and the information underlying Secretary Zinke’s report and recommendations, NRDC submitted a FOIA request to the Interior Department. *See Exhibit A.*

32. NRDC's request sought the following records:
- a. "Any and all comments the [Interior] Department received on or after April 26, 2017 (whether via online submission, by mail, or by any other means) that relate to national monuments, and that are not among the 782,460 comments publicly available on the Regulations.gov website. This includes but is not limited to comments that include "private or proprietary information" or that are considered "duplicate/near duplicate examples of a mass-mail campaign." If you determine that any such comments (or any portions thereof) are exempt from disclosure, please produce a detailed ledger explaining the basis for each withheld comment or portion thereof.
  - b. "Any and all records created or transmitted on or after April 26, 2017, that contain or relate to the Department's or the Secretary's directives, policies, standards, or procedures for reviewing or analyzing public comments relating to national monuments.
  - c. "Any and all records created or transmitted on or after April 26, 2017, that contain or relate to the Department's or the Secretary's review of, assessment of, or findings about public comments relating to national monuments.
  - d. "Any and all records created or transmitted on or after April 26, 2017, that contain or relate to the Department's or the Secretary's inquiry into or findings about "NGO-organized campaigns" relating to the

Department's monument review, or directions or instructions concerning such inquiry or findings.

- e. "Any and all records created or transmitted on or after April 26, 2017, that contain or relate to the basis for the Secretary's statement that there was "a well-orchestrated national campaign organized by multiple organizations" to submit public comments.
- f. "Any records created or transmitted by the Department (or any official or staff-member thereof) on or after April 26, 2017, that relate to the Natural Resources Defense Council (NRDC)." *Id.*

33. NRDC explained that, for purposes of its request, the term "records" is consistent with the meaning of the term under FOIA, including "documents of any kind, including electronic as well as paper documents, e-mails, memoranda, letters, writings (handwritten, typed, electronic or otherwise produced, reproduced, or stored), reports, summaries, notes, meeting notes or minutes, text messages, and any other compilations of data from which information can be obtained." *Id.*

34. NRDC also requested that the Interior Department waive any fees for the search and production of the requested records. NRDC is entitled to a waiver of all fees pursuant to FOIA's fee waiver provisions and the agency's regulations. *See* 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(a).

35. NRDC submitted its request to the Interior Department's Office of the Secretary via the Interior Department's online FOIA portal, in accordance with the agency's FOIA regulations and guidance.

36. The Interior Department's online portal sent NRDC an automated e-mail response acknowledging receipt of the request on September 22, 2017.

37. The Interior Department's response was due within twenty business days of the request i.e., by October 23, 2017. *See* 5 U.S.C. § 552(a)(6)(A)(i). NRDC received no response of any kind by that date.

38. On October 24, 2017 the day after FOIA's statutory deadline had run a FOIA Officer from the Interior Department's Office of the Secretary e-mailed an acknowledgement letter to NRDC's counsel. That letter stated that NRDC's "request was received in the Office of the Secretary FOIA office on September 22, 2017, and assigned control number OS-2017-01247."

39. The letter further stated: "Because we will need to consult with one or more bureaus of the Department in order to properly process your request, the Office of the Secretary FOIA office is taking a 10-workday extension under 43 C.F.R. § 2.19. For the same reason, we are placing your request under the 'Complex' processing track. *See* 43 C.F.R. § 2.15."

40. Finally, the letter stated that the Interior Department had "classified [NRDC's] request as an 'other-use request.'" Seeking clarification, NRDC's counsel asked the FOIA Officer by e-mail whether this meant the Interior Department had denied NRDC's fee waiver request. In an e-mail dated November 1, 2017, the FOIA Officer responded: "It is not a denial of your fee waiver request. We are waiting to determine if a fee waiver i[s] necessary depending on whether there will be any fees."

41. NRDC never received any further communications from the Interior Department relating to its FOIA request.

42. Even accounting for the belated ten-day extension, the Interior Department's response was due on November 7, 2017.

43. To date, the Interior Department still has not substantively responded to NRDC's FOIA request, produced any responsive records, claimed any exemptions, or made a determination on NRDC's fee waiver request.

**NRDC's second FOIA request to the Interior Department**

**# OS-2018-00232**

44. On October 29, 2017, NRDC submitted a second FOIA request to the Interior Department, this time seeking records relating to meetings between Secretary Zinke or other Interior Department leadership and outside groups or individuals regarding national monuments. *See* Exhibit B.

45. Specifically, NRDC sought the following records:

- a. "[A]ny and all records in the possession, custody, or control of the [Interior] Department . . . that pertain to meetings on or after January 20, 2017, attended by Secretary Ryan Zinke, Scott Hommel, Lori Mashburn, James Cason, Doug Domenech, and/or Downey Magallanes, relating to any national monument and/or to the Department's review of national monuments under Executive Order No. 13792, including:
- b. "Any calendar entries, invitations, itineraries, or communications referencing such meetings;

- c. “Any agendas, minutes, attendee lists, or presentations relating to such meetings;
- d. “Any records of individuals who attended these meetings or accompanied the above-named officials on any of these occasions, excluding current career federal employees;
- e. “Any briefings, summaries, or materials prepared or transmitted in relation to such meeting, whether before, during, or after the meeting itself; and
- f. “Any notes taken by any federal employee, including the above-named officials.” *Id.*

46. NRDC explained that, for purposes of its request, the term “records” is consistent with the meaning of the term under FOIA, including “documents of any kind, including electronic and paper documents, emails, memoranda, letters, writings (handwritten, typed, electronic or otherwise produced, reproduced, or stored), reports, summaries, notes, meeting notes or minutes, text messages, and any other compilations of data from which information can be obtained.” *Id.*

47. NRDC also requested that the Interior Department waive any fees for the search and production of the requested records. NRDC is entitled to a waiver of all fees pursuant to FOIA’s fee waiver provisions and the agency’s regulations. *See* 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(a).

48. NRDC submitted its request to the Interior Department's Office of the Secretary via the Interior Department's online FOIA portal, in accordance with the agency's FOIA regulations and guidance.

49. The Interior Department's online portal sent NRDC an automated e-mail response acknowledging receipt of the request on October 29, 2017.

50. The Interior Department's response was due within twenty business days of the request i.e., by November 28, 2017. *See* 5 U.S.C. § 552(a)(6)(A)(i).

51. On November 21, 2017, a FOIA Officer from the Interior Department's Office of the Secretary e-mailed an acknowledgement letter to NRDC's counsel. That letter stated that NRDC's "request was received in the Office of the Secretary FOIA office on October 29, 2017, and assigned control number OS-2018-00232."

52. The letter further stated: "Because we will need to consult with one or more bureaus of the Department in order to properly process your request, the Office of the Secretary FOIA office is taking a 10-workday extension under 43 C.F.R. § 2.19. For the same reason, we are placing your request under the 'Complex' processing track. *See* 43 C.F.R. § 2.15."

53. Finally, the letter stated that the Interior Department had "classified [NRDC's] request as an 'other-use request,'" and went on to explain: "[W]e are in the process of determining whether or not your entitlements are sufficient to enable us to process your request, or if we will need to issue a formal determination on your request for a fee waiver."

54. NRDC never received any further communications from the Interior Department relating to its FOIA request.

55. Accounting for a ten-day extension, the Interior Department's response was due on December 12, 2017.

56. To date, the Interior Department still has not substantively responded to NRDC's FOIA request, produced any responsive records, claimed any exemptions, or made a determination on NRDC's fee waiver request.

**NRDC's FOIA request to the Commerce Department**

**# DOC-IOS-2018-000178**

57. Also on October 29, 2017, NRDC submitted a FOIA request to the Commerce Department, seeking records relating to meetings between Secretary Ross or another member of the Commerce Department's leadership and outside groups or individuals regarding national marine monuments or sanctuaries. *See* Exhibit C.

58. Specifically, NRDC requested the following records:

- a. "[A]ny and all records in the possession, custody, or control of the [Commerce] Department . . . that pertain to meetings on or after January 20, 2017, attended by Secretary Wilbur Ross and/or Earl Comstock, relating to any national marine sanctuary or marine national monument and/or to the Department's review of national marine sanctuaries and monuments under Executive Order No. 13795, including:



- b. “Any calendar entries, invitations, itineraries, or communications referencing such meetings;
- c. “Any agendas, minutes, attendee lists, or presentations relating to such meetings;
- d. “Any records of individuals who attended these meetings or accompanied Secretary Ross or Mr. Comstock on any of these occasions, excluding current career federal employees;
- e. “Any briefings, summaries, or materials prepared or transmitted in relation to such meeting, whether before, during, or after the meeting itself; and
- f. “Any notes taken by any federal employee, including Secretary Ross or Mr. Comstock.” *Id.*

59. NRDC explained that, for purposes of its request, the term “records” is consistent with the meaning of the term under FOIA, including “documents of any kind, including electronic as well as paper documents, e-mails, memoranda, letters, writings (handwritten, typed, electronic or otherwise produced, reproduced, or stored), reports, summaries, notes, meeting notes or minutes, text messages, and any other compilations of data from which information can be obtained.” *Id.*

60. In its request, NRDC requested that the Commerce Department waive any fees for the search and production of the requested records, pursuant to FOIA’s and the agency’s fee waiver provisions. *See* 5 U.S.C. § 552(a)(4)(A)(iii); 15 C.F.R. § 4.11(*l*).

61. NRDC submitted its request to the Commerce Department's Office of the Secretary via the federal government's online FOIA portal, in accordance with the agency's FOIA regulations and guidance.

62. The federal government's online FOIA portal sent NRDC an automated e-mail response acknowledging receipt of the request on October 29, 2017, and assigning it tracking number # DOC-OS-2018-000178.

63. On October 31, 2017, NRDC's counsel received another e-mail from the federal government's online FOIA portal advising that the request's tracking number had been changed to # DOC-IOS-2018-000178.

64. The Commerce Department's response was due within twenty business days of the request i.e., by November 28, 2017. *See* 5 U.S.C. § 552(a)(6)(A)(i).

65. On November 14, 2017, the Commerce Department sent NRDC's counsel an e-mail advising that NRDC's fee waiver request had been "fully granted." Exhibit K. The Commerce Department did not respond substantively to NRDC's FOIA request by the statutory deadline, however.

66. To date, the Commerce Department still has not substantively responded to NRDC's FOIA request, produced any responsive records, or claimed any exemptions.

\* \* \*

67. NRDC seeks a declaration that Defendants have violated the FOIA by failing to respond to NRDC's FOIA requests and failing to promptly release all responsive, non-exempt records. NRDC also seeks an injunction ordering Defendants to provide the requested records without further delay.

68. NRDC brings this action on behalf of itself and its members. NRDC and its members have been and continue to be injured by Defendants' failure to provide responsive records. The requested relief will redress these injuries.

### **CLAIM FOR RELIEF**

#### **COUNT ONE**

#### **5 U.S.C. § 552(a) (FOIA)**

#### ***All Defendants***

69. NRDC incorporates by reference all preceding paragraphs.

70. NRDC has a statutory right under FOIA to the records it seeks.

71. Defendants have violated their statutory duties under FOIA, 5 U.S.C. § 552(a), and the applicable implementing regulations, to release all non-exempt, responsive records to NRDC. Defendants have identified no basis, let alone any valid basis, for withholding or partially withholding the records that are responsive to NRDC's FOIA requests.

72. NRDC is entitled to all non-exempt responsive documents at no cost because disclosure of the requested records would contribute significantly to public understanding and is not primarily in NRDC's commercial interest. 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(a); 15 C.F.R. § 4.11(l).

73. NRDC is being harmed by Defendants' unlawful withholding of the requested records, and it will continue to be harmed unless Defendants are compelled to comply with FOIA's statutory requirements.

### **REQUEST FOR RELIEF**

NRDC respectfully requests that this Court enter a judgment against Defendants as follows:

A. Declare that Defendants have violated FOIA by failing to provide a final determination as to whether they will comply with NRDC's FOIA requests and by failing to produce non-exempt records responsive to NRDC's FOIA requests by the statutory deadline;

B. Declare that Defendant Interior Department has violated FOIA by failing to make a determination as to NRDC's fee waiver requests;

C. Order Defendants to release to NRDC, without further delay and at no cost to NRDC, all responsive, non-exempt records in their possession, custody, or control;

D. If either Defendant contends that any responsive records are exempt or partially exempt from disclosure under FOIA, order that Defendant to produce a log identifying any such records or parts thereof and the basis for the withholdings, and require Defendant to prove that its decision to withhold or redact any such records is justified by law;

E. Order Defendant Interior Department to grant NRDC's fee waiver in full;

F. Award NRDC its reasonable costs and attorneys' fees; and

G. Grant such other and further relief as the Court deems just and proper.

Dated: January 24, 2018

Respectfully submitted,

/s/ Nancy S. Marks

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Counsel for NRDC

# Exhibit C

# NRDC

October 29, 2017

## Via online submission

Department of Commerce  
FOIA Officer

**Re: FOIA Request for Records Relating to Meetings Relating  
to National Marine Sanctuaries and Monuments**

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.*, and applicable Department of Commerce regulations, 15 C.F.R. § 4.1-4.11.

### **I. Description of Records Sought**

Please produce any and all records in the possession, custody, or control of the Department of Commerce (“the Department”) that pertain to meetings on or after January 20, 2017, attended by Secretary Wilbur Ross and/or Earl Comstock, relating to any national marine sanctuary or marine national monument and/or to the Department’s review of national marine sanctuaries and monuments under Executive Order No. 13795, including:

- Any calendar entries, invitations, itineraries, or communications referencing such meetings;
- Any agendas, minutes, attendee lists, or presentations relating to such meetings;
- Any records of individuals who attended these meetings or accompanied Secretary Ross or Mr. Comstock on any of these occasions, excluding current career federal employees;
- Any briefings, summaries, or materials prepared or transmitted in relation to such meeting, whether before, during, or after the meeting itself; and
- Any notes taken by any federal employee, including Secretary Ross or Mr. Comstock.

For purposes of this request, the term “records” is consistent with the meaning of the term under FOIA. This includes, but is not limited to,

documents of any kind, including electronic as well as paper documents, e-mails, memoranda, letters, writings (handwritten, typed, electronic or otherwise produced, reproduced, or stored), reports, summaries, notes, meeting notes or minutes, text messages, and any other compilations of data from which information can be obtained.

Under FOIA, you are obligated to provide records in a readily-accessible electronic format and in the format requested. *See, e.g.*, 5 U.S.C. § 552(a)(3)(B) (“In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.”). We request that you provide the responsive records in electronic .pdf format without “profiles” or “embedded files.” Please do not provide the records in a single or “batched” .pdf file. To the extent that a subset of the requested records is readily available, please provide that subset immediately while you continue to search for additional records to complete your response.

If you decide to invoke any FOIA exemptions in response to this request, please include in your response sufficient information for us to assess the basis for the exemption(s), including any interest(s) that would be harmed by release. Please include a detailed ledger which includes (1) basic factual material about each withheld record, including the originator, date, length, general subject matter, and location of each item; and (2) complete explanations and justifications for the withholding, including the specific exemption(s) under which the record (or portion thereof) was withheld and a full explanation of how each exemption applies to the withheld material. Such statements will be helpful in deciding whether to appeal an adverse determination. Your written justification may help to avoid litigation.

If you determine that portions of any requested records are exempt from disclosure, the FOIA requires that you produce any reasonably segregable non-exempt portions within the statutory time limit. *See* 5 U.S.C. § 552(b). *See, e.g., Gatore v. U.S. Dep’t of Homeland Sec.*, 177 F. Supp. 3d 46, 53 (D.D.C. 2016); *Gosen v. U.S. Citizenship & Immigration Servs.*, 118 F. Supp. 3d 232, 243-44 (D.D.C. 2015).

Please produce the records on a rolling basis. The Department’s search for or deliberations concerning certain records should not delay the production of others that the Department has already retrieved and elected to produce. *See generally* 15 C.F.R. § 4.7. If the Department takes the position that any of these records are publicly available, please indicate where each of them may be found.



## II. Request for a Fee Waiver

NRDC asks that the Department waive any fee it would otherwise charge for the search and production of the records described above. FOIA provides that a requester is entitled to a fee waiver when “disclosure of the information is in the public interest because it [A] is likely to contribute significantly to public understanding of the operations or activities of the government and [B] is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 15 C.F.R. § 4.11(l). The disclosure NRDC seeks here meets both these requirements.

### A. Disclosure is likely to contribute significantly to public understanding of the operations or activities of the government

First, the disclosure requested here is “likely to contribute significantly to public understanding of the operations or activities of the government,” 5 U.S.C. § 552(a)(4)(A)(iii), based on the following factors. *See* 15 C.F.R. § 4.11(l)(2)(i)-(iv) (describing factors to be considered).

#### 1. Subject of the request (15 C.F.R. § 4.11(l)(2)(i))

The requested records directly concern “the operations or activities of the Government.” 15 C.F.R. § 4.11(l)(2)(i). The records pertain to the Department’s “review of all designations and expansions of National Marine Sanctuaries, and of all designations and expansions of Marine National Monuments under the Antiquities Act of 1906 . . . designated or expanded within the 10-year period prior to the date of this order” and the Department’s resulting report. Executive Order No. 13795, section 4(b)(i)-(ii). Disclosure of the records will provide context for the Department’s report and help the public to evaluate the Department’s recommendations and whatever actions the President, Congress, or other federal government officials take with respect to the affected sanctuaries and monuments.

#### 2. Informative value of the information to be disclosed (15 C.F.R. § 4.11(l)(2)(ii))

Disclosure of the requested records is “likely to contribute’ to an understanding of Government operations or activities.” 15 C.F.R. § 4.11(l)(2)(ii). The records are relevant to the Department’s review of national marine sanctuaries and monuments, and therefore they are likely to be “meaningfully informative” in providing context for the Department’s report and for any actions the Administration may take with respect to those sanctuaries or monuments. *Id.* Because the Department’s review has

attracted broad public attention (as explained below), and because the requested records have not previously been made available, disclosure will “contribute’ to an increased public understanding of those operations or activities.” *Id.*

**3. Contribution to public understanding of the subject  
(15 C.F.R. § 4.11(l)(2)(iii))**

Because NRDC is a “representative of the news media,” as explained in Part III below, the Department must presume that this disclosure is likely to contribute to public understanding of the subject of the disclosure. 15 C.F.R. § 4.11(l)(2)(iii). However, even if NRDC were not a media requester, NRDC satisfies the requirement that disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in the subject.” *Id.*

NRDC does not seek the requested records for its own benefit. Rather, it seeks the records to provide new information to the public about the Department’s review process and its resulting report and recommendations. Disclosure of this information will make possible a more complete public understanding of the federal government’s decision-making process and intentions regarding the national marine sanctuaries and monuments at issue. *See* 15 C.F.R. § 4.11(l)(2)(iii) (requiring requester to show that disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester”). There is more than a reasonable likelihood that disclosure of the requested records will significantly increase public understanding of the government’s review process and actions among a broad audience of interested people. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

NRDC has both the ability and the intent to disseminate the information obtained through this request “in a manner that will be informative to the understanding of a reasonably broad audience of persons interested in the subject.” 43 C.F.R. § 2.48(a)(2)(iv); *see also id.* § 2.48(a)(2)(v) (considering requester’s “ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject”). NRDC has more than two million members and online activists, tens of thousands of whom have responded to action alerts relating to the Department’s monument review in particular. And, as detailed below, NRDC has extensive communications capabilities and a proven history of disseminating information of public interest, including information obtained from FOIA requests. NRDC has both the capability and the intent to broadly disseminate the information it seeks here to its members and to the

general public, thereby contributing to a better general understanding of the Department's review process and its ultimate findings.

NRDC uses numerous modes of communication to disseminate information to its members and to the public at large. These include:

- (1) NRDC's website (<http://www.nrdc.org>), which is updated daily and draws approximately 1.7 million page views and 1.5 million unique page views per month, and which features NRDC staff blogs, original reporting on environmental news stories, and in-depth analyses on topics of public interest;
- (2) NRDC's Activist email list, which includes more than 2.4 million subscribers who receive regular communications on urgent environmental issues;
- (3) *NRDC Insider* (<http://www.nrdc.org/newsletter>), a monthly electronic environmental newsletter distributed by email to more than 1.47 million subscribers;
- (4) NRDC's Facebook page, with 909,921 likes and 872,632 followers;
- (5) NRDC's Twitter handle, with 274,922 followers;
- (6) NRDC's Instagram feed, with 111,024 followers;
- (7) NRDC's YouTube channel (<https://www.youtube.com/user/NRDCflix>), with 21,050 subscribers; and
- (8) online media outlets like Medium (<https://medium.com/natural-resources-defense-council>) and Huffington Post (<http://www.huffingtonpost.com/topic/natural-resources-defense-council>).

NRDC also publishes legal and scientific analyses, policy documents, and reports; issues press releases; and directs and produces movies (including *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*). NRDC has more than fifty staff members dedicated to communications work.

In addition, NRDC employees and representatives are widely quoted in the news media; participate in interviews on television, radio, and web broadcasts; appear at conferences; provide congressional testimony; and contribute articles and op-eds to numerous national newspapers, magazines, academic journals, and books. *See, e.g.,* Zoe Carpenter, *After Promising a "Fair Hearing" on Monuments, Secretary Zinke Shuts Out the Public*, THE NATION (May 18, 2017) (quoting NRDC Land and Wildlife Program Director

Sharon Buccino); Op-Ed, *Don't Take Bears Ears Away from Us*, SALT LAKE TRIBUNE (May 6, 2017) (contributed by NRDC trustee Robert Redford); Research Article, *The Requirement To Rebuild U.S. Fish Stocks: Is It Working?* MARINE POLICY (July 2014) (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell); Transcript, *Conservationists Call for Quiet: The Ocean Is Too Loud*, ALL THINGS CONSIDERED (July 28, 2013) (featuring NRDC Marine Mammal Protection Program Director Michael Jasny); Testimony of Johanna Wald, NRDC Senior Attorney, before the U.S. Senate Committee on Energy and Natural Resources, Hearing on the California Desert Protection Act of 2010 (May 20, 2010).

NRDC's legal and scientific experts routinely analyze information obtained through FOIA and use it to inform the public about a variety of environmental issues. *See, e.g.*, Theo Spencer, *The Fight to Stop a Strip Mine Near Bryce Canyon: A History*, NRDC Blog (June 5, 2017) (analyzing documents obtained through partner organization's FOIA request regarding a proposed expansion of an open pit strip mine in Utah); Kevin Bogardus *et al.*, "Homework Assignment": *How Pebble Lobbied Trump's EPA*, E&E NEWS (June 8, 2017) (quoting NRDC staff discussing results of a FOIA seeking communications between EPA and Pebble Mine developers); Tom Neltner *et al.*, *Generally Recognized as Secret: Chemicals Added to Food in the United States*, NRDC Report (2014) (analyzing FOIA documents relating to potentially unsafe chemicals added to food); Carmen Cordova, *Playing Chicken with Antibiotics*, NRDC Issue Brief (2014) (describing FDA records, obtained through FOIA, which show widespread violations of the agency's safety standards for antibiotic feed additives); Dan Flynn, *NRDC Releases FSIS Inspection Reports on Foster Farms*, FOOD SAFETY NEWS (Sept. 12, 2014) (reporting on documents NRDC obtained through FOIA relating to safety violations by poultry company, and linking to the documents); Mae Wu *et al.*, *Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, NRDC Report (2010) (analyzing White House documents obtained through FOIA and from other sources to inform the public about EPA's decision not to protect wildlife and workers from the pesticide atrazine).

In sum, NRDC has a proven ability to digest, synthesize, and disseminate information obtained through FOIA to a broad audience of interested persons. NRDC's more than two million members and activists, when combined with the members of the general public who read NRDC's communications online and in the news media, clearly constitute "a reasonably broad audience of persons interested in the subject." 15 C.F.R. § 4.11(l)(2)(iii). NRDC intends to disseminate any newsworthy information in the released records to this large audience in a manner that will

meaningfully enhance the public's understanding of the federal government's decision-making process. NRDC does not seek records that have been previously disclosed to the public. *See id.* Disclosure may therefore confirm, clarify, or contradict documents or statements in the public domain or actions taken by the federal government, and it will enable the public to better evaluate the federal government's actions.

#### **4. Significance of the contribution to public understanding (15 C.F.R. § 4.11(l)(2)(iv))**

Finally, the records requested will shed significant light on a matter of considerable public interest and concern. *See* 15 C.F.R. § 4.11(l)(2)(iv).

The American public has demonstrated a strong interest in the Department's review of national marine sanctuaries and monuments. According to the Regulations.gov website, nearly 100,000 non-duplicative public comments relating to the Department's review of national marine sanctuaries and monuments were submitted online. *See* <https://www.regulations.gov/docket?D=NOAA-NOS-2017-0066> (last visited Sept. 29, 2017). The Department's review has also prompted many letters to the editor and op-eds, widespread social media activism, and numerous media reports in local and national publications. *See, e.g.,* Guy Kovner, *Marine Sanctuaries that Protect California Coast Get Strong Public Support, Conservationists Say*, THE PRESS-DEMOCRAT (Aug. 17, 2017); Zack Klyver, *Op-Ed: Marine Monument Vital for a Healthy, Bountiful Ocean*, BANGOR DAILY NEWS (Aug. 3, 2017); David Helvarg, *Op-Ed: Time Is Running Out to Stop Trump From Opening California Marine Sanctuaries to Oil Drilling*, LOS ANGELES TIMES (July 7, 2017); Marine Conservation Institute, *Blog: Analysis Shows Overwhelming Public Support for Marine Monuments and Sanctuaries* (Aug. 15, 2017), at <https://blog.marine-conservation.org/2017/08/overwhelming-support-for-marine-monuments-and-sanctuaries.html>.

Despite this strong showing of public interest and concern, very little information is publicly available about the Department's information-gathering and review process. Disclosure of the requested records concerning the Department's meetings with outside individuals and groups will significantly contribute to public understanding of the Department's review process. Disclosure will also provide valuable context for understanding the Department's report, and will enable the public more effectively to evaluate the legal and factual bases for the Department's assertions and recommendations.

For these reasons, NRDC has met the first prerequisite for a fee waiver request under the FOIA.



**B. Disclosure is not primarily in NRDC's commercial interest**

Second, NRDC has no commercial interests that would be furthered by the requested disclosure. *See* 5 U.S.C. § 552(a)(4)(A)(iii); 15 C.F.R. § 4.11(l)(1)(ii). Therefore, it satisfies the second prerequisite for a fee waiver request under the FOIA.

NRDC is a not-for-profit organization. It does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (internal citation omitted); *see also Better Gov't Ass'n v. Dep't of State*, 780 F.2d 86, 88-89 (D.C. Cir. 1986) (recognizing that “[the fee waiver] provision was added to FOIA in an attempt to prevent government agencies from using high fees to discourage certain types of requesters and requests, in particular those from journalists, scholars and nonprofit public interest groups.” (internal quotation marks omitted)). Requesters wish to serve the public by reviewing, analyzing, and disseminating newsworthy and presently non-public information about the federal government's decision-making process with respect to national marine sanctuaries and monuments, and this is precisely the sort of “investigation[]” of “governmental choices and highlighting [of] possible abuses” for which the fee waiver was enacted. *Better Gov't Ass'n*, 780 F.2d at 93.

Access to government records, disclosure forms, and similar materials through FOIA requests is essential to NRDC's role of educating its members, activists, and the general public. NRDC has no commercial interest in the disclosure of the records, and it will realize no commercial benefit or profit from the disclosure of the requested records. For these reasons, NRDC is entitled to a fee waiver under the FOIA.

**III. Request for a Reduction of Fees**

In the alternative, even if the Department denies NRDC's fee waiver request, NRDC qualifies as a “representative of the news media” that is entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and applicable regulations, 15 C.F.R. § 4.11(c), (d); *see also id.* § 4.11(b)(6) (defining “[r]epresentative of the news media”).

A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its

editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); *see also Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep’t of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described in detail in Section II above, NRDC publishes original reports and analyses on conservation-related topics on its website, in its newsletter, and in blog posts; it contributes articles and op-eds to a variety of online and print platforms; and it maintains free online libraries of documents, publications, and other information of interest to the general public. These types of publications and media sources constitute news media outlets for purposes of FOIA. *See* OPEN Government Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”); *see also* 15 C.F.R. § 4.11(b)(6) (“Examples of news-media entities are . . . publishers of periodicals . . . including news organizations that disseminate solely on the Internet.”).

Public interest organizations performing these sorts of public communication functions “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-89 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union); *see also Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 164 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”).

NRDC intends to review the records it obtains through this FOIA request and, if the information is appropriately newsworthy, to analyze them, synthesize them with information from other sources, and create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of its publications or other suitable media channels. NRDC will not resell the information obtained through this FOIA request to other media organizations. For these reasons, even if the Department denies NRDC’s fee waiver request, it should grant a fee reduction consistent with 5 U.S.C. § 552(a)(4)(A)(ii).

#### **IV. Willingness to Pay Fees Under Protest**

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with the Department's FOIA regulations. *See* 15 C.F.R. § 4.11. Please contact me, however, before doing anything that would cause the fee to exceed \$250. NRDC reserves the right to seek administrative or judicial review of any fee waiver denial.

#### **V. Conclusion**

Please email the requested records or, if it is not possible to email, mail a CD of electronic copies of the requested records to me at the address listed below. Please call or email me with any questions. Thank you for your time.

Sincerely,

/s/ Katherine Desormeau  
Katherine Desormeau  
Natural Resources Defense Council, Inc.  
111 Sutter Street, 21<sup>st</sup> Floor  
San Francisco, CA 94104  
Tel: (415) 875-6158  
kdesormeau@nrdc.org



<b>Tracking Number</b>	<b>Type</b>	<b>Requester</b>	<b>Requester Organization</b>
DOC-NOAA-2018-000752	Request	david swatland	
DOC-NOAA-2018-000740	Request	Doug Gillie	Parks & Solar, LLP
DOC-NOAA-2018-000731	Request	Rose Santos	FOIA GROUP INC
DOC-NOAA-2018-000730	Request	Rose Santos	FOIA GROUP INC
DOC-NOAA-2018-000749	Request	Alan Abend	University of Massachusetts Boston
DOC-NOAA-2018-000727	Request	Tia Justice	Logansport Historical Preservation Committee
DOC-NOAA-2018-000716	Request	Vivian Wang	Natural Resources Defense Council

**Custom Report - 02/14/2018 03**

<b>Submitted</b>	<b>Received</b>	<b>Assigned To</b>	<b>Case File Assigned To</b>	<b>Perfected?</b>	<b>Due</b>
02/13/2018	02/13/2018	NOS	NOS	Yes	03/15/2018
02/13/2018	02/13/2018	NMFS	NMFS	Yes	03/15/2018
02/12/2018	02/12/2018	AGO	AGO	Yes	03/15/2018
02/12/2018	02/12/2018	AGO	AGO	Yes	03/15/2018
02/12/2018	02/12/2018	NMFS	NMFS	Yes	03/15/2018
02/11/2018	02/12/2018	NWS	NWS	Yes	03/14/2018
02/08/2018	02/08/2018	Amanda J. Patterson	Amanda J. Patterson	Yes	03/14/2018



## Detail

1) Any and all reports, results, etc. provided to Ms. Athline Clark, the Office of National Marine Sanctuaries' NOAA : Emails or other communications between the National Oceanic and Atmospheric Administration (&quot;NOAA&qu [Reference FGI 18- 56254] relevant to DOCST133017CQ0061 we seek the following: (1) Contract sections A-M ar [Reference FGI 18- 56253] relevant to DOCDG133W12CQ0010 we seek the following: (1) Contract sections A-M : A copy of Marine Mammal Rescue Nantucket (MMRACK) Stranding Agreement application.

This is a request for all documentation (up to and including studies, research, and notations) concerning the affects: Please produce records in the National Marine Fisheries Service's possession, custody, or control pertaining to the

Superintendent of Papahānaumokuākea Marine National Monument, associated with her 360 evaluation  
ot;) and the Food and Drug Administration (&quot;FDA&quot;) concerning testing of canned tuna for con  
rd all attachments, including SOW.  
and all attachments, including SOW.

s and effects of wind turbines and commercial/industrial wind farms on radar used by NOAA/NWS for an  
: agency's decision, after reports of right whale sightings, to create a Dynamic Management Area off the

1) conducted by Edge Training Systems, Inc. between July 1, 2017 and the present. 2) Any and all raw data in compliance with the prescribed weight standard of fill (21 C.F.R. § 161.190(c)); • Any communications, m

any and all purposes, with a primary interest in weather prediction, storm mapping/tracking over populated coast of Virginia in which vessel speeds are restricted to ten knots or slower. (see attached letter)

ata submitted to Edge Training Systems (ETS) by the respondents in response to ETS's invitation to part  
memoranda, policy statements, or other documents relating to the enforcement of the pressed weight sta

l and un-populated areas including hazards, injuries, and any/all cases where turbines/wind farms have

icipate in the evaluation. Specifically, this raw data consists of 11 pages of feedback provided by each re  
indard of fill, 21 C.F.R. &sect; 161.190(c), including but not limited to any recommendations to bring an €

impeded the function of radar. This request also encompasses any and all documentation (up to and inc



espo  
enforcement proceeding or recommendations no

cluding studies, res











**Stacey Nathanson - NOAA Federal**

---

**From:** Stacey Nathanson NOAA Federal  
**Sent:** Wednesday, February 21, 2018 3:23 PM  
**To:** Caroline Park NOAA Federal  
**Cc:** Keith Hagg; Mark Graff NOAA Federal  
**Subject:** Re: Recent Conversation...

Hi guys,

I'm cc'ing Mark Graff, the NOAA FOIA officer here, as he may have valuable insights that he can impart quickly. As to the questions posed above, here are my two cents:

(b)(5)  
[Redacted]

[Redacted]

[Redacted]

Anyone else have thoughts on this one? Thanks!

*Stacey*

Stacey Nathanson  
Attorney-Advisor  
NOAA Office of the General Counsel  
Fisheries and Protected Resources Section  
Phone: 301-713-9673  
Email: [Stacey.Nathanson@noaa.gov](mailto:Stacey.Nathanson@noaa.gov)

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On Wed, Feb 21, 2018 at 1:54 PM, Caroline Park NOAA Federal <[caroline.park@noaa.gov](mailto:caroline.park@noaa.gov)> wrote:

Hi Stacey and Keith -- Got a FOIA inquiry from Derek in SF. He provided details below, but I culled out key points and questions for you here. Emailing both of you as time is a little crunched... I am teleworking tomorrow around med appt and Derek is out starting Friday.

(b)(5) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Thanks,  
C

Forwarded message

From: **Derek Orner - NOAA Federal** <[derek.ornor@noaa.gov](mailto:derek.ornor@noaa.gov)>  
Date: Wed, Feb 21, 2018 at 1:06 PM  
Subject: Recent Conversation...  
To: Caroline Park NOAA Federal <[caroline.park@noaa.gov](mailto:caroline.park@noaa.gov)>

Hey Caroline,

Per our discussion earlier, here (and attached) is a bit of background info.

(b)(5) [Redacted]



- (b)(5) [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

I am happy to come chat a bit more with you in detail. I am around this afternoon and tomorrow afternoon. Out on Friday and then out on travel to Miami for Grants Council meeting next week. Can

meet by phone next week can adjust Council agenda in order to discuss if needed.

Derek

(b)(6) c

*Caroline Park*  
*Deputy Section Chief, Fisheries and Protected Resources Section*  
*NOAA Office of General Counsel*  
*U.S. Department of Commerce*  
*Phone: [\(301\) 713 9675](tel:3017139675)*  
*Fax: [\(301\) 713 0658](tel:3017130658)*

**Mark Graff - NOAA Federal**

---

**From:** Mark Graff NOAA Federal  
**Sent:** Wednesday, February 21, 2018 3:52 PM  
**To:** Stacey Nathanson NOAA Federal  
**Cc:** Caroline Park NOAA Federal; Keith Hagg  
**Subject:** Re: Recent Conversation...

Hi Stacey,

(b)(5) [Redacted]

[Redacted]

[Redacted]

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628 5658 (O)  
(b)(6) [Redacted] (C)

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(b)(5)

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Derek

(b)(6) [Redacted] c

*Caroline Park  
Deputy Section Chief, Fisheries and Protected Resources Section  
NOAA Office of General Counsel  
U.S. Department of Commerce  
Phone: [\(301\) 713 9675](tel:3017139675)  
Fax: [\(301\) 713 0658](tel:3017130658)*



Keith Hagg - NOAA Federal

---

**From:** Keith Hagg NOAA Federal  
**Sent:** Wednesday, February 21, 2018 4:10 PM  
**To:** Stacey Nathanson NOAA Federal  
**Cc:** Caroline Park NOAA Federal; Mark Graff NOAA Federal  
**Subject:** Re: Recent Conversation...

Here's my tak (b)(5) [redacted]

[redacted]

[redacted]

[redacted]

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[redacted]



(b)(5)

Anyone else have thoughts on this one? Thanks!

*Stacey*

Stacey Nathanson  
Attorney-Advisor  
NOAA Office of the General Counsel  
Fisheries and Protected Resources Section  
Phone: [301-713-9673](tel:301-713-9673)  
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(b)(5)

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(b)(5) [Redacted]

Thanks,  
C

Forwarded message

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Date: Wed, Feb 21, 2018 at 1:06 PM

Subject: Recent Conversation...

To: Caroline Park NOAA Federal <[caroline.park@noaa.gov](mailto:caroline.park@noaa.gov)>

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- [Redacted]
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- [Redacted]
- [Redacted]
- [Redacted]

[Redacted]

[Redacted]

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(b)(5) [Redacted]

[Redacted]

[Redacted]

[Redacted]

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Derek

(b)(6) [Redacted] c

*Caroline Park  
Deputy Section Chief, Fisheries and Protected Resources Section  
NOAA Office of General Counsel  
U.S. Department of Commerce  
Phone: [\(301\) 713 9675](tel:3017139675)  
Fax: [\(301\) 713 0658](tel:3017130658)*

Keith A. Hagg  
Attorney Advisor  
Fisheries and Protected Resources Section

NOAA General Counsel Office  
US Department of Commerce  
(301) 713 9689

**Mark Graff - NOAA Federal**

---

**From:** Mark Graff NOAA Federal  
**Sent:** Thursday, February 22, 2018 12:22 PM  
**To:** Robert Hogan; Samuel Dixon NOAA Affiliate; Steven Goodman NOAA Federal; Stacey Nathanson NOAA Federal; Toland, Michael; Kristen Gustafson NOAA Federal; Scott Smullen NOAA Federal; Devin Brakob NOAA Federal  
**Cc:** Dennis Morgan NOAA Federal; Ed Kearns NOAA Federal; Bogomolny, Michael (Federal); Robert Swisher NOAA Federal; Lola Stith NOAA Affiliate  
**Subject:** New FOIA Lawsuit Environmental Advocates re Yuba River  
**Attachments:** ERF NMFS FOIA 12 6 16 (1).pdf; ERF, Complaint.pdf

Hello All,

We've received a new FOIA lawsuit from the Ecorights Foundation, represented by Environmental Advocates (b)(5)

[REDACTED]  
[REDACTED]  
[REDACTED] A copy of the original request and the Complaint are both attached. Bogo is aware of the suit and the AUSA has already been assigned.

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628 5658 (O)  
(b)(6) (C)

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## ENVIRONMENTAL ADVOCATES

ATTORNEYS AT LAW

5135 ANZA STREET  
SAN FRANCISCO, CA 94121  
(415) 533-3376

Fax: (415) 358-5695

E-mail: [csproul@enviroadvocates.com](mailto:csproul@enviroadvocates.com)  
[christopherwhudak@gmail.com](mailto:christopherwhudak@gmail.com)

December 6, 2016

*Via Electronic Mail through FOIAonline\**

<https://foiaonline.regulations.gov>

Ana Liza S. Malabanan  
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National Oceanic and Atmospheric Administration  
Public Reference Facility (OFA56)  
1315 East West Highway (SSMC3)  
Room 10730  
Silver Spring, Maryland 20910  
E-mail: [FOIA@noaa.gov](mailto:FOIA@noaa.gov)

Re: FOIA Request

To Whom It May Concern,

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and relevant Department of Commerce, National Marine Fisheries Service (“NMFS”) regulations, Ecological Rights Foundation (EcoRights’) (via counsel), hereby requests that NMFS provide all responsive records (“documents”) that are in the files maintained by NMFS personnel or offices on the date that NMFS staff conducts their searches for the documents responsive to this request.<sup>1</sup>

### **Definitions**

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<sup>1</sup> See *McGehee v. CIA*, 697 F.2d 1095 (D.C. Cir. 1983); *Pub. Citizen v. Dep't of State*, 276 F.3d 634 (D.C. Cir. 2002); *Oregon Natural Desert Ass'n v. Gutierrez*, 419 F. Supp. 2d 1284, 1288 (D. Or. 2006) (federal agencies must release all documents in their possession through the date they conduct the review of their files for documents responsive to FOIA requests).

1. The term "You" or "Your" as used herein refers to the NATIONAL MARINE FISHERIES SERVICE ("NMFS"), PENNY PRITZKER, as Secretary of Commerce, and/or any person acting or purporting to act on their behalf.
2. The term "document" or "documents" as used herein means all written, typewritten, drawn or printed material or record of any type or description and all information kept or recorded on magnetic or electronic media, including, without limitation, correspondence, letters, agreements, contracts, memoranda of agreement or understanding, electronic mail (including both messages sent and received from NMFS personnel), telegrams, inter- and intra-office communications, forms, reports, studies, working papers, handwritten or other notes, phone records, logs, diaries, minutes, spreadsheets, computation sheets, data sheets, transcripts, drawings, sketches, plans, leases, invoices, index cards, checks, check registers, maps, charts, graphs, bulletins, circulars, pamphlets, notices, summaries, books, photographs, sound recordings, videotapes, rules, photocopied or computer-related materials, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations of them, and all forms of written or recorded matter to which You have access or of which You have any knowledge, or copies of such documents where originals are not available. The terms "document" or "documents" includes all matter that relates in whole or in part to the subject referred to in this request. Where a document has been prepared in several copies that are not identical, or where, by reason of subsequent modification, addition or notation, they are no longer identical, each non-identical copy shall be considered a separate document. Handwritten or other notations of any kind on a copy render it a non-identical copy.
3. The term "related to" as used herein includes comprising, constituting, containing, evidencing, setting forth, summarizing, alluding to, responding to, commenting upon, discussing, supporting, refuting, showing, disclosing, explaining, mentioning, analyzing, recording, reflecting upon, or characterizing, either directly or indirectly, in whole or in part.
4. The term "Stockdale Memo" means the June 11, 2013 Memorandum, subject ESA Guidance, from Corps Chief Counsel, Earl Stockdale, to all Corps counsel, HQ, Dist, Center, Lab, and FOA Offices [attached as Exhibit 1 for your reference].
5. The term "Chris Yates email" refers to the July 24, 2014 email from Chris Yates, NOAA Federal, subject: Fwd:Response to COE Stockdale memo [attached as Exhibit 2 for your reference]..
6. The term "draft Englebright concurrence letter" refers to the draft letter to the Corps entitled "Endangered Species Act Section 7(a)(2) Concurrence Letter for the U.S. Army Corps of Engineers' (Corps) Ongoing Operation and Maintenance of Englebright Dam and Reservoir on the Yuba River" [attached as Exhibit 3 for your reference].
7. The term "unauthorized take" means take that is prohibited by section 9 of the Endangered Species Act.

The foregoing definitions, used below in quotation marks, refer to the terms as defined above.

## **Requests for Documents**

EcoRights requests that "You" please provide the following "documents":

1. Any and all "documents" "related to" the "Chris Yates email" concerning input he, and any NMFS West Coast Region staff provided to NOAA HQ on the impact of the "Stockdale Memo." This request is only for the input on the impact of the "Stockdale Memo" that Chris Yates provided to NOAA HQ and the input on the impact of the "Stockdale Memo" the NMFS West Coast Region staff provided to NOAA HQ and is not a broader request for other documents related to the "Stockdale memo." This request is only for "documents" generated on or prior to July 24, 2014.
2. Any documents to or from NMFS staff Chris Kiefer "related to" the "draft Englebright concurrence letter."
3. Any and all NOAA Fisheries "documents" from January 1, 2000 to the present, in the possession of any NOAA Fisheries Office, Department, and/or Division, including any NOAA law enforcement division, "related to" whether any entities or individuals may have caused or did cause, or may be causing, or are causing "unauthorized take" of threatened or endangered anadromous fish in the Yuba River at, or in the vicinity of, Englebright Dam, Narrows 1 and 2 powerhouses, Daguerre Point Dam, and the Hallwood-Cordua Diversion including but not limited to any and all "documents" generated by, sent by, or received by NMFS Law Enforcement agent, Don Tanner.

15 C.F.R. section 4.6(b) requires NMFS to issue a written determination to EcoRights within twenty working days that this request was received and logged in by NMFS stating which of the requested records will, and which will not, be released and the reason for any denial of any portion of this request. As provided by 15 C.F.R. section 4.6(c), NMFS may extend this obligation by furnishing written notice to the requestor as soon as practicable stating the reasons for such extension and the date by which the office expects to be able to issue a determination. The period may be so extended only when absolutely necessary, only for the period required, and only when one or more of the following unusual circumstances require the extension: (1) there is a need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; (2) there is a need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or (3) there is a need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of NMFS.

EcoRights requests that to the extent that NMFS can do so, EcoRights be furnished with electronic copies of the above documents in lieu of paper copies (to minimize the expense and burden of copying). EcoRights points out that FOIA requires NMFS to provide copies of requested documents "in any form or format requested by the person if the record is readily reproducible by the agency in that form or format." 5 U.S.C. § 552(a)(3)(B).



We request that NMFS provide electronic copies of its response to this request, as well as any responsive documents that NMFS is able to transmit via e-mail, to Christopher Hudak and Christopher Sproul and I at the following e-mail addresses:

Christopher Hudak: christopherwhudak@gmail.com  
Christopher Sproul: csroul@enviroadvocates.com

Please send any documents that must be sent via regular mail to the following address:

Christopher Hudak  
Christopher Sproul  
Environmental Advocates  
5135 Anza St.  
San Francisco, California, 94121

Your staff may contact me at (510) 502-5742 or christopherwhudak@gmail.com to further discuss this request. Thank you for your prompt attention to this matter.

Sincerely,

Christopher Hudak  
Attorney for Ecological Rights Foundation

Encl.: Attachment 1 (Fee Waiver Request)

Pursuant to 5 U.S.C. section 552(a)(4)(A)(iii) and 15 C.F.R. section 4.11(k), EcoRights hereby requests a fee waiver for all copying costs, mailing costs, and other costs related to locating and tendering the documents, in accord with the attached fee waiver statement.

1 Christopher Sproul (State Bar No. 126398)  
ENVIRONMENTAL ADVOCATES  
2 5135 Anza Street  
San Francisco, California 94121  
3 Telephone: (415) 533-3376  
Facsimile: (415) 358-5695  
4 Email: csproul@enviroadvocates.com

5 Patricia Linn (State Bar No. 253015)  
Law Office of Patricia Linn  
6 115 Oakdale Avenue  
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7 Telephone: (415) 388-2303  
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9 109 Quarry Lane  
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10 Telephone: (831) 454-8216  
Facsimile: (415) 358-5695  
11 Email: ecorights@earthlink.net

12 Attorneys for Plaintiff  
ECOLOGICAL RIGHTS FOUNDATION

14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA

17 ECOLOGICAL RIGHTS FOUNDATION, a  
18 non-profit corporation,  
19 Plaintiff,

20 v.

21 NATIONAL MARINE FISHERIES SERVICE,  
22 Defendant.  
23  
24

Civil Case No.

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

25  
26  
27  
28

1 Ecological Rights Foundation (“EcoRights”) alleges as follows:

2 **INTRODUCTION**

3 1. EcoRights brings this action under the Freedom of Information Act ("FOIA"), which allows  
4 an aggrieved party to seek relief when documents are unlawfully withheld, and authorizes a reviewing  
5 court to enjoin the agency from withholding records and to order the production of any agency records  
6 improperly withheld from the complainant. 5 U.S.C. § 552(a)(4)(B). EcoRights seeks declaratory and  
7 injunctive relief for FOIA violations by the National Marine Fisheries Service ("NMFS"). At issue in  
8 this case is a FOIA request to NMFS seeking documents related to NMFS West Coast Region's  
9 Endangered Species Act ("ESA") Section 7 consultations with the Army Corps of Engineers ("Corps")  
10 and NMFS's regulatory oversight of Corps operations and infrastructure on the Yuba River that  
11 adversely impact spring run Chinook salmon, steelhead trout, and green sturgeon which are listed as a  
12 threatened species under the ESA. EcoRights alleges that NMFS: 1) failed to provide a final  
13 determination for EcoRights' administrative appeal within statutory time limits; 2) improperly withheld  
14 information not subject to specific, enumerated exemptions; 3) failed to provide legally adequate  
15 explanations for the withholding of requested information; 4) failed to promptly release non-exempt  
16 information responsive to EcoRight's FOIA request; 5) failed to segregate and release non-exempt  
17 information; and 6) failed to perform a reasonable, legally adequate search for responsive records.

18 **JURISDICTION**

19 2. This Court has subject matter jurisdiction under 5 U.S.C. section 552(a)(4)(B), which allows an  
20 aggrieved party to seek relief when records are unlawfully withheld, and authorizes a reviewing court to  
21 enjoin the agency from withholding records and to order the production of any agency records  
22 improperly withheld from the complainant.

23 3. This Court has personal jurisdiction over NMFS and its officials because NMFS, a branch of  
24 the National Oceanic and Atmospheric Administration ("NOAA"), is an agency of the federal  
25 government operating within the United States.

1 **VENUE**

2 4. Venue in the United States District for the Northern District of California is proper under  
3 5 U.S.C. section 552(a)(4)(B) because the complainant has its principal place of business in the Northern  
4 District, and many of the records sought by complainants are most likely situated in the NMFS and  
5 NOAA offices located within the Northern District.

6 **INTRADISTRICT ASSIGNMENT**

7 5. Intradistrict assignment of this matter to the San Francisco Division of the Court is appropriate  
8 pursuant to Civil Local Rule 3-2(d) because EcoRights' principal place of business is located in  
9 Garberville, California.

10 **THE PARTIES**

11 6. Ecological Rights Foundation ("EcoRights") is a non-profit, public benefit corporation,  
12 organized under the laws of the State of California, devoted to furthering the rights of all people to a  
13 clean, healthful and biologically diverse environment. To further its environmental advocacy goals,  
14 EcoRights actively seeks federal and state agency implementation of state and federal wildlife-related  
15 laws, and as necessary, directly initiates enforcement actions on behalf of itself and its members.

16 7. Defendant NMFS, a division of the Department of Commerce, is the agency of the United  
17 States Government responsible for administering and implementing the ESA for anadromous fisheries  
18 and generally is responsible for the stewardship of the nation's living marine resources and their habitat.

19 **STATUTORY BACKGROUND**

20 8. FOIA requires that an agency disclose records to any person except where the records fall  
21 under a specifically enumerated exemption. 5 U.S.C. § 552. The courts have emphasized the narrow  
22 scope of these exemptions and "the strong policy of the FOIA that the public is entitled to know what its  
23 government is doing and why." *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 868 (D.C.  
24 Cir. 1980).

25 9. FOIA requires that an agency, upon any request for records, shall make the records available  
26 promptly. 5 U.S.C. § 552(a)(3)(A). An agency shall make a determination whether to comply with a  
27 request within twenty (20) business days after the receipt of the request and shall immediately notify the

1 party making the request of such determination, the reasons for the determination, and the party's right  
2 to appeal. 5 U.S.C. § 552(a)(6)(A)(i). In unusual circumstances, the agency may extend the time for the  
3 determination, for no more than ten (10) days, by written notice to the party, specifying the reasons for  
4 the extension and the date on which the determination is expected to be sent. 5 U.S.C. § 552(a)(6)(B)(i).

5 10. Federal agencies are under a duty to conduct a reasonable search for records responsive to a  
6 party's request using methods that can be reasonably expected to produce the information requested to  
7 the extent they exist. 5 U.S.C. § 522(a)(3)(C).

8 11. When an agency decides to withhold records under a claim of exemption it must notify the  
9 person making such request of such determination and the reasons therefor. 5 U.S.C. § 552(a)(6)(A)(i).  
10 Government agencies bear the burden of proof to show that any withheld documents are exempt from  
11 the duty to disclose. 5 U.S.C. § 522(a)(4)(B).

12 12. A party may appeal to the head of the agency any adverse determination. 5 U.S.C. §  
13 552(a)(6)(A)(i). An agency shall make a determination with respect to any appeal within twenty (20)  
14 business days after the receipt of such appeal. 5 U.S.C. § 552(a)(6)(A)(ii). If an agency does not respond  
15 within the FOIA time limits, a party will be deemed to have exhausted its administrative remedies.  
16 5 U.S.C. § 552(a)(6)(C)(i).

17 13. On June 30, 2016, President Obama signed into law the FOIA Improvement Act of 2016. The  
18 Act made significant amendments to FOIA, effective as of enactment on June 30, 2016. 5 U.S.C. § 522,  
19 § 6; OIP Summary of the FOIA Improvement Act of 2016. The amendments include changes to the  
20 standard by which NMFS must evaluate withholdings. The FOIA Improvement Act of 2016 dictates that  
21 agencies shall withhold information only if disclosure would harm an interest protected by an exemption  
22 what is referred to as the "foreseeable harm standard." 5 U.S.C. § 552(a)(8)(A)(i); OIP Summary of  
23 the FOIA Improvement Act of 2016.

24 14. Additionally, FOIA requires an agency to consider partial disclosure whenever the agency  
25 determines that a full disclosure of a requested record is not possible and to take reasonable steps  
26 necessary to segregate and release nonexempt information. 5 U.S.C. § 552(a)(8)(A).

1 15. An agency's process for dealing with FOIA requests constitutes "withholding" if its net effect  
2 is significantly to impair the requester's ability to obtain the records or significantly increase the amount  
3 of time he or she must wait to obtain them. *McGehee, III v. Central Intelligence Agency*, 697 F.2d 1095,  
4 1110 (D.C. Cir. 1983), *vacated in part on other grounds*, 711 F.2d 1076 (1983).

### 5 FACTUAL BACKGROUND

#### 6 **NMFS's Response to EcoRights' December 6, 2016 FOIA Request**

7 16. On December 6, 2016 EcoRights, via counsel, sent a FOIA request to NMFS seeking three  
8 categories of documents: 1) documents containing input NMFS West Coast Region staff provided to  
9 NOAA headquarters detailing the impacts of an Army Corps of Engineers ("Corps") memo known as  
10 the Stockdale Memo. The Stockdale Memo laid out strict guidelines limiting Corps ESA Section 7  
11 consultations with NMFS and the U.S. Fish and Wildlife Service; 2) documents to or from NMFS  
12 counsel Chris Kiefer related to a draft letter from NMFS to the Corps entitled "Endangered Species Act  
13 Section 7(a)(2) Concurrence Letter for the U.S. Army Corps of Engineers' (Corps) Ongoing Operation  
14 and Maintenance of Englebright Dam and Reservoir on the Yuba River;" and 3) documents in the  
15 possession of any NOAA Fisheries Office, Department and/or Division, including any NOAA law  
16 enforcement division, related to whether any entities or individuals are causing or have caused  
17 unauthorized take of threatened or endangered fish species in the Yuba River in the vicinity of  
18 Englebright Dam and Daguerre Point Dam.

19 17. On December 14, 2016 NMFS sent a letter to EcoRights counsel, Christopher Hudak,  
20 acknowledging receipt of the request on December 12, 2016 and assigning it tracking number DOC-  
21 NOAA-2017-000257. The acknowledgement letter stated that NMFS was extending the time for its  
22 response by ten business days because the agency needed to search for and collect the requested records  
23 from field facilities or other establishments separate from the office processing the request.

24 18. On February 13, 2017 NMFS sent EcoRights its final determination partially granting and  
25 partially denying EcoRights' request. NMFS stated it had located 309 documents responsive to the  
26 request and had released 239 of these documents in their entirety, via FOIAonline. Fifty-four documents  
27

1 were partially withheld under attorney work product, attorney client privilege, deliberative process  
2 exemptions pursuant to 5 U.S.C. 552(b)(5) ("Exemption 5") and the right to privacy exemption pursuant  
3 to 5 U.S.C. § 552(b)(6) ("Exemption 6"). The final determination also stated that 16 documents that had  
4 originated from other agencies were referred to those agencies for release determination and direct  
5 response to EcoRights.

6 19. On March 10, 2017 EcoRights timely appealed NMFS's final determination to the Office of  
7 the General Counsel of the Department of Commerce ("DOC Counsel"). EcoRights' administrative  
8 appeal contended that NMFS: 1) had failed to make a reasonable search for responsive documents; 2)  
9 had improperly withheld documents under vague and unjustified claims of deliberative process and  
10 attorney-client privilege exemptions; 3) had withheld information with no exemption claim; 4) had not  
11 shown the existence of foreseeable harm to an interest protected by Exemptions 5 and 6 that would  
12 permit the agency to withhold information under these exemptions; and 5) had failed to segregate factual  
13 material and make partial disclosures where possible.

14 20. EcoRights' appeal contended NMFS's search was inadequate because none of the documents  
15 NMFS had released were from the NOAA Office of Law Enforcement ("OLE") although EcoRights had  
16 specifically asked for OLE documents and EcoRights had reason to know that at least one OLE agent  
17 had responsive documents.

18 21. The 20 business days deadline for NMFS to provide its final determination for EcoRights'  
19 appeal was April 7, 2017.

20 22. On July 18, 2017 NMFS posted to FOIAonline two redacted emails, apparently from the  
21 OLE. EcoRights was not notified that NMFS had released these two OLE documents on FOIAonline.  
22 The two emails had information redacted pursuant to Exemption 6 and Exemption 7 (5 U.S.C. §  
23 552(b)(7)(C)).

24 23. On October 2, 2017 EcoRights' counsel sent an email to NMFS FOIA officers and the DOC  
25 Counsel's office requesting an update on the status of the appeal. The DOC Counsel and NMFS did not  
26 respond.  
27

1 24. On October 25, 2017 EcoRights' counsel sent another email to NMFS FOIA officers and the  
2 DOC Counsel's office which requested that NMFS provide the final appeal determination by November  
3 3, 2017 and warned that if the determination was not provided by that date EcoRights might seek  
4 judicial relief.

5 25. On October 30, 2017 Michael Bogomolny, Acting Chief, Information Law Division, of the  
6 DOC Counsel's Office responded to EcoRights' October 25, 2017 request and stated that he expected  
7 EcoRights would have the appeal determination "this week." However, the DOC Counsel's office did  
8 not provide the appeal determination that week.

9 26. On January 31, 2018 Ecorights' counsel sent another email to the DOC Counsel's office  
10 requesting a status update. Mr. Bogomolny responded that same day and stated he would provide "a full  
11 status update before the end of the week." However, he did not. Instead, on February 2, 2018 he sent yet  
12 another email stating he was "committing to releasing a final determination of the appeal in this matter  
13 next week." However he did not release the determination that week.

14 27. As of the date of this Complaint the DOC Counsel has not released the appeal final  
15 determination and it is 309 days overdue.

16 **FIRST CLAIM FOR RELIEF**  
17 **NMFS Violation of FOIA**  
18 **5 U.S.C. §§ 552(a)(6)(ii) and 552(a)(3)(A)**  
19 **Request for Declaratory Relief**

20 28. EcoRights reasserts and realleges paragraphs 1 through 27 above.

21 29. NMFS has violated 5 U.S.C. § 552(a)(6)(A)(ii) by failing to provide a final determination  
22 for EcoRights' appeal within 20 business days after receipt of the appeal. EcoRights timely submitted  
23 the appeal on March 10, 2017. FOIA required NMFS to provide its appeal determination by April 7,  
24 2017. However, NMFS did not provide the determination by April 7, 2017 and as of the date of this  
25 Complaint the appeal determination is 309 days overdue.

26 30. EcoRights has constructively exhausted its administrative remedies given NMFS's failure to  
27 provide its appeal determination within FOIA's statutory time limits. 5 U.S.C. § 552(a)(6)(C)(i).



**SECOND CLAIM FOR RELIEF**

**NMFS Violation of FOIA**

**5 U.S.C. §§ 552(a)(8)(A), 552(a)(6)(A)(i) and 552(a)(3)(A)**

**Request for Declaratory Relief and Injunction to Compel NMFS to Comply with FOIA Requirement to Release Documents Unless a Valid Exemption Applies**

31. EcoRights reasserts and realleges paragraphs 1 through 30 above.

32. NMFS has violated 5 U.S.C. §§ 552(a)(8)(A) by withholding documents under invalid and unjustified claims of exemption under 5 U.S.C. §§ 552(b)(5), (b)(6), and b(7)(C). NMFS may not withhold documents unless foreseeable harm will occur to an interest protected by an enumerated exemption. 5 U.S.C. §§ 552(a)(8)(A)(i). NMFS has not shown that such foreseeable harm exists. NMFS has also violated 5 U.S.C. §§ 552(a)(8)(A)'s mandate that NMFS segregate and release non-exempt information. NMFS has redacted the entire substantive contents of 67 pages of information under attorney-client privilege and deliberative process exemptions without an adequate showing that NMFS attempted to segregate and release the non-exempt information in these pages.

33. NMFS has also violated FOIA by failing to comply with the 5 U.S.C. § 552(a)(6)(A)(i) requirement that the agency provide enough information, presented with sufficient detail, clarity, and verification, so that the requester can fairly determine what has not been produced and why. Exemptions are read narrowly and NMFS bears the burden of proving exemptions apply, which it has failed to do. 5 U.S.C. § 552(a)(4)(b). NMFS has failed to identify the specific exemption claimed for several documents that were redacted. Several documents identify Exemption 5 as the exemption claimed. However Exemption 5 could mean attorney work product, attorney-client privilege, or deliberative process. One document is redacted without any basis for the withholding identified.

34. NMFS's improper withholding of nonexempt documents also violates 5 U.S.C. § 552(a)(3)(A)'s mandate that requested records be promptly released unless they fall within one of FOIA's specifically enumerated disclosure exemptions. It has been eleven months since EcoRights submitted its appeal. Except for two redacted emails released 18 weeks after the appeal (not promptly), NMFS continues to withhold documents, without justifying they are exempt from disclosure.

**THIRD CLAIM FOR RELIEF**

**NMFS Violation of FOIA**

**5 U.S.C. §§ 552(a)(3)(c)**

**Request for Declaratory Relief and Injunction to Compel NMFS to Perform a Reasonable Search**

35. EcoRights reasserts and realleges paragraphs 1 through 34 above.

36. NMFS has violated 5 U.S.C. § 552(a)(3)(C) by failing to conduct a reasonable, legally adequate search for records responsive to EcoRights request. NMFS's search was inadequate because none of the documents NMFS initially released were from the OLE although EcoRights had specifically asked for OLE documents and EcoRights had reason to know that at least one OLE agent had responsive documents. After EcoRights submitted its appeal, NMFS released two emails, one apparently to an OLE agent and one apparently from an OLE agent. EcoRights makes these assumptions because the names of the sender and recipient have been redacted under Exemptions 6 and 7. The emails concern take of listed salmon and steelhead in the Yuba River. One of the emails indicates the OLE is likely to have more documents responsive to EcoRights' request, but NMFS failed to locate them because of its inadequate search.

**PRAYER FOR RELIEF**

WHEREFORE, EcoRights seeks the following relief:

a. A declaratory judgment pursuant to 5 U.S.C. § 552 declaring that NMFS violated FOIA by failing to provide the final determination for EcoRights' appeal in accordance with FOIA's statutory deadline;

b. A declaratory judgment that NMFS' failure to provide the appeal determination within the statutory deadline and produce non-exempt records promptly as required by FOIA constitutes illegal withholding of records;

c. A declaratory judgment pursuant to 5 U.S.C. § 552 that NMFS violated FOIA by: improperly withholding records that are not exempt from disclosure; failing to adequately explain how and why withheld information falls within a particular exemption; failing to adequately explain how disclosure would foreseeably harm interests protected by claimed exemptions; and failing to segregate and disclose non-exempt requested information;

1 d. A declaratory judgment that NMFS failed to perform a reasonable, legally adequate search for  
2 documents responsive to EcoRight's request;

3 e. An injunction pursuant to 5 U.S.C. § 552(a)(4)(B) ordering NMFS to: 1) conduct a  
4 reasonable, legally adequate search for records responsive to EcoRights' FOIA request within 20 days;  
5 2) produce all non-exempt records in NMFS' possession responsive to EcoRights FOIA request within  
6 30 days; and 3) provide EcoRights with a detailed, legally adequate explanation for the withholding of  
7 any information responsive to Ecorights FOIA request within 30 days;

8 f. An award of attorneys fees and costs to EcoRights pursuant to 5 U.S.C. § 552(a)(4)(E); and

9 g. Such other and further relief as this Court deems just and proper.

10 **DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

11 Based on EcoRights' knowledge to date, pursuant to Civil Local Rule 3-15, the undersigned  
12 certifies that, as of this date, other than the named parties, there is no such interest to report.

13  
14 Respectfully Submitted,

15 Dated: February 10, 2018

16  
17 By: Patricia Linn  
18 Patricia Linn  
19 *Counsel for Ecological Rights Foundation*  
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JS-CAND 44 (Rev. 06/17)

**CIVIL COVER SHEET**

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

Ecological Rights Foundation

(b) County of Residence of First Listed Plaintiff Humboldt  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Patricia Linn, Law Office of Patricia Linn, 115 Oakdale Ave., Mill Valley, CA 94941 (415) 388-2303; additional attorney information is attached

**DEFENDANTS**

National Marine Fisheries Service

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff  3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant  4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
110 Insurance	<b>PERSONAL INJURY</b> 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury 362 Personal Injury -Medical Malpractice	<b>PERSONAL INJURY</b> 365 Personal Injury - Product Liability 367 Health Care/Pharmaceutical Personal Injury Product Liability 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability <b>HABEAS CORPUS</b> 463 Alien Detainee 510 Motions to Vacate Sentence 530 General 535 Death Penalty <b>OTHER</b> 540 Mandamus & Other 550 Civil Rights 555 Prison Condition 560 Civil Detainee-Conditions of Confinement	625 Drug Related Seizure of Property 21 USC § 881 690 Other <b>LABOR</b> 710 Fair Labor Standards Act 720 Labor/Management Relations 740 Railway Labor Act 751 Family and Medical Leave Act 790 Other Labor Litigation 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> 462 Naturalization Application 465 Other Immigration Actions	422 Appeal 28 USC § 158 423 Withdrawal 28 USC § 157 <b>PROPERTY RIGHTS</b> 820 Copyrights 830 Patent 835 Patent-Abbreviated New Drug Application 840 Trademark <b>SOCIAL SECURITY</b> 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS-Third Party 26 USC § 7609	375 False Claims Act 376 Qui Tam (31 USC § 3729(a)) 400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced & Corrupt Organizations 480 Consumer Credit 490 Cable/Sat TV 850 Securities/Commodities/Exchange 890 Other Statutory Actions 891 Agricultural Acts 893 Environmental Matters 895 Freedom of Information Act 896 Arbitration 899 Administrative Procedure Act/Review or Appeal of Agency Decision 950 Constitutionality of State Statutes
120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment Of Veteran's Benefits 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excludes Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise	<b>CIVIL RIGHTS</b> 440 Other Civil Rights 441 Voting 442 Employment 443 Housing/Accommodations 445 Amer. w/Disabilities-Employment 446 Amer. w/Disabilities-Other 448 Education			<input checked="" type="checkbox"/> 895 Freedom of Information Act	
<b>REAL PROPERTY</b> 210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property					

**V. ORIGIN** (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation-Transfer
- 8 Multidistrict Litigation-Direct File

**VI. CAUSE OF ACTION** Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

5 U.S.C. section 552  
Brief description of cause:  
violations of Freedom of Information Act

**VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P.  DEMAND \$

CHECK YES only if demanded in complaint:  
**JURY DEMAND:** Yes  No

**VIII. RELATED CASE(S), IF ANY** (See instructions):

JUDGE

DOCKET NUMBER

**IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)**

(Place an "X" in One Box Only)  SAN FRANCISCO/OAKLAND  SAN JOSE  EUREKA-MCKINLEYVILLE

DATE 02/10/2018

SIGNATURE OF ATTORNEY OF RECORD

*Patricia Linn*

ADDITIONAL ATTORNEYS

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**Kathryn Kempton - NOAA Federal**

---

**From:** Kathryn Kempton NOAA Federal  
**Sent:** Thursday, February 22, 2018 11:21 AM  
**To:** Mark Graff NOAA Federal  
**Subject:** Fwd: New FOIA case, Ecological Rights Foundation v. National Marine Fisheries Service  
**Attachments:** ERF Summons.pdf; ERF, Complaint.pdf; ERF OpeningLtr#1ReqLitRpt.docx.pdf

Good morning, Mar (b)(5) [redacted]  
[redacted]  
[redacted]

[redacted]  
[redacted]  
[redacted]

[redacted] [redacted]  
[redacted]  
[redacted]  
[redacted]

Best,  
Kathryn

Kathryn L. Kempton  
Attorney Advisor, Southwest Section  
NOAA Office of the General Counsel  
U.S. Department of Commerce  
Long Beach CA 90802  
Direct: [\(562\) 980 4091](tel:5629804091)



**U.S. Department of Justice**

*United States Attorney  
Northern District of California*

9th Floor, Federal Building (415) 436-6967  
450 Golden Gate Avenue, Box 36055  
San Francisco, California 94102-3495 FAX: (415) 436-6748  
Email: [jennifer.s.wang@usdoj.gov](mailto:jennifer.s.wang@usdoj.gov)

February 21, 2018

Via Fed Ex

U.S. Department of Commerce  
14th and Constitution Ave., N.W., Room 5870  
Washington, D.C. 20230

Re: *Ecological Rights Foundation v. National Marine Fisheries Services*  
USDC NDCA Case No.: C 18-0888 JSC

Dear Sir or Madam:

I am the Assistant United States Attorney assigned to this District Court case, which was filed against your agency. I am enclosing a copy of the Summons and Complaint. This office was served on February 15, 2018. The government's response to the complaint is due on March 19, 2018.

Please see the United States Attorneys' Manual 4-1.430 to 4-1.434 (updated March 2016) for a summary of your agency's responsibilities in defensive litigation.<sup>1</sup> Please have a lawyer on your staff contact me at (415) 436-6967 at their earliest convenience to discuss how to defend this litigation. In particular, we need to discuss a litigation report, initial disclosures, and the agency's litigation hold as soon as possible.

The litigation report should include the following:

- (a) a narrative statement of the facts;
- (b) a proposed response to the complaint;
- (c) a legal analysis of the claims and defenses (including, but not limited to, subject matter jurisdiction, standing, comparative fault and other statutory and common law defenses);
- (d) your agency file number for this litigation;

<sup>1</sup> Available at <https://www.justice.gov/usam/united-states-attorneys-manual>.

(e) the full name, title, work or home address and telephone number of each person who has discoverable information about factual matters relevant to the case;

(f) all unprivileged documents in the agency's custody or control that are reasonably available that tend to support the positions that the agency has taken or is reasonably likely to take in the case;

(g) all unprivileged documents and other evidentiary material in the agency's custody or control that are then reasonably available that relate to damages;

(h) the nature and extent of the inquiry that you have undertaken to obtain the information in paragraphs (e), (f) and (g) above;

(i) a statement that the disclosures in paragraphs (e), (f) and (g) are complete;

(j) all documents, other than the documents described in paragraphs (f) and (g), which are relevant to the litigation; and

(k) the agency's position on settlement; if the agency believes settlement should be considered, the agency's views on the settlement value of the case.

Within 14 days after the initial conference of the parties, the agency must disclose the identity of witnesses and evidence which support the agency's claims or defenses and any damage calculations and supporting evidence. These disclosures are required by Federal Rule of Civil Procedure 26(a)(1) and must be made even if a motion to dismiss is filed. If you believe the complaint is subject to a dispositive motion, please call me to discuss the matter.

Effective December 1, 2006, the Federal Rules of Civil Procedure were amended to include provisions governing the discovery and disclosure of electronically stored information ("ESI"). For example, ESI must be included in each party's initial disclosure of documents in its possession, control and custody that it may use to support its claims or defenses. Fed. R. Civ. P. 26(a)(1)(B). At the pre-discovery conference required by Rule 26(f), the parties must discuss any issues relating to the disclosure or discovery of ESI, including the form in which it should be produced. Fed. R. Civ. P. 26(f)(3). The Court is authorized to include in its scheduling order provisions for the disclosure and discovery of ESI. Fed. R. Civ. P. 16(b)(3)(b)(iii). While a party need not produce ESI from sources that are not reasonably accessible because of undue burden or cost, it is the responding party's burden to prove inaccessibility. Fed. R. Civ. P. 26(b)(2)(B).

Once a party reasonably anticipates litigation, it must suspend its routine document retention/destruction policy and put in place a "litigation hold" to ensure the preservation of potentially relevant documents. The agency has a duty to preserve all potential evidence, including ESI, relating to this matter. The agency is legally required to take concrete steps to make certain it retains all paper and electronic records that could conceivably be relevant to cases that are in litigation or may lead to litigation. Therefore, all employees identified as having



involvement in this matter are subject to the requirement to preserve documents and records. Failure to take such steps may result in sanctions against the agency, as well as individuals. For your reference, "records" include, but are not limited to, email and other electronic communications, word processing files, portable document format files (PDF), draft of all documents, correspondence, statements, letters, notes, memoranda, reports, databases, diagrams, charts, sound records and transcriptions of any recordings, surveillance tapes, financial statements, corporate records, desk calendars, appointment books, computer print-outs, drawings, photographs, spreadsheets, electronic journal tapes, and all other writings of any kind, however produced or reproduced, in the possession of any agency employee. Records may also include data on an employee's home computer, on legacy computer systems, back up tapes and on hard drives of computers of departing employees.

In order to assist us in meeting our obligations under the rules governing ESI, please include in your litigation report a discussion of the existence, form, location, retention policy and preservation of ESI. In addition, please identify a point of contact with detailed knowledge of the agency's ESI policies and procedures to assist us in complying with these rules.

We look forward to working with you on this matter.

Very truly yours,

ALEX G. TSE  
Acting United States Attorney

By:

  
JENNIFER S WANG  
Assistant United States Attorney

Enclosures

cc: John Griffiths, Director  
Civil Division, Federal Programs Branch  
U.S. Department of Justice  
20 Massachusetts Avenue, N.W., Room 7348  
Washington, DC 20530

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of California

Ecological Rights Foundation

Plaintiff(s)

v.

National Marine Fisheries Service

Defendant(s)

Civil Action No. 3:18-cv-00888

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

National Marine Fisheries Service c/o
Chris Oliver
Director of NOAA Fisheries
1315 East West Highway, Suite 14743
Silver Spring, MD 20910

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Patricia Linn
Law Office of Patricia Linn
115 Oakdale Ave.
Mill Valley, CA
94941

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 02/12/2018

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))***

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify)*: \_\_\_\_\_  
\_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:



1 Christopher Sproul (State Bar No. 126398)  
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Facsimile: (415) 358-5695  
11 Email: ecorights@earthlink.net

12 Attorneys for Plaintiff  
ECOLOGICAL RIGHTS FOUNDATION

14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA

17 ECOLOGICAL RIGHTS FOUNDATION, a  
18 non-profit corporation,  
19 Plaintiff,

20 v.

21 NATIONAL MARINE FISHERIES SERVICE,  
22 Defendant.  
23  
24

Civil Case No.

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

25  
26  
27  
28

1 Ecological Rights Foundation (“EcoRights”) alleges as follows:

2 **INTRODUCTION**

3 1. EcoRights brings this action under the Freedom of Information Act ("FOIA"), which allows  
4 an aggrieved party to seek relief when documents are unlawfully withheld, and authorizes a reviewing  
5 court to enjoin the agency from withholding records and to order the production of any agency records  
6 improperly withheld from the complainant. 5 U.S.C. § 552(a)(4)(B). EcoRights seeks declaratory and  
7 injunctive relief for FOIA violations by the National Marine Fisheries Service ("NMFS"). At issue in  
8 this case is a FOIA request to NMFS seeking documents related to NMFS West Coast Region's  
9 Endangered Species Act ("ESA") Section 7 consultations with the Army Corps of Engineers ("Corps")  
10 and NMFS's regulatory oversight of Corps operations and infrastructure on the Yuba River that  
11 adversely impact spring run Chinook salmon, steelhead trout, and green sturgeon which are listed as a  
12 threatened species under the ESA. EcoRights alleges that NMFS: 1) failed to provide a final  
13 determination for EcoRights' administrative appeal within statutory time limits; 2) improperly withheld  
14 information not subject to specific, enumerated exemptions; 3) failed to provide legally adequate  
15 explanations for the withholding of requested information; 4) failed to promptly release non-exempt  
16 information responsive to EcoRight's FOIA request; 5) failed to segregate and release non-exempt  
17 information; and 6) failed to perform a reasonable, legally adequate search for responsive records.

18 **JURISDICTION**

19 2. This Court has subject matter jurisdiction under 5 U.S.C. section 552(a)(4)(B), which allows an  
20 aggrieved party to seek relief when records are unlawfully withheld, and authorizes a reviewing court to  
21 enjoin the agency from withholding records and to order the production of any agency records  
22 improperly withheld from the complainant.

23 3. This Court has personal jurisdiction over NMFS and its officials because NMFS, a branch of  
24 the National Oceanic and Atmospheric Administration ("NOAA"), is an agency of the federal  
25 government operating within the United States.

1 **VENUE**

2 4. Venue in the United States District for the Northern District of California is proper under  
3 5 U.S.C. section 552(a)(4)(B) because the complainant has its principal place of business in the Northern  
4 District, and many of the records sought by complainants are most likely situated in the NMFS and  
5 NOAA offices located within the Northern District.

6 **INTRADISTRICT ASSIGNMENT**

7 5. Intradistrict assignment of this matter to the San Francisco Division of the Court is appropriate  
8 pursuant to Civil Local Rule 3-2(d) because EcoRights’ principal place of business is located in  
9 Garberville, California.

10 **THE PARTIES**

11 6. Ecological Rights Foundation ("EcoRights") is a non-profit, public benefit corporation,  
12 organized under the laws of the State of California, devoted to furthering the rights of all people to a  
13 clean, healthful and biologically diverse environment. To further its environmental advocacy goals,  
14 EcoRights actively seeks federal and state agency implementation of state and federal wildlife-related  
15 laws, and as necessary, directly initiates enforcement actions on behalf of itself and its members.

16 7. Defendant NMFS, a division of the Department of Commerce, is the agency of the United  
17 States Government responsible for administering and implementing the ESA for anadromous fisheries  
18 and generally is responsible for the stewardship of the nation's living marine resources and their habitat.

19 **STATUTORY BACKGROUND**

20 8. FOIA requires that an agency disclose records to any person except where the records fall  
21 under a specifically enumerated exemption. 5 U.S.C. § 552. The courts have emphasized the narrow  
22 scope of these exemptions and “the strong policy of the FOIA that the public is entitled to know what its  
23 government is doing and why.” *Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 868 (D.C.  
24 Cir. 1980).

25 9. FOIA requires that an agency, upon any request for records, shall make the records available  
26 promptly. 5 U.S.C. § 552(a)(3)(A). An agency shall make a determination whether to comply with a  
27 request within twenty (20) business days after the receipt of the request and shall immediately notify the

1 party making the request of such determination, the reasons for the determination, and the party's right  
2 to appeal. 5 U.S.C. § 552(a)(6)(A)(i). In unusual circumstances, the agency may extend the time for the  
3 determination, for no more than ten (10) days, by written notice to the party, specifying the reasons for  
4 the extension and the date on which the determination is expected to be sent. 5 U.S.C. § 552(a)(6)(B)(i).

5 10. Federal agencies are under a duty to conduct a reasonable search for records responsive to a  
6 party's request using methods that can be reasonably expected to produce the information requested to  
7 the extent they exist. 5 U.S.C. § 522(a)(3)(C).

8 11. When an agency decides to withhold records under a claim of exemption it must notify the  
9 person making such request of such determination and the reasons therefor. 5 U.S.C. § 552(a)(6)(A)(i).  
10 Government agencies bear the burden of proof to show that any withheld documents are exempt from  
11 the duty to disclose. 5 U.S.C. § 522(a)(4)(B).

12 12. A party may appeal to the head of the agency any adverse determination. 5 U.S.C. §  
13 552(a)(6)(A)(i). An agency shall make a determination with respect to any appeal within twenty (20)  
14 business days after the receipt of such appeal. 5 U.S.C. § 552(a)(6)(A)(ii). If an agency does not respond  
15 within the FOIA time limits, a party will be deemed to have exhausted its administrative remedies.  
16 5 U.S.C. § 552(a)(6)(C)(i).

17 13. On June 30, 2016, President Obama signed into law the FOIA Improvement Act of 2016. The  
18 Act made significant amendments to FOIA, effective as of enactment on June 30, 2016. 5 U.S.C. § 522,  
19 § 6; OIP Summary of the FOIA Improvement Act of 2016. The amendments include changes to the  
20 standard by which NMFS must evaluate withholdings. The FOIA Improvement Act of 2016 dictates that  
21 agencies shall withhold information only if disclosure would harm an interest protected by an exemption  
22 what is referred to as the "foreseeable harm standard." 5 U.S.C. § 552(a)(8)(A)(i); OIP Summary of  
23 the FOIA Improvement Act of 2016.

24 14. Additionally, FOIA requires an agency to consider partial disclosure whenever the agency  
25 determines that a full disclosure of a requested record is not possible and to take reasonable steps  
26 necessary to segregate and release nonexempt information. 5 U.S.C. § 552(a)(8)(A).



1 15. An agency's process for dealing with FOIA requests constitutes "withholding" if its net effect  
2 is significantly to impair the requester's ability to obtain the records or significantly increase the amount  
3 of time he or she must wait to obtain them. *McGehee, III v. Central Intelligence Agency*, 697 F.2d 1095,  
4 1110 (D.C. Cir. 1983), *vacated in part on other grounds*, 711 F.2d 1076 (1983).

### 5 FACTUAL BACKGROUND

#### 6 **NMFS's Response to EcoRights' December 6, 2016 FOIA Request**

7 16. On December 6, 2016 EcoRights, via counsel, sent a FOIA request to NMFS seeking three  
8 categories of documents: 1) documents containing input NMFS West Coast Region staff provided to  
9 NOAA headquarters detailing the impacts of an Army Corps of Engineers ("Corps") memo known as  
10 the Stockdale Memo. The Stockdale Memo laid out strict guidelines limiting Corps ESA Section 7  
11 consultations with NMFS and the U.S. Fish and Wildlife Service; 2) documents to or from NMFS  
12 counsel Chris Kiefer related to a draft letter from NMFS to the Corps entitled "Endangered Species Act  
13 Section 7(a)(2) Concurrence Letter for the U.S. Army Corps of Engineers' (Corps) Ongoing Operation  
14 and Maintenance of Englebright Dam and Reservoir on the Yuba River;" and 3) documents in the  
15 possession of any NOAA Fisheries Office, Department and/or Division, including any NOAA law  
16 enforcement division, related to whether any entities or individuals are causing or have caused  
17 unauthorized take of threatened or endangered fish species in the Yuba River in the vicinity of  
18 Englebright Dam and Daguerre Point Dam.

19 17. On December 14, 2016 NMFS sent a letter to EcoRights counsel, Christopher Hudak,  
20 acknowledging receipt of the request on December 12, 2016 and assigning it tracking number DOC-  
21 NOAA-2017-000257. The acknowledgement letter stated that NMFS was extending the time for its  
22 response by ten business days because the agency needed to search for and collect the requested records  
23 from field facilities or other establishments separate from the office processing the request.

24 18. On February 13, 2017 NMFS sent EcoRights its final determination partially granting and  
25 partially denying EcoRights' request. NMFS stated it had located 309 documents responsive to the  
26 request and had released 239 of these documents in their entirety, via FOIAonline. Fifty-four documents  
27

1 were partially withheld under attorney work product, attorney client privilege, deliberative process  
2 exemptions pursuant to 5 U.S.C. 552(b)(5) ("Exemption 5") and the right to privacy exemption pursuant  
3 to 5 U.S.C. § 552(b)(6) ("Exemption 6"). The final determination also stated that 16 documents that had  
4 originated from other agencies were referred to those agencies for release determination and direct  
5 response to EcoRights.

6 19. On March 10, 2017 EcoRights timely appealed NMFS's final determination to the Office of  
7 the General Counsel of the Department of Commerce ("DOC Counsel"). EcoRights' administrative  
8 appeal contended that NMFS: 1) had failed to make a reasonable search for responsive documents; 2)  
9 had improperly withheld documents under vague and unjustified claims of deliberative process and  
10 attorney-client privilege exemptions; 3) had withheld information with no exemption claim; 4) had not  
11 shown the existence of foreseeable harm to an interest protected by Exemptions 5 and 6 that would  
12 permit the agency to withhold information under these exemptions; and 5) had failed to segregate factual  
13 material and make partial disclosures where possible.

14 20. EcoRights' appeal contended NMFS's search was inadequate because none of the documents  
15 NMFS had released were from the NOAA Office of Law Enforcement ("OLE") although EcoRights had  
16 specifically asked for OLE documents and EcoRights had reason to know that at least one OLE agent  
17 had responsive documents.

18 21. The 20 business days deadline for NMFS to provide its final determination for EcoRights'  
19 appeal was April 7, 2017.

20 22. On July 18, 2017 NMFS posted to FOIAonline two redacted emails, apparently from the  
21 OLE. EcoRights was not notified that NMFS had released these two OLE documents on FOIAonline.  
22 The two emails had information redacted pursuant to Exemption 6 and Exemption 7 (5 U.S.C. §  
23 552(b)(7)(C)).

24 23. On October 2, 2017 EcoRights' counsel sent an email to NMFS FOIA officers and the DOC  
25 Counsel's office requesting an update on the status of the appeal. The DOC Counsel and NMFS did not  
26 respond.  
27

1 24. On October 25, 2017 EcoRights' counsel sent another email to NMFS FOIA officers and the  
2 DOC Counsel's office which requested that NMFS provide the final appeal determination by November  
3 3, 2017 and warned that if the determination was not provided by that date EcoRights might seek  
4 judicial relief.

5 25. On October 30, 2017 Michael Bogomolny, Acting Chief, Information Law Division, of the  
6 DOC Counsel's Office responded to EcoRights' October 25, 2017 request and stated that he expected  
7 EcoRights would have the appeal determination "this week." However, the DOC Counsel's office did  
8 not provide the appeal determination that week.

9 26. On January 31, 2018 Ecorights' counsel sent another email to the DOC Counsel's office  
10 requesting a status update. Mr. Bogomolny responded that same day and stated he would provide "a full  
11 status update before the end of the week." However, he did not. Instead, on February 2, 2018 he sent yet  
12 another email stating he was "committing to releasing a final determination of the appeal in this matter  
13 next week." However he did not release the determination that week.

14 27. As of the date of this Complaint the DOC Counsel has not released the appeal final  
15 determination and it is 309 days overdue.

16 **FIRST CLAIM FOR RELIEF**  
17 **NMFS Violation of FOIA**  
18 **5 U.S.C. §§ 552(a)(6)(ii) and 552(a)(3)(A)**  
19 **Request for Declaratory Relief**

20 28. EcoRights reasserts and realleges paragraphs 1 through 27 above.

21 29. NMFS has violated 5 U.S.C. § 552(a)(6)(A)(ii) by failing to provide a final determination  
22 for EcoRights' appeal within 20 business days after receipt of the appeal. EcoRights timely submitted  
23 the appeal on March 10, 2017. FOIA required NMFS to provide its appeal determination by April 7,  
24 2017. However, NMFS did not provide the determination by April 7, 2017 and as of the date of this  
25 Complaint the appeal determination is 309 days overdue.

26 30. EcoRights has constructively exhausted its administrative remedies given NMFS's failure to  
27 provide its appeal determination within FOIA's statutory time limits. 5 U.S.C. § 552(a)(6)(C)(i).

**SECOND CLAIM FOR RELIEF**

**NMFS Violation of FOIA**

**5 U.S.C. §§ 552(a)(8)(A), 552(a)(6)(A)(i) and 552(a)(3)(A)**

**Request for Declaratory Relief and Injunction to Compel NMFS to Comply with FOIA Requirement to Release Documents Unless a Valid Exemption Applies**

31. EcoRights reasserts and realleges paragraphs 1 through 30 above.

32. NMFS has violated 5 U.S.C. §§ 552(a)(8)(A) by withholding documents under invalid and unjustified claims of exemption under 5 U.S.C. §§ 552(b)(5), (b)(6), and b(7)(C). NMFS may not withhold documents unless foreseeable harm will occur to an interest protected by an enumerated exemption. 5 U.S.C. §§ 552(a)(8)(A)(i). NMFS has not shown that such foreseeable harm exists. NMFS has also violated 5 U.S.C. §§ 552(a)(8)(A)'s mandate that NMFS segregate and release non-exempt information. NMFS has redacted the entire substantive contents of 67 pages of information under attorney-client privilege and deliberative process exemptions without an adequate showing that NMFS attempted to segregate and release the non-exempt information in these pages.

33. NMFS has also violated FOIA by failing to comply with the 5 U.S.C. § 552(a)(6)(A)(i) requirement that the agency provide enough information, presented with sufficient detail, clarity, and verification, so that the requester can fairly determine what has not been produced and why. Exemptions are read narrowly and NMFS bears the burden of proving exemptions apply, which it has failed to do. 5 U.S.C. § 552(a)(4)(b). NMFS has failed to identify the specific exemption claimed for several documents that were redacted. Several documents identify Exemption 5 as the exemption claimed. However Exemption 5 could mean attorney work product, attorney-client privilege, or deliberative process. One document is redacted without any basis for the withholding identified.

34. NMFS's improper withholding of nonexempt documents also violates 5 U.S.C. § 552(a)(3)(A)'s mandate that requested records be promptly released unless they fall within one of FOIA's specifically enumerated disclosure exemptions. It has been eleven months since EcoRights submitted its appeal. Except for two redacted emails released 18 weeks after the appeal (not promptly), NMFS continues to withhold documents, without justifying they are exempt from disclosure.

**THIRD CLAIM FOR RELIEF**

**NMFS Violation of FOIA**

**5 U.S.C. §§ 552(a)(3)(c)**

**Request for Declaratory Relief and Injunction to Compel NMFS to Perform a Reasonable Search**

35. EcoRights reasserts and realleges paragraphs 1 through 34 above.

36. NMFS has violated 5 U.S.C. § 552(a)(3)(C) by failing to conduct a reasonable, legally adequate search for records responsive to EcoRights request. NMFS's search was inadequate because none of the documents NMFS initially released were from the OLE although EcoRights had specifically asked for OLE documents and EcoRights had reason to know that at least one OLE agent had responsive documents. After EcoRights submitted its appeal, NMFS released two emails, one apparently to an OLE agent and one apparently from an OLE agent. EcoRights makes these assumptions because the names of the sender and recipient have been redacted under Exemptions 6 and 7. The emails concern take of listed salmon and steelhead in the Yuba River. One of the emails indicates the OLE is likely to have more documents responsive to EcoRights' request, but NMFS failed to locate them because of its inadequate search.

**PRAYER FOR RELIEF**

WHEREFORE, EcoRights seeks the following relief:

a. A declaratory judgment pursuant to 5 U.S.C. § 552 declaring that NMFS violated FOIA by failing to provide the final determination for EcoRights' appeal in accordance with FOIA's statutory deadline;

b. A declaratory judgment that NMFS' failure to provide the appeal determination within the statutory deadline and produce non-exempt records promptly as required by FOIA constitutes illegal withholding of records;

c. A declaratory judgment pursuant to 5 U.S.C. § 552 that NMFS violated FOIA by: improperly withholding records that are not exempt from disclosure; failing to adequately explain how and why withheld information falls within a particular exemption; failing to adequately explain how disclosure would foreseeably harm interests protected by claimed exemptions; and failing to segregate and disclose non-exempt requested information;

1 d. A declaratory judgment that NMFS failed to perform a reasonable, legally adequate search for  
2 documents responsive to EcoRight's request;

3 e. An injunction pursuant to 5 U.S.C. § 552(a)(4)(B) ordering NMFS to: 1) conduct a  
4 reasonable, legally adequate search for records responsive to EcoRights' FOIA request within 20 days;  
5 2) produce all non-exempt records in NMFS' possession responsive to EcoRights FOIA request within  
6 30 days; and 3) provide EcoRights with a detailed, legally adequate explanation for the withholding of  
7 any information responsive to Ecorights FOIA request within 30 days;

8 f. An award of attorneys fees and costs to EcoRights pursuant to 5 U.S.C. § 552(a)(4)(E); and

9 g. Such other and further relief as this Court deems just and proper.

10 **DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

11 Based on EcoRights' knowledge to date, pursuant to Civil Local Rule 3-15, the undersigned  
12 certifies that, as of this date, other than the named parties, there is no such interest to report.

13  
14 Respectfully Submitted,

15 Dated: February 10, 2018

16  
17 By: Patricia Linn  
18 Patricia Linn  
19 *Counsel for Ecological Rights Foundation*  
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23  
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26  
27



JS-CAND 44 (Rev. 06/17)

**CIVIL COVER SHEET**

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

Ecological Rights Foundation

(b) County of Residence of First Listed Plaintiff Humboldt  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Patricia Linn, Law Office of Patricia Linn, 115 Oakdale Ave., Mill Valley, CA 94941 (415) 388-2303; additional attorney information is attached

**DEFENDANTS**

National Marine Fisheries Service

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff  3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant  4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
110 Insurance	<b>PERSONAL INJURY</b> 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury 362 Personal Injury -Medical Malpractice	<b>PERSONAL INJURY</b> 365 Personal Injury - Product Liability 367 Health Care/Pharmaceutical Personal Injury Product Liability 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability <b>HABEAS CORPUS</b> 463 Alien Detainee 510 Motions to Vacate Sentence 530 General 535 Death Penalty <b>OTHER</b> 540 Mandamus & Other 550 Civil Rights 555 Prison Condition 560 Civil Detainee-Conditions of Confinement	625 Drug Related Seizure of Property 21 USC § 881 690 Other <b>LABOR</b> 710 Fair Labor Standards Act 720 Labor/Management Relations 740 Railway Labor Act 751 Family and Medical Leave Act 790 Other Labor Litigation 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> 462 Naturalization Application 465 Other Immigration Actions	422 Appeal 28 USC § 158 423 Withdrawal 28 USC § 157 <b>PROPERTY RIGHTS</b> 820 Copyrights 830 Patent 835 Patent-Abbreviated New Drug Application 840 Trademark <b>SOCIAL SECURITY</b> 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS-Third Party 26 USC § 7609	375 False Claims Act 376 Qui Tam (31 USC § 3729(a)) 400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced & Corrupt Organizations 480 Consumer Credit 490 Cable/Sat TV 850 Securities/Commodities/Exchange 890 Other Statutory Actions 891 Agricultural Acts 893 Environmental Matters 895 Freedom of Information Act 896 Arbitration 899 Administrative Procedure Act/Review or Appeal of Agency Decision 950 Constitutionality of State Statutes
120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment Of Veteran's Benefits 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excludes Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise	<b>CIVIL RIGHTS</b> 440 Other Civil Rights 441 Voting 442 Employment 443 Housing/Accommodations 445 Amer. w/Disabilities-Employment 446 Amer. w/Disabilities-Other 448 Education			<input checked="" type="checkbox"/> 895 Freedom of Information Act	
<b>REAL PROPERTY</b> 210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property					

**V. ORIGIN** (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation-Transfer
- 8 Multidistrict Litigation-Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

5 U.S.C. section 552  
Brief description of cause:  
violations of Freedom of Information Act

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P.  **DEMANDS**

CHECK YES only if demanded in complaint:  
**JURY DEMAND:** Yes  No

**VIII. RELATED CASE(S), IF ANY** (See instructions):

JUDGE

DOCKET NUMBER

**IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)**

(Place an "X" in One Box Only)  SAN FRANCISCO/OAKLAND  SAN JOSE  EUREKA-MCKINLEYVILLE

DATE 02/10/2018

SIGNATURE OF ATTORNEY OF RECORD

*Patricia Linn*

ADDITIONAL ATTORNEYS

Christopher Sproul (State Bar No. 126398)  
ENVIRONMENTAL ADVOCATES  
5135 Anza Street  
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Facsimile: (415) 358-5695  
Email: [csproul@enviroadvocates.com](mailto:csproul@enviroadvocates.com)

Fredric Evenson (State Bar No. 198059)  
Law Offices of Fredric Evenson  
109 Quarry Lane  
Santa Cruz, CA 95060  
Telephone: (831) 454-8216  
Facsimile: (415) 358-5695  
Email: [ecorights@earthlink.net](mailto:ecorights@earthlink.net)



## Mark Graff - NOAA Federal

---

**From:** Mark Graff NOAA Federal  
**Sent:** Friday, February 23, 2018 2:01 PM  
**To:** Branden Blum  
**Cc:** Chauncey Kelly NOAA Federal; Kate Barfield NOAA Federal; Kimberly Katzenbarger NOAA FEDERAL; Stacey Nathanson NOAA Federal  
**Subject:** Consultations and Referrals  
**Attachments:** Consultations Referrals and (b)(5) Final.pptx

Hello Branden,

As you'd asked, attached is the presentation that Stacey Nathanson and I gave to NMFS FOIA coordinators last summer on consultations and referrals, generally walking through the regulatory requirements, and different kinds of inter agency coordination they might see under 15 CFR 4.5.

This training also included a section on general (b)(5) applicability, so that portion is at the end of the slide deck as well. As usual, the cites are mainly in the notes section of the slide deck.

Please let me know if you need more on this topic, or would want this slide deck presented to any particular group that you would like.

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628 5658 (O)  
(b)(6) (C)

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# Referrals, Consultations, and Exemption (b)(5) Deliberative Process

Prepared by Mark H. Graff  
NOAA FOIA Officer/Bureau Chief Privacy  
Officer  
OCIO/GPD

[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov); (301)-628-5658



# Freedom of Information Act (5 USC 552)

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## Outline

1. Birth to Death Processing Flow
2. Regulatory Structure for Referrals
3. The Risks of Other Agency Docs
4. OIP Guidance
5. (b)(5) Two Prong Test
6. The Extent of the Privilege
7. Questions



## Regulatory Structure



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### **MISDIRECTED WITHIN THE DEPARTMENT:**

Where a component's FOIA office determines that a request was misdirected within the Department:

- The receiving component's FOIA office needs to route the request to the correct bureau(s).
- The search starts the time cutoff for records



## Regulatory Structure (Cont'd)



### **OTHER BUREAUS MAY HAVE RECORDS:**

How the proper Department component to respond to a FOIA Request is determined:

- The component that first receives the request and has responsive records.
  - When no records exist, the component that first receives the request and is likely to have responsive records should process the FOIA request.
- Or, the component to which the Departmental FOIA Officer or component FOIA Officer assigns lead responsibility for responding to the request.



## Regulatory Structure (Cont'd)



### CONSULTATIONS:

When a record is requested that originated with NOAA and another Federal agency has a *significant interest* in the record, NOAA must allow the other Federal agency to review the record before responding to a requester.





## Consultations Continued...



Consultations can be done within FOIAonline by uploading the record requiring consultation and then selecting the “**Create Consultation**” button found in the left hand column in FO (if the agency also uses FO)

- If attempts to consult with outside agencies cause a delay in responding to the request, notify the requester that the request will be processed or completed after the consultation has been completed.
- Consultation with another agency constitutes *unusual circumstances* and allows you to invoke a 10 day extension.



## Regulatory Structure (Cont'd)



### **REFERRALS:**

When NOAA possesses requested records that originated with another Federal agency.

NOAA routes these records to that agency for direct response to the requester.







# OIP Referral Guidance



## **OIP's Summary:**

“The agency that is best able to determine a record's sensitivity, and in turn its exemption status, is the agency that should process that record under the Act.

While this may vary in particular cases, as a general rule the agency that originated a record is usually the most appropriate agency to make a FOIA-disclosure determination regarding it.”



## The Risks of Other Agency Docs



There are at least **7** different types of referrals and consultations:

1. External Referrals for direct response to the requester including Exemptions asserted by the referring agency to include their appeal language.

**Example:** ACOE referrals where we respond to requester with their appeal contact.



## The Risks of Other Agency Docs

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2. External Referrals of the request in its entirety with no asserted Exemptions or responsive records being located by the referring agency.

**Example:** Recent DOI Refers us records that fall entirely under our purview.



## The Risks of Other Agency Docs (Cont'd)

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3. Records in which all or part of the record requires a declassification review by the original classifying authority.

**Example:** Navy necropsy records OCA is the Director of the office that generated those docs.



## The Risks of Other Agency Docs (Cont'd)

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4. External Consultations for providing withholding recommendations to another agency

**Example:** Fisheries Management Council Records found within our Control



## The Risks of Other Agency Docs (Cont'd)

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### 5. Intra-Departmental taskings requiring a tasking Memorandum

**Example:** DOC sends us a tasking to conduct a search in Presidential Transition cases through FOIAOnline, and we, in turn, issue taskings within Bureau.



## The Risks of Other Agency Docs (Cont'd)

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### 6. External Litigation consultations seeking NOAA's asserted exemptions

**Example:** FBI recently asked NOAA in the DB Cooper case to provide withholding recommendations on the weather docs from the plane flight.



## The Risks of Other Agency Docs (Cont'd)

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### 7. Referrals asking for non-attribution

**Example:** If we ever have intelligence agency records, they frequently don't want to be identified as the originator of the records.





## NAO 205-14: NOAA FOIA Taskings



There are at least 6 types of taskings—it must be clear which type you are being asked to review:

1. Conduct a search for responsive records (fees waived or non-billable)
2. Prepare a fee estimate in a non-referral
3. Prepare a fee estimate for a case being coordinated by DOC, and the aggregate threshold is not determined by NOAA
4. Review referred records and provide release recommendations to the referring entity
5. Review referred records, and respond directly to the requester, incorporating the referring entities exemptions and appeal language.
6. Respond to an adjudication on appeal



# OIP GUIDANCE



## If they are Agency Records:

When an agency receives a FOIA request for agency records in its possession it must take responsibility for searching for the records and processing the request. It cannot simply refuse to act on the ground that the documents originated elsewhere.





## OIP Guidance (Cont'd)



“When litigation (results), the government generally has not raised any issue over which agency is the “proper party defendant,” but instead has provided affidavits from the originating agencies to justify any contested nondisclosure.”

**Plain English:** DOJ won’t challenge who the Plaintiff names in Court. If you worked on the request, you can be the one sued, and other agencies will just provide affidavits for the records they created.



## (b)(5) Two Prong Test



### When (b)(5) Deliberative Process Applies:

- (b)(5) Statute generally protects: “Inter and intra-agency” (internal and external) communications that would not be available by law to a party other than an agency in litigation with the agency”.
- Courts define this as only documents that are typically privileged in civil discovery



## (b)(5) Two Prong Test (cont'd)

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- As to one of those privileges, Deliberative Process Privilege includes:
  - The Inter-agency (internal) and Intra-agency (external) communication requirement which encompasses the “consultant corollary”.
  - If the consultants, contractors, external advisors provided advice similar to what might have been received from an employee. Must ask—
    - Are they an interested party?
    - Seeking benefit at the expense of other applicants?
    - If yes, no (b)(5) protection.



## (b)(5) Two Prong Test (cont'd)

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### Two Part Test:

- 1) Is the material pre-decisional?
  - a) i.e., antecedent to the adoption of the agency policy? (the making of the “policy sausage”)
- 2) Is it deliberative (not factual)—making recommendations, expressing opinions on legal or policy matters?



## The Extent of the Privilege



- **Policy behind DPP:**
  - Encourage open and frank discussions among employees and protect the decision making processes of the government
  - Protect against premature disclosure of proposed policies before adopted
  - Protect against public confusion



## The Extent of the Privilege



- Since the 2016 FOIA Improvement Act, a **Risk of Harm** must exist for the Privilege to apply.
- Previously, this was only advisory, although in practice, this should not change NOAA's approach, as NOAA routinely required a Risk of Harm Analysis for (b)(5) Deliberative Process.







## Risk of Harm



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### **Foreseeable Harm is now a requirement under the 2016 FOIA Improvement Act:**

To Reach Foreseeable Harm, OIP summarizes the considerations:

- How sensitive is the decision?
- How sensitive is the decision-making process? (consider peer review)
- Is the decision final yet?
- Would disclosure affect the employees that contributed to the records?
- Would future decisions be jeopardized if the records were released?
- How significant would the "chilling" effect be?
- How old is the record?
- How sensitive are portions of the record?



## The Extent of the Privilege



- There is also now a 25 year limit on the use of Deliberative Process.
- After that time—the privilege no longer applies.





## Questions



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# QUESTIONS?

## FOIA, Electronic

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**From:** FOIA, Electronic  
**Sent:** Friday, February 23, 2018 3:28 PM  
**To:** Arnold, Josephine (Federal); Boston, Louis; Brumby, Janet W.; Cheney, Stacy; Crawford, Ayana (Contractor); Curry, Vernon E; Fletcher, Catherine; Graff, Mark (Federal); Kong, Stephen (Federal); Main, Laura; Moulder, Pamela (Federal); Oliphant, Tashima (Federal); Parsons, Bobbie (Federal); Powers, Victor; Staunton, Dondi; Stith, Lola (Contractor); Strickland, Wayne; Toland, Michael (Federal); Agyekum, Grace; Khalid, Sulma (Contractor); Gitelman, Steve (Contractor)  
**Subject:** FW: FOIA Request & Expedited Processing Request: Agency Reform Plan submitted to the Office of Management and Budget

To All:

The FOIA request in the email below from Stephen Reilly was received by multiple Bureaus (b)(5)

Thanks. Harriette

---

**From:** Reilly, Stephen [mailto:sreilly@usatoday.com]  
**Sent:** Friday, February 23, 2018 11:21 AM  
**To:** FOIA, Electronic <EFOIA@doc.gov>  
**Subject:** FOIA Request & Expedited Processing Request: Agency Reform Plan submitted to the Office of Management and Budget

February 23, 2018

FOIA Contact  
United States Department of Commerce  
14th Street and Constitution Avenue, NW  
Washington, DC 20230

VIA EMAIL: [eFOIA@doc.gov](mailto:eFOIA@doc.gov)

Re: Freedom of Information Act request & Expedited FOIA processing request.

To whom it may concern:

This is a request for records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, et seq., for which I also seek expedited processing.

I am seeking the following records:

- Copy of the Agency Reform Plan submitted to the Office of Management and Budget (“OMB”) in approximately September 2017 in accordance with OMB Memorandum M-17-22 (“Comprehensive Plan for Reforming the Federal Government and Reducing the Federal Civilian Workforce”).

## **I. Expedited Processing Request**

I respectfully submit that this request meets the criteria for expedited processing under applicable regulations because, as established and set forth below, I am a person primarily engaged in disseminating information and there is a compelling and urgent need to inform the public about an actual or alleged federal government activity.

The submission of Agency Reform Plans to OMB is an integral and explicitly defined element of the Trump Administration's efforts to "reorganize the executive branch in order to improve the efficiency, effectiveness and accountability of agencies" as set forth in President Trump's [Executive Order 13781](#) of March 13, 2017. Because these records are fundamental and explicitly defined elements of ongoing policymaking intended to reform the executive branch of the federal government, and because without timely public disclosure of these documents the American public will lack vital information needed to assess and understand the actions of policymakers as they reorganize the executive branch, there is currently an urgent need to inform the public about the actual government activity of reorganizing the executive branch. The expeditious public disclosure of records covered by this FOIA request will serve to address that critical need.

In [OMB Memorandum M-17-22](#) dated April 12, 2017, OMB Director Mick Mulvaney provided guidance to heads of each executive departments and agencies on fulfilling E.O. 13781 by directing each agency and department head to submit an Agency Reform Plan to OMB by September 2017. As set forth in M-17-22, these Agency Reform Plans will be "part of the development of the President's FY 2019 Budget" (See M-17-22, page 4 and Figure 1 on page 5). A process has thus been established by which the Agency Response Plans will play a critical role in ongoing policymaking.

Both members of Congress and the public alike require the information in the Agency Reform Plans in order to evaluate policymaking decisions as the Fiscal Year 2019 budgeting process moves forward. In his written open statement for a [September 13, 2017 hearing](#) before the US. Senate Committee on Homeland Security & Governmental Affairs' Regulatory Affairs and Federal Management Subcommittee on the topic of OMB's ongoing government-wide reorganization, Senator James Lankford cited the need to "ensure this reorganization effort is transparent and ultimately successful." In a [December 19, 2017](#) letter to OMB Director Mulvaney, Congressman Elijah E. Cummings requested disclosure of the agency reform plans because the reorganization of the federal government "should not occur in darkness."

Without expeditious disclosure of the requested records, members of the public and Members of Congress will lack an understanding of relevant facts and information while policymakers make decisions leading to the reorganization of the executive branch of the United States government. For the aforementioned reasons, public confidence in the United States government would be harmed if disclosure of the requested records is not expeditious, and there is an urgent need for the general public to access factual information about the actual government activity of reorganizing the executive branch. Upon belief, this factual information is contained within the requested records and through this request I seek to access this information to write one or more news articles for publication in one of the nation's largest general circulation newspapers. I hereby certify that the above is true and accurate to the best of my knowledge and ability.

## **II. Fee Waiver Request**

Because this is a request by a member of the news media for information of significant public interest, I also ask that you waive any search fees in accordance with §552(a)(4)(A)(ii)(II).

For purposes of determining my status with respect to the expedited processing request and any fees that may be applicable to this request, please be advised that I am employed full-time as reporter based in McLean, Virginia for USA TODAY and its network of more than 100 partner daily newspapers owned and operated by Gannett Co. Inc., and that the purpose of this request is to gather information of potential interest to a segment of the public and use my editorial abilities to turn the raw materials into a distinct work with the intent to distribute that work to an audience of newspaper readers throughout the United States. Links to my most recently published material may be found here: <http://www.usatoday.com/staff/30847/steve-reilly/>. I hereby certify that the above is true and accurate to the best of my knowledge and ability.

### **III. Request for Response in Electronic Format**

Where possible, please furnish the requested records in an electronic format pursuant to 5 U.S.C. § 552(a)(3) (B)-(C), preferably via email to [sreilly@usatoday.com](mailto:sreilly@usatoday.com).

If for any reason any portion of this request is denied, please provide written notice of the specific records or portions of records that were withheld, and the specific statutory basis for the withholding. Please also provide the name and address of the officer or body to which my appeal may be directed.

As you are aware, the Act, in § 552(a)(6), grants an agency no more than twenty working days in which to respond to this request. See *Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 65 (D.C. Cir. 1990) (“Congress adopted the time limit provision in the FOIA in order to ‘contribute to the fuller and faster release of information, which is the basic objective of the Act.’” (quoting H.R. Rep. No. 93-876, March 5, 1974., reprinted (1974) U.S. Code Cong. & Ad. News 6267 at 6271)).

I thank you sincerely for your prompt attention to this request and look forward to your timely reply.

Steve Reilly

#### **Steve Reilly**

Investigative Reporter  
USA TODAY

7950 Jones Branch Drive, McLean, VA 22108

Office: (703) 854-3104 | Cell: (703) 853-2614

[sreilly@usatoday.com](mailto:sreilly@usatoday.com) | [@BySteveReilly](https://twitter.com/BySteveReilly)

**Mark Graff - NOAA Federal**

---

**From:** Mark Graff NOAA Federal  
**Sent:** Friday, February 23, 2018 3:24 PM  
**To:** Ana Liza Malabanan NOAA Federal  
**Cc:** Lola Stith NOAA Affiliate  
**Subject:** DOC NOAA 2016 001479  
**Attachments:** ERF, Complaint.pdf; ERF NMFS FOIA 12 6 16 (1).pdf

Hi Ana Liza,

(b)(5)

[REDACTED]

I'm attaching both for background.

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628 5658 (O)

(b)(6) (C)

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## ENVIRONMENTAL ADVOCATES

ATTORNEYS AT LAW

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(415) 533-3376

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E-mail: [csproul@enviroadvocates.com](mailto:csproul@enviroadvocates.com)  
[christopherwhudak@gmail.com](mailto:christopherwhudak@gmail.com)

December 6, 2016

*Via Electronic Mail through FOIAonline\**

<https://foiaonline.regulations.gov>

Ana Liza S. Malabanan  
Regional FOIA Coordinator of  
National Marine Fisheries Service  
National Oceanic and Atmospheric Administration  
West Coast Region  
501 West Ocean Blvd  
Long Beach, CA 90802-4213  
E-mail: [ana.liza.malabanan@noaa.gov](mailto:ana.liza.malabanan@noaa.gov)

National Marine Fisheries Service  
National Oceanic and Atmospheric Administration  
Public Reference Facility (OFA56)  
1315 East West Highway (SSMC3)  
Room 10730  
Silver Spring, Maryland 20910  
E-mail: [FOIA@noaa.gov](mailto:FOIA@noaa.gov)

Re: FOIA Request

To Whom It May Concern,

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and relevant Department of Commerce, National Marine Fisheries Service (“NMFS”) regulations, Ecological Rights Foundation (EcoRights’) (via counsel), hereby requests that NMFS provide all responsive records (“documents”) that are in the files maintained by NMFS personnel or offices on the date that NMFS staff conducts their searches for the documents responsive to this request.<sup>1</sup>

### **Definitions**

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<sup>1</sup> See *McGehee v. CIA*, 697 F.2d 1095 (D.C. Cir. 1983); *Pub. Citizen v. Dep't of State*, 276 F.3d 634 (D.C. Cir. 2002); *Oregon Natural Desert Ass'n v. Gutierrez*, 419 F. Supp. 2d 1284, 1288 (D. Or. 2006) (federal agencies must release all documents in their possession through the date they conduct the review of their files for documents responsive to FOIA requests).



1. The term "You" or "Your" as used herein refers to the NATIONAL MARINE FISHERIES SERVICE ("NMFS"), PENNY PRITZKER, as Secretary of Commerce, and/or any person acting or purporting to act on their behalf.
2. The term "document" or "documents" as used herein means all written, typewritten, drawn or printed material or record of any type or description and all information kept or recorded on magnetic or electronic media, including, without limitation, correspondence, letters, agreements, contracts, memoranda of agreement or understanding, electronic mail (including both messages sent and received from NMFS personnel), telegrams, inter- and intra-office communications, forms, reports, studies, working papers, handwritten or other notes, phone records, logs, diaries, minutes, spreadsheets, computation sheets, data sheets, transcripts, drawings, sketches, plans, leases, invoices, index cards, checks, check registers, maps, charts, graphs, bulletins, circulars, pamphlets, notices, summaries, books, photographs, sound recordings, videotapes, rules, photocopied or computer-related materials, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations of them, and all forms of written or recorded matter to which You have access or of which You have any knowledge, or copies of such documents where originals are not available. The terms "document" or "documents" includes all matter that relates in whole or in part to the subject referred to in this request. Where a document has been prepared in several copies that are not identical, or where, by reason of subsequent modification, addition or notation, they are no longer identical, each non-identical copy shall be considered a separate document. Handwritten or other notations of any kind on a copy render it a non-identical copy.
3. The term "related to" as used herein includes comprising, constituting, containing, evidencing, setting forth, summarizing, alluding to, responding to, commenting upon, discussing, supporting, refuting, showing, disclosing, explaining, mentioning, analyzing, recording, reflecting upon, or characterizing, either directly or indirectly, in whole or in part.
4. The term "Stockdale Memo" means the June 11, 2013 Memorandum, subject ESA Guidance, from Corps Chief Counsel, Earl Stockdale, to all Corps counsel, HQ, Dist, Center, Lab, and FOA Offices [attached as Exhibit 1 for your reference].
5. The term "Chris Yates email" refers to the July 24, 2014 email from Chris Yates, NOAA Federal, subject: Fwd:Response to COE Stockdale memo [attached as Exhibit 2 for your reference]..
6. The term "draft Englebright concurrence letter" refers to the draft letter to the Corps entitled "Endangered Species Act Section 7(a)(2) Concurrence Letter for the U.S. Army Corps of Engineers' (Corps) Ongoing Operation and Maintenance of Englebright Dam and Reservoir on the Yuba River" [attached as Exhibit 3 for your reference].
7. The term "unauthorized take" means take that is prohibited by section 9 of the Endangered Species Act.

The foregoing definitions, used below in quotation marks, refer to the terms as defined above.

## **Requests for Documents**

EcoRights requests that "You" please provide the following "documents":

1. Any and all "documents" "related to" the "Chris Yates email" concerning input he, and any NMFS West Coast Region staff provided to NOAA HQ on the impact of the "Stockdale Memo." This request is only for the input on the impact of the "Stockdale Memo" that Chris Yates provided to NOAA HQ and the input on the impact of the "Stockdale Memo" the NMFS West Coast Region staff provided to NOAA HQ and is not a broader request for other documents related to the "Stockdale memo." This request is only for "documents" generated on or prior to July 24, 2014.
2. Any documents to or from NMFS staff Chris Kiefer "related to" the "draft Englebright concurrence letter."
3. Any and all NOAA Fisheries "documents" from January 1, 2000 to the present, in the possession of any NOAA Fisheries Office, Department, and/or Division, including any NOAA law enforcement division, "related to" whether any entities or individuals may have caused or did cause, or may be causing, or are causing "unauthorized take" of threatened or endangered anadromous fish in the Yuba River at, or in the vicinity of, Englebright Dam, Narrows 1 and 2 powerhouses, Daguerre Point Dam, and the Hallwood-Cordua Diversion including but not limited to any and all "documents" generated by, sent by, or received by NMFS Law Enforcement agent, Don Tanner.

15 C.F.R. section 4.6(b) requires NMFS to issue a written determination to EcoRights within twenty working days that this request was received and logged in by NMFS stating which of the requested records will, and which will not, be released and the reason for any denial of any portion of this request. As provided by 15 C.F.R. section 4.6(c), NMFS may extend this obligation by furnishing written notice to the requestor as soon as practicable stating the reasons for such extension and the date by which the office expects to be able to issue a determination. The period may be so extended only when absolutely necessary, only for the period required, and only when one or more of the following unusual circumstances require the extension: (1) there is a need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; (2) there is a need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or (3) there is a need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of NMFS.

EcoRights requests that to the extent that NMFS can do so, EcoRights be furnished with electronic copies of the above documents in lieu of paper copies (to minimize the expense and burden of copying). EcoRights points out that FOIA requires NMFS to provide copies of requested documents "in any form or format requested by the person if the record is readily reproducible by the agency in that form or format." 5 U.S.C. § 552(a)(3)(B).

We request that NMFS provide electronic copies of its response to this request, as well as any responsive documents that NMFS is able to transmit via e-mail, to Christopher Hudak and Christopher Sproul and I at the following e-mail addresses:

Christopher Hudak: christopherwhudak@gmail.com  
Christopher Sproul: csproul@enviroadvocates.com

Please send any documents that must be sent via regular mail to the following address:

Christopher Hudak  
Christopher Sproul  
Environmental Advocates  
5135 Anza St.  
San Francisco, California, 94121

Your staff may contact me at (510) 502-5742 or christopherwhudak@gmail.com to further discuss this request. Thank you for your prompt attention to this matter.

Sincerely,

Christopher Hudak  
Attorney for Ecological Rights Foundation

Encl.: Attachment 1 (Fee Waiver Request)

Pursuant to 5 U.S.C. section 552(a)(4)(A)(iii) and 15 C.F.R. section 4.11(k), EcoRights hereby requests a fee waiver for all copying costs, mailing costs, and other costs related to locating and tendering the documents, in accord with the attached fee waiver statement.

1 Christopher Sproul (State Bar No. 126398)  
ENVIRONMENTAL ADVOCATES  
2 5135 Anza Street  
San Francisco, California 94121  
3 Telephone: (415) 533-3376  
Facsimile: (415) 358-5695  
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5 Patricia Linn (State Bar No. 253015)  
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11 Email: ecorights@earthlink.net

12 Attorneys for Plaintiff  
ECOLOGICAL RIGHTS FOUNDATION  
13

14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16

17 ECOLOGICAL RIGHTS FOUNDATION, a  
18 non-profit corporation,  
19 Plaintiff,

20 v.

21 NATIONAL MARINE FISHERIES SERVICE,  
22 Defendant.  
23  
24

Civil Case No.

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

25  
26  
27  
28

1 Ecological Rights Foundation (“EcoRights”) alleges as follows:

2 **INTRODUCTION**

3 1. EcoRights brings this action under the Freedom of Information Act ("FOIA"), which allows  
4 an aggrieved party to seek relief when documents are unlawfully withheld, and authorizes a reviewing  
5 court to enjoin the agency from withholding records and to order the production of any agency records  
6 improperly withheld from the complainant. 5 U.S.C. § 552(a)(4)(B). EcoRights seeks declaratory and  
7 injunctive relief for FOIA violations by the National Marine Fisheries Service ("NMFS"). At issue in  
8 this case is a FOIA request to NMFS seeking documents related to NMFS West Coast Region's  
9 Endangered Species Act ("ESA") Section 7 consultations with the Army Corps of Engineers ("Corps")  
10 and NMFS's regulatory oversight of Corps operations and infrastructure on the Yuba River that  
11 adversely impact spring run Chinook salmon, steelhead trout, and green sturgeon which are listed as a  
12 threatened species under the ESA. EcoRights alleges that NMFS: 1) failed to provide a final  
13 determination for EcoRights' administrative appeal within statutory time limits; 2) improperly withheld  
14 information not subject to specific, enumerated exemptions; 3) failed to provide legally adequate  
15 explanations for the withholding of requested information; 4) failed to promptly release non-exempt  
16 information responsive to EcoRight's FOIA request; 5) failed to segregate and release non-exempt  
17 information; and 6) failed to perform a reasonable, legally adequate search for responsive records.

18 **JURISDICTION**

19 2. This Court has subject matter jurisdiction under 5 U.S.C. section 552(a)(4)(B), which allows an  
20 aggrieved party to seek relief when records are unlawfully withheld, and authorizes a reviewing court to  
21 enjoin the agency from withholding records and to order the production of any agency records  
22 improperly withheld from the complainant.

23 3. This Court has personal jurisdiction over NMFS and its officials because NMFS, a branch of  
24 the National Oceanic and Atmospheric Administration ("NOAA"), is an agency of the federal  
25 government operating within the United States.

1 **VENUE**

2 4. Venue in the United States District for the Northern District of California is proper under  
3 5 U.S.C. section 552(a)(4)(B) because the complainant has its principal place of business in the Northern  
4 District, and many of the records sought by complainants are most likely situated in the NMFS and  
5 NOAA offices located within the Northern District.

6 **INTRADISTRICT ASSIGNMENT**

7 5. Intradistrict assignment of this matter to the San Francisco Division of the Court is appropriate  
8 pursuant to Civil Local Rule 3-2(d) because EcoRights’ principal place of business is located in  
9 Garberville, California.

10 **THE PARTIES**

11 6. Ecological Rights Foundation ("EcoRights") is a non-profit, public benefit corporation,  
12 organized under the laws of the State of California, devoted to furthering the rights of all people to a  
13 clean, healthful and biologically diverse environment. To further its environmental advocacy goals,  
14 EcoRights actively seeks federal and state agency implementation of state and federal wildlife-related  
15 laws, and as necessary, directly initiates enforcement actions on behalf of itself and its members.

16 7. Defendant NMFS, a division of the Department of Commerce, is the agency of the United  
17 States Government responsible for administering and implementing the ESA for anadromous fisheries  
18 and generally is responsible for the stewardship of the nation's living marine resources and their habitat.

19 **STATUTORY BACKGROUND**

20 8. FOIA requires that an agency disclose records to any person except where the records fall  
21 under a specifically enumerated exemption. 5 U.S.C. § 552. The courts have emphasized the narrow  
22 scope of these exemptions and “the strong policy of the FOIA that the public is entitled to know what its  
23 government is doing and why.” *Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 868 (D.C.  
24 Cir. 1980).

25 9. FOIA requires that an agency, upon any request for records, shall make the records available  
26 promptly. 5 U.S.C. § 552(a)(3)(A). An agency shall make a determination whether to comply with a  
27 request within twenty (20) business days after the receipt of the request and shall immediately notify the

1 party making the request of such determination, the reasons for the determination, and the party's right  
2 to appeal. 5 U.S.C. § 552(a)(6)(A)(i). In unusual circumstances, the agency may extend the time for the  
3 determination, for no more than ten (10) days, by written notice to the party, specifying the reasons for  
4 the extension and the date on which the determination is expected to be sent. 5 U.S.C. § 552(a)(6)(B)(i).

5 10. Federal agencies are under a duty to conduct a reasonable search for records responsive to a  
6 party's request using methods that can be reasonably expected to produce the information requested to  
7 the extent they exist. 5 U.S.C. § 522(a)(3)(C).

8 11. When an agency decides to withhold records under a claim of exemption it must notify the  
9 person making such request of such determination and the reasons therefor. 5 U.S.C. § 552(a)(6)(A)(i).  
10 Government agencies bear the burden of proof to show that any withheld documents are exempt from  
11 the duty to disclose. 5 U.S.C. § 522(a)(4)(B).

12 12. A party may appeal to the head of the agency any adverse determination. 5 U.S.C. §  
13 552(a)(6)(A)(i). An agency shall make a determination with respect to any appeal within twenty (20)  
14 business days after the receipt of such appeal. 5 U.S.C. § 552(a)(6)(A)(ii). If an agency does not respond  
15 within the FOIA time limits, a party will be deemed to have exhausted its administrative remedies.  
16 5 U.S.C. § 552(a)(6)(C)(i).

17 13. On June 30, 2016, President Obama signed into law the FOIA Improvement Act of 2016. The  
18 Act made significant amendments to FOIA, effective as of enactment on June 30, 2016. 5 U.S.C. § 522,  
19 § 6; OIP Summary of the FOIA Improvement Act of 2016. The amendments include changes to the  
20 standard by which NMFS must evaluate withholdings. The FOIA Improvement Act of 2016 dictates that  
21 agencies shall withhold information only if disclosure would harm an interest protected by an exemption  
22 what is referred to as the "foreseeable harm standard." 5 U.S.C. § 552(a)(8)(A)(i); OIP Summary of  
23 the FOIA Improvement Act of 2016.

24 14. Additionally, FOIA requires an agency to consider partial disclosure whenever the agency  
25 determines that a full disclosure of a requested record is not possible and to take reasonable steps  
26 necessary to segregate and release nonexempt information. 5 U.S.C. § 552(a)(8)(A).

1 15. An agency's process for dealing with FOIA requests constitutes "withholding" if its net effect  
2 is significantly to impair the requester's ability to obtain the records or significantly increase the amount  
3 of time he or she must wait to obtain them. *McGehee, III v. Central Intelligence Agency*, 697 F.2d 1095,  
4 1110 (D.C. Cir. 1983), *vacated in part on other grounds*, 711 F.2d 1076 (1983).

### 5 FACTUAL BACKGROUND

#### 6 **NMFS's Response to EcoRights' December 6, 2016 FOIA Request**

7 16. On December 6, 2016 EcoRights, via counsel, sent a FOIA request to NMFS seeking three  
8 categories of documents: 1) documents containing input NMFS West Coast Region staff provided to  
9 NOAA headquarters detailing the impacts of an Army Corps of Engineers ("Corps") memo known as  
10 the Stockdale Memo. The Stockdale Memo laid out strict guidelines limiting Corps ESA Section 7  
11 consultations with NMFS and the U.S. Fish and Wildlife Service; 2) documents to or from NMFS  
12 counsel Chris Kiefer related to a draft letter from NMFS to the Corps entitled "Endangered Species Act  
13 Section 7(a)(2) Concurrence Letter for the U.S. Army Corps of Engineers' (Corps) Ongoing Operation  
14 and Maintenance of Englebright Dam and Reservoir on the Yuba River;" and 3) documents in the  
15 possession of any NOAA Fisheries Office, Department and/or Division, including any NOAA law  
16 enforcement division, related to whether any entities or individuals are causing or have caused  
17 unauthorized take of threatened or endangered fish species in the Yuba River in the vicinity of  
18 Englebright Dam and Daguerre Point Dam.

19 17. On December 14, 2016 NMFS sent a letter to EcoRights counsel, Christopher Hudak,  
20 acknowledging receipt of the request on December 12, 2016 and assigning it tracking number DOC-  
21 NOAA-2017-000257. The acknowledgement letter stated that NMFS was extending the time for its  
22 response by ten business days because the agency needed to search for and collect the requested records  
23 from field facilities or other establishments separate from the office processing the request.

24 18. On February 13, 2017 NMFS sent EcoRights its final determination partially granting and  
25 partially denying EcoRights' request. NMFS stated it had located 309 documents responsive to the  
26 request and had released 239 of these documents in their entirety, via FOIAonline. Fifty-four documents  
27



1 were partially withheld under attorney work product, attorney client privilege, deliberative process  
2 exemptions pursuant to 5 U.S.C. 552(b)(5) ("Exemption 5") and the right to privacy exemption pursuant  
3 to 5 U.S.C. § 552(b)(6) ("Exemption 6"). The final determination also stated that 16 documents that had  
4 originated from other agencies were referred to those agencies for release determination and direct  
5 response to EcoRights.

6 19. On March 10, 2017 EcoRights timely appealed NMFS's final determination to the Office of  
7 the General Counsel of the Department of Commerce ("DOC Counsel"). EcoRights' administrative  
8 appeal contended that NMFS: 1) had failed to make a reasonable search for responsive documents; 2)  
9 had improperly withheld documents under vague and unjustified claims of deliberative process and  
10 attorney-client privilege exemptions; 3) had withheld information with no exemption claim; 4) had not  
11 shown the existence of foreseeable harm to an interest protected by Exemptions 5 and 6 that would  
12 permit the agency to withhold information under these exemptions; and 5) had failed to segregate factual  
13 material and make partial disclosures where possible.

14 20. EcoRights' appeal contended NMFS's search was inadequate because none of the documents  
15 NMFS had released were from the NOAA Office of Law Enforcement ("OLE") although EcoRights had  
16 specifically asked for OLE documents and EcoRights had reason to know that at least one OLE agent  
17 had responsive documents.

18 21. The 20 business days deadline for NMFS to provide its final determination for EcoRights'  
19 appeal was April 7, 2017.

20 22. On July 18, 2017 NMFS posted to FOIAonline two redacted emails, apparently from the  
21 OLE. EcoRights was not notified that NMFS had released these two OLE documents on FOIAonline.  
22 The two emails had information redacted pursuant to Exemption 6 and Exemption 7 (5 U.S.C. §  
23 552(b)(7)(C)).

24 23. On October 2, 2017 EcoRights' counsel sent an email to NMFS FOIA officers and the DOC  
25 Counsel's office requesting an update on the status of the appeal. The DOC Counsel and NMFS did not  
26 respond.  
27

1 24. On October 25, 2017 EcoRights' counsel sent another email to NMFS FOIA officers and the  
2 DOC Counsel's office which requested that NMFS provide the final appeal determination by November  
3 3, 2017 and warned that if the determination was not provided by that date EcoRights might seek  
4 judicial relief.

5 25. On October 30, 2017 Michael Bogomolny, Acting Chief, Information Law Division, of the  
6 DOC Counsel's Office responded to EcoRights' October 25, 2017 request and stated that he expected  
7 EcoRights would have the appeal determination "this week." However, the DOC Counsel's office did  
8 not provide the appeal determination that week.

9 26. On January 31, 2018 Ecorights' counsel sent another email to the DOC Counsel's office  
10 requesting a status update. Mr. Bogomolny responded that same day and stated he would provide "a full  
11 status update before the end of the week." However, he did not. Instead, on February 2, 2018 he sent yet  
12 another email stating he was "committing to releasing a final determination of the appeal in this matter  
13 next week." However he did not release the determination that week.

14 27. As of the date of this Complaint the DOC Counsel has not released the appeal final  
15 determination and it is 309 days overdue.

16 **FIRST CLAIM FOR RELIEF**  
17 **NMFS Violation of FOIA**  
18 **5 U.S.C. §§ 552(a)(6)(ii) and 552(a)(3)(A)**  
19 **Request for Declaratory Relief**

20 28. EcoRights reasserts and realleges paragraphs 1 through 27 above.

21 29. NMFS has violated 5 U.S.C. § 552(a)(6)(A)(ii) by failing to provide a final determination  
22 for EcoRights' appeal within 20 business days after receipt of the appeal. EcoRights timely submitted  
23 the appeal on March 10, 2017. FOIA required NMFS to provide its appeal determination by April 7,  
24 2017. However, NMFS did not provide the determination by April 7, 2017 and as of the date of this  
25 Complaint the appeal determination is 309 days overdue.

26 30. EcoRights has constructively exhausted its administrative remedies given NMFS's failure to  
27 provide its appeal determination within FOIA's statutory time limits. 5 U.S.C. § 552(a)(6)(C)(i).

**SECOND CLAIM FOR RELIEF**

**NMFS Violation of FOIA**

**5 U.S.C. §§ 552(a)(8)(A), 552(a)(6)(A)(i) and 552(a)(3)(A)**

**Request for Declaratory Relief and Injunction to Compel NMFS to Comply with FOIA Requirement to Release Documents Unless a Valid Exemption Applies**

31. EcoRights reasserts and realleges paragraphs 1 through 30 above.

32. NMFS has violated 5 U.S.C. §§ 552(a)(8)(A) by withholding documents under invalid and unjustified claims of exemption under 5 U.S.C. §§ 552(b)(5), (b)(6), and b(7)(C). NMFS may not withhold documents unless foreseeable harm will occur to an interest protected by an enumerated exemption. 5 U.S.C. §§ 552(a)(8)(A)(i). NMFS has not shown that such foreseeable harm exists. NMFS has also violated 5 U.S.C. §§ 552(a)(8)(A)'s mandate that NMFS segregate and release non-exempt information. NMFS has redacted the entire substantive contents of 67 pages of information under attorney-client privilege and deliberative process exemptions without an adequate showing that NMFS attempted to segregate and release the non-exempt information in these pages.

33. NMFS has also violated FOIA by failing to comply with the 5 U.S.C. § 552(a)(6)(A)(i) requirement that the agency provide enough information, presented with sufficient detail, clarity, and verification, so that the requester can fairly determine what has not been produced and why. Exemptions are read narrowly and NMFS bears the burden of proving exemptions apply, which it has failed to do. 5 U.S.C. § 552(a)(4)(b). NMFS has failed to identify the specific exemption claimed for several documents that were redacted. Several documents identify Exemption 5 as the exemption claimed. However Exemption 5 could mean attorney work product, attorney-client privilege, or deliberative process. One document is redacted without any basis for the withholding identified.

34. NMFS's improper withholding of nonexempt documents also violates 5 U.S.C. § 552(a)(3)(A)'s mandate that requested records be promptly released unless they fall within one of FOIA's specifically enumerated disclosure exemptions. It has been eleven months since EcoRights submitted its appeal. Except for two redacted emails released 18 weeks after the appeal (not promptly), NMFS continues to withhold documents, without justifying they are exempt from disclosure.

**THIRD CLAIM FOR RELIEF**

**NMFS Violation of FOIA**

**5 U.S.C. §§ 552(a)(3)(c)**

**Request for Declaratory Relief and Injunction to Compel NMFS to Perform a Reasonable Search**

35. EcoRights reasserts and realleges paragraphs 1 through 34 above.

36. NMFS has violated 5 U.S.C. § 552(a)(3)(C) by failing to conduct a reasonable, legally adequate search for records responsive to EcoRights request. NMFS's search was inadequate because none of the documents NMFS initially released were from the OLE although EcoRights had specifically asked for OLE documents and EcoRights had reason to know that at least one OLE agent had responsive documents. After EcoRights submitted its appeal, NMFS released two emails, one apparently to an OLE agent and one apparently from an OLE agent. EcoRights makes these assumptions because the names of the sender and recipient have been redacted under Exemptions 6 and 7. The emails concern take of listed salmon and steelhead in the Yuba River. One of the emails indicates the OLE is likely to have more documents responsive to EcoRights' request, but NMFS failed to locate them because of its inadequate search.

**PRAYER FOR RELIEF**

WHEREFORE, EcoRights seeks the following relief:

a. A declaratory judgment pursuant to 5 U.S.C. § 552 declaring that NMFS violated FOIA by failing to provide the final determination for EcoRights' appeal in accordance with FOIA's statutory deadline;

b. A declaratory judgment that NMFS' failure to provide the appeal determination within the statutory deadline and produce non-exempt records promptly as required by FOIA constitutes illegal withholding of records;

c. A declaratory judgment pursuant to 5 U.S.C. § 552 that NMFS violated FOIA by: improperly withholding records that are not exempt from disclosure; failing to adequately explain how and why withheld information falls within a particular exemption; failing to adequately explain how disclosure would foreseeably harm interests protected by claimed exemptions; and failing to segregate and disclose non-exempt requested information;

1 d. A declaratory judgment that NMFS failed to perform a reasonable, legally adequate search for  
2 documents responsive to EcoRight's request;

3 e. An injunction pursuant to 5 U.S.C. § 552(a)(4)(B) ordering NMFS to: 1) conduct a  
4 reasonable, legally adequate search for records responsive to EcoRights' FOIA request within 20 days;  
5 2) produce all non-exempt records in NMFS' possession responsive to EcoRights FOIA request within  
6 30 days; and 3) provide EcoRights with a detailed, legally adequate explanation for the withholding of  
7 any information responsive to Ecorights FOIA request within 30 days;

8 f. An award of attorneys fees and costs to EcoRights pursuant to 5 U.S.C. § 552(a)(4)(E); and

9 g. Such other and further relief as this Court deems just and proper.

10 **DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

11 Based on EcoRights' knowledge to date, pursuant to Civil Local Rule 3-15, the undersigned  
12 certifies that, as of this date, other than the named parties, there is no such interest to report.

13  
14 Respectfully Submitted,

15 Dated: February 10, 2018

16  
17 By: Patricia Linn  
18 Patricia Linn  
19 *Counsel for Ecological Rights Foundation*  
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JS-CAND 44 (Rev. 06/17)

**CIVIL COVER SHEET**

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p><b>I. (a) PLAINTIFFS</b> Ecological Rights Foundation</p> <p><b>(b)</b> County of Residence of First Listed Plaintiff Humboldt <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p><b>(c)</b> Attorneys <i>(Firm Name, Address, and Telephone Number)</i> Patricia Linn, Law Office of Patricia Linn, 115 Oakdale Ave., Mill Valley, CA 94941 (415) 388-2303; additional attorney information is attached</p>	<p><b>DEFENDANTS</b> National Marine Fisheries Service</p> <p>County of Residence of First Listed Defendant <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p>
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<p><b>II. BASIS OF JURISDICTION</b> <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff    <input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input checked="" type="checkbox"/> 2 U.S. Government Defendant    <input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> </thead> <tbody> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </tbody> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

**IV. NATURE OF SUIT** *(Place an "X" in One Box Only)*

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
110 Insurance	<b>PERSONAL INJURY</b> 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury 362 Personal Injury -Medical Malpractice	<b>PERSONAL INJURY</b> 365 Personal Injury - Product Liability 367 Health Care/Pharmaceutical Personal Injury Product Liability 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability <b>PRISONER PETITIONS</b> <b>HABEAS CORPUS</b> 463 Alien Detainee 510 Motions to Vacate Sentence 530 General 535 Death Penalty <b>OTHER</b> 540 Mandamus & Other 550 Civil Rights 555 Prison Condition 560 Civil Detainee-Conditions of Confinement	625 Drug Related Seizure of Property 21 USC § 881 690 Other <b>LABOR</b> 710 Fair Labor Standards Act 720 Labor/Management Relations 740 Railway Labor Act 751 Family and Medical Leave Act 790 Other Labor Litigation 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> 462 Naturalization Application 465 Other Immigration Actions	422 Appeal 28 USC § 158 423 Withdrawal 28 USC § 157 <b>PROPERTY RIGHTS</b> 820 Copyrights 830 Patent 835 Patent-Abbreviated New Drug Application 840 Trademark <b>SOCIAL SECURITY</b> 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS-Third Party 26 USC § 7609	375 False Claims Act 376 Qui Tam (31 USC § 3729(a)) 400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced & Corrupt Organizations 480 Consumer Credit 490 Cable/Sat TV 850 Securities/Commodities/Exchange 890 Other Statutory Actions 891 Agricultural Acts 893 Environmental Matters 895 Freedom of Information Act 896 Arbitration 899 Administrative Procedure Act/Review or Appeal of Agency Decision 950 Constitutionality of State Statutes
120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment Of Veteran's Benefits 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excludes Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise	<b>CIVIL RIGHTS</b> 440 Other Civil Rights 441 Voting 442 Employment 443 Housing/Accommodations 445 Amer. w/Disabilities-Employment 446 Amer. w/Disabilities-Other 448 Education			<input checked="" type="checkbox"/> 895 Freedom of Information Act	
<b>REAL PROPERTY</b> 210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property					

**V. ORIGIN** *(Place an "X" in One Box Only)*

1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from Another District *(specify)*     6 Multidistrict Litigation-Transfer     8 Multidistrict Litigation-Direct File

**VI. CAUSE OF ACTION** Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*  
5 U.S.C. section 552  
Brief description of cause:  
violations of Freedom of Information Act

**VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P.    **DEMAND \$**    CHECK YES only if demanded in complaint:  
**JURY DEMAND:**    Yes     No

**VIII. RELATED CASE(S), IF ANY** *(See instructions):*    JUDGE    DOCKET NUMBER

**IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)**  
*(Place an "X" in One Box Only)*     SAN FRANCISCO/OAKLAND     SAN JOSE     EUREKA-MCKINLEYVILLE

DATE 02/10/2018    SIGNATURE OF ATTORNEY OF RECORD *Patricia Linn*

ADDITIONAL ATTORNEYS

Christopher Sproul (State Bar No. 126398)  
ENVIRONMENTAL ADVOCATES  
5135 Anza Street  
San Francisco, California 94121  
Telephone: (415) 533-3376  
Facsimile: (415) 358-5695  
Email: [csproul@enviroadvocates.com](mailto:csproul@enviroadvocates.com)

Fredric Evenson (State Bar No. 198059)  
Law Offices of Fredric Evenson  
109 Quarry Lane  
Santa Cruz, CA 95060  
Telephone: (831) 454-8216  
Facsimile: (415) 358-5695  
Email: [ecorights@earthlink.net](mailto:ecorights@earthlink.net)



**Ana Liza Malabanan - NOAA Federal**

---

**From:** Ana Liza Malabanan NOAA Federal  
**Sent:** Friday, February 23, 2018 3:16 PM  
**To:** Mark Graff NOAA Federal  
**Cc:** Lola Stith NOAA Affiliate; FOIA Office  
**Subject:** Fwd: GCNW Clearance for Final (FEMA Input) response to FOIA DOC NOAA 2016 001479  
**Attachments:** Summary.docx; Final FEMA Input Letter to Requester 2016 001479.doc; 2 05 2018 FEMA Withdrawal of Privilege Claims Email RE\_ EcoRights NOAA FOIA Referral FEMA FOIA 2017 FEFO 00888 Closed.pdf; NMFS FOIA Tasker Final w\_FEMA Input GC\_JH.pdf

Hi Mark,

Here is the FOIAonline case I left you the voicemail messages about. Please give me a call if you have any questions or need additional information (b)(5)

Thanks!

Ana Liza

Forwarded message

**From:** Ana Liza Malabanan - NOAA Federal <[ana.liza.malabanan@noaa.gov](mailto:ana.liza.malabanan@noaa.gov)>  
**Date:** Thu, Feb 22, 2018 at 9:39 AM  
**Subject:** Fwd: GCNW Clearance for Final (FEMA Input) response to FOIA DOC NOAA 2016 001479  
**To:** Laurie Beale NOAA Federal <[laurie.beale@noaa.gov](mailto:laurie.beale@noaa.gov)>  
**Cc:** Brittany Pugh NOAA Federal <[brittany.pugh@noaa.gov](mailto:brittany.pugh@noaa.gov)>

Hi Laurie,

Welcome back! Just following up on my voicemail message...please let me know if you have any questions/revisions (b)(5)

Thanks!

Ana Liza

Forwarded message

**From:** Ana Liza Malabanan - NOAA Federal <[ana.liza.malabanan@noaa.gov](mailto:ana.liza.malabanan@noaa.gov)>  
**Date:** Thu, Feb 15, 2018 at 1:47 PM  
**Subject:** GCNW Clearance for Final (FEMA Input) response to FOIA DOC NOAA 2016 001479  
**To:** Laurie Beale NOAA Federal <[laurie.beale@noaa.gov](mailto:laurie.beale@noaa.gov)>  
**Cc:** Brittany Pugh NOAA Federal <[brittany.pugh@noaa.gov](mailto:brittany.pugh@noaa.gov)>



Hi Laurie,

Sorry it's taken me so long to sort this out (b)(5)

Give me a call if you have any questions or would like additional information.

Thanks!

Ana Liza

Ana Liza S. Malabanan  
Freedom of Information Act (FOIA) Coordinator  
Information Services and Management Branch  
Operations, Management & Information Division  
NOAA Fisheries West Coast Region  
U.S. Department of Commerce  
Office: 562 980 4008





**RE: EcoRights NOAA FOIA Referral FEMA FOIA 2017-FEFO-00888 Closed**

**Rich, Paula** <Paula.Rich@fema.dhs.gov>  
To: Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov>

Mon, Feb 5, 2018 at 6:50 PM

(b)(5)

**From:** Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov>  
**Sent:** Monday, February 5, 2018 6:45:01 PM  
**To:** Rich, Paula  
**Cc:** Laurie Beale - NOAA Federal  
**Subject:** Re: RE: EcoRights NOAA FOIA Referral FEMA FOIA 2017-FEFO-00888 Closed

Hi Paula,

I am sending you an email instead of playing phone tag. Thanks for the response providing FEMA's release determination.

(b)(5)

(b)(5)

Thank you very much!

Ana Liza

On Wed, Jan 24, 2018 at 12:03 PM, Rich, Paula <Paula.Rich@fema.dhs.gov> wrote:

Hello, Ana Liza.

(b)(5)

Best,  
Paula

**From:** Fischer, John D  
**Sent:** Wednesday, January 24, 2018 3:01 PM  
**To:** Ana Liza Malabanan - NOAA Federal <[ana.liza.malabanan@noaa.gov](mailto:ana.liza.malabanan@noaa.gov)>  
**Cc:** Rich, Paula <[Paula.Rich@fema.dhs.gov](mailto:Paula.Rich@fema.dhs.gov)>; Neuschaefer, Eric <[eric.neuschaefer@fema.dhs.gov](mailto:eric.neuschaefer@fema.dhs.gov)>; FEMA-FOIA <[FEMA-FOIA@fema.dhs.gov](mailto:FEMA-FOIA@fema.dhs.gov)>  
**Subject:** RE: EcoRights NOAA FOIA Referral FEMA FOIA 2017-FEFO-00888 Closed  
**Importance:** High

Good Afternoon Ana Liza,

(b)(5)

With this we are administratively closing our case.

Thanks.

v/r,

*John Fischer*

Government Information Specialist

Information Management Division

Office of the Chief Administrative Officer (OCAO)

Federal Emergency Management Agency

U.S. Department of Homeland Security

500 C Street, 7<sup>th</sup> Floor

Washington, DC 20472

Desk: (202) 212-2230

Mobile (b)(6)

[john.fischer@fema.dhs.gov](mailto:john.fischer@fema.dhs.gov)

Ana Liza S. Malabanan  
Freedom of Information Act (FOIA) Coordinator  
Information Services and Management Branch  
Operations, Management & Information Division  
NOAA Fisheries West Coast Region  
U.S. Department of Commerce  
Office: 562-980-4008



(b) (5)

(b) (5)

February 15, 2018

**TASK MEMORANDUM FOR:** Lead FOIA Coordinator  
**FROM:** NOAA FOIA Office  
**SUBJECT:** Amended response to  
FOIA Request No. DOC-NOAA-2016-001479

I am forwarding a copy of the attached FOIA request for your attention. Please follow this procedure:

**1. Note the Time Period and Due Date:**

The search period date for this FOIA is **January 1, 2009 to July 21, 2016** or the start date of actual document search. In order to complete this request within the regulatory time-frame, please respond to the requester by **September 22, 2016**.

**2. Attach Completed FOIA Search Log(s) (See “Correspondence Other” in FO for template)**

Search every location that could reasonably contain responsive documents.

**3. Assemble Potentially Responsive Records:**

Note that potentially responsive records may include emails with attachments, final documents, draft documents, maps, shapefiles, raw data, handwritten notes, informal records, and electronic records.

**4. Produce Two Document Sets:**

Once assembled, produce two document-sets in electronic format. Mark each identical page from each document-set with a uniquely identifiable number. Maintain one set as an original set. The original documents must have no redactions. Maintain the original document set in an accessible repository for six years.

Use the second document-set to apply FOIA exemptions. **Annotate the FOIA exemptions next to, or over, each redaction.**

As you organize the potentially responsive documents, please identify documents or portions of documents that originated with another office, agency, or bureau. Please refer the documents, or request a consultation, as required by FOIA regulations.

**5. Summarize the FOIA Review:**

Please check **ALL** appropriate boxes.

Interim Response number **[NUMBER]** made on **[DATE]**

Amended Final Response incorporating FEMA Input

The NMFS FOIA office closed this request due to non-payment of fees, or requester's failure to respond to correspondence or,

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Responsive records in our possession can be released in their entirety.

Responsive records in our possession contain segregable exempted material and should be partially withheld. The applicable exemption is noted over all drawn redactions.

Responsive records in our possession contain exempted material and should be withheld in full. The applicable exemption is noted over all drawn redactions and/or listed in the response letter and index.

Responsive records in our possession belonging to another, office, bureau, or federal agency for disclosure determination(s) have been sent to that component for referral or consultation.

Responsive records in our possession are openly available to the public.

A reasonable search was conducted and no responsive records were located.

A foreseeable harm review and analysis was not applicable.

A foreseeable harm review and analysis was completed for documents containing entirely or partially withheld content. Reviewers determined that disclosure of withheld content would result in harm to an interest protected by the statutory exemption(s), or that disclosure is prohibited by law.

Check **all** exemptions that apply to this foreseeable harm review:

(b)(2) Agency Personnel Rules/Practices

(b)(3) Federal Law Prohibits Disclosure

(b)(4) Business Trade and Financial Information

(b)(5) Attorney Work Product/Attorney-Client Privilege/Deliberative Process

(b)(6) Personal Privacy Protection

(b)(7) Law Enforcement Purposes

**6. Verify the following items if a Final Response is being made:**

Admin Cost tab has been completed (or request is being closed as Failure to Pay Fee or Failure to Clarify Scope).

NMFS FOIA Liaison (or assistant) has been set as first reviewer in the Review tab.

The responsive records have been uploaded to FOIAonline (FO) and properly coded for release type (UR, RR, etc.).

Exemptions used have also been noted in FO next to each record (click the pencil icon).

A FORDEM or Bulk Upload memo is being used in place of the responsive records and has been uploaded to both the Records tab and Other Correspondence.

Search Logs have been properly filled out, signed, and uploaded to Other Correspondence (if search was conducted).

The Final Action Letter (FAL) contains an accurate count of the records being released and describes all exemption(s) being applied to the records.

Draft FAL is uploaded to Other Correspondence.



**7. Obtain Signatures to Verify Review:**

MALABANAN.ANA  
LIZA.S.1365888147

Digitally signed by  
MALABANAN.ANA  
LIZA.S.1365888147  
Date: 2018.02.15 13:44:57 08'00'

\_\_\_\_\_  
Lead Coordinator

\_\_\_\_\_  
Date

HORNOF.GERALD.F.1365857225  
D.F.1365857225

Digitally signed by  
HORNOF.GERALD.F.1365857225  
Date: 2018.02.22 14:03:59  
-08'00'

\_\_\_\_\_  
RO/LO Senior Official

\_\_\_\_\_  
Date

BEALE.LAURIE.KATHRYN.1  
365860234

Digitally signed by  
BEALE.LAURIE.KATHRYN.1365860234  
Date: 2018.02.22 13:14:00 -08'00'

\_\_\_\_\_  
\*General Counsel

\_\_\_\_\_  
Date

GC was consulted on this response, but did not review documents. GC has no legal objection assuming the information contained in this form is accurate.

GC was consulted and reviewed certain documents containing possible redactions and withholdings. GC has no legal objection to the agency's response for those specific documents.

**\* NOTE:** GC review is necessary for any FOIA release that is in litigation or is related to a request in litigation. However, GC signature is not necessary for full releases that do not involve litigation or the threat of litigation.

(b) (5)

**Khalid, Sulma (Contractor)**

---

**From:** Khalid, Sulma (Contractor)  
**Sent:** Monday, February 26, 2018 12:02 PM  
**To:** Graff, Mark (Federal); Arnold, Josephine (Federal); Strickland, Wayne  
**Cc:** Toland, Michael (Federal)  
**Subject:** FW: Follow up: Keys\_DOC OS 2018 000208  
**Attachments:** Keys\_DOC OS 2018 000208\_Dept Wide Tasker\_Request for FOIA Log Retention Statement.docx

Good Morning,

Please see the below follow-up e-mail and provide OPOG with a response at your earliest convenience (b)(5)

---

Regards,  
Sulma

---

**From:** Khalid, Sulma (Contractor)  
**Sent:** Thursday, January 18, 2018 8:51 AM  
**To:** Parsons, Bobbie (Federal) <bParsons@doc.gov>; Abello, Isabel <Isabel.Abello@trade.gov>; Graff, Mark (Federal) <Mark.Graff@noaa.gov>; Arnold, Josephine (Federal) <jarnold@mbda.gov>; Strickland, Wayne <WayneS@ntis.gov>  
**Subject:** Follow-up: Keys\_DOC-OS-2018-000208

Good Morning,

(b)(5)

- FOIA logs from 1999-2002.
- a brief written statement detailing your bureau's retention practices for FOIA logs

(b)(5)

(b)(5). If you have any questions or would like to discuss further, please feel free to contact me at [skhalid@doc.gov](mailto:skhalid@doc.gov) or x7432.

Regards,

**Sulma Khalid**  
**FOIA/PA Analyst (Contractor)**  
**U.S. Department of Commerce**  
**Office of Privacy and Open Government**  
**Phone Number: (202) 482-7432**  
**Email: [skhalid@doc.gov](mailto:skhalid@doc.gov)**



November 16, 2017

MEMORANDUM FOR:           Bobbie Parsons, IOS                           Vernon E. Curry, CEN  
                                    Pam Moulder, ESA                           Stephen Kong, EDA  
                                    Grace Agyekum, BIS                       Victor Powers, ITA  
                                    Josephine Arnold, MBDA               Catherine Fletcher, NIST  
                                    Wayne Strickland, NTIS               Stacy Cheney, NTIA  
                                    Mark Graff, NOAA                       Jennifer Piel, OIG  
                                    Jamie Boston, PTO                       Dondi Staunton, BEA  
                                    Joselyn Bingham, OCIO

FROM:                        Michael J. Toland, Ph.D.  
                                    Deputy Chief Freedom of Information Act (FOIA) Officer

SUBJECT:                    FOIA Requests for Older FOIA Logs  
                                    Clay Keys DOC-OS-2018-000208

The U.S. Department of Commerce’s FOIA Office, Office of Privacy and Open Government (“OPOG”) is issuing this memorandum in response to a FOIA request seeking the agency’s FOIA logs from 1999-2002.

Pursuant to the disposition instructions proffered in the General Records Schedule § 4.2, FOIA logs are to be maintained as follows: “Temporary. Destroy or delete 5 years after date of last entry, final adjudication by courts, or final action by agency, (such as downgrading, transfer, or destruction of related classified documents, release of information from controlled unclassified status), as may apply, whichever is later; but longer retention is authorized if required for business use.”<sup>1</sup>

The OPOG has received similar requests in the past seeking access to older FOIA logs that have most likely been destroyed pursuant to a records retention schedule. To increase our efficiency in processing requests for older FOIA Logs, OPOG is requesting that all Agency components submit a brief written statement detailing your bureau’s retention practices for FOIA logs. If your practice differs from that proffered in the General Records Schedule, please cite to your policy or procedure governing FOIA log retention. If your bureau does not have such a policy, you may cite to the GSR, as outlined above. Although these statements cannot be used to process the present request for old FOIA logs, we intend to use these statements to support our “no record” responses for future requests seeking older FOIA logs.

In order to continue processing the present request, please conduct a search for the following:

“Copies of FOIA Logs from 1999-2002.”

---

<sup>1</sup> GRS 4.2: Accounting for and control of access to classified and controlled unclassified records and records requested under the FOIA, PA and MDR (DAA-GRS-2016-000200004). (available at: <https://www.archives.gov/files/records-mgmt/grs/grs04-2.pdf>)

I am sending this FOIA request to you for your attention, since your office has been identified as an office that may have responsive records. Please take the following actions:

- Please notify our office if you know of any other bureau/office that may also have responsive documents.
- Conduct a search for responsive records.
  - You must search every place that could reasonably be expected to have responsive documents.
  - The date range for records that may be responsive to this request is FOIA logs from **1999-2002**.
  - Please provide a response within 10 business days from the date of this letter, on December 1, 2017.
- If you identify any records:
  - Please provide electronic copies of the records to me as soon as possible.
    - Upload documents in FOIAonline following the instructions in the attachment entitled “Instructions for uploading documents into FOIAonline.”
  - Identify whether you believe the records, or any portions thereof, should be withheld from disclosure.
    - Attached is a copy of FOIA Exemptions to assist you with making withholding determinations.
    - Sulma Khalid is also available to answer any questions you may have about FOIA Exemptions or the FOIA request by phone at 202-482-7432, or by email at [skhalid@doc.gov](mailto:skhalid@doc.gov).
  - Sign and date the attached Certification of Search.
  - Return the completed Certification of Search along with the responsive records to my office.
- If you do not identify any responsive records:
  - Check the box “My Office has found no responsive document” on the attached Certification of Search.
  - Sign and date the Certification of Search.
  - Return the completed Certification of Search to my office.

#### Attachments

1. Instructions for uploading documents into FOIAonline
2. Certification of Search
3. FOIA Exemptions

## **Instructions for uploading documents into FOIAonline**

A signed Certification of Search should be uploaded separately in Case File/Correspondence/Other. Only the Certification of Search signed by the FOIA Officer/Senior Official from the Bureau should be uploaded. Please do not upload Sub-Agency Taskers.

Responsive documents are to be uploaded in Case File/Records. Please identify whether you believe the document, or any portion of it, should be withheld from disclosure. You must include the FOIA exemption next to any information you identify as protected from disclosure.

- A clean copy and redacted copy shall be uploaded on FOIAonline.
- The clean copy will be uploaded with an UU (Unredacted – Unreleaseable) Publish Option.
- Redacted copy will be uploaded and grouped by exemptions applied, i.e., RR (Redacted-Releaseable) - (b)6, (b)5 (please include the privilege used).
- The format to be used for “Title” of uploaded documents: ITA - 24 documents, RR, (b)4, (b)6. (Bureau [not sub agency] - number of documents - Publish Options – exemptions).
- For documents that are completely withheld UU-Unredacted – Unreleaseable; and RU-Redacted-Unreleaseable (you must apply an Exemption in the Action Column).
- For referred documents use the following format for “Title:” 15 documents refer to NTIA.

**Certification of Search for FOIA Request No. DOC-OS-2018-000208**

THIS RESPONSE MUST BE SIGNED BY A SENIOR OFFICIAL IN YOUR OFFICE.

Please contact me if you have any questions about the scope of this request or the FOIA exemptions, at 202-482-3842.

Please sign this sheet of paper and check all of the appropriate boxes

- Uploaded in FOIAonline are all documents in the possession of my office which are responsive and can be released in entirety.
- Uploaded in FOIAonline are all documents within the possession of my office which are responsive and we have found reason to partially withhold. One clean copy and one redacted copy have been uploaded.
- Uploaded in FOIAonline are all documents within the possession of my office which are responsive and we have found reason to withhold entirely, each document to be withheld entirely has been noted.
- Uploaded in FOIAonline are all documents within the possession of my office which are responsive and must be referred to the originating office, bureau, or federal agency for disclosure determinations.
- My office has found no responsive documents.
- All disclosure determinations have been made by the Commerce Office that originated or has control of the documents
- A foreseeable harm review and analysis has been completed for all withheld documents and portions of documents and it has been determined that disclosure of the withheld material would result in harm to an interest protected by the asserted exemption or that disclosure is prohibited by law. Name of person most knowledgeable with the issue of foreseeable harm:  
.

- Interim response
- Final response

Signature (Senior Official)

Date

## FOIA Exemptions

**Exemption 1:** classified national defense and foreign relations information;

**Exemption 2:** internal agency personnel rules and practices;

**Exemption 3:** information that is prohibited from disclosure by another federal law;

**Exemption 4:** trade secrets and other confidential or privileged commercial or financial information;

**Exemption 5:** inter-agency or intra-agency communications that are protected by legal privileges, including the deliberative process, attorney-client and attorney work-product privileges;

**Exemption 6:** information involving matters of personal privacy;

**Exemption 7:** records or information compiled for law enforcement purposes, to the extent that the production of those records:

Exemption (7)(A) could reasonably be expected to interfere with enforcement proceedings,

Exemption (7)(B) would deprive a person of a right to a fair trial or an impartial adjudication,

Exemption (7)(C) could reasonably be expected to constitute an unwarranted invasion of personal privacy,

Exemption (7)(D) could reasonably be expected to disclose the identity of and/or information provided by a confidential source,

Exemption (7)(E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or

Exemption (7)(F) could reasonably be expected to endanger the life or physical safety of any individual;

**Exemption 8:** information relating to the supervision of financial institutions; and

**Exemption 9:** geological information on wells.





**Lola Stith - NOAA Affiliate**

---

**From:** Lola Stith NOAA Affiliate  
**Sent:** Monday, February 26, 2018 1:15 PM  
**To:** Mark Graff NOAA Federal  
**Cc:** Velna Bullock NOAA Federal  
**Subject:** Re: FW: Follow up: Pangelinan\_DOC OS 2018 000125  
**Attachments:** NOAA Response\_Pangelinan\_DOC OS 2018 000125\_Search Tasker.docx

Hi Mark (b)(5) Please find the completed tasker attached for your signature.

R/  
Lola

On Mon, Feb 26, 2018 at 11:39 AM, Mark Graff NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)> wrote:

Hi Guys,

DOC is following up on this one (b)(5)

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
[\(301\) 628 5658](tel:3016285658) (O)  
(b)(6) (C)

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Forwarded message

**From:** Mark Graff - NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)>  
**Date:** Mon, Feb 26, 2018 at 11:38 AM  
**Subject:** Re: FW: Follow up: Pangelinan\_DOC OS 2018 000125  
**To:** "Khalid, Sulma (Contractor)" <[SKhalid@doc.gov](mailto:SKhalid@doc.gov)>  
**Cc:** "Toland, Michael (Federal)" <[MToland@doc.gov](mailto:MToland@doc.gov)>

Hello Sulma,

(b)(5)

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
[\(301\) 628 5658](tel:3016285658) (O)  
(b)(6) (C)

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On Mon, Feb 26, 2018 at 11:34 AM, Khalid, Sulma (Contractor) <[SKhalid@doc.gov](mailto:SKhalid@doc.gov)> wrote:

Hello Mark,

Any update on this case? As you know, NOAA was tasked back in November.

Thanks,

Sulma

**From:** Mark Graff NOAA Federal [mailto:[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)]  
**Sent:** Tuesday, February 06, 2018 3:45 PM  
**To:** Khalid, Sulma (Contractor) <[SKhalid@doc.gov](mailto:SKhalid@doc.gov)>  
**Cc:** Parsons, Bobbie (Federal) <[bParsons@doc.gov](mailto:bParsons@doc.gov)>; Toland, Michael (Federal) <[MToland@doc.gov](mailto:MToland@doc.gov)>  
**Subject:** Re: FW: Follow up: Pangelinan\_DOC OS 2018 000125

Hello Sulma,

I apologize for the delay (b)(5)

Mark H. Graff

FOIA Officer/Bureau Chief Privacy Officer (BCPO)

National Oceanic and Atmospheric Administration

[\(301\) 628 5658](tel:3016285658) (O)

(b)(6) (C)

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On Tue, Feb 6, 2018 at 11:24 AM, Khalid, Sulma (Contractor) <[SKhalid@doc.gov](mailto:SKhalid@doc.gov)> wrote:

Good Morning,

(b)(5)

. If you have any questions or would like to discuss further, feel free to contact me at x7432 or [skhalid@doc.gov](mailto:skhalid@doc.gov).

Thank you,

Sulma

---

**From:** Khalid, Sulma (Contractor)

**Sent:** Thursday, January 18, 2018 8:17 AM

**To:** Parsons, Bobbie (Federal) <[bParsons@doc.gov](mailto:bParsons@doc.gov)>; Abello, Isabel <[Isabel.Abello@trade.gov](mailto:Isabel.Abello@trade.gov)>; Graff, Mark (Federal) <[Mark.Graff@noaa.gov](mailto:Mark.Graff@noaa.gov)>; Arnold, Josephine (Federal) <[jarnold@mbda.gov](mailto:jarnold@mbda.gov)>; Strickland, Wayne <[WayneS@ntis.gov](mailto:WayneS@ntis.gov)>

**Subject:** Follow up: Pangelinan\_DOC OS 2018 000125

Good Morning,

(b)(5)

1. For any direct correspondences between the Department and Patrick J. Morrisey in his capacity as:
  - a. West Virginia Attorney General (January 2013 present)
  - b. Private citizen (April 1990 present),
  - c. Congressional staffer (1999 2004),
  - d. Partner at Sidley Austin LLP (2004 2010); or
  - e. Partner at King & Spalding LLP (2010 2013).
  
2. Requester amended his request to limit the scope of the search to the Offices at the Assistant Secretary level and above, specifically:
  - a. Secretary
  - b. Deputy Secretary
  - c. Assistant Secretary for Legislative and Intergovernmental Affairs
  - d. Inspector General
  - e. General Counsel
  - f. Director of the Office of Policy and Strategic Planning
  - g. Executive Secretariat
  - h. Director of the Office of Public Affairs
  - i. NOAA Under Secretary
  - j. Under Secretary for International Trade
  - k. Under Secretary for Industry and Security
  - l. Under Secretary for Economic Affairs
  - m. Under Secretary for Standards and Technology
  - n. Under Secretary for Intellectual Property
  - o. Assistant Secretary for Economic Development
  - p. Minority Business Development Agency National Director

(b)(5)

. If you have any questions or would like to discuss further, please feel free to contact me at [skhalid@doc.gov](mailto:skhalid@doc.gov) or x7432.

The FOIA carries with it a mandatory 20 business day deadline. As this request is now 37 days old, your prompt attention to this matter is greatly appreciated.

Regards,

**Sulma Khalid**

**FOIA/PA Analyst (Contractor)**

**U.S. Department of Commerce**

**Office of Privacy and Open Government**

**Phone Number: [\(202\) 482-7432](tel:(202)482-7432)**

**Email: [skhalid@doc.gov](mailto:skhalid@doc.gov)**

Lola Stith

Contractor - The Ambit Group, LLC

NOAA Office of the Chief Information Officer (OCIO)

(c (b)(6) [REDACTED])

[lola.m.stith@noaa.gov](mailto:lola.m.stith@noaa.gov)



November 29, 2017

MEMORANDUM FOR:           Bobbie Parsons, IOS                               Vernon E. Curry, CEN  
                                  Pam Moulder, ESA                               Stephen Kong, EDA  
                                  Grace Agyekum, BIS                             Victor Powers, ITA  
                                  Josephine Arnold, MBDA                     Catherine Fletcher, NIST  
                                  Wayne Strickland, NTIS                     Stacy Cheney, NTIA  
                                  **Mark Graff, NOAA**                             Jennifer Piel, OIG  
                                  Jamie Boston, PTO

FROM:                           Michael J. Toland, Ph.D.  
                                  Deputy Chief Freedom of Information Act (FOIA) Officer

SUBJECT:                     Amended FOIA Request - DOC-OS-2018-000125

The U.S. Department of Commerce's FOIA Office, Office of Privacy and Open Government, received a request seeking:

1. For any direct correspondences between the Department and Patrick J. Morrissey in his capacity as:
  - a. West Virginia Attorney General (January 2013-present)
  - b. Private citizen (April 1990-present),
  - c. Congressional staffer (1999-2004),
  - d. Partner at Sidley Austin LLP (2004-2010); or
  - e. Partner at King & Spalding LLP (2010-2013).
  
2. Requester amended his request to limit the scope of the search to the Offices at the Assistant Secretary level and above, specifically:
  - a. Secretary
  - b. Deputy Secretary
  - c. Assistant Secretary for Legislative and Intergovernmental Affairs
  - d. Inspector General
  - e. General Counsel
  - f. Director of the Office of Policy and Strategic Planning
  - g. Executive Secretariat
  - h. Director of the Office of Public Affairs
  - i. NOAA Under Secretary
  - j. Under Secretary for International Trade
  - k. Under Secretary for Industry and Security
  - l. Under Secretary for Economic Affairs
  - m. Under Secretary for Standards and Technology
  - n. Under Secretary for Intellectual Property
  - o. Assistant Secretary for Economic Development
  - p. Minority Business Development Agency National Director

I am sending this FOIA request to you for your attention, since your office has been identified as possibly having records that may be responsive to the request. Please take the following actions:

- Please notify our office if you know of any other bureau/office that may also have responsive documents.
- Conduct a search for responsive records.
  - You must search every place that could reasonably be expected to have responsive documents.
  - The date range for records that may be responsive to this request are specific to the capacity in which the subject of the record was working. Please see above.
- If you identify any records:
  - Please provide electronic copies of the records to me within ten (10) business days of the date of this letter—on or before **December 13, 2017**.
    - Upload documents in FOIAonline following the instructions in the attachment entitled “Instructions for uploading documents into FOIAonline.”
  - Identify whether you believe the records, or any portions thereof, should be withheld from disclosure.
    - Attached is a copy of FOIA Exemptions to assist you with making withholding determinations.
    - Sulma Khalid is also available to answer any questions you may have about FOIA Exemptions or the FOIA request by phone at 202-482-7432, or by email at [skhalid@doc.gov](mailto:skhalid@doc.gov).
  - Sign and date the attached Certification of Search.
  - Return the completed Certification of Search along with the responsive records to my office.
- If you do not identify any responsive records:
  - Check the box “My Office has found no responsive document” on the attached Certification of Search.
  - Sign and date the Certification of Search.
  - Return the completed Certification of Search to my office.

Attachments

1. Instructions for uploading documents into FOIAonline
2. Certification of Search
3. FOIA Exemptions



## **Instructions for uploading documents into FOIAonline**

A signed Certification of Search should be uploaded separately in Case File/Correspondence/Other. Only the Certification of Search signed by the FOIA Officer/Senior Official from the Bureau should be uploaded. Please do not upload Sub-Agency Taskers.

Responsive documents are to be uploaded in Case File/Records. Please identify whether you believe the document, or any portion of it, should be withheld from disclosure. You must include the FOIA exemption next to any information you identify as protected from disclosure.

- A clean copy and redacted copy shall be uploaded on FOIAonline.
- The clean copy will be uploaded with an UU (Unredacted – Unreleaseable) Publish Option.
- Redacted copy will be uploaded and grouped by exemptions applied, i.e., RR (Redacted-Releaseable) - (b)6, (b)5 (please include the privilege used).
- The format to be used for “Title” of uploaded documents: ITA - 24 documents, RR, (b)4, (b)6. (Bureau [not sub agency] - number of documents - Publish Options – exemptions).
- For documents that are completely withheld UU-Unredacted – Unreleaseable; and RU-Redacted-Unreleaseable (you must apply an Exemption in the Action Column).
- For referred documents use the following format for “Title:” 15 documents refer to NTIA.

**Certification of Search for FOIA Request No. DOC-OS-2018-000125**

THIS RESPONSE MUST BE SIGNED BY A SENIOR OFFICIAL IN YOUR OFFICE.

Please contact me if you have any questions about the scope of this request or the FOIA exemptions, at 202-482-7432.

Please sign this sheet of paper and check all of the appropriate boxes

- Uploaded in FOIAonline are all documents in the possession of my office which are responsive and can be released in entirety.
- Uploaded in FOIAonline are all documents within the possession of my office which are responsive and we have found reason to partially withhold. One clean copy and one redacted copy have been uploaded.
- Uploaded in FOIAonline are all documents within the possession of my office which are responsive and we have found reason to withhold entirely, each document to be withheld entirely has been noted.
- Uploaded in FOIAonline are all documents within the possession of my office which are responsive and must be referred to the originating office, bureau, or federal agency for disclosure determinations.

**X** My office has found no responsive documents.

All disclosure determinations have been made by the Commerce Office that originated or has control of the documents

A foreseeable harm review and analysis has been completed for all withheld documents and portions of documents and it has been determined that disclosure of the withheld material would result in harm to an interest protected by the asserted exemption or that disclosure is prohibited by law. Name of person most knowledgeable with the issue of foreseeable harm:

.

Interim response                      **X**      Final response

2/26/18

Signature (Senior Official)

Date

## FOIA Exemptions

**Exemption 1:** classified national defense and foreign relations information;

**Exemption 2:** internal agency personnel rules and practices;

**Exemption 3:** information that is prohibited from disclosure by another federal law;

**Exemption 4:** trade secrets and other confidential or privileged commercial or financial information;

**Exemption 5:** inter-agency or intra-agency communications that are protected by legal privileges, including the deliberative process, attorney-client and attorney work-product privileges;

**Exemption 6:** information involving matters of personal privacy;

**Exemption 7:** records or information compiled for law enforcement purposes, to the extent that the production of those records:

Exemption (7)(A) could reasonably be expected to interfere with enforcement proceedings,

Exemption (7)(B) would deprive a person of a right to a fair trial or an impartial adjudication,

Exemption (7)(C) could reasonably be expected to constitute an unwarranted invasion of personal privacy,

Exemption (7)(D) could reasonably be expected to disclose the identity of and/or information provided by a confidential source,

Exemption (7)(E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or

Exemption (7)(F) could reasonably be expected to endanger the life or physical safety of any individual;

**Exemption 8:** information relating to the supervision of financial institutions; and

**Exemption 9:** geological information on wells.

**Mark Graff - NOAA Federal**

---

**From:** Mark Graff NOAA Federal  
**Sent:** Monday, February 26, 2018 1:33 PM  
**To:** Khalid, Sulma (Contractor)  
**Cc:** Arnold, Josephine (Federal); Strickland, Wayne; Toland, Michael (Federal)  
**Subject:** Re: FW: Follow up: Keys\_DOC OS 2018 000208  
**Attachments:** Keys\_DOC OS 2018 000208\_Dept Wide Tasker\_Request for FOIA Log Retention Statement mhg.pdf

Hi Sulma,

(b)(5) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

A copy of the signed tasker is attached for reference. Lola will send the confirmation for tasking closure as usual.

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628 5658 (O)  
(b)(6) [REDACTED] (C)

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On Mon, Feb 26, 2018 at 12:02 PM, Khalid, Sulma (Contractor) <[SKhalid@doc.gov](mailto:SKhalid@doc.gov)> wrote:

Good Morning,

Please see the below follow up e mail and provide OPOG with a response at your earliest convenience. This case is now 71 days old, and your bureaus have neither uploaded a tasker nor responded to my previous follow up e mail.

Regards,

Sulma

---

**From:** Khalid, Sulma (Contractor)

**Sent:** Thursday, January 18, 2018 8:51 AM

**To:** Parsons, Bobbie (Federal) <[bParsons@doc.gov](mailto:bParsons@doc.gov)>; Abello, Isabel <[Isabel.Abello@trade.gov](mailto:Isabel.Abello@trade.gov)>; Graff, Mark (Federal) <[Mark.Graff@noaa.gov](mailto:Mark.Graff@noaa.gov)>; Arnold, Josephine (Federal) <[jarnold@mbda.gov](mailto:jarnold@mbda.gov)>; Strickland, Wayne <[WayneS@ntis.gov](mailto:WayneS@ntis.gov)>

**Subject:** Follow up: Keys\_DOC OS 2018 000208

Good Morning,

**(b)(5)**

- FOIA logs from 1999-2002.
- a brief written statement detailing your bureau's retention practices for FOIA logs

**(b)(5)**

If you have any questions or would like to discuss further, please feel free to contact me at [skhalid@doc.gov](mailto:skhalid@doc.gov) or x7432.

Regards,

**Sulma Khalid**

**FOIA/PA Analyst (Contractor)**

**U.S. Department of Commerce**

**Office of Privacy and Open Government**

**Phone Number:** [\(202\) 482-7432](tel:(202)482-7432)

**Email:** [skhalid@doc.gov](mailto:skhalid@doc.gov)



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Chief Financial Officer and**  
**Assistant Secretary for Administration**  
Washington, D.C. 20230

November 16, 2017

MEMORANDUM FOR:           Bobbie Parsons, IOS                           Vernon E. Curry, CEN  
                                  Pam Moulder, ESA                           Stephen Kong, EDA  
                                  Grace Agyekum, BIS                       Victor Powers, ITA  
                                  Josephine Arnold, MBDA               Catherine Fletcher, NIST  
                                  Wayne Strickland, NTIS               Stacy Cheney, NTIA  
                                  Mark Graff, NOAA                       Jennifer Piel, OIG  
                                  Jamie Boston, PTO                       Dondi Staunton, BEA  
                                  Joselyn Bingham, OCIO

FROM:                       Michael J. Toland, Ph.D.  
                                  Deputy Chief Freedom of Information Act (FOIA) Officer

SUBJECT:                   FOIA Requests for Older FOIA Logs  
                                  Clay Keys DOC-OS-2018-000208

The U.S. Department of Commerce’s FOIA Office, Office of Privacy and Open Government (“OPOG”) is issuing this memorandum in response to a FOIA request seeking the agency’s FOIA logs from 1999-2002.

Pursuant to the disposition instructions proffered in the General Records Schedule § 4.2, FOIA logs are to be maintained as follows: “Temporary. Destroy or delete 5 years after date of last entry, final adjudication by courts, or final action by agency, (such as downgrading, transfer, or destruction of related classified documents, release of information from controlled unclassified status), as may apply, whichever is later; but longer retention is authorized if required for business use.”<sup>1</sup>

The OPOG has received similar requests in the past seeking access to older FOIA logs that have most likely been destroyed pursuant to a records retention schedule. To increase our efficiency in processing requests for older FOIA Logs, OPOG is requesting that all Agency components submit a brief written statement detailing your bureau’s retention practices for FOIA logs. If your practice differs from that proffered in the General Records Schedule, please cite to your policy or procedure governing FOIA log retention. If your bureau does not have such a policy, you may cite to the GSR, as outlined above. Although these statements cannot be used to process the present request for old FOIA logs, we intend to use these statements to support our “no record” responses for future requests seeking older FOIA logs.

In order to continue processing the present request, please conduct a search for the following:

“Copies of FOIA Logs from 1999-2002.”

---

<sup>1</sup> GRS 4.2: Accounting for and control of access to classified and controlled unclassified records and records requested under the FOIA, PA and MDR (DAA-GRS-2016-000200004). (available at: <https://www.archives.gov/files/records-mgmt/grs/grs04-2.pdf>)

I am sending this FOIA request to you for your attention, since your office has been identified as an office that may have responsive records. Please take the following actions:

- Please notify our office if you know of any other bureau/office that may also have responsive documents.
- Conduct a search for responsive records.
  - You must search every place that could reasonably be expected to have responsive documents.
  - The date range for records that may be responsive to this request is FOIA logs from **1999-2002**.
  - Please provide a response within 10 business days from the date of this letter, on December 1, 2017.
- If you identify any records:
  - Please provide electronic copies of the records to me as soon as possible.
    - Upload documents in FOIAonline following the instructions in the attachment entitled “Instructions for uploading documents into FOIAonline.”
  - Identify whether you believe the records, or any portions thereof, should be withheld from disclosure.
    - Attached is a copy of FOIA Exemptions to assist you with making withholding determinations.
    - Sulma Khalid is also available to answer any questions you may have about FOIA Exemptions or the FOIA request by phone at 202-482-7432, or by email at [skhalid@doc.gov](mailto:skhalid@doc.gov).
  - Sign and date the attached Certification of Search.
  - Return the completed Certification of Search along with the responsive records to my office.
- If you do not identify any responsive records:
  - Check the box “My Office has found no responsive document” on the attached Certification of Search.
  - Sign and date the Certification of Search.
  - Return the completed Certification of Search to my office.

#### Attachments

1. Instructions for uploading documents into FOIAonline
2. Certification of Search
3. FOIA Exemptions



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Responsive documents are to be uploaded in Case File/Records. Please identify whether you believe the document, or any portion of it, should be withheld from disclosure. You must include the FOIA exemption next to any information you identify as protected from disclosure.

- A clean copy and redacted copy shall be uploaded on FOIAonline.
- The clean copy will be uploaded with an UU (Unredacted – Unreleaseable) Publish Option.
- Redacted copy will be uploaded and grouped by exemptions applied, i.e., RR (Redacted-Releaseable) - (b)6, (b)5 (please include the privilege used).
- The format to be used for “Title” of uploaded documents: ITA - 24 documents, RR, (b)4, (b)6. (Bureau [not sub agency] - number of documents - Publish Options – exemptions).
- For documents that are completely withheld UU-Unredacted – Unreleaseable; and RU-Redacted-Unreleaseable (you must apply an Exemption in the Action Column).
- For referred documents use the following format for “Title:” 15 documents refer to NTIA.

**Certification of Search for FOIA Request No. DOC-OS-2018-000208**

THIS RESPONSE MUST BE SIGNED BY A SENIOR OFFICIAL IN YOUR OFFICE.

Please contact me if you have any questions about the scope of this request or the FOIA exemptions, at 202-482-3842.

Please sign this sheet of paper and check all of the appropriate boxes

- Uploaded in FOIAonline are all documents in the possession of my office which are responsive and can be released in entirety.
- Uploaded in FOIAonline are all documents within the possession of my office which are responsive and we have found reason to partially withhold. One clean copy and one redacted copy have been uploaded.
- Uploaded in FOIAonline are all documents within the possession of my office which are responsive and we have found reason to withhold entirely, each document to be withheld entirely has been noted.
- Uploaded in FOIAonline are all documents within the possession of my office which are responsive and must be referred to the originating office, bureau, or federal agency for disclosure determinations.
- My office has found no responsive documents.
- All disclosure determinations have been made by the Commerce Office that originated or has control of the documents
- A foreseeable harm review and analysis has been completed for all withheld documents and portions of documents and it has been determined that disclosure of the withheld material would result in harm to an interest protected by the asserted exemption or that disclosure is prohibited by law. Name of person most knowledgeable with the issue of foreseeable harm:  
.

- Interim response                       Final response

**GRAFF.MARK.HYRUM.1  
514447892**

Digitally signed by GRAFF.MARK.HYRUM.1514447892  
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI,  
ou=OTHER, cn=GRAFF.MARK.HYRUM.1514447892  
Date: 2018.02.26 13:28:28 -05'00'

Signature (Senior Official)

Date

## FOIA Exemptions

**Exemption 1:** classified national defense and foreign relations information;

**Exemption 2:** internal agency personnel rules and practices;

**Exemption 3:** information that is prohibited from disclosure by another federal law;

**Exemption 4:** trade secrets and other confidential or privileged commercial or financial information;

**Exemption 5:** inter-agency or intra-agency communications that are protected by legal privileges, including the deliberative process, attorney-client and attorney work-product privileges;

**Exemption 6:** information involving matters of personal privacy;

**Exemption 7:** records or information compiled for law enforcement purposes, to the extent that the production of those records:

Exemption (7)(A) could reasonably be expected to interfere with enforcement proceedings,

Exemption (7)(B) would deprive a person of a right to a fair trial or an impartial adjudication,

Exemption (7)(C) could reasonably be expected to constitute an unwarranted invasion of personal privacy,

Exemption (7)(D) could reasonably be expected to disclose the identity of and/or information provided by a confidential source,

Exemption (7)(E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or

Exemption (7)(F) could reasonably be expected to endanger the life or physical safety of any individual;

**Exemption 8:** information relating to the supervision of financial institutions; and

**Exemption 9:** geological information on wells.



**Mark Graff - NOAA Federal**

---

**From:** Mark Graff NOAA Federal  
**Sent:** Monday, February 26, 2018 1:33 PM  
**To:** Lola Stith NOAA Affiliate  
**Subject:** Fwd: FW: Follow up: Keys\_DOC OS 2018 000208  
**Attachments:** Keys\_DOC OS 2018 000208\_Dept Wide Tasker\_Request for FOIA Log Retention Statement mhg.pdf

Hey Lola,

Can you close this DOC tasking? I already signed the tasker and notified Sulma.

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628 5658 (O)  
(b)(6) (C)

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Forwarded message

**From:** Mark Graff - NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)>  
**Date:** Mon, Feb 26, 2018 at 1:32 PM  
**Subject:** Re: FW: Follow up: Keys\_DOC OS 2018 000208  
**To:** "Khalid, Sulma (Contractor)" <[SKhalid@doc.gov](mailto:SKhalid@doc.gov)>  
**Cc:** "Arnold, Josephine (Federal)" <[jarnold@mbda.gov](mailto:jarnold@mbda.gov)>, "Strickland, Wayne" <[WayneS@ntis.gov](mailto:WayneS@ntis.gov)>, "Toland, Michael (Federal)" <[MToland@doc.gov](mailto:MToland@doc.gov)>

Hi Sulma,

(b)(5)

[Redacted]

[Redacted]

A copy of the signed tasker is attached for reference. Lola will send the confirmation for tasking closure as usual.

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
[\(301\) 628 5658](tel:3016285658) (O)  
**(b)(6)** (C)

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On Mon, Feb 26, 2018 at 12:02 PM, Khalid, Sulma (Contractor) <[SKhalid@doc.gov](mailto:SKhalid@doc.gov)> wrote:

Good Morning,

Please see the below follow up e mail and provide OPOG with a response at your earliest convenience. This case is now 71 days old, and your bureaus have neither uploaded a tasker nor responded to my previous follow up e mail.

Regards,

Sulma

---

**From:** Khalid, Sulma (Contractor)  
**Sent:** Thursday, January 18, 2018 8:51 AM  
**To:** Parsons, Bobbie (Federal) <[bParsons@doc.gov](mailto:bParsons@doc.gov)>; Abello, Isabel <[Isabel.Abello@trade.gov](mailto:Isabel.Abello@trade.gov)>; Graff, Mark (Federal) <[Mark.Graff@noaa.gov](mailto:Mark.Graff@noaa.gov)>; Arnold, Josephine (Federal) <[jarnold@mbda.gov](mailto:jarnold@mbda.gov)>; Strickland, Wayne <[WayneS@ntis.gov](mailto:WayneS@ntis.gov)>  
**Subject:** Follow up: Keys\_DOC OS 2018 000208

Good Morning,

**(b)(5)**

- FOIA logs from 1999-2002.
- a brief written statement detailing your bureau's retention practices for FOIA logs

(b)(5)

. If you have any questions or would like to discuss further, please feel free to contact me at [skhalid@doc.gov](mailto:skhalid@doc.gov) or x7432.

Regards,

**Sulma Khalid**

**FOIA/PA Analyst (Contractor)**

**U.S. Department of Commerce**

**Office of Privacy and Open Government**

**Phone Number: [\(202\) 482-7432](tel:(202)482-7432)**

**Email: [skhalid@doc.gov](mailto:skhalid@doc.gov)**



November 16, 2017

MEMORANDUM FOR:           Bobbie Parsons, IOS                               Vernon E. Curry, CEN  
                                  Pam Moulder, ESA                               Stephen Kong, EDA  
                                  Grace Agyekum, BIS                             Victor Powers, ITA  
                                  Josephine Arnold, MBDA                       Catherine Fletcher, NIST  
                                  Wayne Strickland, NTIS                       Stacy Cheney, NTIA  
                                  Mark Graff, NOAA                             Jennifer Piel, OIG  
                                  Jamie Boston, PTO                             Dondi Staunton, BEA  
                                  Joselyn Bingham, OCIO

FROM:                        Michael J. Toland, Ph.D.  
                                  Deputy Chief Freedom of Information Act (FOIA) Officer

SUBJECT:                    FOIA Requests for Older FOIA Logs  
                                  Clay Keys DOC-OS-2018-000208

The U.S. Department of Commerce’s FOIA Office, Office of Privacy and Open Government (“OPOG”) is issuing this memorandum in response to a FOIA request seeking the agency’s FOIA logs from 1999-2002.

Pursuant to the disposition instructions proffered in the General Records Schedule § 4.2, FOIA logs are to be maintained as follows: “Temporary. Destroy or delete 5 years after date of last entry, final adjudication by courts, or final action by agency, (such as downgrading, transfer, or destruction of related classified documents, release of information from controlled unclassified status), as may apply, whichever is later; but longer retention is authorized if required for business use.”<sup>1</sup>

The OPOG has received similar requests in the past seeking access to older FOIA logs that have most likely been destroyed pursuant to a records retention schedule. To increase our efficiency in processing requests for older FOIA Logs, OPOG is requesting that all Agency components submit a brief written statement detailing your bureau’s retention practices for FOIA logs. If your practice differs from that proffered in the General Records Schedule, please cite to your policy or procedure governing FOIA log retention. If your bureau does not have such a policy, you may cite to the GSR, as outlined above. Although these statements cannot be used to process the present request for old FOIA logs, we intend to use these statements to support our “no record” responses for future requests seeking older FOIA logs.

In order to continue processing the present request, please conduct a search for the following:

“Copies of FOIA Logs from 1999-2002.”

---

<sup>1</sup> GRS 4.2: Accounting for and control of access to classified and controlled unclassified records and records requested under the FOIA, PA and MDR (DAA-GRS-2016-000200004). (available at: <https://www.archives.gov/files/records-mgmt/grs/grs04-2.pdf>)



I am sending this FOIA request to you for your attention, since your office has been identified as an office that may have responsive records. Please take the following actions:

- Please notify our office if you know of any other bureau/office that may also have responsive documents.
- Conduct a search for responsive records.
  - You must search every place that could reasonably be expected to have responsive documents.
  - The date range for records that may be responsive to this request is FOIA logs from **1999-2002**.
  - Please provide a response within 10 business days from the date of this letter, on December 1, 2017.
- If you identify any records:
  - Please provide electronic copies of the records to me as soon as possible.
    - Upload documents in FOIAonline following the instructions in the attachment entitled “Instructions for uploading documents into FOIAonline.”
  - Identify whether you believe the records, or any portions thereof, should be withheld from disclosure.
    - Attached is a copy of FOIA Exemptions to assist you with making withholding determinations.
    - Sulma Khalid is also available to answer any questions you may have about FOIA Exemptions or the FOIA request by phone at 202-482-7432, or by email at [skhalid@doc.gov](mailto:skhalid@doc.gov).
  - Sign and date the attached Certification of Search.
  - Return the completed Certification of Search along with the responsive records to my office.
- If you do not identify any responsive records:
  - Check the box “My Office has found no responsive document” on the attached Certification of Search.
  - Sign and date the Certification of Search.
  - Return the completed Certification of Search to my office.

#### Attachments

1. Instructions for uploading documents into FOIAonline
2. Certification of Search
3. FOIA Exemptions

## **Instructions for uploading documents into FOIAonline**

A signed Certification of Search should be uploaded separately in Case File/Correspondence/Other. Only the Certification of Search signed by the FOIA Officer/Senior Official from the Bureau should be uploaded. Please do not upload Sub-Agency Taskers.

Responsive documents are to be uploaded in Case File/Records. Please identify whether you believe the document, or any portion of it, should be withheld from disclosure. You must include the FOIA exemption next to any information you identify as protected from disclosure.

- A clean copy and redacted copy shall be uploaded on FOIAonline.
- The clean copy will be uploaded with an UU (Unredacted – Unreleaseable) Publish Option.
- Redacted copy will be uploaded and grouped by exemptions applied, i.e., RR (Redacted-Releaseable) - (b)6, (b)5 (please include the privilege used).
- The format to be used for “Title” of uploaded documents: ITA - 24 documents, RR, (b)4, (b)6. (Bureau [not sub agency] - number of documents - Publish Options – exemptions).
- For documents that are completely withheld UU-Unredacted – Unreleaseable; and RU-Redacted-Unreleaseable (you must apply an Exemption in the Action Column).
- For referred documents use the following format for “Title:” 15 documents refer to NTIA.

**Certification of Search for FOIA Request No. DOC-OS-2018-000208**

THIS RESPONSE MUST BE SIGNED BY A SENIOR OFFICIAL IN YOUR OFFICE.

Please contact me if you have any questions about the scope of this request or the FOIA exemptions, at 202-482-3842.

Please sign this sheet of paper and check all of the appropriate boxes

- Uploaded in FOIAonline are all documents in the possession of my office which are responsive and can be released in entirety.
- Uploaded in FOIAonline are all documents within the possession of my office which are responsive and we have found reason to partially withhold. One clean copy and one redacted copy have been uploaded.
- Uploaded in FOIAonline are all documents within the possession of my office which are responsive and we have found reason to withhold entirely, each document to be withheld entirely has been noted.
- Uploaded in FOIAonline are all documents within the possession of my office which are responsive and must be referred to the originating office, bureau, or federal agency for disclosure determinations.
- My office has found no responsive documents.
- All disclosure determinations have been made by the Commerce Office that originated or has control of the documents
- A foreseeable harm review and analysis has been completed for all withheld documents and portions of documents and it has been determined that disclosure of the withheld material would result in harm to an interest protected by the asserted exemption or that disclosure is prohibited by law. Name of person most knowledgeable with the issue of foreseeable harm:  
.

- Interim response                       Final response

**GRAFF.MARK.HYRUM.1**  
**514447892**

Digitally signed by GRAFF.MARK.HYRUM.1514447892  
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI,  
ou=OTHER, cn=GRAFF.MARK.HYRUM.1514447892  
Date: 2018.02.26 13:28:28 -05'00'

Signature (Senior Official)

Date

## FOIA Exemptions

**Exemption 1:** classified national defense and foreign relations information;

**Exemption 2:** internal agency personnel rules and practices;

**Exemption 3:** information that is prohibited from disclosure by another federal law;

**Exemption 4:** trade secrets and other confidential or privileged commercial or financial information;

**Exemption 5:** inter-agency or intra-agency communications that are protected by legal privileges, including the deliberative process, attorney-client and attorney work-product privileges;

**Exemption 6:** information involving matters of personal privacy;

**Exemption 7:** records or information compiled for law enforcement purposes, to the extent that the production of those records:

Exemption (7)(A) could reasonably be expected to interfere with enforcement proceedings,

Exemption (7)(B) would deprive a person of a right to a fair trial or an impartial adjudication,

Exemption (7)(C) could reasonably be expected to constitute an unwarranted invasion of personal privacy,

Exemption (7)(D) could reasonably be expected to disclose the identity of and/or information provided by a confidential source,

Exemption (7)(E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions,  
or

Exemption (7)(F) could reasonably be expected to endanger the life or physical safety of any individual;

**Exemption 8:** information relating to the supervision of financial institutions; and

**Exemption 9:** geological information on wells.



## Mark Graff - NOAA Federal

---

**From:** Mark Graff NOAA Federal  
**Sent:** Monday, February 26, 2018 1:40 PM  
**To:** Lola Stith NOAA Affiliate  
**Cc:** Velna Bullock NOAA Federal  
**Subject:** Re: FW: Follow up: Pangelinan\_DOC OS 2018 000125  
**Attachments:** NOAA Response\_Pangelinan\_DOC OS 2018 000125\_Search Tasker mhg.pdf

Perfect ready for closure. Signed tasking attached.

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628 5658 (O)  
(b)(6) (C)

Confidentiality Notice: This e mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.

On Mon, Feb 26, 2018 at 1:14 PM, Lola Stith NOAA Affiliate <[lola.m.stith@noaa.gov](mailto:lola.m.stith@noaa.gov)> wrote:

Hi Mark (b)(5). Please find the completed tasker attached for your signature.

R/  
Lola

On Mon, Feb 26, 2018 at 11:39 AM, Mark Graff NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)> wrote:

Hi Guys,

(b)(5)

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
[\(301\) 628 5658](tel:3016285658) (O)  
(b)(6) (C)

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Forwarded message

From: **Mark Graff - NOAA Federal** <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)>  
Date: Mon, Feb 26, 2018 at 11:38 AM  
Subject: Re: FW: Follow up: Pangelinan\_DOC OS 2018 000125  
To: "Khalid, Sulma (Contractor)" <[SKhalid@doc.gov](mailto:SKhalid@doc.gov)>  
Cc: "Toland, Michael (Federal)" <[MToland@doc.gov](mailto:MToland@doc.gov)>

Hello Sulma,

(b)(5)

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
[\(301\) 628 5658](tel:3016285658) (O)

(b)(6) (C)

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On Mon, Feb 26, 2018 at 11:34 AM, Khalid, Sulma (Contractor) <[SKhalid@doc.gov](mailto:SKhalid@doc.gov)> wrote:

Hello Mark,

Any update on this case? As you know, NOAA was tasked back in November.

Thanks,

Sulma

**From:** Mark Graff NOAA Federal [mailto:[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)]  
**Sent:** Tuesday, February 06, 2018 3:45 PM  
**To:** Khalid, Sulma (Contractor) <[SKhalid@doc.gov](mailto:SKhalid@doc.gov)>  
**Cc:** Parsons, Bobbie (Federal) <[bParsons@doc.gov](mailto:bParsons@doc.gov)>; Toland, Michael (Federal) <[MToland@doc.gov](mailto:MToland@doc.gov)>  
**Subject:** Re: FW: Follow up: Pangelinan\_DOC OS 2018 000125

Hello Sulma,

I apologize for the delay (b)(5)

Mark H. Graff

FOIA Officer/Bureau Chief Privacy Officer (BCPO)

National Oceanic and Atmospheric Administration

[\(301\) 628 5658](tel:3016285658) (O)

(b)(6) (C)

Confidentiality Notice: This e mail message is intended only for the named recipients. It contains information that may be confidential, privileged, attorney work product, or otherwise exempt from disclosure under applicable law. If you have received this message in error, are not a named recipient, or are not the employee or agent responsible for delivering this message to a named recipient, be advised that any review, disclosure, use, dissemination, distribution, or reproduction of this message or its contents is strictly prohibited. Please notify us immediately that you have received this message in error, and delete the message.

On Tue, Feb 6, 2018 at 11:24 AM, Khalid, Sulma (Contractor) <[SKhalid@doc.gov](mailto:SKhalid@doc.gov)> wrote:

Good Morning,

(b)(5)

(b)(5)

. If you have any questions or would like to discuss further, feel free to contact me at x7432 or [skhalid@doc.gov](mailto:skhalid@doc.gov).

Thank you,

Sulma

---

**From:** Khalid, Sulma (Contractor)

**Sent:** Thursday, January 18, 2018 8:17 AM

**To:** Parsons, Bobbie (Federal) <[bParsons@doc.gov](mailto:bParsons@doc.gov)>; Abello, Isabel <[Isabel.Abello@trade.gov](mailto:Isabel.Abello@trade.gov)>; Graff, Mark (Federal) <[Mark.Graff@noaa.gov](mailto:Mark.Graff@noaa.gov)>; Arnold, Josephine (Federal) <[jarnold@mbda.gov](mailto:jarnold@mbda.gov)>;



Strickland, Wayne <[WayneS@ntis.gov](mailto:WayneS@ntis.gov)>

**Subject:** Follow up: Pangelinan\_DOC OS 2018 000125

Good Morning,

(b)(5)

1. For any direct correspondences between the Department and Patrick J. Morrisey in his capacity as:
  - a. West Virginia Attorney General (January 2013 present)
  - b. Private citizen (April 1990 present),
  - c. Congressional staffer (1999 2004),
  - d. Partner at Sidley Austin LLP (2004 2010); or
  - e. Partner at King & Spalding LLP (2010 2013).
  
2. Requester amended his request to limit the scope of the search to the Offices at the Assistant Secretary level and above, specifically:
  - a. Secretary
  - b. Deputy Secretary
  - c. Assistant Secretary for Legislative and Intergovernmental Affairs
  - d. Inspector General
  - e. General Counsel
  - f. Director of the Office of Policy and Strategic Planning
  - g. Executive Secretariat
  - h. Director of the Office of Public Affairs
  - i. NOAA Under Secretary
  - j. Under Secretary for International Trade
  - k. Under Secretary for Industry and Security
  - l. Under Secretary for Economic Affairs
  - m. Under Secretary for Standards and Technology
  - n. Under Secretary for Intellectual Property
  - o. Assistant Secretary for Economic Development
  - p. Minority Business Development Agency National Director

(b)(5)

. If you have any questions or would like to discuss further, please

feel free to contact me at [skhalid@doc.gov](mailto:skhalid@doc.gov) or x7432.

The FOIA carries with it a mandatory 20 business day deadline. As this request is now 37 days old, your prompt attention to this matter is greatly appreciated.

Regards,

**Sulma Khalid**

**FOIA/PA Analyst (Contractor)**

**U.S. Department of Commerce**

**Office of Privacy and Open Government**

**Phone Number: [\(202\) 482-7432](tel:(202)482-7432)**

**Email: [skhalid@doc.gov](mailto:skhalid@doc.gov)**

Lola Stith

Contractor - The Ambit Group, LLC

NOAA Office of the Chief Information Officer (OCIO)

(c **(b)(6)**)

[lola.m.stith@noaa.gov](mailto:lola.m.stith@noaa.gov)



November 29, 2017

MEMORANDUM FOR:           Bobbie Parsons, IOS                                 Vernon E. Curry, CEN  
                                  Pam Moulder, ESA                                 Stephen Kong, EDA  
                                  Grace Agyekum, BIS                                 Victor Powers, ITA  
                                  Josephine Arnold, MBDA                             Catherine Fletcher, NIST  
                                  Wayne Strickland, NTIS                             Stacy Cheney, NTIA  
                                  **Mark Graff, NOAA**                                 Jennifer Piel, OIG  
                                  Jamie Boston, PTO

FROM:                         Michael J. Toland, Ph.D.  
                                  Deputy Chief Freedom of Information Act (FOIA) Officer

SUBJECT:                    Amended FOIA Request - DOC-OS-2018-000125

The U.S. Department of Commerce's FOIA Office, Office of Privacy and Open Government, received a request seeking:

1. For any direct correspondences between the Department and Patrick J. Morrissey in his capacity as:
  - a. West Virginia Attorney General (January 2013-present)
  - b. Private citizen (April 1990-present),
  - c. Congressional staffer (1999-2004),
  - d. Partner at Sidley Austin LLP (2004-2010); or
  - e. Partner at King & Spalding LLP (2010-2013).
  
2. Requester amended his request to limit the scope of the search to the Offices at the Assistant Secretary level and above, specifically:
  - a. Secretary
  - b. Deputy Secretary
  - c. Assistant Secretary for Legislative and Intergovernmental Affairs
  - d. Inspector General
  - e. General Counsel
  - f. Director of the Office of Policy and Strategic Planning
  - g. Executive Secretariat
  - h. Director of the Office of Public Affairs
  - i. NOAA Under Secretary
  - j. Under Secretary for International Trade
  - k. Under Secretary for Industry and Security
  - l. Under Secretary for Economic Affairs
  - m. Under Secretary for Standards and Technology
  - n. Under Secretary for Intellectual Property
  - o. Assistant Secretary for Economic Development
  - p. Minority Business Development Agency National Director

I am sending this FOIA request to you for your attention, since your office has been identified as possibly having records that may be responsive to the request. Please take the following actions:

- Please notify our office if you know of any other bureau/office that may also have responsive documents.
- Conduct a search for responsive records.
  - You must search every place that could reasonably be expected to have responsive documents.
  - The date range for records that may be responsive to this request are specific to the capacity in which the subject of the record was working. Please see above.
- If you identify any records:
  - Please provide electronic copies of the records to me within ten (10) business days of the date of this letter—on or before **December 13, 2017**.
    - Upload documents in FOIAonline following the instructions in the attachment entitled “Instructions for uploading documents into FOIAonline.”
  - Identify whether you believe the records, or any portions thereof, should be withheld from disclosure.
    - Attached is a copy of FOIA Exemptions to assist you with making withholding determinations.
    - Sulma Khalid is also available to answer any questions you may have about FOIA Exemptions or the FOIA request by phone at 202-482-7432, or by email at skhalid@doc.gov.
  - Sign and date the attached Certification of Search.
  - Return the completed Certification of Search along with the responsive records to my office.
- If you do not identify any responsive records:
  - Check the box “My Office has found no responsive document” on the attached Certification of Search.
  - Sign and date the Certification of Search.
  - Return the completed Certification of Search to my office.

Attachments

1. Instructions for uploading documents into FOIAonline
2. Certification of Search
3. FOIA Exemptions

## **Instructions for uploading documents into FOIAonline**

A signed Certification of Search should be uploaded separately in Case File/Correspondence/Other. Only the Certification of Search signed by the FOIA Officer/Senior Official from the Bureau should be uploaded. Please do not upload Sub-Agency Taskers.

Responsive documents are to be uploaded in Case File/Records. Please identify whether you believe the document, or any portion of it, should be withheld from disclosure. You must include the FOIA exemption next to any information you identify as protected from disclosure.

- A clean copy and redacted copy shall be uploaded on FOIAonline.
- The clean copy will be uploaded with an UU (Unredacted – Unreleaseable) Publish Option.
- Redacted copy will be uploaded and grouped by exemptions applied, i.e., RR (Redacted-Releaseable) - (b)6, (b)5 (please include the privilege used).
- The format to be used for “Title” of uploaded documents: ITA - 24 documents, RR, (b)4, (b)6. (Bureau [not sub agency] - number of documents - Publish Options – exemptions).
- For documents that are completely withheld UU-Unredacted – Unreleaseable; and RU-Redacted-Unreleaseable (you must apply an Exemption in the Action Column).
- For referred documents use the following format for “Title:” 15 documents refer to NTIA.

**Certification of Search for FOIA Request No. DOC-OS-2018-000125**

THIS RESPONSE MUST BE SIGNED BY A SENIOR OFFICIAL IN YOUR OFFICE.

Please contact me if you have any questions about the scope of this request or the FOIA exemptions, at 202-482-7432.

Please sign this sheet of paper and check all of the appropriate boxes

- Uploaded in FOIAonline are all documents in the possession of my office which are responsive and can be released in entirety.
- Uploaded in FOIAonline are all documents within the possession of my office which are responsive and we have found reason to partially withhold. One clean copy and one redacted copy have been uploaded.
- Uploaded in FOIAonline are all documents within the possession of my office which are responsive and we have found reason to withhold entirely, each document to be withheld entirely has been noted.
- Uploaded in FOIAonline are all documents within the possession of my office which are responsive and must be referred to the originating office, bureau, or federal agency for disclosure determinations.
- My office has found no responsive documents.
- All disclosure determinations have been made by the Commerce Office that originated or has control of the documents
- A foreseeable harm review and analysis has been completed for all withheld documents and portions of documents and it has been determined that disclosure of the withheld material would result in harm to an interest protected by the asserted exemption or that disclosure is prohibited by law. Name of person most knowledgeable with the issue of foreseeable harm:  
.

Interim response                       Final response

**GRAFF.MARK.HYRUM.1514447892**  
Digitally signed by  
GRAFF.MARK.HYRUM.1514447892  
DN: c=US, o=U.S. Government,  
ou=DoD, ou=PKI, ou=OTHER,  
cn=GRAFF.MARK.HYRUM.1514447892  
Date: 2018.02.26 13:39:42 -05'00'

2/26/18

Signature (Senior Official)

Date

## **FOIA Exemptions**

**Exemption 1:** classified national defense and foreign relations information;

**Exemption 2:** internal agency personnel rules and practices;

**Exemption 3:** information that is prohibited from disclosure by another federal law;

**Exemption 4:** trade secrets and other confidential or privileged commercial or financial information;

**Exemption 5:** inter-agency or intra-agency communications that are protected by legal privileges, including the deliberative process, attorney-client and attorney work-product privileges;

**Exemption 6:** information involving matters of personal privacy;

**Exemption 7:** records or information compiled for law enforcement purposes, to the extent that the production of those records:

Exemption (7)(A) could reasonably be expected to interfere with enforcement proceedings,

Exemption (7)(B) would deprive a person of a right to a fair trial or an impartial adjudication,

Exemption (7)(C) could reasonably be expected to constitute an unwarranted invasion of personal privacy,

Exemption (7)(D) could reasonably be expected to disclose the identity of and/or information provided by a confidential source,

Exemption (7)(E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, or

Exemption (7)(F) could reasonably be expected to endanger the life or physical safety of any individual;

**Exemption 8:** information relating to the supervision of financial institutions; and

**Exemption 9:** geological information on wells.

## Shem Yusuf - NOAA Federal

---

**From:** Shem Yusuf NOAA Federal  
**Sent:** Monday, February 26, 2018 2:43 PM  
**To:** Mark Graff NOAA Federal  
**Subject:** Fwd: Freedom of Information Act Appeal DOC NOAA 2018 000571  
**Attachments:** FAL DOC NOAA 2018 000571.pdf; FOIA Request NOAA Coastal Geospatial.docx; SF330.pdf

FYI.

Forwarded message

From: **John Palatiello** <[john@jmpa.us](mailto:john@jmpa.us)>  
Date: Mon, Feb 26, 2018 at 1:40 PM  
Subject: Freedom of Information Act Appeal DOC NOAA 2018 000571  
To: [FOIAAppeals@doc.gov](mailto:FOIAAppeals@doc.gov)  
Cc: [shem.s.yusuf@noaa.gov](mailto:shem.s.yusuf@noaa.gov), [robert.swisher@noaa.gov](mailto:robert.swisher@noaa.gov)

Assistant General Counsel for Litigation, Employment, and Oversight  
U.S. Department of Commerce  
Office of General Counsel  
Room 5875  
14th and Constitution Avenue, N.W.  
Washington, D.C. 20230

Re: Freedom of Information Act Appeal DOC NOAA 2018 000571

Dear Sir or Madam:

This is to appeal the determination of my Freedom of Information Act request. My original request, and the NOAA determination, are attached.

There is an error of fact in this determination. In its determination letter, the following is stated: "Please note that NOAA does not keep track of sub-contractors, only Prime contractors."

1. In Solicitation NCNP0000-15-00223, NOAA requested that competing firms submit a Standard Form 330. Item C of SF 330 (copy attached) requires the prime contractor to provide information on subcontractors. Therefore, NOAA has information on subcontractors. I am requesting the SF 330 of each of the prime contractors, which included their subcontractor data.
2. Solicitation NCNP0000-15-00223 was conducted pursuant to part 36.6 of the Federal Acquisition Regulation (FAR). Section 36.606 of the FAR includes the following: "(e) Because selection of firms is based upon qualifications, the extent of any subcontracting is an important negotiation topic. The clause prescribed at [44.204\(b\)](#), Subcontractors and Outside Associates and Consultants (Architect-Engineer Services) (see [52.244-4](#)), limits a firm's subcontracting to firms agreed upon during negotiations.
3. The FAR also provides: "3. (b) The contracting officer may insert the clause at [52.244-4](#), Subcontracts and Outside Associates and Consultants (Architect-Engineer Services), in architect-engineer contracts.



4. The FAR also provides: "52.244-4 – Subcontractors and Outside Associates and Consultants (Architect-Engineer Services).

As prescribed in [44.204\(b\)](#), insert the following clause:

**Subcontractors and Outside Associates and Consultants (Architect-Engineer Services)(Aug 1998)**

Any subcontractors and outside associates or consultants required by the Contractor in connection with the services covered by the contract will be limited to individuals or firms that were specifically identified and agreed to during negotiations. The Contractor shall obtain the Contracting Officer's written consent before making any substitution for these subcontractors, associates, or consultants."

Therefore, NOAA has information on subcontractors in each prime contractor's original SF 330, as well as and substitutions approved by the Contracting Officer. We hereby appeal NOAA's determinate and request that information.

Sincerely,

John M. Palatiello, President  
John M. Palatiello & Associates, Inc.  
1856 Old Reston Avenue, Suite 205  
Reston, VA 20190  
(703) 787 6665  
[www.jmpa.us](http://www.jmpa.us)

Sincerely,

Mr. Shem S. Yusuf  
Procurement Analyst/FOIA Liaison  
NOAA Acquisition and Grants Office  
Policy and Oversight Division

Richard Bolling Federal Building  
601 East 12th Street, Rm. 1747  
Kansas City, Missouri 64106  
Phone: (816) 823-3859  
Fax: (757) 664-3888

**"Some people spend an entire lifetime wondering if they made a difference...the Marines don't have that problem." - President Ronald Reagan, 1985**



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

February 13, 2018

Mr. John M. Palatiello  
John M. Palatiello & Associates, Inc.  
1856 Old Reston Avenue  
Suite 205  
Reston, VA 20190

**Re: FOIA Request DOC-NOAA-2018-000571**

Dear Mr. Palatiello:

This letter is in response to your Freedom of Information Act (FOIA) request which was received by our office on 01/16/2018, in which you requested:

*A copy of the following documents, or documents containing the following information, be provided to me: Any documents that identify the prime ( Dewberry, Fugro Geospatial, Quantum Spatial, Tetra Tech, Woolpert) contractors and subcontractors (all members of the teams in support of the prime contractors) to the NOAA Office for Coastal Management in Charleston, South Carolina (with contracting officer services provided by NOAA's Eastern Acquisition Division in Norfolk, Virginia), under the Coastal Geospatial Services Contract Vehicle, including but not limited contracts awarded pursuant to Solicitation Number: NCNP0000 15 00223 and/or awarded pursuant to Contract Award Number: EA 133C 16 CQ 0042 0046. Specifically, I am requesting documents to identify the firm, primary individual point(s) of contact, address, telephone and email for each prime and subcontractor on these contracts known to NOAA.*

You can retrieve these public records via the [www.sam.gov](http://www.sam.gov) website. You should conduct a search for the awardee names (ie., Dewberry, Fugro Geospatial, Quantum Spatial, Tetra Tech, Woolpert) as listed in your request.

- Type in the business entity in the Quick Search field and click Search
- Once the result screen appears, click the View Details button for the business entity you want
- On the Entity Dashboard screen, click the POC selection located on the left side of the screen
- Scroll down to Mandatory Points of Contact section to see the list of primary contacts for the business entity

Under the Mandatory Points of Contact section, you will find the primary contacts listed for the business entity including their full name, phone number(s) and address. Please note that NOAA does not keep track of subcontractors, only Prime contractors.

Although this is not a denial of your FOIA request you may appeal this determination. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must be received within 90 calendar days of the date of this response letter at the following address:

Assistant General Counsel for Litigation, Employment, and Oversight  
U.S. Department of Commerce  
Office of General Counsel  
Room 5875  
14th and Constitution Avenue, N.W.

Washington, D.C. 20230

An appeal may also be sent by e-mail to [FOIAAppeals@doc.gov](mailto:FOIAAppeals@doc.gov), or by FOIAonline at <https://foiaonline.regulations.gov/foia/action/public/home#>.

For your appeal to be complete, it must include the following items:

- a copy of the original request,
- our response to your request,
- a statement explaining why the withheld records should be made available, and why the denial of the records was in error.
- “Freedom of Information Act Appeal” must appear on your appeal letter. It should also be written on your envelope, or e-mail subject line.

FOIA appeals posted to the e-mail box, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

FOIA grants requesters the right to challenge an agency's final action in federal court. Before doing so, an adjudication of an administrative appeal is ordinarily required.

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

Office of Government Information Services  
National Archives and Records Administration  
Room 2510  
8601 Adelphi Road  
College Park, MD 20740-6001

Email: [ogis@nara.gov](mailto:ogis@nara.gov)

Phone: 301-837-1996

Fax: 301-837-0348

Toll-free: 1-877-684-6448

If you have questions regarding this correspondence, please contact Shem Yusuf at [shem.s.yusuf@noaa.gov](mailto:shem.s.yusuf@noaa.gov) or the NOAA FOIA Public Liaison Robert Swisher at (301) 628-5755.

Sincerely,



Lola Stith  
NOAA FOIA Office

12/13/17

to nkolika.ndubisi, nosfoia  
Nkolika (Nikki) Ndubisi  
FOIA Liaison Officer  
National Ocean Service (NOS)  
1305 East West Highway  
Silver Spring, MD 20910

Re: Freedom of Information Act Request

Dear Sir or Madam:

This is a request under the Freedom of Information Act.

I request that a copy of the following documents, or documents containing the following information, be provided to me:

Any documents that identify the prime ( Dewberry, Fugro Geospatial, Quantum Spatial, Tetra Tech, Woolpert) contractors and subcontractors (all members of the teams in support of the prime contractors) to the NOAA Office for Coastal Management in Charleston, South Carolina (with contracting officer services provided by NOAA's Eastern Acquisition Division in Norfolk, Virginia), under the Coastal Geospatial Services Contract Vehicle, including but not limited contracts awarded pursuant to Solicitation Number: NCNP0000-15-00223 and/or awarded pursuant to Contract Award Number: EA-133C-16-CQ-0042-0046. Specifically, I am requesting documents to identify the firm, primary individual point(s) of contact, address, telephone and email for each prime and subcontractor on these contracts known to NOAA.

In order to help to determine my status to assess fees, you should know that I am a manager of nonprofit associations organized under section 501(c)(6) of the Internal Revenue Code. As such, I am affiliated with nonprofit scientific, professional and educational institutions, and this request is made for a scholarly or scientific purpose. I request a waiver of all fees for this request. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government. If this waiver is denied, I am willing to pay fees for this request up to a maximum of \$50. If you estimate that the fees will exceed this limit, please inform me first.

Thank you for your consideration of this request. Please do not hesitate to contact me if you have any questions. Please also provide a prompt acknowledgement of receipt of this request.

Sincerely,

John M. Palatiello, President  
John M. Palatiello & Associates, Inc.  
1856 Old Reston Avenue, Suite 205  
Reston, VA 20190  
(703) 787-6665  
[www.jmpa.us](http://www.jmpa.us)

# ARCHITECT-ENGINEER QUALIFICATIONS

OMB Control Number: 9000-0157  
Expiration Date: 12/31/2020

Paperwork Reduction Act Statement - This information collection meets the requirements of 44 USC § 3507, as amended by section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget (OMB) control number. The OMB control number for this collection is 9000-0157. We estimate that it will take 29 hours (25 hours for part 1 and 4 hours for Part 2) to read the instructions, gather the facts, and answer the questions. Send only comments relating to our time estimate, including suggestions for reducing this burden, or any other aspects of this collection of information to: General Services Administration, Regulatory Secretariat Division (M1V1CB), 1800 F Street, NW, Washington, DC 20405.

## PURPOSE

Federal agencies use this form to obtain information from architect-engineer (A-E) firms about their professional qualifications. Federal agencies select firms for A-E contracts on the basis of professional qualifications as required by 40 U.S.C. chapter 11, Selection of Architects Engineers, and Part 36 of the Federal Acquisition Regulation (FAR).

The Selection of Architects and Engineers statute requires the public announcement of requirements for A-E services (with some exceptions provided by other statutes), and the selection of at least three of the most highly qualified firms based on demonstrated competence and professional qualifications according to specific criteria published in the announcement. The Act then requires the negotiation of a contract at a fair and reasonable price starting first with the most highly qualified firm.

The information used to evaluate firms is from this form and other sources, including performance evaluations, any additional data requested by the agency, and interviews with the most highly qualified firms and their references.

## GENERAL INSTRUCTIONS

Part I presents the qualifications for a specific contract.

Part II presents the general qualifications of a firm or a specific branch office of a firm. Part II has two uses:

1. An A-E firm may submit Part II to the appropriate central, regional or local office of each Federal agency to be kept on file. A public announcement is not required for certain contracts, and agencies may use Part II as a basis for selecting at least three of the most highly qualified firms for discussions prior to requesting submission of Part I. Firms are encouraged to update Part II on file with agency offices, as appropriate, according to FAR Part 36. If a firm has branch offices, submit a separate Part II for each branch office seeking work.

2. Prepare a separate Part II for each firm that will be part of the team proposed for a specific contract and submitted with Part I. If a firm has branch offices, submit a separate Part II for each branch office that has a key role on the team.

## INDIVIDUAL AGENCY INSTRUCTIONS

Individual agencies may supplement these instructions. For example, they may limit the number of projects or number of pages submitted in Part I in response to a public announcement for a particular project. Carefully comply with any agency instructions when preparing and submitting this form. Be as concise as possible and provide only the information requested by the agency.

## DEFINITIONS

**Architect-Engineer Services:** Defined in FAR 2.101.

**Branch Office:** A geographically distinct place of business or subsidiary office of a firm that has a key role on the team.

**Discipline:** Primary technical capabilities of key personnel, as evidenced by academic degree, professional registration, certification, and/or extensive experience.

**Firm:** Defined in FAR 36.102.

**Key Personnel:** Individuals who will have major contract responsibilities and/or provide unusual or unique expertise.

## SPECIFIC INSTRUCTIONS

### Part I - Contract-Specific Qualifications

#### Section A. Contract Information.

1. Title and Location. Enter the title and location of the contract for which this form is being submitted, exactly as shown in the public announcement or agency request.

2. Public Notice Date. Enter the posted date of the agency's notice on the Federal Business Opportunity website (FedBizOpps), other form of public announcement or agency request for this contract.

3. Solicitation or Project Number. Enter the agency's solicitation number and/or project number, if applicable, exactly as shown in the public announcement or agency request for this contract.

#### Section B. Architect-Engineer Point of Contact.

4-8. Name, Title, Name of Firm, Telephone Number, Fax (Facsimile) Number and E-mail (Electronic Mail) Address. Provide information for a representative of the prime contractor or joint venture that the agency can contact for additional information.

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Section C. Proposed Team.

9-11. Firm Name, Address, and Role in This Contract. Provide the contractual relationship, name, full mailing address, and a brief description of the role of each firm that will be involved in performance of this contract. List the prime contractor or joint venture partners first. If a firm has branch offices, indicate each individual branch office that will have a key role on the team. The named subcontractors and outside associates or consultants must be used, and any change must be approved by the contracting officer. (See FAR Part 52 Clause "Subcontractors and Outside Associates and Consultants (Architect-Engineer Services)"). Attach an additional sheet in the same format as Section C if needed.

Section D. Organizational Chart of Proposed Team.

As an attachment after Section C, present an organizational chart of the proposed team showing the names and roles of all key personnel listed in Section E and the firm they are associated with as listed in Section C.

Section E. Resumes of Key Personnel Proposed for this Contract.

Complete this section for each key person who will participate in this contract. Group by firm, with personnel of the prime contractor or joint venture partner firms first. The following blocks must be completed for each resume:

12. Name. Self-explanatory.

13. Role in this contract. Self-explanatory.

14. Years Experience. Total years of relevant experience (block 14a), and years of relevant experience with current firm, but not necessarily the same branch office (block 14b).

15. Firm Name and Location. Name, city and state of the firm where the person currently works, which must correspond with one of the firms (or branch office of a firm, if appropriate) listed in Section C.

16. Education. Provide information on the highest relevant academic degree(s) received. Indicate the area(s) of specialization for each degree.

17. Current Professional Registration. Provide information on current relevant professional registration(s) in a State or possession of the United States, Puerto Rico, or the District of Columbia according to FAR Part 36.

18. Other Professional Qualifications. Provide information on any other professional qualifications relating to this contract, such as education, professional registration, publications, organizational memberships, certifications, training, awards, and foreign language capabilities.

19. Relevant Projects. Provide information on up to five projects in which the person had a significant role that demonstrates the person's capability relevant to her/his proposed role in this contract. These projects do not necessarily have to be any of the projects presented in Section F for the project team if the person was not involved in any of those projects or the person worked on other projects that were more relevant than the team projects in Section F. Use the check box provided to indicate if the project was performed with any office of the current firm. If any of the professional services or construction projects are not complete, leave Year Completed blank and indicate the status in Brief Description and Specific Role (block (3)).

Section F. Example Projects Which Best Illustrate Proposed Team's Qualifications for this Contract.

Select projects where multiple team members worked together, if possible, that demonstrate the team's capability to perform work similar to that required for this contract. Complete one Section F for each project. Present ten projects, unless otherwise specified by the agency. Complete the following blocks for each project:

20. Example Project Key Number. Start with "1" for the first project and number consecutively.

21. Title and Location. Title and location of project or contract. For an indefinite delivery contract, the location is the geographic scope of the contract.

22. Year Completed. Enter the year completed of the professional services (such as planning, engineering study, design, or surveying), and/or the year completed of construction, if applicable. If any of the professional services or the construction projects are not complete, leave Year Completed blank and indicate the status in Brief Description of Project and Relevance to this Contract (block 24).

23a. Project Owner. Project owner or user, such as a government agency or installation, an institution, a corporation or private individual.

23b. Point of Contact Name. Provide name of a person associated with the project owner or the organization which contracted for the professional services, who is very familiar with the project and the firm's (or firms') performance.

23c. Point of Contact Telephone Number. Self-explanatory.

24. Brief Description of Project and Relevance to this Contract. Indicate scope, size, cost, principal elements and special features of the project. Discuss the relevance of the example project to this contract. Enter any other information requested by the agency for each example project.

25. Firms from Section C Involved with this Project. Indicate which firms (or branch offices, if appropriate) on the project team were involved in the example project, and their roles. List in the same order as Section C.

**Section G. Key Personnel Participation in Example Projects.**

This matrix is intended to graphically depict which key personnel identified in Section E worked on the example projects listed in Section F. Complete the following blocks (see example below).

26. and 27. Names of Key Personnel and Role in this Contract. List the names of the key personnel and their proposed roles in this contract in the same order as they appear in Section E.

28. Example Projects Listed in Section F. In the column under each project key number (see block 29) and for each key person, place an "X" under the project key number for participation in the same or similar role.

29. Example Projects Key. List the key numbers and titles of the example projects in the same order as they appear in Section F.

**Section H. Additional Information.**

30. Use this section to provide additional information specifically requested by the agency or to address selection criteria that are not covered by the information provided in Sections A-G.

**Section I. Authorized Representative.**

31. and 32. Signature of Authorized Representative and Date. An authorized representative of a joint venture or the prime contractor must sign and date the completed form. Signing attests that the information provided is current and factual, and that all firms on the proposed team agree to work on the project. Joint ventures selected for negotiations must make available a statement of participation by a principal of each member of the joint venture.

33. Name and Title. Self-explanatory.

**SAMPLE ENTRIES FOR SECTION G (MATRIX)**

26. NAMES OF KEY PERSONNEL (From Section E, Block 12)	27. ROLE IN THIS CONTRACT (From Section E, Block 13)	28. EXAMPLE PROJECTS LISTED IN SECTION F (Fill in "Example Projects Key" section below first, before completing table. Place "X" under project key number for participation in same or similar role.)									
		1	2	3	4	5	6	7	8	9	10
Jane A. Smith	Chief Architect	X		X							
Joseph B. Williams	Chief Mechanical Engineer	X	X	X	X						
Tara C. Donovan	Chief Electrical Engineer	X	X		X						

**29. EXAMPLE PROJECTS KEY**

NUMBER	TITLE OF EXAMPLE PROJECT (From Section F)	NUMBER	TITLE OF EXAMPLE PROJECT (From Section F)
1	Federal Courthouse, Denver, CO	6	XYZ Corporation Headquarters, Boston, MA
2	Justin J. Wilson Federal Building, Baton Rouge, LA	7	Founder's Museum, Newport, RI

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## Part II - General Qualifications

See the "**General Instructions**" on page 1 for firms with branch offices. Prepare Part II for the specific branch office seeking work if the firm has branch offices.

1. **Solicitation Number.** If Part II is submitted for a specific contract, insert the agency's solicitation number and/or project number, if applicable, exactly as shown in the public announcement or agency request.

2a-2e. **Firm (or Branch Office) Name and Address.** Self-explanatory.

3. **Year Established.** Enter the year the firm (or branch office, if appropriate) was established under the current name.

4. **Unique Entity Identifier.** Insert the unique entity identifier issued by the entity designated at SAM. See FAR part 4.6.

5. **Ownership.**

a. **Type.** Enter the type of ownership or legal structure of the firm (sole proprietor, partnership, corporation, joint venture, etc.).

b. **Small Business Status.** Refer to the North American Industry Classification System (NAICS) code in the public announcement, and indicate if the firm is a small business according to the current size standard for that NAICS code (for example, Engineering Services (part of NAICS 541330), Architectural Services (NAICS 541310), Surveying and Mapping Services (NAICS 541370)). The small business categories and the internet website for the NAICS codes appear in FAR part 19. Contact the requesting agency for any questions. Contact your local U.S. Small Business Administration office for any questions regarding Business Status.

6a-6c. **Point of Contact.** Provide this information for a representative of the firm that the agency can contact for additional information. The representative must be empowered to speak on contractual and policy matters.

7. **Name of Firm.** Enter the name of the firm if Part II is prepared for a branch office.

8a-8c. **Former Firm Names.** Indicate any other previous names for the firm (or branch office) during the last six years. Insert the year that this corporate name change was effective and the associated unique entity identifier. This information is used to review past performance on Federal contracts.

9. **Employees by Discipline.** Use the relevant disciplines and associated function codes shown at the end of these instructions and list in the same numerical order. After the listed disciplines, write in any additional disciplines and leave the function code blank. List no more than 20 disciplines. Group remaining employees under "Other Employees" in column b. Each person can be counted only once according to his/her primary function. If Part II is prepared for a firm (including all branch offices), enter the number of employees by disciplines in column c(1). If Part II is prepared for a branch office, enter the number of employees by discipline in column c(2) and for the firm in column c(1).

10. **Profile of Firm's Experience and Annual Average Revenue for Last 5 Years.** Complete this block for the firm or branch office for which this Part II is prepared. Enter the experience categories which most accurately reflect the firm's technical capabilities and project experience. Use the relevant experience categories and associated profile codes shown at the end of these instructions, and list in the same numerical order. After the listed experience categories, write in any unlisted relevant project experience categories and leave the profile codes blank. For each type of experience, enter the appropriate revenue index number to reflect the professional services revenues received annually (averaged over the last 5 years) by the firm or branch office for performing that type of work. A particular project may be identified with one experience category or it may be broken into components, as best reflects the capabilities and types of work performed by the firm. However, do not double count the revenues received on a particular project.

11. **Annual Average Professional Services Revenues of Firm for Last 3 Years.** Complete this block for the firm or branch office for which this Part II is prepared. Enter the appropriate revenue index numbers to reflect the professional services revenues received annually (averaged over the last 3 years) by the firm or branch office. Indicate Federal work (performed directly for the Federal Government, either as the prime contractor or subcontractor), non-Federal work (all other domestic and foreign work, including Federally-assisted projects), and the total. If the firm has been in existence for less than 3 years, see the definition for "Annual Receipts" under FAR 19.101.

12. **Authorized Representative.** An authorized representative of the firm or branch office must sign and date the completed form. Signing attests that the information provided is current and factual. Provide the name and title of the authorized representative who signed the form.



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List of Disciplines (*Function Codes*)

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<b>Code</b>	<b>Description</b>	<b>Code</b>	<b>Description</b>
01	Acoustical Engineer	32	Hydraulic Engineer
02	Administrative	33	Hydrographic Surveyor
03	Aerial Photographer	34	Hydrologist
04	Aeronautical Engineer	35	Industrial Engineer
05	Archeologist	36	Industrial Hygienist
06	Architect	37	Interior Designer
07	Biologist	38	Land Surveyor
08	CADD Technician	39	Landscape Architect
09	Cartographer	40	Materials Engineer
10	Chemical Engineer	41	Materials Handling Engineer
11	Chemist	42	Mechanical Engineer
12	Civil Engineer	43	Mining Engineer
13	Communications Engineer	44	Oceanographer
14	Computer Programmer	45	Photo Interpreter
15	Construction Inspector	46	Photogrammetrist
16	Construction Manager	47	Planner: Urban/Regional
17	Corrosion Engineer	48	Project Manager
18	Cost Engineer/Estimator	49	Remote Sensing Specialist
19	Ecologist	50	Risk Assessor
20	Economist	51	Safety/Occupational Health Engineer
21	Electrical Engineer	52	Sanitary Engineer
22	Electronics Engineer	53	Scheduler
23	Environmental Engineer	54	Security Specialist
24	Environmental Scientist	55	Soils Engineer
25	Fire Protection Engineer	56	Specifications Writer
26	Forensic Engineer	57	Structural Engineer
27	Foundation/Geotechnical Engineer	58	Technician/Analyst
28	Geodetic Surveyor	59	Toxicologist
29	Geographic Information System Specialist	60	Transportation Engineer
30	Geologist	61	Value Engineer
31	Health Facility Planner	62	Water Resources Engineer

List of Experience Categories (*Profile Codes*)

<b>Code</b>	<b>Description</b>	<b>Code</b>	<b>Description</b>
A01	Acoustics, Noise Abatement	E01	Ecological & Archeological Investigations
A02	Aerial Photography; Airborne Data and Imagery Collection and Analysis	E02	Educational Facilities; Classrooms
A03	Agricultural Development; Grain Storage; Farm Mechanization	E03	Electrical Studies and Design
A04	Air Pollution Control	E04	Electronics
A05	Airports; Nav aids; Airport Lighting; Aircraft Fueling	E05	Elevators; Escalators; People-Movers
A06	Airports; Terminals and Hangars; Freight Handling	E06	Embassies and Chanceries
A07	Arctic Facilities	E07	Energy Conservation; New Energy Sources
A08	Animal Facilities	E08	Engineering Economics
A09	Anti-Terrorism/Force Protection	E09	Environmental Impact Studies, Assessments or Statements
A10	Asbestos Abatement	E10	Environmental and Natural Resource Mapping
A11	Auditoriums & Theaters	E11	Environmental Planning
A12	Automation; Controls; Instrumentation	E12	Environmental Remediation
B01	Barracks; Dormitories	E13	Environmental Testing and Analysis
B02	Bridges	F01	Fallout Shelters; Blast-Resistant Design
C01	Cartography	F02	Field Houses; Gyms; Stadiums
C02	Cemeteries ( <i>Planning &amp; Relocation</i> )	F03	Fire Protection
C03	Charting: Nautical and Aeronautical	F04	Fisheries; Fish ladders
C04	Chemical Processing & Storage	F05	Forensic Engineering
C05	Child Care/Development Facilities	F06	Forestry & Forest products
C06	Churches; Chapels	G01	Garages; Vehicle Maintenance Facilities; Parking Decks
C07	Coastal Engineering	G02	Gas Systems (Propane; Natural, Etc.)
C08	Codes; Standards; Ordinances	G03	Geodetic Surveying: Ground and Air-borne
C09	Cold Storage; Refrigeration and Fast Freeze	G04	Geographic Information System Services: Development, Analysis, and Data Collection
C10	Commercial Building ( <i>low rise</i> ) ; Shopping Centers	G05	Geospatial Data Conversion: Scanning, Digitizing, Compilation, Attributing, Scribing, Drafting
C11	Community Facilities	G06	Graphic Design
C12	Communications Systems; TV; Microwave	H01	Harbors; Jetties; Piers, Ship Terminal Facilities
C13	Computer Facilities; Computer Service	H02	Hazardous Materials Handling and Storage
C14	Conservation and Resource Management	H03	Hazardous, Toxic, Radioactive Waste Remediation
C15	Construction Management	H04	Heating; Ventilating; Air Conditioning
C16	Construction Surveying	H05	Health Systems Planning
C17	Corrosion Control; Cathodic Protection; Electrolysis	H06	Highrise; Air-Rights-Type Buildings
C18	Cost Estimating; Cost Engineering and Analysis; Parametric Costing; Forecasting	H07	Highways; Streets; Airfield Paving; Parking Lots
C19	Cryogenic Facilities	H08	Historical Preservation
D01	Dams ( <i>Concrete; Arch</i> )	H09	Hospital & Medical Facilities
D02	Dams ( <i>Earth; Rock</i> ); Dikes; Levees	H10	Hotels; Motels
D03	Desalinization ( <i>Process &amp; Facilities</i> )	H11	Housing ( <i>Residential, Multi-Family; Apartments; Condominiums</i> )
D04	Design-Build - Preparation of Requests for Proposals	H12	Hydraulics & Pneumatics
D05	Digital Elevation and Terrain Model Development	H13	Hydrographic Surveying
D06	Digital Orthophotography		
D07	Dining Halls; Clubs; Restaurants		
D08	Dredging Studies and Design		

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List of Experience Categories (*Profile Codes continued*)

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Code	Description	Code	Description
I01	Industrial Buildings; Manufacturing Plants	P09	Product, Machine Equipment Design
I02	Industrial Processes; Quality Control	P10	Pneumatic Structures, Air-Support Buildings
I03	Industrial Waste Treatment	P11	Postal Facilities
I04	Intelligent Transportation Systems	P12	Power Generation, Transmission, Distribution
I05	Interior Design; Space Planning	P13	Public Safety Facilities
I06	Irrigation; Drainage	R01	Radar; Sonar; Radio & Radar Telescopes
J01	Judicial and Courtroom Facilities	R02	Radio Frequency Systems & Shieldings
L01	Laboratories; Medical Research Facilities	R03	Railroad; Rapid Transit
L02	Land Surveying	R04	Recreation Facilities (Parks, Marinas, Etc.)
L03	Landscape Architecture	R05	Refrigeration Plants/Systems
L04	Libraries; Museums; Galleries	R06	Rehabilitation (Buildings; Structures; Facilities)
L05	Lighting (Interior; Display; Theater, Etc.)	R07	Remote Sensing
L06	Lighting (Exteriors; Streets; Memorials; Athletic Fields, Etc.)	R08	Research Facilities
M01	Mapping Location/Addressing Systems	R09	Resources Recovery; Recycling
M02	Materials Handling Systems; Conveyors; Sorters	R10	Risk Analysis
M03	Metallurgy	R11	Rivers; Canals; Waterways; Flood Control
M04	Microclimatology; Tropical Engineering	R12	Roofing
M05	Military Design Standards	S01	Safety Engineering; Accident Studies; OSHA Studies
M06	Mining & Mineralogy	S02	Security Systems; Intruder & Smoke Detection
M07	Missile Facilities (Silos; Fuels; Transport)	S03	Seismic Designs & Studies
M08	Modular Systems Design; Pre-Fabricated Structures or Components	S04	Sewage Collection, Treatment and Disposal
N01	Naval Architecture; Off-Shore Platforms	S05	Soils & Geologic Studies; Foundations
N02	Navigation Structures; Locks	S06	Solar Energy Utilization
N03	Nuclear Facilities; Nuclear Shielding	S07	Solid Wastes; Incineration; Landfill
O01	Office Buildings; Industrial Parks	S08	Special Environments; Clean Rooms, Etc.
O02	Oceanographic Engineering	S09	Structural Design; Special Structures
O03	Ordnance; Munitions; Special Weapons	S10	Surveying; Platting; Mapping; Flood Plain Studies
P01	Petroleum Exploration; Refining	S11	Sustainable Design
P02	Petroleum and Fuel (Storage and Distribution)	S12	Swimming Pools
P03	Photogrammetry	S13	Storm Water Handling & Facilities
P04	Pipelines (Cross-Country - Liquid & Gas)	T01	Telephone Systems ( <i>Rural; Mobile; Intercom, Etc.</i> )
P05	Planning (Community, Regional, Areawide and State)	T02	Testing & Inspection Services
P06	Planning (Site, Installation, and Project)	T03	Traffic & Transportation Engineering
P07	Plumbing & Piping Design	T04	Topographic Surveying and Mapping
P08	Prisons & Correctional Facilities	T05	Towers ( <i>Self-Supporting &amp; Guyed Systems</i> )
		T06	Tunnels & Subways

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List of Experience Categories (*Profile Codes continued*)

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<b>Code</b>	<b>Description</b>
U01	Unexploded Ordnance Remediation
U02	Urban Renewals; Community Development
U03	Utilities (Gas and Steam)
V01	Value Analysis; Life-Cycle Costing
W01	Warehouses & Depots
W02	Water Resources; Hydrology; Ground Water
W03	Water Supply; Treatment and Distribution
W04	Wind Tunnels; Research/Testing Facilities Design
Z01	Zoning; Land Use Studies

# ARCHITECT - ENGINEER QUALIFICATIONS

## PART I - CONTRACT-SPECIFIC QUALIFICATIONS

### A. CONTRACT INFORMATION

1. TITLE AND LOCATION *(City and State)*

2. PUBLIC NOTICE DATE

3. SOLICITATION OR PROJECT NUMBER

### B. ARCHITECT-ENGINEER POINT OF CONTACT

4. NAME AND TITLE

5. NAME OF FIRM

6. TELEPHONE NUMBER

7. FAX NUMBER

8. E-MAIL ADDRESS

### C. PROPOSED TEAM

*(Complete this section for the prime contractor and all key subcontractors.)*

	(Check)			9. FIRM NAME	10. ADDRESS	11. ROLE IN THIS CONTRACT
	PRIME	J-V PARTNER	SUBCONTRACTOR			
a.				<input type="checkbox"/> CHECK IF BRANCH OFFICE		
b.				<input type="checkbox"/> CHECK IF BRANCH OFFICE		
c.				<input type="checkbox"/> CHECK IF BRANCH OFFICE		
d.				<input type="checkbox"/> CHECK IF BRANCH OFFICE		
e.				<input type="checkbox"/> CHECK IF BRANCH OFFICE		
f.				<input type="checkbox"/> CHECK IF BRANCH OFFICE		

### D. ORGANIZATIONAL CHART OF PROPOSED TEAM

*(Attached)*

**E. RESUMES OF KEY PERSONNEL PROPOSED FOR THIS CONTRACT**

*(Complete one Section E for each key person.)*

12. NAME	13. ROLE IN THIS CONTRACT	14. YEARS EXPERIENCE	
		a. TOTAL	b. WITH CURRENT FIRM
15. FIRM NAME AND LOCATION <i>(City and State)</i>			
16. EDUCATION <i>(Degree and Specialization)</i>		17. CURRENT PROFESSIONAL REGISTRATION <i>(State and Discipline)</i>	
18. OTHER PROFESSIONAL QUALIFICATIONS <i>(Publications, Organizations, Training, Awards, etc.)</i>			

**19. RELEVANT PROJECTS**

	(1) TITLE AND LOCATION <i>(City and State)</i>	(2) YEAR COMPLETED	
		PROFESSIONAL SERVICES	CONSTRUCTION <i>(If applicable)</i>
<b>a.</b>	(3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE	<input type="checkbox"/> Check if project performed with current firm	
	(1) TITLE AND LOCATION <i>(City and State)</i>	(2) YEAR COMPLETED	
		PROFESSIONAL SERVICES	CONSTRUCTION <i>(If applicable)</i>
<b>b.</b>	(3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE	<input type="checkbox"/> Check if project performed with current firm	
	(1) TITLE AND LOCATION <i>(City and State)</i>	(2) YEAR COMPLETED	
		PROFESSIONAL SERVICES	CONSTRUCTION <i>(If applicable)</i>
<b>c.</b>	(3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE	<input type="checkbox"/> Check if project performed with current firm	
	(1) TITLE AND LOCATION <i>(City and State)</i>	(2) YEAR COMPLETED	
		PROFESSIONAL SERVICES	CONSTRUCTION <i>(If applicable)</i>
<b>d.</b>	(3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE	<input type="checkbox"/> Check if project performed with current firm	
	(1) TITLE AND LOCATION <i>(City and State)</i>	(2) YEAR COMPLETED	
		PROFESSIONAL SERVICES	CONSTRUCTION <i>(If applicable)</i>
<b>e.</b>	(3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE	<input type="checkbox"/> Check if project performed with current firm	

<b>F. EXAMPLE PROJECTS WHICH BEST ILLUSTRATE PROPOSED TEAM'S QUALIFICATIONS FOR THIS CONTRACT</b> <i>(Present as many projects as requested by the agency, or 10 projects, if not specified. Complete one Section F for each project.)</i>		20. EXAMPLE PROJECT KEY NUMBER
21. TITLE AND LOCATION <i>(City and State)</i>	22. YEAR COMPLETED	
	PROFESSIONAL SERVICES	CONSTRUCTION <i>(If applicable)</i>
<b>23. PROJECT OWNER'S INFORMATION</b>		
a. PROJECT OWNER	b. POINT OF CONTACT NAME	c. POINT OF CONTACT TELEPHONE NUMBER
24. BRIEF DESCRIPTION OF PROJECT AND RELEVANCE TO THIS CONTRACT <i>(Include scope, size, and cost)</i>		

**25. FIRMS FROM SECTION C INVOLVED WITH THIS PROJECT**

<b>a.</b>	(1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>	(3) ROLE
<b>b.</b>	(1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>	(3) ROLE
<b>c.</b>	(1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>	(3) ROLE
<b>d.</b>	(1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>	(3) ROLE
<b>e.</b>	(1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>	(3) ROLE
<b>f.</b>	(1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>	(3) ROLE

**G. KEY PERSONNEL PARTICIPATION IN EXAMPLE PROJECTS**

26. NAMES OF KEY PERSONNEL (From Section E, Block 12)	27. ROLE IN THIS CONTRACT (From Section E, Block 13)	28. EXAMPLE PROJECTS LISTED IN SECTION F <i>(Fill in "Example Projects Key" section below before completing table. Place "X" under project key number for participation in same or similar role.)</i>											
		1	2	3	4	5	6	7	8	9	10		

**29. EXAMPLE PROJECTS KEY**

NUMBER	TITLE OF EXAMPLE PROJECT (From Section F)	NUMBER	TITLE OF EXAMPLE PROJECT (From Section F)
1		6	
2		7	
3		8	
4		9	
5		10	



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**H. ADDITIONAL INFORMATION**

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30. PROVIDE ANY ADDITIONAL INFORMATION REQUESTED BY THE AGENCY. ATTACH ADDITIONAL SHEETS AS NEEDED.

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**I. AUTHORIZED REPRESENTATIVE**

*The foregoing is a statement of facts.*

31. SIGNATURE

32. DATE

33. NAME AND TITLE

# ARCHITECT-ENGINEER QUALIFICATIONS

1. SOLICITATION NUMBER *(If any)*

## PART II - GENERAL QUALIFICATIONS

*(If a firm has branch offices, complete for each specific branch office seeking work.)*

2a. FIRM (or Branch Office) NAME		3. YEAR ESTABLISHED	4. UNIQUE ENTITY IDENTIFIER
2b. STREET		5. OWNERSHIP	
2c. CITY		a. TYPE	
2d. STATE	2e. ZIP CODE	b. SMALL BUSINESS STATUS	
6a. POINT OF CONTACT NAME AND TITLE		7. NAME OF FIRM <i>(If Block 2a is a Branch Office)</i>	
6b. TELEPHONE NUMBER	6c. E-MAIL ADDRESS		
8a. FORMER FIRM NAME(S) <i>(If any)</i>		8b. YEAR ESTABLISHED	8c. UNIQUE ENTITY IDENTIFIER

9. EMPLOYEES BY DISCIPLINE				10. PROFILE OF FIRM'S EXPERIENCE AND ANNUAL AVERAGE REVENUE FOR LAST 5 YEARS		
a. Function Code	b. Discipline	c. Number of Employees		a. Profile Code	b. Experience	c. Revenue Index Number <i>(see below)</i>
		(1) FIRM	(2) BRANCH			
Other Employees						
<b>Total</b>						

<p>11. ANNUAL AVERAGE PROFESSIONAL SERVICES REVENUES OF FIRM FOR LAST 3 YEARS <i>(Insert revenue index number shown at right)</i></p> <table style="width: 100%;"> <tr><td>a. Federal Work</td><td> </td></tr> <tr><td>b. Non-Federal Work</td><td> </td></tr> <tr><td><b>c. Total Work</b></td><td> </td></tr> </table>	a. Federal Work		b. Non-Federal Work		<b>c. Total Work</b>		<p style="text-align: center;">PROFESSIONAL SERVICES REVENUE INDEX NUMBER</p> <table style="width: 100%;"> <tr> <td>1. Less than \$100,000</td> <td>6. \$2 million to less than \$5 million</td> </tr> <tr> <td>2. \$100,000 to less than \$250,000</td> <td>7. \$5 million to less than \$10 million</td> </tr> <tr> <td>3. \$250,000 to less than \$500,000</td> <td>8. \$10 million to less than \$25 million</td> </tr> <tr> <td>4. \$500,000 to less than \$1 million</td> <td>9. \$25 million to less than \$50 million</td> </tr> <tr> <td>5. \$1 million to less than \$2 million</td> <td>10. \$50 million or greater</td> </tr> </table>	1. Less than \$100,000	6. \$2 million to less than \$5 million	2. \$100,000 to less than \$250,000	7. \$5 million to less than \$10 million	3. \$250,000 to less than \$500,000	8. \$10 million to less than \$25 million	4. \$500,000 to less than \$1 million	9. \$25 million to less than \$50 million	5. \$1 million to less than \$2 million	10. \$50 million or greater
a. Federal Work																	
b. Non-Federal Work																	
<b>c. Total Work</b>																	
1. Less than \$100,000	6. \$2 million to less than \$5 million																
2. \$100,000 to less than \$250,000	7. \$5 million to less than \$10 million																
3. \$250,000 to less than \$500,000	8. \$10 million to less than \$25 million																
4. \$500,000 to less than \$1 million	9. \$25 million to less than \$50 million																
5. \$1 million to less than \$2 million	10. \$50 million or greater																

**12. AUTHORIZED REPRESENTATIVE**  
*The foregoing is a statement of facts.*

a. SIGNATURE	b. DATE
c. NAME AND TITLE	

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>Federal agencies select firms for A E contracts on the basis of professional  
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selection of at least three of the most highly qualified firms based on demonstrated  
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>The Act then requires the negotiation of a contract at a fair and reasonable price  
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<div data-bbox="54 775 920 789" data-label="Text">>A public announcement is not required for certain contracts, and agencies may use Part</div>
<div data-bbox="54 788 877 802" data-label="Text">II as a basis for selecting at least three of the most highly qualified firms for</div>
<div data-bbox="54 801 877 815" data-label="Text">discussions prior to requesting submission of Part I.<span style="xfa spacerun:yes"></div>
<div data-bbox="54 814 159 828" data-label="Text">>Â </span></div>
<div data-bbox="54 827 886 841" data-label="Text">>Firms are encouraged to update Part II on file with agency offices, as appropriate,</div>
<div data-bbox="54 840 597 854" data-label="Text">according to FAR Part 36.<span style="xfa spacerun:yes"></div>
<div data-bbox="54 853 159 867" data-label="Text">>Â </span></div>
<div data-bbox="54 866 920 880" data-label="Text">>If a firm has branch offices, submit a separate Part II for each branch office seeking</div>
<div data-bbox="54 879 402 893" data-label="Text">work.<span style="xfa spacerun:yes"></div>
<div data-bbox="54 892 149 906" data-label="Text">>Â </span></div>
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>2.<span style="xfa spacerun:yes"
>Â </span
>Prepare a separate Part II for each firm that will be part of the team proposed for a
specific contract and submitted with Part I.<span style="xfa spacerun:yes"
>Â </span
>If a firm has branch offices, submit a separate Part II for each branch office that has
a key role on the team.</p
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>Â </span
></p
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>Individual agencies may supplement these instructions.<span style="xfa spacerun:yes"
>Â </span
>For example, they may limit the number of projects or number of<span
style="font weight:bold;letter spacing:0em"
><span style="xfa spacerun:yes"
>Â </span
></span
><span style="letter spacing:0em"
>pages submitted in Part I in response to a public announcement for a particular
project.<span style="xfa spacerun:yes"
>Â </span
>Carefully comply with any agency instructions when preparing and submitting this
form.<span style="xfa spacerun:yes"
>Â </span
>Be as concise as possible and provide only the information requested by the
agency.</span
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>DEFINITIONS</p
><p style="letter spacing:0in"
><span style="xfa spacerun:yes"
>Â </span
```



></p>><p style="letter spacing:0in">>Architect Engineer Services:<span style="xfa spacerun:yes">Â </span>><span style="font weight:normal">>Defined in FAR 2.101.</span>><span style="xfa spacerun:yes">Â </span>></p>><p style="letter spacing:0in">><span style="xfa spacerun:yes">Â </span>></p>><p style="letter spacing:0in">>Branch Office:<span style="xfa spacerun:yes">Â </span>><span style="font weight:normal">>A geographically distinct place of business or</span>><span style="xfa spacerun:yes">Â </span>><span style="font weight:normal">>subsidiary office of a firm that has a key role on the</span>><span style="xfa spacerun:yes">Â </span>><span style="font weight:normal">>team.</span>><span style="xfa spacerun:yes">Â </span>></p>><p style="letter spacing:0in">><span style="xfa spacerun:yes">Â </span>></p>><p style="letter spacing:0in">>Discipline:<span style="xfa spacerun:yes">Â </span>><span style="font weight:normal">>Primary technical capabilities of key personnel,</span>><span style="xfa spacerun:yes">Â </span>><span style="font weight:normal">>as evidenced by academic degree, professional registration,</span>><span style="xfa spacerun:yes">Â </span>><span style="font weight:normal">>certification, and/or extensive experience.</span>><span style="xfa spacerun:yes">Â </span>></p>><p style="letter spacing:0in">><span style="xfa spacerun:yes">Â </span>></p>><p style="letter spacing:0in">>Firm:<span style="xfa spacerun:yes">Â </span>><span style="font weight:normal">> Defined in FAR 36.102.</span>><span style="xfa spacerun:yes">Â </span>></p>><p style="letter spacing:0in">><span style="xfa spacerun:yes">Â </span>></p>><p style="letter spacing:0in">>Key Personnel:<span style="xfa spacerun:yes">Â </span>><span style="font weight:normal">>Individuals who will have major contract</span>><span style="xfa spacerun:yes">Â </span>></p>

```
>Â </span
><span style="font weight:normal"
>responsibilities and/or provide unusual or unique expertise.</span
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>Â </span
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>Section A. Contract Information.<span style="xfa spacerun:yes"
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>Â </span
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>1. Title and Location.<span style="xfa spacerun:yes"
>Â </span
>Enter the title and location of the contract for which this form is being submitted,
exactly as shown in the public announcement or agency request.<span
style="xfa spacerun:yes"
>Â </span
></p
><p style="margin bottom:0pt;font weight:normal;text decoration:none;letter spacing:0in"
><span style="xfa spacerun:yes"
>Â </span
></p
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>2. Public Notice Date.<span style="xfa spacerun:yes"
>Â </span
>Enter the posted date of the agency's notice on the Federal Business Opportunity
website (FedBizOpps), other form of public announcement or agency request for this
contract.<span style="xfa spacerun:yes"
>Â </span
></p
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style="margin bottom:0pt;text indent:14.4pt;font weight:normal;text decoration:none;lette
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r spacing:0in"
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>Â </span
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><p
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r spacing:0in"
>3. Solicitation or Project Number.<span style="xfa spacerun:yes"
>Â </span
>Enter the agency's solicitation<span style="xfa spacerun:yes"
>Â </span
>number<span style="xfa spacerun:yes"
>Â </span
>and/or<span style="xfa spacerun:yes"
>Â </span
>project<span style="xfa spacerun:yes"
>Â </span
>number,<span style="xfa spacerun:yes"
>Â </span
>if<span style="xfa spacerun:yes"
>Â </span
>applicable, exactly as shown in the public announcement or agency request for this
contract.</p
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><span style="xfa spacerun:yes"
>Â </span
></p
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>Section B.<span style="xfa spacerun:yes"
>Â </span
>Architect Engineer Point of Contact.<span style="xfa spacerun:yes"
>Â </span
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>Â </span
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style="margin bottom:0pt;text indent:14.4pt;font weight:normal;text decoration:none;lette
r spacing:0in"
>4 8.<span style="xfa spacerun:yes"
>Â </span
>Name, Title, Name of Firm, Telephone Number, Fax (Facsimile) Number and E mail
(Electronic Mail) Address.<span style="xfa spacerun:yes"
>Â </span
>Provide information for a representative of the prime contractor or joint venture that
the agency can contact for additional information.</p
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>Paperwork Reduction Act Statement This information collection meets the requirements
of 44 USC Â§ 3507, as amended by section 2 of the Paperwork Reduction Act of<span
style="xfa spacerun:yes"
>Â </span
></p
><p style="line height:8pt;letter spacing:0in"
>1995.<span style="xfa spacerun:yes"
>Â </span
>You do not need to answer these questions unless we display a valid Office of
Management and Budget (OMB) control number.<span style="xfa spacerun:yes"
>Â </span
>The OMB control number for this collection is 9000 0157.<span style="xfa spacerun:yes"
>Â </span
>We estimate that it will take 29 hours (25 hours for part 1 and 4 hours for Part 2) to
read the instructions, gather the facts, and answer the questions.<span
style="xfa spacerun:yes"
>Â </span
>Send only comments relating to our time estimate, including suggestions for reducing
this burden, or any other aspects of this collection of information to:<span
style="xfa spacerun:yes"
>Â </span
>General Services Administration, Regulatory Secretariat Division (M1V1CB), 1800 F
Street, NW, Washington, DC<span style="xfa spacerun:yes"
>Â </span
>20405.</p
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>Section C.<span style="xfa spacerun:yes"
>Â </span
>Proposed Team.<span style="xfa spacerun:yes"
>Â </span
></p
><p style="letter spacing:0in"
><span style="xfa spacerun:yes"
>Â </span
></p
><p style="letter spacing:0in"
>9 11.<span style="xfa spacerun:yes"
>Â </span
>Firm Name, Address, and Role in This Contract. Provide the contractual relationship,
name, full mailing address, and a brief description of the role of each firm that will
be involved in performance of this contract.<span style="xfa spacerun:yes"
>Â </span
>List the prime contractor or joint venture partners first.<span style="xfa spacerun:yes"
>Â </span
>If a firm has branch offices, indicate each individual branch office that will have a
key role on the team.<span style="xfa spacerun:yes"
>Â </span
>The named subcontractors and outside associates or consultants must be used, and any
change must be approved by the contracting officer. (See FAR Part 52 Clause
"Subcontractors and Outside Associates and Consultants (Architect Engineer
Services)").<span style="xfa spacerun:yes"
>Â </span
>Attach an additional sheet in the same format as Section C if needed.<span
style="xfa spacerun:yes"
>Â </span
></p
><p style="letter spacing:0in"
><span style="xfa spacerun:yes"
>Â </span
></p
><p style="letter spacing:0in"
>Section D.<span style="xfa spacerun:yes"
>Â </span
>Organizational Chart of Proposed Team.<span style="xfa spacerun:yes"
>Â </span
></p
><p style="letter spacing:0in"
><span style="xfa spacerun:yes"
>Â </span
></p
><p style="letter spacing:0in"
>As an attachment after Section C, present an organizational chart of the proposed team
showing the names and roles of all key personnel listed in Section E and the firm they
are associated with as listed in Section C.<span style="xfa spacerun:yes"
>Â </span
></p
><p style="letter spacing:0in"
><span style="xfa spacerun:yes"
>Â </span
></p
><p style="letter spacing:0in"
>Section E.<span style="xfa spacerun:yes"
>Â </span
>Resumes of Key Personnel Proposed for this Contract.<span style="xfa spacerun:yes"
>Â </span
```

></p>
 ><p style="letter spacing:0in">
 ><span style="xfa spacerun:yes">
 >Â </span>
 ></p>
 ><p style="letter spacing:0in">
 >Complete this section for each key person who will participate in this contract.<span style="xfa spacerun:yes">
 >Â </span>
 >Group by firm, with personnel of the prime contractor or joint venture partner firms first.<span style="xfa spacerun:yes">
 >Â </span>
 >The following blocks must be completed for each resume:<span style="xfa spacerun:yes">
 >Â </span>
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 ><p style="letter spacing:0in">
 ><span style="xfa spacerun:yes">
 >Â </span>
 ></p>
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 >12.<span style="xfa spacerun:yes">
 >Â </span>
 >Name.<span style="xfa spacerun:yes">
 >Â </span>
 >Self explanatory.<span style="xfa spacerun:yes">
 >Â </span>
 ></p>
 ><p style="letter spacing:0in">
 ><span style="xfa spacerun:yes">
 >Â </span>
 ></p>
 ><p style="letter spacing:0in">
 >13.<span style="xfa spacerun:yes">
 >Â </span>
 >Role in this contract.<span style="xfa spacerun:yes">
 >Â </span>
 >Self explanatory.<span style="xfa spacerun:yes">
 >Â </span>
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 ><span style="xfa spacerun:yes">
 >Â </span>
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 ><p style="letter spacing:0in">
 >14.<span style="xfa spacerun:yes">
 >Â </span>
 >Years Experience.<span style="xfa spacerun:yes">
 >Â </span>
 >Total years of relevant experience (block 14a), and years of relevant experience with current firm, but not necessarily the same branch office (block 14b).<span style="xfa spacerun:yes">
 >Â </span>
 ></p>
 ><p style="letter spacing:0in">
 ><span style="xfa spacerun:yes">
 >Â </span>
 ></p>
 ><p style="letter spacing:0in">
 >15.<span style="xfa spacerun:yes">
 >Â </span>
 >Firm Name and Location.<span style="xfa spacerun:yes">
 >Â </span>
 >Name, city and state of the firm where the person currently works, which must correspond with one of the firms (or branch office of a firm, if appropriate)<span style="xfa spacerun:yes">
 >Â </span>
 >listed in Section C.<span style="xfa spacerun:yes">
 >Â </span>
 ></p>
 ><p style="letter spacing:0in">
 ><span style="xfa spacerun:yes">
 >Â </span>
 ></p>

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>Â </span
></p
><p style="letter spacing:0in"
>16.<span style="xfa spacerun:yes"
>Â </span
>Education.<span style="xfa spacerun:yes"
>Â </span
>Provide<span style="xfa spacerun:yes"
>Â </span
>information<span style="xfa spacerun:yes"
>Â </span
>on<span style="xfa spacerun:yes"
>Â </span
>the highest relevant academic degree(s) received.<span style="xfa spacerun:yes"
>Â </span
>Indicate the area(s) of specialization for each degree.<span style="xfa spacerun:yes"
>Â </span
></p
><p style="letter spacing:0in"
><span style="xfa spacerun:yes"
>Â </span
></p
><p style="letter spacing:0in"
>17.<span style="xfa spacerun:yes"
>Â </span
>Current Professional Registration.<span style="xfa spacerun:yes"
>Â </span
>Provide information on current relevant professional registration(s) in a State or
possession of the United States, Puerto Rico, or the District of<span
style="xfa spacerun:yes"
>Â </span
>Columbia according to FAR Part 36.<span style="xfa spacerun:yes"
>Â </span
></p
><p style="letter spacing:0in"
><span style="xfa spacerun:yes"
>Â </span
></p
><p style="letter spacing:0in"
>18.<span style="xfa spacerun:yes"
>Â </span
>Other Professional Qualifications.<span style="xfa spacerun:yes"
>Â </span
>Provide information on any other professional qualifications relating to this contract,
such as education, professional registration, publications, organizational memberships,
certifications, training, awards, and foreign language capabilities.</p
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>19.<span style="xfa spacerun:yes"
>Â </span
>Relevant Projects.<span style="xfa spacerun:yes"
>Â </span
>Provide information on up to five projects in which the person had a significant role
that demonstrates the person's capability relevant to her/his proposed role in this
contract.<span style="xfa spacerun:yes"
```

>Â </span  
>These projects do not necessarily have to be any of the projects presented in Section F for the project team if the person was not involved in any of those projects or the person worked on other projects that were more relevant than the team projects in Section F.<span style="xfa spacerun:yes">  
>Â </span  
>Use the check box provided to indicate if the project was performed with any office of the current firm.<span style="xfa spacerun:yes">  
>Â </span  
>If any of the professional services or construction projects are not complete, leave Year Completed blank and indicate the status in Brief Description and Specific Role (block (3)).<span style="xfa spacerun:yes">  
>Â </span  
<</p>  
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<<span style="xfa spacerun:yes">  
>Â </span  
<</p>  
<<p style="letter spacing:0in">  
>Section F.<span style="xfa spacerun:yes">  
>Â </span  
>Example Projects which Best Illustrate Proposed Team's Qualifications for this Contract.<span style="xfa spacerun:yes">  
>Â </span  
<</p>  
<<p style="letter spacing:0in">  
<<span style="xfa spacerun:yes">  
>Â </span  
<</p>  
<<p style="letter spacing:0in">  
>Select projects where multiple team members worked together, if possible, that demonstrate the team's capability to perform work similar to that required for this contract.<span style="xfa spacerun:yes">  
>Â </span  
>Complete one Section F for each project.<span style="xfa spacerun:yes">  
>Â </span  
>Present ten projects, unless otherwise specified by the agency.<span style="xfa spacerun:yes">  
>Â </span  
>Complete the following blocks for each project:<span style="xfa spacerun:yes">  
>Â </span  
<</p>  
<<p style="letter spacing:0in">  
<<span style="xfa spacerun:yes">  
>Â </span  
<</p>  
<<p style="letter spacing:0in">  
>20.<span style="xfa spacerun:yes">  
>Â </span  
>Example Project Key Number.<span style="xfa spacerun:yes">  
>Â </span  
>Start with "1" for the first project and number consecutively.<span style="xfa spacerun:yes">  
>Â </span  
<</p>  
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>Â </span  
<</p>  
<<p style="letter spacing:0in">  
>21.<span style="xfa spacerun:yes">  
>Â </span  
>Title and Location.<span style="xfa spacerun:yes">  
>Â </span  
>Title and location of project or contract.<span style="xfa spacerun:yes">  
>Â </span  
>For an indefinite delivery contract, the location is the geographic scope of the contract.<span style="xfa spacerun:yes">  
>Â </span  
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><span style="xfa spacerun:yes"  
>Â </span  
></p  
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>22.<span style="xfa spacerun:yes"  
>Â </span  
>Year Completed.<span style="xfa spacerun:yes"  
>Â </span  
>Enter the year completed of the professional services (such as planning, engineering  
study, design, or surveying), and/or the year completed of construction,<span  
style="xfa spacerun:yes"  
>Â </span  
>if applicable.<span style="xfa spacerun:yes"  
>Â </span  
>If any of the professional services or the construction projects are not complete,  
leave Year Completed blank and indicate the status in Brief Description of Project and  
Relevance to this Contract (block 24).<span style="xfa spacerun:yes"  
>Â </span  
></p  
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>Â </span  
></p  
><p style="letter spacing:0in"  
>23a.<span style="xfa spacerun:yes"  
>Â </span  
>Project Owner.<span style="xfa spacerun:yes"  
>Â </span  
>Project owner or user, such as a government agency or installation, an institution, a  
corporation or private individual.<span style="xfa spacerun:yes"  
>Â </span  
></p  
><p style="letter spacing:0in"  
><span style="xfa spacerun:yes"  
>Â </span  
></p  
><p style="letter spacing:0in"  
>23b.<span style="xfa spacerun:yes"  
>Â </span  
>Point of Contact Name.<span style="xfa spacerun:yes"  
>Â </span  
>Provide name of a person associated with the project owner or the organization which  
contracted for the professional services, who is very familiar with the project and the  
firm's (or firms') performance.<span style="xfa spacerun:yes"  
>Â </span  
></p  
><p style="letter spacing:0in"  
><span style="xfa spacerun:yes"  
>Â </span  
></p  
><p style="letter spacing:0in"  
>23c.<span style="xfa spacerun:yes"  
>Â </span  
>Point of Contact Telephone Number.<span style="xfa spacerun:yes"  
>Â </span  
>Self explanatory.<span style="xfa spacerun:yes"  
>Â </span  
></p  
><p style="letter spacing:0in"  
><span style="xfa spacerun:yes"  
>Â </span  
></p  
><p style="letter spacing:0in"  
>24.<span style="xfa spacerun:yes"  
>Â </span  
>Brief Description of Project and Relevance to this Contract.<span  
style="xfa spacerun:yes"  
>Â </span  
>Indicate scope, size, cost, principal elements and special features of the  
project.<span style="xfa spacerun:yes"  
>Â </span

```
>Discuss the relevance of the example project to this contract.<span
style="xfa spacerun:yes"
>Ã /span
>Enter any other information requested by the agency for each example project.</p
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330 (REV. 8/2016) 0 17200 7106 0 0 0 "Arial" 1 0 9000 ISO 8859 1?><?renderCache.textRun
22 PAGE 2 OF INSTRUCTIONS 0 55727 17906 0 0 0 "Arial" 1 0 9000 ISO 8859 1?></draw
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```

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PROJECTS KEY 0 212997 9369 0 0 0 "Arial" 1 0 9000 ISO 8859 1?><</draw
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>25.<span style="xfa spacerun:yes"
>Â </span
>Firms from Section C Involved with this Project.<span style="xfa spacerun:yes"
>Â </span
>Indicate which firms (or branch offices, if appropriate) on the project team were
involved in the example project, and their roles.<span style="xfa spacerun:yes"
>Â </span
>List in the same order as Section C.<span style="xfa spacerun:yes"
>Â </span
<</p
<<p style="letter spacing:0in"
<<span style="xfa spacerun:yes"
>Â </span
<</p
<<p style="letter spacing:0in"
>Section G.<span style="xfa spacerun:yes"
>Â </span
>Key Personnel Participation in Example Projects.<span style="xfa spacerun:yes"
>Â </span
<</p
<<p style="letter spacing:0in"
<<span style="xfa spacerun:yes"
>Â </span
<</p
<<p style="letter spacing:0in"
>This matrix is intended to graphically depict which key personnel identified in Section
E worked on the example projects listed in Section F.<span style="xfa spacerun:yes"
>Â </span
>Complete the following blocks (see example below).<span style="xfa spacerun:yes"
>Â </span
<</p
<<p style="letter spacing:0in"
<<span style="xfa spacerun:yes"
>Â </span
<</p
<<p style="letter spacing:0in"
>26. and 27.<span style="xfa spacerun:yes"
>Â </span

```

```
>Names of Key Personnel and Role in this Contract.<span style="xfa spacerun:yes"
>Â </span
>List the names of the key personnel and their proposed roles in this contract in the
same order as they appear in Section E.<span style="xfa spacerun:yes"
>Â </span
<</p
<<p style="letter spacing:0in"
<<span style="xfa spacerun:yes"
>Â </span
<</p
<<p style="letter spacing:0in"
>28.<span style="xfa spacerun:yes"
>Â </span
>Example Projects Listed in Section F.<span style="xfa spacerun:yes"
>Â </span
>In the column under each project key number (see block 29) and for each key person,
place an "X" under the project key number for<span style="xfa spacerun:yes"
>Â </span
>participation in the same or similar role.</p
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>29.<span style="xfa spacerun:yes"
>Â </span
>Example Projects Key.<span style="xfa spacerun:yes"
>Â </span
>List the key numbers and titles of the example projects in the same order as they
appear in Section F.<span style="xfa spacerun:yes"
>Â </span
<</p
<<p style="letter spacing:0in"
<<span style="xfa spacerun:yes"
>Â </span
<</p
<<p style="letter spacing:0in"
>Section H.<span style="xfa spacerun:yes"
>Â </span
>Additional Information.<span style="xfa spacerun:yes"
>Â </span
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<<span style="xfa spacerun:yes"
>Â </span
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>30.<span style="xfa spacerun:yes"
>Â </span
>Use this section to provide additional information specifically requested by the agency
or to address selection criteria that are not covered by the information provided in
Sections A G.<span style="xfa spacerun:yes"
>Â </span
<</p
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<<span style="xfa spacerun:yes"
>Â </span
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```

```
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>Section I.<span style="xfa spacerun:yes"
>Â </span
>Authorized Representative.<span style="xfa spacerun:yes"
>Â </span
<</p
><p style="letter spacing:0in"
><span style="xfa spacerun:yes"
>Â </span
<</p
><p style="letter spacing:0in"
>31. and 32.<span style="xfa spacerun:yes"
>Â </span
>Signature of Authorized Representative and Date.<span style="xfa spacerun:yes"
>Â </span
>An authorized representative of a joint venture or the prime contractor must sign and
date the completed form.<span style="xfa spacerun:yes"
>Â </span
>Signing attests that the information provided is current and factual, and that all
firms on the proposed team agree to work on the project.<span style="xfa spacerun:yes"
>Â </span
>Joint ventures selected for negotiations must make available a statement of
participation by a principal of each member of the joint venture.<span
style="xfa spacerun:yes"
>Â </span
<</p
><p style="letter spacing:0in"
><span style="xfa spacerun:yes"
>Â </span
<</p
><p style="letter spacing:0in"
>33.<span style="xfa spacerun:yes"
>Â </span
>Name and Title.<span style="xfa spacerun:yes"
>Â </span
>Self explanatory.</p
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330 (REV. 8/2016) 0 16075 7106 0 0 0 "Arial" 1 0 9000 ISO 8859 1?><?renderCache.textRun
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>SAMPLE ENTRIES FOR SECTION G<span style="xfa spacerun:yes"
>Â </span
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>(MATRIX)</span
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```

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>Â </span
>NAMES OF KEY PERSONNEL<span style="xfa spacerun:yes"
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>(From Section E,</p
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>Â </span
>ROLE IN THIS<br
/>CONTRACT<br
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>(From Section E,<span style="xfa spacerun:yes"
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>Ã </span
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>completing table.<span style="xfa spacerun:yes"
>Ã </span
>Place "X" under project key number for</p
><p style="font style:italic;letter spacing:0in"
>participation in same or similar role.)</p
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>>/draw
>>draw name="T78" x="158.487mm" y="145.701mm" minW="10.32mm" minH="4.313mm"
>>value
>>text
>7</text
>>/value
>>ui
>>textEdit
/>>/ui
>>para vAlign="middle" hAlign="center"
/>><font size="9pt" typeface="Arial"
/>><traversal
>><traverse ref="T80[0]"
/>></traversal
>>/draw
>>draw name="T80" x="168.284mm" y="145.701mm" minW="10.32mm" minH="4.313mm"
>>value
>>text
>8</text
>>/value
>>ui
>>textEdit
/>>/ui
>>para vAlign="middle" hAlign="center"
/>><font size="9pt" typeface="Arial"
/>><traversal
>><traverse ref="T82[0]"
/>></traversal
>>/draw
>>draw name="T82" x="178.86mm" y="145.701mm" minW="10.32mm" minH="4.313mm"
```

```
>>value
>>text
>9</text
></value
>>ui
>>textEdit
/></ui
>>para vAlign="middle" hAlign="center"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T84[0]"
/></traversal
></draw
><draw name="T84" x="189.699mm" y="145.701mm" w="10.32mm" minH="4.313mm"
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>>text
>10</text
></value
>>ui
>>textEdit
/></ui
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/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T169[0]"
/></traversal
></draw
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>>text
>X</text
></value
>>ui
>>textEdit
/></ui
>>para vAlign="middle" hAlign="center"
/><font typeface="Courier New"
/><traversal
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/></traversal
><?renderCache.bounds 29254 23244 0 0 0 0 0 0?><?renderCache.textRun 1 X 0 11627 14737 0
0 0 "Courier New" 0 0 10000 ISO 8859 1?></draw
><draw name="T156" x="118mm" y="149.754mm" w="10.32mm" h="8.2mm"
><value
>>text
>X</text
></value
>>ui
>>textEdit
/></ui
>>para vAlign="middle" hAlign="center"
/><font typeface="Courier New"
/><traversal
><traverse ref="T72[0]"
/></traversal
><?renderCache.bounds 29254 23244 0 0 0 0 0 0?><?renderCache.textRun 1 X 0 11627 14737 0
0 0 "Courier New" 0 0 10000 ISO 8859 1?></draw
><draw name="T156" x="118mm" y="158.214mm" w="10.32mm" h="8.2mm"
><value
>>text
>X</text
></value
>>ui
>>textEdit
/></ui
>>para vAlign="middle" hAlign="center"
/><font typeface="Courier New"
/><traversal
><traverse ref="T156[3]"
/></traversal
><?renderCache.bounds 29254 23244 0 0 0 0 0 0?><?renderCache.textRun 1 X 0 11627 14737 0
```

```
0 0 "Courier New" 0 0 10000 ISO 8859 1?></draw
><draw name="T156" x="128.06mm" y="158.214mm" w="10.32mm" h="8.2mm"
><value
><text
>X</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle" hAlign="center"
/><font typeface="Courier New"
/><traversal
><traverse ref="T172[0]"
/></traversal
><?renderCache.bounds 29254 23244 0 0 0 0 0 0?><?renderCache.textRun 1 X 0 11627 14737 0
0 0 "Courier New" 0 0 10000 ISO 8859 1?></draw
><draw name="T156" x="128.06mm" y="166.934mm" w="10.32mm" h="8.2mm"
><value
><text
>X</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle" hAlign="center"
/><font typeface="Courier New"
/><traversal
><traverse ref="T185[0]"
/></traversal
><?renderCache.bounds 29254 23244 0 0 0 0 0 0?><?renderCache.textRun 1 X 0 11627 14737 0
0 0 "Courier New" 0 0 10000 ISO 8859 1?></draw
><draw name="T156" x="97.37mm" y="158.214mm" w="10.32mm" h="8.2mm"
><value
><text
>X</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle" hAlign="center"
/><font typeface="Courier New"
/><traversal
><traverse ref="T149[0]"
/></traversal
><?renderCache.bounds 29254 23244 0 0 0 0 0 0?><?renderCache.textRun 1 X 0 11627 14737 0
0 0 "Courier New" 0 0 10000 ISO 8859 1?></draw
><draw name="T156" x="107.73mm" y="158.214mm" w="10.32mm" h="8.2mm"
><value
><text
>X</text
></value
><ui
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/></ui
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/><traversal
><traverse ref="T156[2]"
/></traversal
><?renderCache.bounds 29254 23244 0 0 0 0 0 0?><?renderCache.textRun 1 X 0 11627 14737 0
0 0 "Courier New" 0 0 10000 ISO 8859 1?></draw
><draw name="T156" x="107.73mm" y="166.934mm" w="10.32mm" h="8.2mm"
><value
><text
>X</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle" hAlign="center"
/><font typeface="Courier New"
```

```

/><traversal
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/></traversal
><?renderCache.bounds 29254 23244 0 0 0 0 0 0?><?renderCache.textRun 1 x 0 11627 14737 0
0 0 "Courier New" 0 0 10000 ISO 8859 1?></draw
><draw name="T156" x="97.37mm" y="166.934mm" w="10.32mm" h="8.2mm"
><value
><text
>X</text
></value
><ui
><textEdit
/></ui
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/><font typeface="Courier New"
/><traversal
><traverse ref="T156[7]"
/></traversal
><?renderCache.bounds 29254 23244 0 0 0 0 0 0?><?renderCache.textRun 1 x 0 11627 14737 0
0 0 "Courier New" 0 0 10000 ISO 8859 1?></draw
><draw name="T188" x="2.291mm" y="217.964mm" w="13.759mm" minH="0.152in"
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><text
>NUMBER</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T204[0]"
/></traversal
></draw
><draw name="T190" x="19.895mm" y="217.964mm" w="75.676mm" minH="0.152in"
><value
><exData contentType="text/html"
><body xmlns="http://www.w3.org/1999/xhtml"
xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
><p style="letter spacing:0in"
>TITLE OF EXAMPLE PROJECT<span style="xfa spacerun:yes"
>Â </span
><span style="font style:italic"
>(From Section F)</span
></p
></body
></exData
></value
><ui
><textEdit
/></ui
><para vAlign="middle"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T201[0]"
/></traversal
></draw
><draw name="T193" x="97.831mm" y="217.964mm" w="13.759mm" minH="0.152in"
><value
><text
>NUMBER</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T208[0]"
/></traversal
></draw

```

```

><draw name="T195" x="117.685mm" y="217.964mm" w="75.676mm" minH="0.152in"
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><exData contentType="text/html"
><body xmlns="http://www.w3.org/1999/xhtml"
xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
><p style="letter spacing:0in"
>TITLE OF EXAMPLE PROJECT<span style="xfa spacerun:yes"
>Â </span
><span style="font style:italic"
>(From Section F)</span
></p
></body
></exData
></value
><ui
><textEdit
/></ui
><para vAlign="middle"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T197[0]"
/></traversal
></draw
><draw name="T197" x="113.454mm" y="224.17mm" w="86.836mm" h="5.508mm"
><value
><text
>XYZ Corporation Headquarters, Boston, MA</text
></value
><ui
><textEdit
/></ui
><font typeface="Courier New"
/><traversal
><traverse ref="T209[0]"
/></traversal
><?renderCache.bounds 246149 15613 0 0 0 0 0 0?><?renderCache.textRun 40 XYZ Corporation
Headquarters, Boston, MA 0 0 8115 0 0 0 "Courier New" 0 0 10000 ISO 8859 1?></draw
><draw name="T199" x="113.2mm" y="230.918mm" w="61.394mm" minH="0.146in"
><value
><text
>Founder's Museum, Newport, RI</text
></value
><ui
><textEdit
/></ui
><font typeface="Courier New"
/><traversal
><traverse ref="T196[0]"
/></traversal
></draw
><draw name="T201" x="17.14mm" y="224.17mm" w="79.71mm" h="4.2mm"
><value
><text
>Federal Courthouse, Denver, CO </text
></value
><ui
><textEdit
/></ui
><font typeface="Courier New"
/><traversal
><traverse ref="T205[0]"
/></traversal
><?renderCache.bounds 225950 11906 0 0 0 0 0 0?><?renderCache.textRun 31 Federal
Courthouse, Denver, CO 0 0 8115 0 0 0 "Courier New" 0 0 10000 ISO 8859 1?></draw
><draw name="T202" x="16.88mm" y="230.918mm" w="80.057mm" h="10.116mm"
><value
><text
>Justin J. Wilson Federal Building, Baton Rouge, LA</text
></value
><ui
><textEdit

```

```
/></ui
><font typeface="Courier New"
/><traversal
><traverse ref="T193[0]"
/></traversal
><?renderCache.bounds 226933 28675 0 0 0 0 0 0?><?renderCache.textRun 35 Justin J.
Wilson Federal Building, 0 0 8115 0 0 0 "Courier New" 0 0 10000
ISO 8859 1?><?renderCache.textRun 15 Baton Rouge, LA 0 0 20115 0 0 0 "Courier New" 0 0
10000 ISO 8859 1?></draw
><draw name="T204" x="8.966mm" y="224.17mm" minW="0.078in" minH="0.152in"
><value
><text
>1</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T190[0]"
/></traversal
></draw
><draw name="T205" x="8.966mm" y="230.918mm" minW="0.078in" minH="0.152in"
><value
><text
>2</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T202[0]"
/></traversal
></draw
><draw name="T208" x="102.946mm" y="224.17mm" minW="0.078in" minH="0.152in"
><value
><text
>6</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T195[0]"
/></traversal
></draw
><draw name="T209" x="102.946mm" y="230.918mm" minW="0.078in" minH="0.152in"
><value
><text
>7</text
></value
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><textEdit
/></ui
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/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T199[0]"
/></traversal
></draw
><traversal
><traverse operation="first" ref="T2[0]"
/></traversal
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/><?templateDesigner expand 1?></subform
><subform name="Page4" x="0pt" y="0pt" w="8in" h="266.7mm"
```



```
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><line
><edge thickness="0.508mm"
/></line
></value
></draw
><draw name="R1" y="249.081mm" x="3.53mm" w="196.636mm" h="0in"
><value
><line
><edge thickness="0.508mm"
/></line
></value
></draw
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><value
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><body xmlns="http://www.w3.org/1999/xhtml"
xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/"
><p style="margin bottom:0pt;letter spacing:0in"
>Part II General Qualifications<span style="xfa spacerun:yes"
>Â </span
></p
><p style="margin bottom:0pt;font weight:normal;letter spacing:0in"
><span style="xfa spacerun:yes"
>Â </span
></p
><p style="margin bottom:0pt;font weight:normal;letter spacing:0in"
>See the "<span style="font weight:bold"
>General Instructions</span
>" on page 1 for firms with<span style="font weight:bold"
><span style="xfa spacerun:yes"
>Â </span
></span
>branch offices.<span style="xfa spacerun:yes"
>Â </span
><span style="font weight:bold"
><span style="xfa spacerun:yes"
>Â </span
></span
>Prepare Part II for the specific branch office<span style="font weight:bold"
><span style="xfa spacerun:yes"
>Â </span
></span
>seeking work if the firm has branch offices.<span style="font weight:bold"
><span style="xfa spacerun:yes"
>Â </span
></span
></p
><p style="margin bottom:0pt;font weight:normal;letter spacing:0in"
><span style="xfa spacerun:yes"
>Â </span
></p
><p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in"
>1.<span style="xfa spacerun:yes"
>Â </span
>Solicitation Number.<span style="xfa spacerun:yes"
>Â </span
>If Part II is submitted for a<span style="font weight:bold"
><span style="xfa spacerun:yes"
>Â </span
></span
>specific contract, insert the agency's solicitation number<span style="font weight:bold"
><span style="xfa spacerun:yes"
>Â </span
></span
>and/or project number, if applicable, exactly as shown in the<span
style="font weight:bold"
><span style="xfa spacerun:yes"
>Â </span
></span
```

</span>  
>public announcement or agency request.<span style="font weight:bold">  
<span style="xfa spacerun:yes">  
>Â </span>  
</span>  
</p>  
<p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in">  
<span style="xfa spacerun:yes">  
>Â </span>  
</p>  
<p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in">  
>2a 2e.<span style="xfa spacerun:yes">  
>Â </span>  
>Firm (or Branch Office) Name and Address.<span style="xfa spacerun:yes">  
>Â </span>  
>Self explanatory.<span style="font weight:bold">  
<span style="xfa spacerun:yes">  
>Â </span>  
</span>  
</p>  
<p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in">  
<span style="xfa spacerun:yes">  
>Â </span>  
</p>  
<p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in">  
>3.<span style="xfa spacerun:yes">  
>Â </span>  
>Year Established.<span style="xfa spacerun:yes">  
>Â </span>  
>Enter the year the firm (or branch<span style="font weight:bold">  
<span style="xfa spacerun:yes">  
>Â </span>  
</span>  
>office, if appropriate) was established under the current<span style="font weight:bold">  
<span style="xfa spacerun:yes">  
>Â </span>  
</span>  
>name.<span style="font weight:bold">  
<span style="xfa spacerun:yes">  
>Â </span>  
</span>  
</p>  
<p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in">  
<span style="xfa spacerun:yes">  
>Â </span>  
</p>  
<p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in">  
>4.<span style="xfa spacerun:yes">  
>Â </span>  
>Unique Entity Identifier.<span style="xfa spacerun:yes">  
>Â </span>  
>Insert the unique entity identifier issued by the entity designated at SAM.<span style="xfa spacerun:yes">  
>Â </span>  
>See FAR part<span style="font weight:bold">  
<span style="xfa spacerun:yes">  
>Â </span>  
</span>  
>4.6.<span style="font weight:bold">  
<span style="xfa spacerun:yes">  
>Â </span>  
</span>  
</p>  
<p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in">  
<span style="xfa spacerun:yes">  
>Â </span>  
</p>  
<p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in">  
>5.<span style="xfa spacerun:yes">  
>Â </span>  
>Ownership.<span style="font weight:bold">

```
><span style="xfa spacerun:yes"
>Â </span
></span
></p
><p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in"
><span style="xfa spacerun:yes"
>Â </span
></p
><p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in"
>a. Type.<span style="xfa spacerun:yes"
>Â </span
>Enter the type of ownership or legal structure<span style="font weight:bold"
><span style="xfa spacerun:yes"
>Â </span
></span
>of the firm (sole proprietor, partnership, corporation, joint<span
style="font weight:bold"
><span style="xfa spacerun:yes"
>Â </span
></span
>venture, etc.).<span style="font weight:bold"
><span style="xfa spacerun:yes"
>Â </span
></span
></p
><p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in"
><span style="xfa spacerun:yes"
>Â </span
></p
><p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in"
>b. Small Business Status.<span style="xfa spacerun:yes"
>Â </span
>Refer to the North American<span style="font weight:bold"
><span style="xfa spacerun:yes"
>Â </span
></span
>Industry Classification System (NAICS) code in the public<span style="font weight:bold"
><span style="xfa spacerun:yes"
>Â </span
></span
>announcement, and indicate if the firm is a small business<span style="font weight:bold"
><span style="xfa spacerun:yes"
>Â </span
></span
>according to the current size standard for that NAICS code<span style="font weight:bold"
><span style="xfa spacerun:yes"
>Â </span
></span
>(for example, Engineering Services (part of NAICS 541330),<span style="font weight:bold"
><span style="xfa spacerun:yes"
>Â </span
></span
>Architectural Services (NAICS 541310), Surveying and<span style="font weight:bold"
><span style="xfa spacerun:yes"
>Â </span
></span
>Mapping Services (NAICS 541370)).<span style="xfa spacerun:yes"
>Â </span
></p
>The small business<span style="font weight:bold"
><span style="xfa spacerun:yes"
>Â </span
></span
>categories and the internet website for the NAICS codes<span style="font weight:bold"
><span style="xfa spacerun:yes"
>Â </span
></span
>appear in FAR part 19.<span style="xfa spacerun:yes"
>Â </span
></p
>Contact the requesting agency for<span style="font weight:bold"
><span style="xfa spacerun:yes"
>Â </span
></span
></p
```

</span>  
>any questions.<span style="xfa spacerun:yes">  
>Â </span>  
>Contact your local U.S. Small Business<span style="font weight:bold">  
><span style="xfa spacerun:yes">  
>Â </span>  
></span>  
>Administration office for any questions regarding Business<span style="font weight:bold">  
><span style="xfa spacerun:yes">  
>Â </span>  
></span>  
>Status.<span style="font weight:bold">  
><span style="xfa spacerun:yes">  
>Â </span>  
></span>  
></p>  
><p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in">  
><span style="xfa spacerun:yes">  
>Â </span>  
></p>  
><p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in">  
>6a 6c.<span style="xfa spacerun:yes">  
>Â </span>  
>Point of Contact.<span style="xfa spacerun:yes">  
>Â </span>  
>Provide this information for a<span style="font weight:bold">  
><span style="xfa spacerun:yes">  
>Â </span>  
></span>  
>representative of the firm that the agency can contact for additional information.<span style="xfa spacerun:yes">  
>Â </span>  
>The representative must be<span style="font weight:bold">  
><span style="xfa spacerun:yes">  
>Â </span>  
></span>  
>empowered to speak on contractual and policy matters.<span style="font weight:bold">  
><span style="xfa spacerun:yes">  
>Â </span>  
></span>  
></p>  
><p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in">  
><span style="xfa spacerun:yes">  
>Â </span>  
></p>  
><p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in">  
>7.<span style="xfa spacerun:yes">  
>Â </span>  
>Name of Firm.<span style="xfa spacerun:yes">  
>Â </span>  
>Enter the name of the firm if PartII is<span style="font weight:bold">  
><span style="xfa spacerun:yes">  
>Â </span>  
></span>  
>prepared for a branch office.<span style="font weight:bold">  
><span style="xfa spacerun:yes">  
>Â </span>  
></span>  
></p>  
><p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in">  
><span style="xfa spacerun:yes">  
>Â </span>  
></p>  
><p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in">  
>8a 8c.<span style="xfa spacerun:yes">  
>Â </span>  
>Former Firm Names.<span style="xfa spacerun:yes">  
>Â </span>  
>Indicate any other previous<span style="font weight:bold">  
><span style="xfa spacerun:yes">  
>Â </span>

```
<</span
>names for the firm (or branch office) during the last six<span style="font weight:bold"
><span style="xfa spacerun:yes"
>Â </span
></span
>years. Insert the year that this corporate name change was effective and the associated
unique entity identifier.<span style="xfa spacerun:yes"
>Â </span
>This information is used to review past performance on Federal contracts.<span
style="xfa spacerun:yes"
>Â </span
></p
></body
></exData
></value
><ui
><textEdit
/></ui
><font weight="bold" size="9pt" typeface="Arial"
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><traverse ref="T110[0]"
/></traversal
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><draw name="T54" x="108.178mm" y="8.064mm" w="3.611in" h="8.454986in"
><value
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xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/"
><p style="margin bottom:0pt;letter spacing:0in"
><span style="xfa spacerun:yes"
>Â </span
></p
><p style="margin bottom:0pt;letter spacing:0in"
><span style="xfa spacerun:yes"
>Â </span
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>Employees by Discipline.<span style="xfa spacerun:yes"
>Â </span
>Use the relevant disciplines and associated function codes shown at the end of these
instructions and list in the same numerical order.<span style="xfa spacerun:yes"
>Â </span
>After the listed disciplines, write in any additional disciplines and leave the
function code blank.<span style="xfa spacerun:yes"
>Â </span
>List no more than 20 disciplines.<span style="xfa spacerun:yes"
>Â </span
>Group remaining employees under "Other Employees" in column b.<span
style="xfa spacerun:yes"
>Â </span
>Each person can be counted only once according to his/her primary function.<span
style="xfa spacerun:yes"
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>If Part II is prepared for a firm (including all branch offices), enter the number of
employees by disciplines in column c(1).<span style="xfa spacerun:yes"
>Â </span
>If Part II is prepared for a branch office, enter the number of employees by discipline
in column c(2) and for the firm in column c(1).<span style="xfa spacerun:yes"
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>10.<span style="xfa spacerun:yes"
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>Profile of Firm's Experience and Annual Average Revenue for Last 5 Years.<span
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>Complete this block for the firm or branch office for which this Part II is prepared.<span style="xfa spacerun:yes"  
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>Enter the experience categories which most accurately reflect the firm's technical capabilities and project experience.<span style="xfa spacerun:yes"  
>Â </span  
>Use the relevant experience categories and associated profile codes shown at the end of these instructions, and list in the same numerical order.<span style="xfa spacerun:yes"  
>Â </span  
>After the listed experience categories, write in any unlisted relevant project experience categories and leave the profile codes blank.<span style="xfa spacerun:yes"  
>Â </span  
>For each type of experience, enter the appropriate revenue index number to reflect the professional services revenues received annually (averaged over the last 5 years) by the firm or branch office for performing that type of work.<span style="xfa spacerun:yes"  
>Â </span  
>A particular project may be identified with one experience category or it may be broken into components, as best reflects the capabilities and types of work performed by the firm.<span style="xfa spacerun:yes"  
>Â </span  
>However, do not double count the revenues received on a particular project.<span style="xfa spacerun:yes"  
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>11.<span style="xfa spacerun:yes"  
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>Annual Average Professional Services Revenues of Firm for Last 3 Years.<span style="xfa spacerun:yes"  
>Â </span  
>Complete this block for the firm or branch office for which this Part II is prepared.<span style="xfa spacerun:yes"  
>Â </span  
>Enter the appropriate revenue index numbers to reflect the professional services revenues received annually (averaged over the last 3 years) by the firm or branch office.<span style="xfa spacerun:yes"  
>Â </span  
>Indicate Federal work (performed directly for the Federal Government, either as the prime contractor or subcontractor), non Federal work (all other domestic and foreign work, including Federally assisted projects), and the total.<span style="xfa spacerun:yes"  
>Â </span  
>If the firm has been in existence for less than 3 years, see the definition for "Annual Receipts" under FAR 19.101.<span style="xfa spacerun:yes"  
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>Authorized Representative.<span style="xfa spacerun:yes"  
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>An authorized representative of the firm or branch office must sign and date the completed form.<span style="xfa spacerun:yes"  
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>Signing attests that the information provided is current and factual.<span style="xfa spacerun:yes"  
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>Provide the name and title of the authorized representative who signed the form.</p  
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ISO 8859 1?><?renderCache.textRun 23 Collection and Analysis 0 0 17906 0 0 0 "Arial" 0 0
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>Â </span
><span style="font style:italic"
>(Planning & Relocation)</span
></p
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>Â />span
><span style="font style:italic"
>(low rise)</span
> ; Shopping Centers</p
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Building 0 0 7132 0 0 0 "Arial" 0 0 9000 ISO 8859 1?><?renderCache.textRun 10 (low
rise) 0 85030 7132 0 0 0 "Arial" 0 1 9000 ISO 8859 1?><?renderCache.textRun 19 ;
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Control; Cathodic Protection; Electrolysis 0 0 7106 0 0 0 "Arial" 0 0 9000
ISO 8859 1?></draw
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Estimating; Cost Engineering and 0 0 7106 0 0 0 "Arial" 0 0 9000
ISO 8859 1?><?renderCache.textRun 41 Analysis; Parametric Costing; Forecasting 0 0 17906
0 0 0 "Arial" 0 0 9000 ISO 8859 1?></draw
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>Â />span
><span style="font style:italic"
>(Concrete; Arch)</span
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>(Earth; Rock);</span
> Dikes; Levees</p
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>(Process & Facilities)</span
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> Preparation of Requests for Proposals</p
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Drafting</text
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>Â </span
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>(Residential, Multi Family;</span
><span style="xfa spacerun:yes"
>Â </span
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>Apartments; Condominiums)</span
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330 (REV. 8/2016) 0 19819 7106 0 0 0 "Arial" 1 0 9000 ISO 8859 1?><?renderCache.textRun
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(Exteriors; Streets; Memorials; 0 0 7106 0 0 0 "Arial" 0 0 9000
ISO 8859 1?>>?renderCache.textRun 22 Athletic Fields, Etc.) 0 0 17906 0 0 0 "Arial" 0 0
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>Â </span
>OTHER PROFESSIONAL QUALIFICATIONS<span style="xfa-spacerun:yes"
>Â </span
><span style="font-style:italic"
>(Publications, Organizations, Training, Awards, etc.)</span
></p
></body
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>E.<span style="xfa-spacerun:yes"
>Â </span
>RESUMES OF KEY PERSONNEL PROPOSED FOR THIS CONTRACT<span style="xfa-spacerun:yes"
>Â </span
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><p style="font-weight:normal;font-style:italic;text-decoration:none;letter-spacing:0in"
>(Complete one Section E for each key person.)</p
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>Â </span
><span style="font-style:italic"
>(City and State)</span
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>(REV. 8/2016)</span
> PAGE 2</p
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>(1) TITLE AND LOCATION<span style="xfa spacerun:yes"
>Â </span
><span style="font style:italic"
>(City and State)</span
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>(Brief scope, size, cost, etc.)</span
> AND SPECIFIC ROLE</p
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> AND SPECIFIC ROLE</p
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PROJECTS 0 221748 7948 0 0 0 "Arial" 0 0 9000 ISO 8859 1?></draw
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>(City and State)</span
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>Ã </span
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>(If applicable)</span
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>(Brief scope, size, cost, etc.)</span
> AND SPECIFIC ROLE</p
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/><corner thickness="0.1753mm" presence="hidden"
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><toolTip
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etc.)</toolTip
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><edge thickness="0.4064mm"
/></line
></value
></draw
><draw name="R57" y="214.155mm" x="3.712mm" w="196.527mm" h="0in"
><value
```

```
>>line
>>edge thickness="0.4064mm"
/>>/line
>>/value
>>/draw
>>draw name="R0" y="5.99mm" x="3.71mm" w="196.05mm" h="0in"
>>value
>>line
>>edge thickness="0.508mm"
/>>/line
>>/value
>>/draw
>>draw name="R1" y="252.022mm" x="3.71mm" w="196.05mm" h="0in"
>>value
>>line
>>edge thickness="0.508mm"
/>>/line
>>/value
>>/draw
>>draw name="R2" y="6.09mm" x="161.084mm" w="0in" h="13.348mm"
>>value
>>line slope="/"
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R3" y="19.47mm" x="3.71mm" w="196.05mm" h="0in"
>>value
>>line slope="/"
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R8" y="40.673mm" x="3.71mm" w="196.05mm" h="0in"
>>value
>>line
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R9" y="40.673mm" x="69.644mm" w="0in" h="8.553mm"
>>value
>>line
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R13" y="167.504mm" x="3.71mm" w="196.05mm" h="0in"
>>value
>>line
>>edge thickness="0.508mm"
/>>/line
>>/value
>>/draw
>>draw name="R15" y="49.118mm" x="3.71mm" w="196.05mm" h="0in"
>>value
>>line
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R32" y="176.196mm" x="8.6mm" w="0in" h="75.469mm"
>>value
>>line
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>bind match="none"
/>>draw name="T4" x="3.18mm" y="5.47mm" w="6.2185in" h="13.949mm"
>>value
```



```

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><p style="text-decoration:none;letter-spacing:0in"
>F.<span style="xfa-spacerun:yes"
>Â </span
>EXAMPLE PROJECTS WHICH BEST ILLUSTRATE PROPOSED TEAM'S</p
><p style="text-decoration:none;letter-spacing:0in"
>QUALIFICATIONS FOR THIS CONTRACT<span style="xfa-spacerun:yes"
>Â </span
></p
><p style="font-weight:normal;font-style:italic;text-decoration:none;letter-spacing:0in"
>(Present as many projects as requested by the agency, or 10 projects, if not
specified.<span style="xfa-spacerun:yes"
>Â </span
><span style="font-weight:bold;font-style:normal"
><span style="xfa-spacerun:yes"
>Â </span
></span
></p
><p style="font-weight:normal;font-style:italic;text-decoration:none;letter-spacing:0in"
>Complete one Section F for each project.)</p
></body
></exData
></value
><ui
><textEdit
/></ui
><para vAlign="middle" hAlign="center" lineHeight="9pt"
/><font weight="bold" size="9pt" typeface="Arial"
/><traversal
><traverse ref="T19[0]"
/></traversal
></draw
><draw name="T10" x="4.218mm" y="41.269mm" w="0.992in" minH="0.118in"
><value
><text
>a. PROJECT OWNER</text
></value
><ui
><textEdit
/></ui
><font size="7pt" typeface="Arial"
/><traversal
><traverse ref="ProjectOwner[0]"
/></traversal
></draw
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xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
><p style="letter-spacing:0in"
>21.<span style="xfa-spacerun:yes"
>Â </span
>TITLE AND LOCATION<span style="xfa-spacerun:yes"
>Â </span
><span style="font-style:italic"
>(City and State)</span
></p
></body
></exData
></value
><ui
><textEdit
/></ui
><font size="7pt" typeface="Arial"
/><traversal
><traverse ref="TitleandLocation[0]"
/></traversal
><para vAlign="middle"

```

```
/></draw
><draw name="T14" x="3.53mm" y="169.739mm" w="196.854mm" h="5.224mm"
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><text
>25. FIRMS FROM SECTION C INVOLVED WITH THIS PROJECT</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle" hAlign="center"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T21[0]"
/></traversal
><?renderCache.bounds 558011 14808 0 0 0 0 0 0?><?renderCache.textRun 52 25. FIRMS FROM
SECTION C INVOLVED WITH THIS PROJECT 0 145495 10010 0 0 0 "Arial" 0 0 9000
ISO 8859 1?></draw
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><value
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xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
><p style="text-decoration:none;letter-spacing:0in"
>24.<span style="xfa spacerun:yes"
>Â </span
>BRIEF DESCRIPTION OF PROJECT AND RELEVANCE TO THIS CONTRACT<span
style="xfa spacerun:yes"
>Â </span
><span style="font style:italic"
>(Include scope, size, and cost)</span
></p
></body
></exData
></value
><ui
><textEdit
/></ui
><font size="7pt" typeface="Arial"
/><traversal
><traverse ref="BriefDescription[0]"
/></traversal
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/></draw
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><p style="letter-spacing:0in"
>20.<span style="xfa spacerun:yes"
>Â </span
>EXAMPLE PROJECT KEY</p
><p style="letter-spacing:0in"
><span style="xfa spacerun:yes"
>Â Â Â Â Â Â </span
>NUMBER</p
></body
></exData
></value
><ui
><textEdit
/></ui
><para textIndent=" 11.52pt"
/><font size="7pt" typeface="Arial"
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/></traversal
></draw
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><text
```

```
>a.</text
<</value
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/><</ui
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/><<font weight="bold" size="9pt" typeface="Arial"
/><<traversal
<<traverse ref="T65[0]"
/><</traversal
<</draw
<<draw name="T22" x="5.437mm" y="193.2mm" w="0.162in" minH="0.15in"
<<value
<<text
>b.</text
<</value
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<<textEdit
/><</ui
<<para vAlign="middle"
/><<font weight="bold" size="9pt" typeface="Arial"
/><<traversal
<<traverse ref="T34[0]"
/><</traversal
<</draw
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<<value
<<text
>c.</text
<</value
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/><</ui
<<para vAlign="middle"
/><<font weight="bold" size="9pt" typeface="Arial"
/><<traversal
<<traverse ref="T40[0]"
/><</traversal
<</draw
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<<value
<<text
>d.</text
<</value
<<ui
<<textEdit
/><</ui
<<para vAlign="middle"
/><<font weight="bold" size="9pt" typeface="Arial"
/><<traversal
<<traverse ref="T47[0]"
/><</traversal
<</draw
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<<text
>e.</text
<</value
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/><</ui
<<para vAlign="middle"
/><<font weight="bold" size="9pt" typeface="Arial"
/><<traversal
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/><</traversal
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<<text
>f.</text
```

```
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/></ui
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<</draw
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<<text
>(1) FIRM NAME</text
<</value
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<<textEdit
/></ui
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/><traversal
<<traverse ref="FirmNameB[0]"
/></traversal
<<para vAlign="middle"
/></draw
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xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
<<p style="text decoration:none;letter spacing:0in"
>(2) FIRM LOCATION<span style="xfa spacerun:yes"
>Â </span
<<span style="font style:italic"
>(City and State)</span
<</p
<</body
<</exData
<</value
<<ui
<<textEdit
/></ui
<<font size="7pt" typeface="Arial"
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<<traverse ref="FirmLocationB[0]"
/></traversal
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/></draw
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>(3) ROLE</text
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<<textEdit
/></ui
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/><traversal
<<traverse ref="RoleC[0]"
/></traversal
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/></draw
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<<value
<<text
>(1) FIRM NAME</text
<</value
<<ui
<<textEdit
/></ui
<<font size="7pt" typeface="Arial"
/><traversal
```

```

><traverse ref="FirmNameC[0]"
/></traversal
><para vAlign="middle"
/></draw
><draw name="T41" x="67.693mm" y="201.867mm" w="1.719in" h="0.118in"
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xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
><p style="text-decoration:none;letter-spacing:0in"
>(2) FIRM LOCATION<span style="xfa-spacerun:yes"
>Â </span
><span style="font-style:italic"
>(City and State)</span
></p
></body
></exData
></value
><ui
><textEdit
/></ui
><font size="7pt" typeface="Arial"
/></traversal
><traverse ref="FirmLocationC[0]"
/></traversal
><para vAlign="middle"
/></draw
><draw name="T44" x="128.653mm" y="214.827mm" w="0.453in" minH="0.118in"
><value
><text
>(3) ROLE</text
></value
><ui
><textEdit
/></ui
><font size="7pt" typeface="Arial"
/></traversal
><traverse ref="RoleD[0]"
/></traversal
></draw
><draw name="T47" x="9.273mm" y="214.827mm" w="0.759in" minH="0.118in"
><value
><text
>(1) FIRM NAME</text
></value
><ui
><textEdit
/></ui
><font size="7pt" typeface="Arial"
/></traversal
><traverse ref="FirmNameD[0]"
/></traversal
></draw
><draw name="T48" x="67.693mm" y="214.827mm" w="1.719in" h="0.118in"
><value
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><body xmlns="http://www.w3.org/1999/xhtml"
xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
><p style="text-decoration:none;letter-spacing:0in"
>(2) FIRM LOCATION<span style="xfa-spacerun:yes"
>Â </span
><span style="font-style:italic"
>(City and State)</span
></p
></body
></exData
></value
><ui
><textEdit
/></ui
><font size="7pt" typeface="Arial"

```

```

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/></traversal
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><text
>(3) ROLE</text
></value
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><textEdit
/></ui
><font size="7pt" typeface="Arial"
/><traversal
><traverse ref="RoleE[0]"
/></traversal
><para vAlign="middle"
/></draw
><draw name="T54" x="9.273mm" y="227.267mm" w="0.759in" minH="0.118in"
><value
><text
>(1) FIRM NAME</text
></value
><ui
><textEdit
/></ui
><font size="7pt" typeface="Arial"
/><traversal
><traverse ref="FirmNameE[0]"
/></traversal
><para vAlign="middle"
/></draw
><draw name="T55" x="67.693mm" y="227.267mm" w="1.719in" h="0.118in"
><value
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xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
><p style="text-decoration:none;letter-spacing:0in"
>(2) FIRM LOCATION<span style="xfa spacerun:yes"
>Â </span
><span style="font-style:italic"
>(City and State)</span
></p
></body
></exData
></value
><ui
><textEdit
/></ui
><font size="7pt" typeface="Arial"
/><traversal
><traverse ref="FirmLocationE[0]"
/></traversal
><para vAlign="middle"
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xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
><p style="text-decoration:none;letter-spacing:0in"
>STANDARD FORM 330<span style="xfa spacerun:yes"
>Â </span
><span style="font-weight:normal"
>(REV. 8/2016)</span
> PAGE 3</p
></body
></exData
></value
><ui
><textEdit

```

```

/></ui
><para hAlign="right" vAlign="middle"
/><font weight="bold" size="9pt" typeface="Arial"
/></draw
><draw name="T62" x="128.653mm" y="189.167mm" w="0.453in" minH="0.118in"
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><text
>(3) ROLE</text
></value
><ui
><textEdit
/></ui
><font size="7pt" typeface="Arial"
/><traversal
><traverse ref="RoleB[0]"
/></traversal
><para vAlign="middle"
/></draw
><draw name="T65" x="9.273mm" y="176.467mm" w="0.759in" minH="0.118in"
><value
><text
>(1) FIRM NAME</text
></value
><ui
><textEdit
/></ui
><font size="7pt" typeface="Arial"
/><traversal
><traverse ref="FirmNameA[0]"
/></traversal
><para vAlign="middle"
/></draw
><draw name="T67" x="67.693mm" y="176.207mm" w="1.718986in" h="0.138472in"
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xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
><p style="text-decoration:none;letter-spacing:0in"
>(2) FIRM LOCATION<span style="xfa spacerun:yes"
>Â </span
><span style="font style:italic"
>(City and State)</span
></p
></body
></exData
></value
><ui
><textEdit
/></ui
><font size="7pt" typeface="Arial"
/><traversal
><traverse ref="FirmLocationA[0]"
/></traversal
><para vAlign="middle"
/></draw
><draw name="T72" x="128.653mm" y="176.207mm" w="0.453in" minH="0.118in"
><value
><text
>(3) ROLE</text
></value
><ui
><textEdit
/></ui
><font size="7pt" typeface="Arial"
/><traversal
><traverse ref="RoleA[0]"
/></traversal
><para vAlign="middle"
/></draw
><draw name="T76" x="70.258mm" y="41.269mm" w="1.442in" minH="0.118in"
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```

```

<<text
>b. POINT OF CONTACT NAME</text
<</value
<<ui
<<textEdit
/></ui
<<font size="7pt" typeface="Arial"
/><traversal
<<traverse ref="PointofContact[0]"
/></traversal
<</draw
<<draw name="T78" x="3.17mm" y="34.602mm" w="197.213mm" h="3.828mm"
<<value
<<text
>23. PROJECT OWNER'S INFORMATION</text
<</value
<<ui
<<textEdit
/></ui
<<para vAlign="middle" hAlign="center"
/><font size="9pt" typeface="Arial"
/><traversal
<<traverse ref="T10[0]"
/></traversal
<<?renderCache.bounds 559029 10851 0 0 0 0 0 0?><?renderCache.textRun 32 23. PROJECT
OWNER'S INFORMATION 0 194650 8031 0 0 0 "Arial" 0 0 9000 ISO 8859 1?></draw
<<draw name="T80" x="143.893mm" y="41.269mm" w="2.146in" minH="0.118in"
<<value
<<text
>c. POINT OF CONTACT TELEPHONE NUMBER</text
<</value
<<ui
<<textEdit
/></ui
<<font size="7pt" typeface="Arial"
/><traversal
<<traverse ref="TelephoneNumber[0]"
/></traversal
<</draw
<<draw name="T83" x="128.653mm" y="239.707mm" w="0.453in" minH="0.118in"
<<value
<<text
>(3) ROLE</text
<</value
<<ui
<<textEdit
/></ui
<<font size="7pt" typeface="Arial"
/><traversal
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/></traversal
<<para vAlign="middle"
/></draw
<<draw name="T85" x="9.273mm" y="239.967mm" w="0.759in" minH="0.118in"
<<value
<<text
>(1) FIRM NAME</text
<</value
<<ui
<<textEdit
/></ui
<<font size="7pt" typeface="Arial"
/><traversal
<<traverse ref="FirmNameF[0]"
/></traversal
<<para vAlign="middle"
/></draw
<<draw name="T86" x="67.693mm" y="239.707mm" w="1.719in" h="0.118in"
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<<body xmlns="http://www.w3.org/1999/xhtml"

```



```
xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
><p style="text decoration:none;letter spacing:0in"
>(2) FIRM LOCATION<span style="xfa spacerun:yes"
>Â </span
><span style="font style:italic"
>(City and State)</span
></p
></body
></exData
></value
><ui
><textEdit
/></ui
><font size="7pt" typeface="Arial"
/><traversal
><traverse ref="FirmLocationF[0]"
/></traversal
><para vAlign="middle"
/></draw
><draw name="T91" x="148.973mm" y="20.124mm" w="28.194mm" minH="0.118in"
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>22. YEAR COMPLETED</text
></value
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/></ui
><para vAlign="middle"
/><font size="7pt" typeface="Arial"
/><traversal
><traverse ref="T94[0]"
/></traversal
></draw
><draw name="T94" x="126.113mm" y="24.042mm" w="1.273in" minH="0.118in"
><value
><text
>PROFESSIONAL SERVICES</text
></value
><ui
><textEdit
/></ui
><font size="7pt" typeface="Arial"
/><traversal
><traverse ref="DateofProfessionalServices[0]"
/></traversal
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xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
><p style="text decoration:none;letter spacing:0in"
>CONSTRUCTION<span style="xfa spacerun:yes"
>Â </span
><span style="font style:italic"
>(If applicable)</span
></p
></body
></exData
></value
><ui
><textEdit
/></ui
><font size="7pt" typeface="Arial"
/><traversal
><traverse ref="DateofConstruction[0]"
/></traversal
></draw
><traversal
><traverse operation="first" ref="T4[0]"
/></traversal
```

```
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>>?templateDesigner StyleID aped0?></border
><margin
/></textEdit
<</ui
><font typeface="Arial"
/><margin bottomInset="0mm" leftInset="0mm" rightInset="0mm" topInset="0mm"
/><border
><edge presence="hidden"
/><corner thickness="0.1753mm" presence="hidden"
/></border
><assist
><toolTip
>21. TITLE AND LOCATION (City and State)</toolTip
><speak priority="toolTip"
/></assist
><traversal
><traverse ref="T91[0]"
/></traversal
><para vAlign="bottom"
/></field
>>field h="3.7mm" name="ProjectOwner" w="63.936mm" x="4.218mm" y="44.957mm"
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/></textEdit
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><font typeface="Arial"
/><margin bottomInset="0mm" leftInset="0mm" rightInset="0mm" topInset="0mm"
/><border
><edge presence="hidden"
/><corner thickness="0.1753mm" presence="hidden"
/></border
><assist
><toolTip
>23. PROJECT OWNER'S INFORMATION. a. PROJECT OWNER</toolTip
><speak priority="toolTip"
/></assist
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/><traversal
><traverse ref="T76[0]"
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```

```
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>>/draw
>>draw name="R323" y="116.062mm" x="3.589mm" w="196.697mm" h="0in"
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/>>/line
>>/value
>>/draw
>>draw name="R502" y="200.559mm" x="3.589mm" w="195.56mm" h="0in"
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>>draw name="R504" y="213.429mm" x="3.589mm" w="196.697mm" h="0in"
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>>/value
>>/draw
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>>/value
>>/draw
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>>/value
>>/draw
>>draw name="R376" y="238.829mm" x="3.33mm" w="196.697mm" h="0in"
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```

```
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>>/value
>>/draw
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>>/value
>>/draw
>>draw name="R390" y="27.655mm" x="107.645mm" w="0in" h="173.085mm"
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>>/value
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>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R394" y="27.655mm" x="127.965mm" w="0in" h="173.085mm"
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>>edge thickness="0.254mm"
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>>/value
>>/draw
>>draw name="R396" y="27.655mm" x="138.125mm" w="0in" h="173.085mm"
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>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R398" y="27.655mm" x="148.285mm" w="0in" h="173.085mm"
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/>>/line
>>/value
>>/draw
>>draw name="R400" y="27.655mm" x="158.445mm" w="0in" h="173.085mm"
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>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R402" y="27.655mm" x="168.605mm" w="0in" h="173.085mm"
>>value
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>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
```

```
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>></value
>></draw
>><draw name="R406" y="27.655mm" x="188.925mm" w="0in" h="173.085mm"
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>><edge thickness="0.254mm"
/>></line
>></value
>></draw
>><draw name="R24" y="209.302mm" x="111.463mm" w="0in" h="45.907mm"
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>><edge thickness="0.254mm"
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>></value
>></draw
>><draw name="R0" x="3.589mm" w="196.697mm" h="0in" y="5.72mm"
>><value
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>><edge thickness="0.508mm"
/>></line
>></value
>></draw
>><draw name="R1" y="255.466mm" x="3.33mm" w="196.697mm" h="0in"
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>><line
>><edge thickness="0.508mm"
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>></value
>></draw
>><draw name="R2" y="14.462mm" x="3.589mm" w="196.697mm" h="0in"
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>><edge thickness="0.254mm"
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>></value
>></draw
>><draw name="R4" y="209.302mm" x="96.88mm" w="0in" h="45.907mm"
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>><edge thickness="0.254mm"
/>></line
>></value
>></draw
>><draw name="R14" y="209.302mm" x="16.183mm" w="0in" h="45.907mm"
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>><edge thickness="0.254mm"
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>></value
>></draw
>><bind match="none"
/>><draw name="T3" x="3.53mm" y="6.382mm" w="196.853mm" h="6.985mm"
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>>G. KEY PERSONNEL PARTICIPATION IN EXAMPLE PROJECTS </text
>></value
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>><textEdit
/>></ui
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/>><font weight="bold" size="9pt" typeface="Arial"
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>><traverse ref="T379[0]"
/>></traversal
>><?renderCache.bounds 558009 19800 0 0 0 0 0 0?><?renderCache.textRun 52 G. KEY
```

```
PERSONNEL PARTICIPATION IN EXAMPLE PROJECTS  0 142737 12506 0 0 0 "Arial" 1 0 9000
ISO 8859 1?></draw
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/><font size="9pt" typeface="Arial"
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/></traversal
></draw
><draw name="T6" x="3.386mm" y="224.211mm" minW="12.912mm" minH="3.861mm"
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></value
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><textEdit
/></ui
><para vAlign="middle" hAlign="center"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="ExampleProject2[0]"
/></traversal
></draw
><draw name="T8" x="3.386mm" y="232.669mm" minW="12.912mm" minH="3.861mm"
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>3</text
></value
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/></ui
><para vAlign="middle" hAlign="center"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="ExampleProject3[0]"
/></traversal
></draw
><draw name="T10" x="3.386mm" y="241.127mm" minW="12.912mm" minH="3.861mm"
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><text
>4</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle" hAlign="center"
/><font size="9pt" typeface="Arial"
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/></traversal
></draw
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/><traversal
><traverse ref="ExampleProject5[0]"
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```



```
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>6</text
<</value
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/><font size="9pt" typeface="Arial"
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<<traverse ref="T512[0]"
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<<draw name="T16" x="97.37mm" y="224.211mm" minW="12.696mm" minH="3.861mm"
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<<draw name="T18" x="97.37mm" y="232.669mm" minW="12.696mm" minH="3.861mm"
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<<text
>8</text
<</value
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<<textEdit
/></ui
<<para vAlign="middle" hAlign="center"
/><font size="9pt" typeface="Arial"
/><traversal
<<traverse ref="ExampleProject8[0]"
/></traversal
<</draw
<<draw name="T20" x="97.37mm" y="241.127mm" minW="12.696mm" minH="3.861mm"
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<<text
>9</text
<</value
<<ui
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/></ui
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/><font size="9pt" typeface="Arial"
/><traversal
<<traverse ref="ExampleProject9[0]"
/></traversal
<</draw
<<draw name="T22" x="97.37mm" y="249.585mm" w="12.696mm" minH="3.861mm"
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<<text
>10</text
<</value
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/></ui
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/><font size="9pt" typeface="Arial"
/><traversal
<<traverse ref="ExampleProject10[0]"
/></traversal
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```

><draw name="T372" x="121.229mm" y="255.587mm" w="78.507mm" h="4.145mm"
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xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
><p style="text-decoration:none;letter-spacing:0in"
>STANDARD FORM 330<span style="xfa-spacerun:yes"
>Â </span
><span style="font-weight:normal"
>(REV. 8/2016)</span
> PAGE 4</p
></body
></exData
></value
><ui
><textEdit
/></ui
><para hAlign="right" vAlign="middle"
/><font-weight="bold" size="9pt" typeface="Arial"
/></draw
><draw name="T379" x="3.17mm" y="15.575mm" w="45.867mm" h="0.569014in"
><value
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><body xmlns="http://www.w3.org/1999/xhtml"
xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
><p style="text-decoration:none;letter-spacing:0in"
>26.<span style="xfa-spacerun:yes"
>Â </span
>NAMES OF KEY<span style="xfa-spacerun:yes"
>Â </span
></p
><p style="text-decoration:none;letter-spacing:0in"
><span style="xfa-spacerun:yes"
>Â </span
>PERSONNEL<span style="xfa-spacerun:yes"
>Â </span
></p
><p style="font-style:italic;text-decoration:none;letter-spacing:0in"
>(From Section E, Block 12)</p
></body
></exData
></value
><ui
><textEdit
/></ui
><para vAlign="middle" hAlign="center"
/><font-size="9pt" typeface="Arial"
/><traversal
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/></traversal
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><p style="text-decoration:none;letter-spacing:0in"
>27.<span style="xfa-spacerun:yes"
>Â </span
>ROLE IN THIS</p
><p style="text-decoration:none;letter-spacing:0in"
><span style="xfa-spacerun:yes"
>Â Â </span
>CONTRACT<span style="xfa-spacerun:yes"
>Â </span
></p
><p style="font-style:italic;text-decoration:none;letter-spacing:0in"
>(From Section E, Block 13)</p
></body
></exData
></value

```

```
><ui
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></value
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/><font size="9pt" typeface="Arial"
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0 0 "Arial" 0 0 9000 ISO 8859 1?></draw
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><traverse ref="CheckBox4 1[0]"
/></traversal
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><text
>5</text
></value
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>7</text
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/><font size="9pt" typeface="Arial"
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/></traversal
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>8</text
></value
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><para vAlign="middle" hAlign="center"
/><font size="9pt" typeface="Arial"
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/></traversal
></draw
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/></traversal
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>10</text
></value
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```

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PROJECTS KEY 0 212997 8602 0 0 0 "Arial" 1 0 9000 ISO 8859 1?></draw
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>Â </span
<<span style="font style:italic"
>(From Section F)</span
<</p
<</body
<</exData
<</value
<<ui
<<textEdit
/></ui
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/></traversal
<</draw
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>NUMBER</text
<</value
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/><font size="9pt" typeface="Arial"
/><traversal

```

```

><traverse ref="T15[0]"
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xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
<<p style="letter spacing:0in"
>28.<span style="xfa spacerun:yes"
>Â </span
>EXAMPLE PROJECTS LISTED IN SECTION F<span style="xfa spacerun:yes"
>Â </span
<</p
<<p style="xfa font horizontal scale:95%;font style:italic;letter spacing:0in"
>(Fill in "Example Projects Key" section below before completing table.<span
style="xfa spacerun:yes"
>Â </span
<</p
<<p style="xfa font horizontal scale:95%;font style:italic;letter spacing:0in"
>Place "X" under project key number for participation in same or similar role.)</p
<</body
<</exData
<</value
<</ui
<<textEdit
/></ui
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spaceBelow="0pt" textIndent="0pt" marginLeft="0pt" marginRight="0pt"
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/></traversal
<</draw
<<traversal
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/></textEdit
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/><corner thickness="0.1753mm" presence="hidden"
/></border
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/></assist
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```

```
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/><corner thickness="0.1753mm" presence="hidden"
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/></textEdit
></ui
>>font typeface="Arial" size="9pt"
/><margin bottomInset="0mm" leftInset="0mm" rightInset="0mm" topInset="0mm"
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INFORMATION 0 211256 8662 0 0 0 "Arial" 1 0 9000 ISO 8859 1?>>/draw
>>draw name="T5" x="3.678mm" y="15.68mm" w="5.789in" minH="0.118in"
>>value
>>text
>30. PROVIDE ANY ADDITIONAL INFORMATION REQUESTED BY THE AGENCY. ATTACH ADDITIONAL
SHEETS AS NEEDED.</text
>>/value
>>ui
>>textEdit
/>>/ui
>>para vAlign="middle"
/>>font size="7pt" typeface="Arial"
/>>traversal
>>traverse ref="AdditionalInfo[0]"
/>>/traversal
>>/draw
>>draw name="T6" x="3.18mm" y="222.75mm" w="196.85mm" h="0.317in"
>>value
>>exData contentType="text/html"
>>body xmlns="http://www.w3.org/1999/xhtml"
xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
>>p style="text-decoration:none;letter-spacing:0in"
>I.<span style="xfa-spacerun:yes"
>Â </span
>AUTHORIZED REPRESENTATIVE<span style="xfa-spacerun:yes"
>Â </span
>>/p
>>p style="font-weight:normal;font-style:italic;text-decoration:none;letter-spacing:0in"
>The foregoing is a statement of facts.</p
>>/body
>>/exData
>>/value
>>ui
>>textEdit
/>>/ui
>>para vAlign="middle" hAlign="center"
/>>font weight="bold" size="9pt" typeface="Arial"
/>>traversal
>>traverse ref="T9[0]"
/>>/traversal
>>/draw
>>draw name="T9" x="3.678mm" y="231.301mm" w="0.789in" minH="0.118in"
>>value
>>text
>31. SIGNATURE</text
>>/value
>>ui
>>textEdit
/>>/ui
>>para vAlign="middle"
/>>font size="7pt" typeface="Arial"
/>>traversal
>>traverse ref="SignatureField2[0]"
/>>/traversal
>>/draw
```

```

<<draw name="T11" x="166.213mm" y="231.301mm" w="0.495in" minH="0.118in"
<<value
<<text
>32. DATE</text
<</value
<<ui
<<textEdit
/></ui
<<para vAlign="middle"
/><font size="7pt" typeface="Arial"
/><traversal
<<traverse ref="DateSigned[0]"
/></traversal
<</draw
<<draw name="T12" x="3.678mm" y="244.286mm" w="1.055in" minH="0.118in"
<<value
<<text
>33. NAME AND TITLE</text
<</value
<<ui
<<textEdit
/></ui
<<para vAlign="middle"
/><font size="7pt" typeface="Arial"
/><traversal
<<traverse ref="NameandTitle[0]"
/></traversal
<</draw
<<draw name="T13" x="129.557mm" y="252.402mm" w="70.55mm" h="4.181mm"
<<value
<<exData contentType="text/html"
<<body xmlns="http://www.w3.org/1999/xhtml"
xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
<<p style="text-decoration:none;letter-spacing:0in"
>STANDARD FORM 330<span style="xfa spacerun:yes"
>Â </span
<<span style="font-weight:normal"
>(REV. 8/2016)</span
> PAGE 5<span style="xfa spacerun:yes"
>Â </span
<</p
<</body
<</exData
<</value
<<ui
<<textEdit
/></ui
<<para vAlign="middle" hAlign="right"
/><font weight="bold" size="9pt" typeface="Arial"
/></draw
<<traversal
<<traverse ref="T3[0]" operation="first"
/></traversal
<<field h="201.761mm" name="AdditionalInfo" w="196.345mm" x="3.678mm" y="19.689mm"
<<ui
<<textEdit hScrollPolicy="off" multiLine="1" vScrollPolicy="off"
<<border presence="hidden"
<<?templateDesigner styleID aped0?></border
<<margin
/></textEdit
<</ui
<<font typeface="Arial"
/><margin bottomInset="0mm" leftInset="0mm" rightInset="0mm" topInset="0mm"
/><border
<<edge presence="hidden"
/><corner thickness="0.1753mm" presence="hidden"
/></border
<<assist
<<toolTip
>30. PROVIDE ANY ADDITIONAL INFORMATION REQUESTED BY THE AGENCY. ATTACH ADDITIONAL
SHEETS AS NEEDED.</toolTip

```

```

<<speak priority="toolTip"
/></assist
<<traversal
<<traverse ref="T6[0]"
/></traversal
<<para lineHeight="11pt"
/></field
<<field name="DateSigned" w="33.287mm" h="5.616mm" x="166.213mm" y="237.478mm"
<<ui
<<dateTimeEdit hScrollPolicy="off"
<<border presence="hidden"
<<?templateDesigner StyleID aped0?></border
<<margin
/></dateTimeEdit
<<picture
>date{MM/DD/YYYY}|date{MMDDYYYY}|date{M/D/YYYY}|date{MM DD YYYY}|date{M D
YYYY}|date{MM DD YYYY}|date{M D YYYY}|date{MM,DD,YYYY}|date{M,D,YYYY}|date{MM.DD.YYYY}|da
te{M.D.YYYY}|date{DD MMM YYYY}|date{M/D/YY}|date{M D YY}|date{M D
YY}|date{MM/DD/YY}|date{MM DD YY}|date{MMDDYY}|date{MM DD YY}</picture
<</ui
<<font typeface="Arial"
/><margin topInset="0mm" bottomInset="0mm" leftInset="0mm" rightInset="0mm"
/><value
<<date
/></value
<<border
<<edge presence="hidden"
/><corner thickness="0.007in" presence="hidden"
/></border
<<validate formatTest="error" scriptTest="warning"
<<message
<<text name="formatTest"
>Invalid Date. Enter 2 digit month, 2 digit day and 4 digit year.</text
<</message
<<picture
>MM/DD/YYYY</picture
<</validate
<<format
<<picture
>MM/DD/YYYY</picture
<</format
<<assist
<<speak priority="toolTip"
/><toolTip
>32. DATE OF SIGNATURE. Enter 2 digit month, 2 digit day and 4 digit year.</toolTip
<</assist
<<para vAlign="bottom"
/><traversal
<<traverse ref="T12[0]"
/></traversal
<</field
<<field h="4.5mm" name="NameandTitle" w="195.822mm" x="3.678mm" y="247.097mm"
<<ui
<<textEdit hScrollPolicy="off"
<<border presence="hidden"
<<?templateDesigner StyleID aped0?></border
<<margin
/></textEdit
<</ui
<<font typeface="Arial"
/><margin bottomInset="0mm" leftInset="0mm" rightInset="0mm" topInset="0mm"
/><border
<<edge presence="hidden"
/><corner thickness="0.1753mm" presence="hidden"
/></border
<<para vAlign="bottom"
/><assist
<<toolTip
>33. NAME AND TITLE</toolTip
<<speak priority="toolTip"
/></assist

```



```

><traversal
><traverse ref="T13[0]"
/></traversal
></field
><breakBefore targetType="pageArea" target="PageArea1" startNew="1"
/><field name="SignatureField2" y="234.545mm" x="3.651mm" w="161.646mm" h="8.706mm"
><ui
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><border presence="hidden"
/><margin
/><manifest action="all"
/></signature
></ui
><font typeface="Myriad Pro"
/><margin topInset="1mm" bottomInset="1mm" leftInset="1mm" rightInset="1mm"
/><para vAlign="middle"
/><caption reserve="0.01in"
><para vAlign="middle"
/></caption
><bind match="none"
/><traversal
><traverse ref="T11[0]"
/></traversal
></field
><?templateDesigner expand 1?></subform
><subform name="Page14" w="8in" h="266.7mm"
><draw name="R3" y="248.085mm" x="3.728mm" w="196.664mm" h="0in"
><value
><line
><edge thickness="0.254mm"
/></line
></value
></draw
><draw name="T10" x="3.44mm" y="18.96mm" w="196.85mm" h="0.336111in"
><value
><exData contentType="text/html"
><body xmlns="http://www.w3.org/1999/xhtml"
xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/"
><p style="font weight:bold;font style:normal"
>PART II GENERAL QUALIFICATIONS</p
><p
>(If a firm has branch offices, complete for each specific branch office seeking
work.)</p
></body
></exData
></value
><ui
><textEdit
/></ui
><para vAlign="middle" hAlign="center" lineHeight="11pt"
/><font posture="italic" size="11pt" typeface="Arial"
/><traversal
><traverse ref="T12[0]"
/></traversal
><?renderCache.bounds 558000 24200 0 0 0 0 0 0?><?renderCache.textRun 33 PART II
GENERAL QUALIFICATIONS 0 179390 10885 0 0 0 "Arial" 1 0 11000
ISO 8859 1?><?renderCache.textRun 86 (If a firm has branch offices, complete for each
specific branch office seeking work.) 0 76024 21917 0 0 0 "Arial" 0 1 11000
ISO 8859 1?></draw
><draw name="R275" y="192.787mm" x="3.728mm" w="196.664mm" h="0in"
><value
><line
><edge thickness="0.254mm"
/></line
></value
></draw
><draw name="R280" y="74.11mm" x="3.728mm" w="196.032mm" h="0in"
><value
><line
><edge thickness="0.508mm"
/></line

```

```
>>/value
>>/draw
>>draw name="R281" y="65.876mm" x="69.662mm" w="0in" h="8.49mm"
>>value
>>line
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R284" y="48.858mm" x="133.183mm" w="66.843mm" h="0in"
>>value
>>line
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R288" y="239.358mm" x="3.728mm" w="196.664mm" h="0in"
>>value
>>line
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R301" y="65.87mm" x="3.53mm" w="129.288mm" h="0in"
>>value
>>line slope="/"
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R303" y="99.91mm" x="18.79mm" w="0in" h="96.84mm"
>>value
>>line slope="/"
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R233" y="112.38mm" x="3.728mm" w="196.664mm" h="0in"
>>value
>>line
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R151" y="218.213mm" x="3.728mm" w="67.876mm" h="0.04mm"
>>value
>>line slope="/"
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R191" y="108.125mm" x="3.728mm" w="196.664mm" h="0in"
>>value
>>line
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R174" y="226.68mm" x="3.725mm" w="67.842mm" h="0in"
>>value
>>line
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R175" y="218.298mm" x="39.182mm" w="0in" h="12.701mm"
>>value
>>line
>>edge thickness="0.254mm"
/>>/line
>>/value
```

```
>>/draw
>>draw name="R182" y="180.091mm" x="3.728mm" w="196.664mm" h="0in"
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><line
><edge thickness="0.254mm"
/></line
></value
></draw
>>draw name="R183" y="184.323mm" x="3.728mm" w="196.664mm" h="0in"
>>value
><line
><edge thickness="0.254mm"
/></line
></value
></draw
>>draw name="R184" y="188.555mm" x="3.728mm" w="196.664mm" h="0in"
>>value
><line
><edge thickness="0.254mm"
/></line
></value
></draw
>>draw name="R185" y="230.744mm" x="3.728mm" w="196.664mm" h="0in"
>>value
><line
><edge thickness="0.508mm"
/></line
></value
></draw
>>draw name="R156" y="201.089mm" x="3.728mm" w="196.664mm" h="0in"
>>value
><line
><edge thickness="0.508mm"
/></line
></value
></draw
>>draw name="R160" y="57.325mm" x="133.183mm" w="66.843mm" h="0in"
>>value
><line
><edge thickness="0.254mm"
/></line
></value
></draw
>>draw name="R164" y="52.922mm" x="3.386mm" w="129.432mm" h="0in"
>>value
><line slope="/"
><edge thickness="0.508mm"
/></line
></value
></draw
>>draw name="R169" y="74.09mm" x="155.938mm" w="0in" h="17.239mm"
>>value
><line
><edge thickness="0.254mm"
/></line
></value
></draw
>>draw name="R169" y="73.97mm" x="121.768mm" w="0in" h="17.239mm"
>>value
><line
><edge thickness="0.254mm"
/></line
></value
></draw
>>draw name="R172" y="222.446mm" x="3.725mm" w="67.842mm" h="0in"
>>value
><line
><edge thickness="0.254mm"
/></line
></value
></draw
```

```
>>draw name="R126" y="120.844mm" x="3.728mm" w="196.664mm" h="0in"
>>value
>>line
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R127" y="125.076mm" x="3.728mm" w="196.664mm" h="0in"
>>value
>>line
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R128" y="129.308mm" x="3.728mm" w="196.664mm" h="0in"
>>value
>>line
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R129" y="133.54mm" x="3.728mm" w="196.664mm" h="0in"
>>value
>>line
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R130" y="137.772mm" x="3.728mm" w="196.664mm" h="0in"
>>value
>>line
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R131" y="142.004mm" x="3.728mm" w="196.664mm" h="0in"
>>value
>>line
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R132" y="163.163mm" x="3.728mm" w="196.664mm" h="0in"
>>value
>>line
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R133" y="167.395mm" x="3.728mm" w="196.664mm" h="0in"
>>value
>>line
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R134" y="171.627mm" x="3.728mm" w="196.664mm" h="0in"
>>value
>>line
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R135" y="175.859mm" x="3.728mm" w="196.664mm" h="0in"
>>value
>>line
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R136" y="146.235mm" x="3.728mm" w="196.664mm" h="0in"
```

```
><value
><line
><edge thickness="0.254mm"
/></line
></value
></draw
><draw name="R137" y="150.467mm" x="3.728mm" w="196.664mm" h="0in"
><value
><line
><edge thickness="0.254mm"
/></line
></value
></draw
><draw name="R138" y="154.699mm" x="3.728mm" w="196.664mm" h="0in"
><value
><line
><edge thickness="0.254mm"
/></line
></value
></draw
><draw name="R139" y="158.931mm" x="3.728mm" w="196.664mm" h="0in"
><value
><line
><edge thickness="0.254mm"
/></line
></value
></draw
><draw name="R140" y="91.298mm" x="103.054mm" w="0in" h="109.787mm"
><value
><line
><edge thickness="0.508mm"
/></line
></value
></draw
><draw name="R80" y="91.304mm" x="3.728mm" w="196.664mm" h="0in"
><value
><line
><edge thickness="0.508mm"
/></line
></value
></draw
><draw name="R81" y="99.658mm" x="3.728mm" w="196.664mm" h="0in"
><value
><line
><edge thickness="0.254mm"
/></line
></value
></draw
><draw name="R84" y="197.025mm" x="3.728mm" w="196.664mm" h="0in"
><value
><line
><edge thickness="0.254mm"
/></line
></value
></draw
><draw name="R85" y="100.013mm" x="71.71mm" w="0in" h="130.607mm"
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/></line
></value
></draw
><draw name="R87" y="104.379mm" x="87.31mm" w="0in" h="96.871mm"
><value
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><edge thickness="0.254mm"
/></line
></value
></draw
><draw name="R45" y="99.762mm" x="176.363mm" w="0in" h="101.331mm"
><value
```

```
>>line
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R47" y="116.612mm" x="3.728mm" w="196.664mm" h="0in"
>>value
>>line
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R74" y="78.322mm" x="3.728mm" w="196.032mm" h="0in"
>>value
>>line slope="/"
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R27" y="40.434mm" x="133.183mm" w="66.843mm" h="0in"
>>value
>>line slope="/"
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R32" y="104.14mm" x="71.97mm" w="30.435mm" h="0in"
>>value
>>line slope="/"
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R44" y="99.762mm" x="117.922mm" w="0in" h="101.331mm"
>>value
>>line
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R0" y="5.98mm" x="3.728mm" w="196.032mm" h="0in"
>>value
>>line slope="/"
>>edge thickness="0.508mm"
/>>/line
>>/value
>>/draw
>>draw name="R1" y="255.995mm" x="3.728mm" w="196.664mm" h="0in"
>>value
>>line
>>edge thickness="0.508mm"
/>>/line
>>/value
>>/draw
>>draw name="R2" y="239.443mm" x="158.562mm" w="0in" h="8.575mm"
>>value
>>line
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R5" y="6.371mm" x="133.08mm" w="0in" h="12.471mm"
>>value
>>line slope="/"
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R6" y="19.14mm" x="3.097mm" w="196.664mm" h="0in"
>>value
>>line
```

```
><edge thickness="0.254mm"
/></line
></value
></draw
><draw name="R8" y="27.692mm" x="3.27mm" w="196.491mm" h="0in"
><value
><line
><edge thickness="0.254mm"
/></line
></value
></draw
><draw name="R11" y="36.158mm" x="3.27mm" w="196.491mm" h="0in"
><value
><line
><edge thickness="0.254mm"
/></line
></value
></draw
><draw name="R13" y="44.625mm" x="3.27mm" w="129.627mm" h="0in"
><value
><line
><edge thickness="0.254mm"
/></line
></value
></draw
><draw name="R15" y="44.709mm" x="92.522mm" w="0in" h="8.281mm"
><value
><line
><edge thickness="0.254mm"
/></line
></value
></draw
><draw name="R17" y="44.709mm" x="107.762mm" w="0in" h="8.281mm"
><value
><line
><edge thickness="0.254mm"
/></line
></value
></draw
><draw name="R20" y="27.798mm" x="132.895mm" w="0in" h="45.844mm"
><value
><line slope="/"
><edge thickness="0.254mm"
/></line
></value
></draw
><draw name="R20" y="53.182mm" x="133.138mm" w="0in" h="20.692mm"
><value
><line slope="/"
><edge thickness="0.508mm"
/></line
></value
></draw
><draw name="R21" y="28.058mm" x="162.332mm" w="0in" h="7.835mm"
><value
><line
><edge thickness="0.254mm"
/></line
></value
></draw
><bind match="none"
/><draw name="T4" x="4.236mm" y="239.422mm" w="0.753in" minH="0.118in"
><value
><text
>a. SIGNATURE </text
></value
><ui
><textEdit
/></ui
><font size="7pt" typeface="Arial"
/></traversal
```

```

<<traverse ref="SignatureField3[0]"
/></traversal
<<para vAlign="middle"
/></draw
<<draw name="T7" x="3.651mm" y="6.51mm" w="128.503mm" h="12.124mm"
<<value
<<text
>ARCHITECT ENGINEER QUALIFICATIONS</text
<</value
<<ui
<<textEdit
/></ui
<<para vAlign="middle" hAlign="center"
/><font weight="bold" size="14pt" typeface="Arial"
/><traversal
<<traverse ref="T71[0]"
/></traversal
<<?renderCache.bounds 364260 34367 0 0 0 0 0 0?><?renderCache.textRun 33
ARCHITECT ENGINEER QUALIFICATIONS 0 41354 21237 0 0 0 "Arial" 1 0 14000
ISO 8859 1?></draw
<<draw name="T12" x="4.236mm" y="28.309mm" w="1.846in" minH="0.118in"
<<value
<<exData contentType="text/html"
<<body xmlns="http://www.w3.org/1999/xhtml"
xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
<<p style="letter spacing:0in"
>2a.<span style="xfa spacerun:yes"
>Â </span
>FIRM (<span style="font style:italic"
>or Branch Office</span
>) NAME</p
<</body
<</exData
<</value
<<ui
<<textEdit
/></ui
<<font size="7pt" typeface="Arial"
/><traversal
<<traverse ref="FirmName[0]"
/></traversal
<</draw
<<draw name="T14" x="4.236mm" y="36.424mm" w="15.011mm" h="3.316mm"
<<value
<<text
>2b. STREET</text
<</value
<<ui
<<textEdit
/></ui
<<font size="7pt" typeface="Arial"
/><traversal
<<traverse ref="Street[0]"
/></traversal
<<para vAlign="middle"
/><?renderCache.bounds 42551 9400 0 0 0 0 0 0?><?renderCache.textRun 11 2b. STREET 0 0
6727 0 0 0 "Arial" 0 0 7000 ISO 8859 1?></draw
<<draw name="T16" x="4.236mm" y="45.2mm" w="0.45in" minH="0.118in"
<<value
<<text
>2c. CITY</text
<</value
<<ui
<<textEdit
/></ui
<<font size="7pt" typeface="Arial"
/><traversal
<<traverse ref="City[0]"
/></traversal
<<para vAlign="middle"
/></draw

```



```

><draw name="T18" x="93.11mm" y="45.2mm" w="0.544in" minH="0.118in"
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><text
>2d. STATE</text
></value
><ui
><textEdit
/></ui
><font size="7pt" typeface="Arial"
/><para vAlign="middle"
/><traversal
><traverse ref="State[0]"
/></traversal
></draw
><draw name="T19" x="108.376mm" y="45.2mm" w="17.043mm" minH="0.118in"
><value
><text
>2e. ZIP CODE</text
></value
><ui
><textEdit
/></ui
><font size="7pt" typeface="Arial"
/><traversal
><traverse ref="ZipCode[0]"
/></traversal
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/></draw
><draw name="T23" x="133.776mm" y="28.018mm" w="27.86mm" h="3.029mm"
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><text
>3. YEAR ESTABLISHED</text
></value
><ui
><textEdit
/></ui
><font size="7pt" typeface="Arial"
/><traversal
><traverse ref="YearEstablished[0]"
/></traversal
><para vAlign="middle"
/><?renderCache.bounds 78973 8586 0 0 0 0 0 0?><?renderCache.textRun 20 3. YEAR
ESTABLISHED 0 0 6320 0 0 0 "Arial" 0 0 7000 ISO 8859 1?></draw
><draw name="T25" x="163.206mm" y="28.049mm" w="36.908mm" minH="0.118in"
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><text
>4. UNIQUE ENTITY IDENTIFIER </text
></value
><ui
><textEdit
/></ui
><font size="7pt" typeface="Arial"
/><traversal
><traverse ref="DunsNumber[0]"
/></traversal
><para vAlign="middle"
/></draw
><draw name="T28" x="155.086mm" y="36.615mm" w="24.155mm" minH="0.152in"
><value
><text
>5. OWNERSHIP</text
></value
><ui
><textEdit
/></ui
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/><font size="9pt" typeface="Arial"
/><traversal
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/></traversal
></draw

```

```

<<draw name="T31" x="18.877mm" y="102.237mm" w="53.44mm" minH="0.134in"
<<value
<<text
<b. Discipline</text
<</value
<<ui
<<textEdit
/></ui
<<para vAlign="middle" hAlign="center"
/><font size="8pt" typeface="Arial"
/><traversal
<<traverse ref="Discipline[0]"
/></traversal
<</draw
<<draw name="T33" x="71.797mm" y="100.078mm" w="30.9mm" h="3.746mm"
<<value
<<text
<c. Number of Employees</text
<</value
<<ui
<<textEdit
/></ui
<<para vAlign="middle" hAlign="center"
/><font size="8pt" typeface="Arial"
/><traversal
<<traverse ref="T88[0]"
/></traversal
<<?renderCache.bounds 87591 10619 0 0 0 0 0 0?><?renderCache.textRun 22 c. Number of
Employees 0 17625 0 0 0 "Arial" 0 0 8000 ISO 8859 1?></draw
<<draw name="T35" x="102.66mm" y="92.317mm" w="97.63mm" h="0.277in"
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<<body xmlns="http://www.w3.org/1999/xhtml"
xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
<<p style="text decoration:none;letter spacing:0in"
>10.<span style="xfa spacerun:yes"
>Â </span
>PROFILE OF FIRM'S EXPERIENCE<span style="xfa spacerun:yes"
>Â </span
<</p
<<p style="text decoration:none;letter spacing:0in"
>AND ANNUAL AVERAGE REVENUE FOR LAST 5 YEARS</p
<</body
<</exData
<</value
<<ui
<<textEdit
/></ui
<<para vAlign="middle" hAlign="center"
/><font size="9pt" typeface="Arial"
/><traversal
<<traverse ref="T272[0]"
/></traversal
<</draw
<<draw name="T39" x="118.004mm" y="102.237mm" w="58.289mm" minH="0.134in"
<<value
<<text
<b. Experience</text
<</value
<<ui
<<textEdit
/></ui
<<para vAlign="middle" hAlign="center"
/><font size="8pt" typeface="Arial"
/><traversal
<<traverse ref="Experience[0]"
/></traversal
<</draw
<<draw name="T41" x="176.626mm" y="99.49mm" w="23.4mm" h="8.68mm"
<<value
<<exData contentType="text/html"

```

```

<<body xmlns="http://www.w3.org/1999/xhtml"
xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/"
<<p
>c. Revenue Index Number<span style="xfa spacerun:yes"
>Â </span
<</p
<<p style="font style:italic"
>(see below)</p
<</body
<</exData
<</value
<<ui
<<textEdit
/></ui
<<para vAlign="middle" hAlign="center" lineHeight="8pt"
/><font size="8pt" typeface="Arial"
/><traversal
<<traverse ref="RevenueIndexNumber[0]"
/></traversal
<<?renderCache.bounds 66331 24605 0 0 0 0 0 0?><?renderCache.textRun 17 c. Revenue Index
0 2035 7418 0 0 0 "Arial" 0 0 8000 ISO 8859 1?><?renderCache.textRun 8 Number 0 18939
15418 0 0 0 "Arial" 0 0 8000 ISO 8859 1?><?renderCache.textRun 11 (see below) 0 12490
23442 0 0 0 "Arial" 0 1 8000 ISO 8859 1?></draw
<<draw name="T67" x="132.153mm" y="256.307mm" w="68.695mm" h="4.16mm"
<<value
<<exData contentType="text/html"
<<body xmlns="http://www.w3.org/1999/xhtml"
xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
<<p style="text decoration:none;letter spacing:0in"
>STANDARD FORM 330<span style="xfa spacerun:yes"
>Â </span
<<span style="font weight:normal"
>(REV. 8/2016)</span
> PAGE 6</p
<</body
<</exData
<</value
<<ui
<<textEdit
/></ui
<<para hAlign="right" vAlign="middle"
/><font weight="bold" size="9pt" typeface="Arial"
/></draw
<<draw name="T71" x="133.776mm" y="6.594mm" w="1.643986in" h="0.118in"
<<value
<<exData contentType="text/html"
<<body xmlns="http://www.w3.org/1999/xhtml"
xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
<<p style="letter spacing:0in"
>1.<span style="xfa spacerun:yes"
>Â </span
>SOLICITATION NUMBER<span style="xfa spacerun:yes"
>Â </span
<<span style="font style:italic"
>(If any)</span
<</p
<</body
<</exData
<</value
<<ui
<<textEdit
/></ui
<<font size="7pt" typeface="Arial"
/><traversal
<<traverse ref="SolicitationNumber[0]"
/></traversal
<<para vAlign="middle"
/></draw
<<draw name="T75" x="44.8mm" y="74.703mm" w="48.59mm" h="0.134in"
<<value
<<exData contentType="text/html"

```

```

<<body xmlns="http://www.w3.org/1999/xhtml"
xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
><p style="letter spacing:0in"
>8a.<span style="xfa spacerun:yes"
>Â </span
>FORMER FIRM NAME(S)<span style="xfa spacerun:yes"
>Â </span
><span style="font style:italic"
>(If any)</span
></p
></body
></exData
></value
><ui
><textEdit
/></ui
><para vAlign="middle"
/><font size="8pt" typeface="Arial"
/><traversal
><traverse ref="FormerNames[0]"
/></traversal
></draw
><draw name="T79" x="122.024mm" y="74.753mm" w="33.41mm" h="3.354mm"
><value
><text
>8b. YEAR ESTABLISHED</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle"
/><font size="8pt" typeface="Arial"
/><traversal
><traverse ref="YearEstablished[1]"
/></traversal
><?renderCache.bounds 94706 9507 0 0 0 0 0 0?><?renderCache.textRun 21 8b. YEAR
ESTABLISHED 0 0 7069 0 0 0 "Arial" 0 0 8000 ISO 8859 1?></draw
><draw name="T82" x="3.35mm" y="93.765mm" w="99.66mm" minH="0.152in"
><value
><text
>9. EMPLOYEES BY DISCIPLINE </text
></value
><ui
><textEdit
/></ui
><para vAlign="middle" hAlign="center"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T192[0]"
/></traversal
></draw
><draw name="T86" x="62.3mm" y="197.473mm" w="0.343in" minH="0.15in"
><value
><text
>Total</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle"
/><font weight="bold" size="9pt" typeface="Arial"
/><traversal
><traverse ref="TotalFirm[0]"
/></traversal
></draw
><draw name="T88" x="72.317mm" y="104.783mm" w="15.173mm" minH="0.118in"
><value
><text
>(1) FIRM</text
></value
><ui

```

```

><textEdit
/></ui
><para vAlign="middle" hAlign="center"
/><font size="7pt" typeface="Arial"
/><traversal
><traverse ref="Firm1[0]"
/></traversal
></draw
><draw name="T89" x="87.485mm" y="104.783mm" w="0.613in" minH="0.118in"
><value
><text
>(2) BRANCH</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle" hAlign="center"
/><font size="7pt" typeface="Arial"
/><traversal
><traverse ref="Branch1[0]"
/></traversal
></draw
><draw name="T141" x="74.848mm" y="208.766mm" w="0.211in" minH="0.152in"
><value
><text
> 1.</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T142[0]"
/></traversal
></draw
><draw name="T142" x="82.468mm" y="208.766mm" w="1.237in" minH="0.152in"
><value
><text
>Less than $100,000</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T143[0]"
/></traversal
></draw
><draw name="T143" x="74.848mm" y="212.728mm" w="0.211in" minH="0.152in"
><value
><text
> 2.</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T144[0]"
/></traversal
></draw
><draw name="T144" x="82.468mm" y="212.728mm" w="1.913in" minH="0.152in"
><value
><text
>$100,000 to less than $250,000</text
></value
><ui
><textEdit

```

```

/></ui
><para vAlign="middle"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T145[0]"
/></traversal
></draw
><draw name="T145" x="74.848mm" y="216.716mm" w="0.211in" minH="0.152in"
><value
><text
> 3.</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T146[0]"
/></traversal
></draw
><draw name="T146" x="82.468mm" y="216.716mm" w="1.991in" minH="0.152in"
><value
><text
>$250,000 to less than $500,000</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T147[0]"
/></traversal
></draw
><draw name="T147" x="74.848mm" y="220.704mm" w="0.211in" minH="0.152in"
><value
><text
> 4.</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T148[0]"
/></traversal
></draw
><draw name="T148" x="82.468mm" y="220.704mm" w="1.971in" minH="0.152in"
><value
><text
>$500,000 to less than $1 million</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T149[0]"
/></traversal
></draw
><draw name="T149" x="74.848mm" y="224.666mm" w="0.211in" minH="0.152in"
><value
><text
> 5.</text
></value
><ui
><textEdit
/></ui

```

```

<<para vAlign="middle"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T150[0]"
/></traversal
></draw
><draw name="T150" x="82.468mm" y="224.666mm" w="1.951in" minH="0.152in"
><value
><text
>$1 million to less than $2 million</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T291[0]"
/></traversal
></draw
><draw name="T152" x="3.391mm" y="201.219mm" w="68.049mm" h="16.67mm"
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xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
><p style="text-decoration:none;letter-spacing:0in"
>11.<span style="xfa-spacerun:yes"
>Â /span
>ANNUAL AVERAGE PROFESSIONAL SERVICES REVENUES OF FIRM</p
><p style="text-decoration:none;letter-spacing:0in"
>FOR LAST 3 YEARS</p
><p style="font-style:italic;text-decoration:none;letter-spacing:0in"
>(Insert revenue index number shown at right)</p
></body
></exData
></value
><ui
><textEdit
/></ui
><para vAlign="middle" hAlign="center"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T170[0]"
/></traversal
></draw
><draw name="T161" x="133.776mm" y="57.9mm" w="2.280972in" h="0.118in"
><value
><exData contentType="text/html"
><body xmlns="http://www.w3.org/1999/xhtml"
xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
><p style="text-decoration:none;letter-spacing:0in"
>7.<span style="xfa-spacerun:yes"
>Â /span
>NAME OF FIRM<span style="xfa-spacerun:yes"
>Â /span
><span style="font-style:italic"
>(If Block 2a is a Branch Office)</span
></p
></body
></exData
></value
><ui
><textEdit
/></ui
><font size="7pt" typeface="Arial"
/><traversal
><traverse ref="NameofFirm[0]"
/></traversal
></draw
><draw name="T163" x="4.236mm" y="53.684mm" w="2.034in" minH="0.118in"
><value

```

```
><text
>6a. POINT OF CONTACT NAME AND TITLE</text
></value
><ui
><textEdit
/></ui
><font size="7pt" typeface="Arial"
/><traversal
><traverse ref="PointofContact[0]"
/></traversal
></draw
><draw name="T166" x="70.276mm" y="66.124mm" w="1.044in" minH="0.118in"
><value
><text
>6c. E MAIL ADDRESS</text
></value
><ui
><textEdit
/></ui
><font size="7pt" typeface="Arial"
/><traversal
><traverse ref="Email[0]"
/></traversal
><para vAlign="middle"
/></draw
><draw name="T168" x="156.195mm" y="74.703mm" w="43.592mm" minH="0.134in"
><value
><text
>8c. UNIQUE ENTITY IDENTIFIER</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle"
/><font size="8pt" typeface="Arial"
/><traversal
><traverse ref="DunsNumber[1]"
/></traversal
></draw
><draw name="T170" x="4.998mm" y="218.365mm" w="0.962in" minH="0.152in"
><value
><text
>a. Federal work</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="FederalworkA[0]"
/></traversal
></draw
><draw name="T171" x="4.998mm" y="222.607mm" w="1.242in" minH="0.152in"
><value
><text
>b. Non Federal work</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="NonFederalworkB[0]"
/></traversal
></draw
><draw name="T173" x="4.998mm" y="226.849mm" w="0.84in" minH="0.15in"
><value
><text
>c. Total work</text
```



```

<</value
<<ui
<<textEdit
/></ui
<<para vAlign="middle"
/><font weight="bold" size="9pt" typeface="Arial"
/><traversal
<<traverse ref="TotalWorkC[0]"
/></traversal
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<<draw name="T186" x="3.18mm" y="231.065mm" w="196.85mm" h="0.325028in"
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<<body xmlns="http://www.w3.org/1999/xhtml"
xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
<<p style="letter spacing:0in"
>12.<span style="xfa spacerun:yes"
>Â </span
>AUTHORIZED REPRESENTATIVE<span style="xfa spacerun:yes"
>Â </span
<</p
<<p style="font weight:normal;font style:italic;letter spacing:0in"
>The foregoing is a statement of facts.</p
<</body
<</exData
<</value
<<ui
<<textEdit
/></ui
<<para vAlign="middle" hAlign="center"
/><font weight="bold" size="9pt" typeface="Arial"
/><traversal
<<traverse ref="T4[0]"
/></traversal
<</draw
<<draw name="T188" x="159.176mm" y="239.682mm" w="0.429in" minH="0.118in"
<<value
<<text
>b. DATE</text
<</value
<<ui
<<textEdit
/></ui
<<font size="7pt" typeface="Arial"
/><traversal
<<traverse ref="DateofSignature[0]"
/></traversal
<<para vAlign="middle"
/></draw
<<draw name="T189" x="4.236mm" y="248.426mm" w="0.986in" minH="0.118in"
<<value
<<text
>c. NAME AND TITLE</text
<</value
<<ui
<<textEdit
/></ui
<<font size="7pt" typeface="Arial"
/><traversal
<<traverse ref="NameandTitle[0]"
/></traversal
<<para vAlign="middle"
/></draw
<<draw name="T192" x="3.35mm" y="99.737mm" w="15.527mm" h="8.467mm"
<<value
<<text
>a. Function Code</text
<</value
<<ui
<<textEdit
/></ui

```

```
>><para vAlign="middle" hAlign="center"
/><font size="8pt" typeface="Arial"
/><traversal
>><traverse ref="FunctionCode[0]"
/></traversal
>><?renderCache.bounds 44014 24001 0 0 0 0 0 0?><?renderCache.textRun 12 a. Function 0
2218 9516 0 0 0 "Arial" 0 0 8000 ISO 8859 1?><?renderCache.textRun 4 Code 0 12444 19116
0 0 0 "Arial" 0 0 8000 ISO 8859 1?></draw
>><draw name="T272" x="103.363mm" y="99.817mm" w="14.055mm" h="8.467mm"
>><value
>><text
>a. Profile Code</text
></value
><ui
><textEdit
/></ui
>><para vAlign="middle" hAlign="center"
/><font size="8pt" typeface="Arial"
/><traversal
>><traverse ref="ProfileCode[0]"
/></traversal
>><?renderCache.bounds 39841 24001 0 0 0 0 0 0?><?renderCache.textRun 11 a. Profile 0
4135 9516 0 0 0 "Arial" 0 0 8000 ISO 8859 1?><?renderCache.textRun 4 Code 0 10358 19116
0 0 0 "Arial" 0 0 8000 ISO 8859 1?></draw
>><draw name="T282" x="4.236mm" y="66.124mm" w="31.15mm" minH="0.118in"
>><value
>><text
>6b. TELEPHONE NUMBER</text
></value
><ui
><textEdit
/></ui
><font size="7pt" typeface="Arial"
/><traversal
>><traverse ref="TelephoneNumber[0]"
/></traversal
>><para vAlign="middle"
/></draw
>><draw name="T285" x="133.776mm" y="40.489mm" w="0.407in" minH="0.118in"
>><value
>><text
>a. TYPE</text
></value
><ui
><textEdit
/></ui
><font size="7pt" typeface="Arial"
/><traversal
>><traverse ref="Type[0]"
/></traversal
>><para vAlign="middle"
/></draw
>><draw name="T287" x="133.776mm" y="49.442mm" w="1.428in" minH="0.118in"
>><value
>><text
>b. SMALL BUSINESS STATUS</text
></value
><ui
><textEdit
/></ui
><font size="7pt" typeface="Arial"
/><traversal
>><traverse ref="BusinessStatus[0]"
/></traversal
>><para vAlign="middle"
/></draw
>><draw name="T290" x="72.5mm" y="202.83mm" w="127mm" h="5.216mm"
>><value
>><text
>PROFESSIONAL SERVICES REVENUE INDEX NUMBER</text
></value
```

```
<<ui
<<textEdit
/></ui
<<para vAlign="middle" hAlign="center"
/><font size="9pt" typeface="Arial"
/><traversal
<<traverse ref="T141[0]"
/></traversal
<<?renderCache.bounds 360000 14786 0 0 0 0 0 0?><?renderCache.textRun 42 PROFESSIONAL
SERVICES REVENUE INDEX NUMBER 0 62224 9999 0 0 0 "Arial" 0 0 9000 ISO 8859 1?></draw
<<draw name="T291" x="137.052mm" y="208.766mm" w="0.212in" minH="0.152in"
<<value
<<text
> 6.</text
<</value
<<ui
<<textEdit
/></ui
<<para vAlign="middle"
/><font size="9pt" typeface="Arial"
/><traversal
<<traverse ref="T292[0]"
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<</draw
<<draw name="T292" x="144.698mm" y="208.766mm" w="1.951in" minH="0.152in"
<<value
<<text
>$2 million to less than $5 million</text
<</value
<<ui
<<textEdit
/></ui
<<para vAlign="middle"
/><font size="9pt" typeface="Arial"
/><traversal
<<traverse ref="T293[0]"
/></traversal
<</draw
<<draw name="T293" x="137.052mm" y="212.728mm" w="0.212in" minH="0.152in"
<<value
<<text
> 7.</text
<</value
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<<textEdit
/></ui
<<para vAlign="middle"
/><font size="9pt" typeface="Arial"
/><traversal
<<traverse ref="T294[0]"
/></traversal
<</draw
<<draw name="T294" x="144.698mm" y="212.728mm" w="2.029in" minH="0.152in"
<<value
<<text
>$5 million to less than $10 million</text
<</value
<<ui
<<textEdit
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>9. EMPLOYEES BY DISCIPLINE. c. Number of Employees. 1. FIRM</toolTip
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/></assist
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/><corner thickness="0.1753mm" presence="hidden"
/></border
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<<picture
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<<picture
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<<format

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>9. EMPLOYEES BY DISCIPLINE. c. Number of Employees. 1. FIRM</toolTip
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>num{z,zzz,zzz,zz9}</picture
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><picture
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>9. EMPLOYEES BY DISCIPLINE. c. 1. Total Number of Employees at Firm</toolTip
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></format
><traversal
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```

```

/></traversal
><calculate
><script
>
sum(Firm1 + Firm2 + Firm3 + Firm4 + Firm5 + Firm6 + Firm7 + Firm8 + Firm9 + Firm10 +
Firm11 + Firm12 + Firm13 + Firm14 + Firm15 + Firm16 + Firm17 + Firm18 + Firm19 + Firm20
+ Firm21)
</script
></calculate
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/><margin bottomInset="0mm" leftInset="0mm" rightInset="0mm" topInset="0mm"
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/><assist
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>6. b. TELEPHONE NUMBER</toolTip
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/><margin bottomInset="0mm" leftInset="0mm" rightInset="0mm" topInset="0mm"
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><toolTip
>3. YEAR ESTABLISHED</toolTip
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><event activity="exit" name="event__exit"
><script contentType="application/x javascript"
>myString = this.rawValue
myRegex = /^[^0123456789.]+/g
if (myString != null){
  myNewString = myString.match(myRegex)
  if (myNewString != null){
    xfa.host.messageBox("Please enter 4 digit year!");
    myNewString = myString.replace(myRegex, "")
    this.rawValue = myNewString
  }
}
</script
></event
></traversal

```

```

<<traverse ref="T25[0]"
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/><assist
<<toolTip
>8. b. YEAR ESTABLISHED</toolTip
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/></assist
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<<edge presence="hidden"
/><corner thickness="0.1753mm" presence="hidden"
/></border
<<event activity="exit" name="event__exit"
<<script contentType="application/x javascript"
>
myString = this.rawValue
myRegEx = /^[^0123456789.]+/g
if (myString != null){
  myNewString = myString.match(myRegEx)
  if (myNewString != null){
    xfa.host.messageBox("Please enter 4 digit year!");
    myNewString = myString.replace(myRegEx,"");
    this.rawValue = myNewString
  }
}
</script
<</event
<<traversal
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/></traversal
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>4. UNIQUE ENTITY IDENTIFIER</toolTip
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><traverse ref="T82[0]"
/></traversal
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/><corner thickness="0.007in" presence="hidden"
/></border
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>This is a protected field.</speak
><toolTip
>12. c. NAME AND TITLE</toolTip
></assist
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><traverse ref="T67[0]"
/></traversal
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><?templateDesigner styleID aped0?></border
><margin
/></dateTimeEdit
><picture
>date{MM/DD/YYYY}|date{MMDDYYYY}|date{M/D/YYYY}|date{MM DD YYYY}|date{M D
YYYY}|date{MM DD YYYY}|date{M D YYYY}|date{MM,DD,YYYY}|date{M,D,YYYY}|date{MM.DD.YYYY}|da
te{M.D.YYYY}|date{DD MMM YYYY}|date{M/D/YY}|date{M D YY}|date{M D
YY}|date{MM/DD/YY}|date{MM DD YY}|date{MMDDYY}|date{MM DD YY}</picture
<</ui
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><date
/></value
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><edge presence="hidden"
```

```

/><corner thickness="0.007in" presence="hidden"
/></border
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><message
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>Invalid Date. Enter 2 digit month, 2 digit day and 4 digit year.</text
></message
><picture
>MM/DD/YYYY</picture
></validate
><format
><picture
>MM/DD/YYYY</picture
></format
><assist
><speak priority="toolTip"
/><toolTip
>12. b. Date of Signature. Enter 2 digit month, 2 digit day and 4 digit year.</toolTip
></assist
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/><traversal
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/></traversal
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/><para vAlign="middle" hAlign="center"
/><assist
><speak priority="toolTip"
/><toolTip
>10. PROFILE OF FIRM'S EXPERIENCE AND ANNUAL AVERAGE REVENUE FOR LAST 5 YEARS. c.
Revenue Index Number (see below)</toolTip
></assist
><event activity="exit" name="event__exit"
><script contentType="application/x javascript"
>myString = this.rawValue
myRegex = /^[^0123456789.]+/g
if (myString != null){
  myNewString = myString.match(myRegex)
  if (myNewString != null){
    xfa.host.messageBox("Please use only digits!");
    myNewString = myString.replace(myRegex,"")
    this.rawValue = myNewString
  }
}
</script
></event
><traversal
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/></traversal
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><text maxChars="2"
/></value
></field
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/></textEdit

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/><toolTip
>10. PROFILE OF FIRM'S EXPERIENCE AND ANNUAL AVERAGE REVENUE FOR LAST 5 YEARS. c.
Revenue Index Number (see below)</toolTip
</assist
<event activity="exit" name="event__exit"
<script contentType="application/x javascript"
>myString = this.rawValue
myRegex = /^[^0123456789.]+/g
if (myString != null){
  myNewString = myString.match(myRegex)
  if (myNewString != null){
    xfa.host.messageBox("Please use only digits!");
    myNewString = myString.replace(myRegex,"")
    this.rawValue = myNewString
  }
}
</script
</event
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/></traversal
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<<text maxChars="2"
/></value
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/></border
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/></textEdit
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/><assist
<speak priority="toolTip"
/><toolTip
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Revenue Index Number (see below)</toolTip
</assist
<event activity="exit" name="event__exit"
<script contentType="application/x javascript"
>myString = this.rawValue
myRegex = /^[^0123456789.]+/g
if (myString != null){
  myNewString = myString.match(myRegex)
  if (myNewString != null){
    xfa.host.messageBox("Please use only digits!");
    myNewString = myString.replace(myRegex,"")
    this.rawValue = myNewString
  }
}
</script
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/></traversal
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/></value
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Revenue Index Number (see below)</toolTip
<</assist
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<<script contentType="application/x javascript"
>myString = this.rawValue
myRegex = /^[^0123456789.]+/g
if (myString != null){
  myNewString = myString.match(myRegex)
  if (myNewString != null){
    xfa.host.messageBox("Please use only digits!");
    myNewString = myString.replace(myRegex,"")
    this.rawValue = myNewString
  }
}
</script
<</event
<<traversal
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/></value
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Revenue Index Number (see below)</toolTip
<</assist
<<event activity="exit" name="event__exit"
<<script contentType="application/x javascript"
>myString = this.rawValue
myRegex = /^[^0123456789.]+/g
if (myString != null){
  myNewString = myString.match(myRegex)
  if (myNewString != null){
    xfa.host.messageBox("Please use only digits!");
    myNewString = myString.replace(myRegex,"")
    this.rawValue = myNewString
  }
}
</script
<</event
<<traversal

```

```

><traverse ref="ProfileCode[5]"
/></traversal
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><text maxChars="2"
/></value
></field
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><textEdit
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><edge
/></border
><margin
/></textEdit
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/><assist
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/><toolTip
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Revenue Index Number (see below)</toolTip
></assist
><event activity="exit" name="event__exit"
><script contentType="application/x javascript"
>myString = this.rawValue
myRegex = /^[^0123456789.]+/g
if (myString != null){
  myNewString = myString.match(myRegex)
  if (myNewString != null){
    xfa.host.messageBox("Please use only digits!");
    myNewString = myString.replace(myRegex,"")
    this.rawValue = myNewString
  }
}
</script
></event
><traversal
><traverse ref="ProfileCode[6]"
/></traversal
><value
><text maxChars="2"
/></value
></field
><field name="RevenueIndexNumber" y="133.838mm" x="185.213mm" w="6.225mm" h="3.91mm"
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/><assist
><speak priority="toolTip"
/><toolTip
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Revenue Index Number (see below)</toolTip
></assist
><event activity="exit" name="event__exit"
><script contentType="application/x javascript"
>myString = this.rawValue
myRegex = /^[^0123456789.]+/g
if (myString != null){
  myNewString = myString.match(myRegex)
  if (myNewString != null){
    xfa.host.messageBox("Please use only digits!");

```

```

    myNewString = myString.replace(myRegEx,"")
    this.rawValue = myNewString
}
}
</script
>>/event
>>traversal
>>traverse ref="ProfileCode[7]"
/></traversal
>>value
>>text maxChars="2"
/></value
></field
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>>border presence="hidden"
>>edge
/></border
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/></textEdit
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/><toolTip
>10. PROFILE OF FIRM'S EXPERIENCE AND ANNUAL AVERAGE REVENUE FOR LAST 5 YEARS. c.
Revenue Index Number (see below)</toolTip
></assist
>>event activity="exit" name="event__exit"
>>script contentType="application/x javascript"
>myString = this.rawValue
myRegEx = /^[^0123456789.]+/g
if (myString != null){
    myNewString = myString.match(myRegEx)
    if (myNewString != null){
        xfa.host.messageBox("Please use only digits!");
        myNewString = myString.replace(myRegEx,"")
        this.rawValue = myNewString
    }
}
</script
>>/event
>>traversal
>>traverse ref="ProfileCode[8]"
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>>text maxChars="2"
/></value
></field
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Revenue Index Number (see below)</toolTip
></assist
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```

><script contentType="application/x javascript"
>myString = this.rawValue
myRegExp = /^[^0123456789.]+/g
if (myString != null){
  myNewString = myString.match(myRegExp)
  if (myNewString != null){
    xfa.host.messageBox("Please use only digits!");
    myNewString = myString.replace(myRegExp,"")
    this.rawValue = myNewString
  }
}
</script
></event
><traversal
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    myNewString = myString.replace(myRegex,"")
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  if (myNewString != null){
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myRegex = /^[^0123456789.]+/g
if (myString != null){

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myNewString = myString.match(myRegEx)
if (myNewString != null){
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**Bogomolny, Michael (Federal)**

---

**From:** Bogomolny, Michael (Federal)  
**Sent:** Monday, February 26, 2018 3:09 PM  
**To:** Graff, Mark (Federal)  
**Subject:** DOC NOAA 2017 001606; NRDC v. DOC, No. 18 cv 583 (S.D.N.Y.)  
**Attachments:** Draft Answer 2 21 18.docx; 01 complaint.pdf

Mark,

(b)(5) [Redacted]

[Redacted]

[Redacted]

[Redacted] Can you please take a look?

Thanks,  
bogo

---

**From:** Jude, Jennifer (USANYS) [mailto:Jennifer.Jude@usdoj.gov]  
**Sent:** Wednesday, February 21, 2018 7:07 PM  
**To:** Bogomolny, Michael (Federal) <MBogomolny@doc.gov>  
**Subject:** RE: documents for NRDC v. DOC

Hi again,

Thanks for these files. (b)(5) [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
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Thanks,  
Jen

---

**From:** Bogomolny, Michael (Federal) [mailto:MBogomolny@doc.gov]  
**Sent:** Wednesday, February 14, 2018 3:29 PM  
**To:** Jude, Jennifer (USANYS) <JJude@usa.doj.gov>  
**Subject:** documents for NRDC v. DOC

Jennifer,

(b)(5) [Redacted]  
[Redacted]  
[Redacted]

(b)(5)

Sincerely,

bogo

-----  
**Michael Bogomolny**

Acting Chief, Information Law Division  
[mbogomolny@doc.gov](mailto:mbogomolny@doc.gov) (202) 482-0703  
United States Department of Commerce  
Office of the General Counsel



**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

NATURAL RESOURCES DEFENSE	)	
COUNCIL, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
UNITED STATES DEPARTMENT OF	)	18-cv-583
COMMERCE,	)	ECF Case
	)	
Defendant.	)	
	)	

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**INTRODUCTION**

1. Defendant United States Department of Commerce (Commerce) has violated the Freedom of Information Act (FOIA), 5 U.S.C. § 552, by failing to fully disclose records relating to a July 2017 determination by the Secretary of Commerce that New Jersey had complied with its obligation to implement management measures aimed at conserving summer flounder. Plaintiff Natural Resources Defense Council (NRDC) requested these records from Commerce six months ago.

2. Commerce’s National Oceanic and Atmospheric Administration (NOAA), regional fishery management councils, and the interstate Atlantic States Marine Fisheries Commission (the Fisheries Commission or Commission) work together to conserve and manage various fish populations along the Atlantic coast. As part of these efforts, the Fisheries Commission adopts management plans to protect certain fish species against depletion. Under Federal law, the Commission

identifies Atlantic coastal states to be included in its various management plans and then works to ensure that those states implement and enforce the plans.

3. In June 2017, the Fisheries Commission determined that New Jersey was out of compliance with the Commission's management plan for summer flounder, a fish species that is currently subject to overfishing. In July 2017, contrary to the Commission's determination, the Secretary of Commerce found that the summer flounder management measures New Jersey had failed to implement were not necessary for the conservation of summer flounder. The Secretary's determination allowed New Jersey's recreational summer flounder fishing season to proceed.

4. On July 26, 2017, NRDC submitted a FOIA request to Commerce for documents related to the Secretary's finding that the summer flounder management plan measures New Jersey had failed to implement were unnecessary for conserving summer flounder.

5. In October and November, Commerce via NOAA (a component of Commerce) provided NRDC with two "interim" releases of responsive documents. These interim releases consisted solely of documents from NOAA's files, and nothing from other Commerce components or the Office of the Secretary.

6. After the most recent interim release, Commerce informed NRDC that there were no more responsive documents in NOAA's files. Commerce further informed NRDC that it was unable to provide an update regarding the status of its

search for additional responsive documents outside of NOAA, other than noting a “significant logjam” due to the volume of Commerce FOIA requests.

7. Although Commerce has had six months to search for and produce responsive documents, it has not provided NRDC with any records from components of Commerce other than NOAA. Nor has Commerce provided NRDC with a final determination as to whether it will comply with NRDC’s request. The statutory deadline for such a final determination was, at the latest, September 11, 2017, with the final production of documents due promptly thereafter.

8. It is important that NRDC receives these documents in a timely manner. The Commission has already begun setting management measures for the 2018 summer flounder recreational fishing season, and the Commission and individual states will make key management decisions over the next four months prior to the opening of the season in May 2018. Particularly if New Jersey or other states choose not to comply with the relevant management plan for the 2018 fishing season, the requested documents could provide critical information to NRDC and the public in making advocacy decisions.

9. NRDC seeks a declaration that Commerce has violated FOIA by failing to provide a final determination as to whether it will comply with NRDC’s request, and by failing to produce all non-exempt responsive records, by the statutory deadline. NRDC seeks an injunction ordering Commerce to disclose at no cost and without further delay all non-exempt, responsive records to NRDC.

## THE PARTIES

10. Plaintiff NRDC is a national, non-profit environmental and public health membership organization with hundreds of thousands of members nationwide. NRDC engages in research, advocacy, public education, and litigation related to protecting public health and the environment. The organization's work includes efforts to end overfishing and promote the long-term sustainability of fishing practices in the United States.

11. Defendant Commerce is a federal agency within the meaning of FOIA, 5 U.S.C. § 551(1), and has possession or control of the records that NRDC seeks.

## JURISDICTION AND VENUE

12. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

13. Venue is proper in this court because plaintiff NRDC resides and has its principal place of business in this judicial district. 5 U.S.C. § 552(a)(4)(B).

## STATUTORY AND REGULATORY FRAMEWORK

14. FOIA requires that federal agencies release, upon request, information to the public, 5 U.S.C. § 552(a)(3), unless one of nine statutory exemptions applies, *id.* § 552(b).

15. Within 20 business days of an agency's receipt of a FOIA request, the agency must "determine . . . whether to comply with such request," *id.* § 552(a)(6)(A)(i); *see also* 15 C.F.R. § 4.6(b) (Commerce FOIA regulation), and "immediately notify the person making such request of . . . such determination and

the reasons therefor,” 5 U.S.C. § 552(a)(6)(A)(i). If the agency determines that it will comply with the request, it must “promptly” release responsive, non-exempt records to the requester. *Id.* § 552(a)(6)(C)(i); *see also* 15 C.F.R. § 4.7(c).

16. In “unusual circumstances,” an agency may extend the time limit for responding to a FOIA request by up to 10 business days. 5 U.S.C. § 552(a)(6)(B)(i).

17. If the agency fails to comply with the statutory time limits, the requester is deemed to have exhausted her administrative remedies and may immediately file suit “to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld.” 5 U.S.C. §§ 552(a)(4)(B), 552(a)(6)(C)(i).

#### **FACTUAL BACKGROUND**

18. Summer flounder is an important fish for commercial and recreational fishing industries along the Mid-Atlantic coast, and is found in waters from Nova Scotia, Canada, to the east coast of Florida. Despite conservation efforts, the summer flounder population is below target levels and is currently subject to overfishing.

19. Summer flounder and the fishing of summer flounder collectively known as the summer flounder fishery are jointly managed by NOAA (a component of Commerce), the Mid-Atlantic Fishery Management Council, and the Fisheries Commission. Together, these entities seek to conserve summer flounder and prevent depletion of the species.

20. Under the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act), 16 U.S.C. §§ 5101-5108, the Fisheries Commission is tasked with developing management plans to conserve summer flounder (as well as other fish species in the Atlantic coastal region), *see id.* § 5104(a). The Atlantic Coastal Act provides that, for each management plan, the Commission must identify the states that are required to implement and enforce the plan. *Id.* § 5104(a)(1). Under some management plans, the Commission allows states to implement their own management measures, so long as the state's measures achieve the same level of conservation as the Commission's plan.

21. If the Fisheries Commission finds that a state has failed to implement or enforce measures in compliance with the Commission's management plan for a particular fish species, the Atlantic Coastal Act requires the Commission to make a formal non-compliance determination. *Id.* § 5105(a). This determination is subject to review by the Secretary of Commerce, who makes an independent compliance determination. *Id.* § 5106(a)(1). If the Secretary agrees that the state has failed to implement and enforce the measures contained in the management plan, and also that such measures are "necessary for the conservation of the fishery," the Secretary must declare a moratorium on fishing that species in the waters of the non-complying state. *Id.* § 5106(a), (c)(1).

22. In February 2017, in response to new science indicating the declining population status of summer flounder, the Fisheries Commission tightened measures in its summer flounder management plan applicable to recreational

fishing. These stricter measures included increased minimum size requirements and a reduction in the maximum number of summer flounder allowed to be caught and kept by any one person.

23. State officials from New Jersey—one of several states required to implement and enforce the Commission’s summer flounder management plan—vocally opposed these stricter measures. Soon after the Fisheries Commission voted on the new restrictions, the New Jersey Department of Environmental Protection Commissioner wrote a letter to the Secretary of Commerce, asking the Secretary to stop them from going into effect, claiming the restrictions would lead to the “destruction of” New Jersey’s recreational summer flounder industry.

24. New Jersey ultimately proposed its own summer flounder recreational management measures, instead of implementing the new measures adopted by the Commission. Although the Commission’s summer flounder management plan allowed New Jersey to do so if the measures would achieve the same level of conservation as the Commission’s plan, after reviewing the measures proposed by New Jersey, the Commission found that the measures would not sufficiently protect summer flounder and were therefore inconsistent with the Commission’s plan.

25. New Jersey nonetheless implemented its own measures, prompting a formal non-compliance determination by the Fisheries Commission on June 1, 2017.

26. In July 2017, for the first time in the twenty-four-year history of the Atlantic Coastal Act, the Secretary of Commerce made a finding contrary to the Commission’s non-compliance determination, allowing New Jersey’s recreational

summer flounder season to proceed. Specifically, the Secretary found that the measures New Jersey failed to implement were “not necessary for the conservation of summer flounder.” 82 Fed. Reg. 33,481 (July 20, 2017). The notice announcing the Secretary’s compliance determination was brief and devoid of any substantive explanation. *See id.*

27. On July 26, 2017, NRDC served a FOIA request on Commerce, seeking records supporting, explaining, or otherwise relating to the Secretary’s finding that the summer flounder management measures New Jersey failed to implement were not necessary for the conservation of summer flounder. NRDC also requested a fee waiver.

28. NRDC received an email notification indicating that the request would be processed by NOAA, a component of Commerce. NRDC also received a letter from NOAA on August 4, 2017, acknowledging receipt of the request and stating that the agency was invoking the statutory ten-day extension applicable in “unusual circumstances.” In its letter, NOAA stated that it anticipated completing NRDC’s request by September 7, 2017.

29. On August 23, NRDC received a letter from NOAA recommending that NRDC narrow the scope of its request. After a phone call with NRDC on August 24 and an additional email from NRDC on August 25, NOAA agreed to move forward with the request. Around the same time, Commerce granted NRDC’s fee waiver request.



30. NOAA provided NRDC with two “interim releases” of responsive documents in October and November, but did not provide a final date for Commerce’s completion of NRDC’s request. The interim releases consisted solely of documents from NOAA’s files, and a NOAA representative confirmed that NOAA itself has no other responsive documents. NOAA further informed NRDC that it was unable to provide more information regarding the status of Commerce’s search for additional responsive documents, other than noting a “significant logjam” due to the volume of Commerce FOIA requests.

31. It has been six months since NRDC served its FOIA request on Commerce, and more than four months since the statutory deadline passed, yet Commerce has failed to provide NRDC with a final response to its request.

#### **CLAIM FOR RELIEF**

32. Plaintiff incorporates by reference all preceding paragraphs.

33. NRDC has a statutory right under FOIA to obtain without further delay all records responsive to its request that are not exempt from disclosure.

34. Commerce violated its duty under FOIA, 5 U.S.C. § 552(a), to release by the statutory deadline all non-exempt, responsive records to NRDC.

#### **REQUEST FOR RELIEF**

Plaintiff respectfully requests that this Court enter judgment against Commerce as follows:

A. Declaring that Commerce has violated FOIA by failing to produce all non-exempt records responsive to NRDC’s FOIA request by the statutory deadline;

- B. Ordering that Commerce disclose the remaining requested records to NRDC at no cost and without further delay;
- C. Ordering that Commerce produce an index identifying any documents or parts thereof that it withholds and the basis for the withholdings, in the event Commerce determines that certain responsive records are exempt from disclosure;
- D. Retaining jurisdiction over this case to rule on any challenged assertions by Commerce that certain responsive records are exempt from disclosure;
- E. Awarding NRDC its costs and reasonable attorneys' fees; and
- F. Granting such other relief that the Court considers just and proper.

Respectfully submitted,

/s/ Catherine Marlantes Rahm  
Catherine Marlantes Rahm  
Natural Resources Defense Council  
40 West 20th Street, 11th Floor  
New York, NY 10011  
(212) 727-4628  
crahm@nrdc.org

*Counsel for Plaintiff*

Dated: January 23, 2018

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**Mark Graff - NOAA Federal**

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**From:** Mark Graff NOAA Federal  
**Sent:** Monday, February 26, 2018 3:28 PM  
**To:** Appeals, FOIA; Bogomolny, Michael (Federal)  
**Cc:** Lola Stith NOAA Affiliate  
**Subject:** Fwd: Freedom of Information Act Appeal DOC NOAA 2018 000571  
**Attachments:** FAL DOC NOAA 2018 000571.pdf; FOIA Request NOAA Coastal Geospatial.docx; SF330.pdf

Good Afternoon Bogo,

(b)(5)

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
(301) 628 5658 (O)  
(b)(6) (C)

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Forwarded message

**From:** Shem Yusuf - NOAA Federal <[shem.s.yusuf@noaa.gov](mailto:shem.s.yusuf@noaa.gov)>  
**Date:** Mon, Feb 26, 2018 at 2:42 PM  
**Subject:** Fwd: Freedom of Information Act Appeal DOC NOAA 2018 000571  
**To:** Mark Graff NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)>

FYI.

Forwarded message

**From:** John Palatiello <[john@jmpa.us](mailto:john@jmpa.us)>  
**Date:** Mon, Feb 26, 2018 at 1:40 PM  
**Subject:** Freedom of Information Act Appeal DOC NOAA 2018 000571  
**To:** [FOIAAppeals@doc.gov](mailto:FOIAAppeals@doc.gov)  
**Cc:** [shem.s.yusuf@noaa.gov](mailto:shem.s.yusuf@noaa.gov), [robert.swisher@noaa.gov](mailto:robert.swisher@noaa.gov)

Assistant General Counsel for Litigation, Employment, and Oversight  
U.S. Department of Commerce  
Office of General Counsel

Room 5875  
14th and Constitution Avenue, N.W.  
Washington, D.C. 20230

Re: Freedom of Information Act Appeal DOC NOAA 2018 000571

Dear Sir or Madam:

This is to appeal the determination of my Freedom of Information Act request. My original request, and the NOAA determination, are attached.

There is an error of fact in this determination. In its determination letter, the following is stated: "Please note that NOAA does not keep track of sub-contractors, only Prime contractors."

1. In Solicitation NCNP0000-15-00223, NOAA requested that competing firms submit a Standard Form 330. Item C of SF 330 (copy attached) requires the prime contractor to provide information on subcontractors. Therefore, NOAA has information on subcontractors. I am requesting the SF 330 of each of the prime contractors, which included their subcontractor data.
2. Solicitation NCNP0000-15-00223 was conducted pursuant to part 36.6 of the Federal Acquisition Regulation (FAR). Section 36.606 of the FAR includes the following: "(e) Because selection of firms is based upon qualifications, the extent of any subcontracting is an important negotiation topic. The clause prescribed at [44.204\(b\)](#), Subcontractors and Outside Associates and Consultants (Architect-Engineer Services) (see [52.244-4](#)), limits a firm's subcontracting to firms agreed upon during negotiations.
3. The FAR also provides: "3. (b) The contracting officer may insert the clause at [52.244-4](#), Subcontracts and Outside Associates and Consultants (Architect-Engineer Services), in architect-engineer contracts.
4. The FAR also provides: "52.244-4 – Subcontractors and Outside Associates and Consultants (Architect-Engineer Services).

As prescribed in [44.204\(b\)](#), insert the following clause:

**Subcontractors and Outside Associates and Consultants (Architect-Engineer Services)(Aug 1998)**

Any subcontractors and outside associates or consultants required by the Contractor in connection with the services covered by the contract will be limited to individuals or firms that were specifically identified and agreed to during negotiations. The Contractor shall obtain the Contracting Officer's written consent before making any substitution for these subcontractors, associates, or consultants."

Therefore, NOAA has information on subcontractors in each prime contractor's original SF 330, as well as and substitutions approved by the Contracting Officer. We hereby appeal NOAA's determinate and request that information.

Sincerely,

John M. Palatiello, President  
John M. Palatiello & Associates, Inc.  
1856 Old Reston Avenue, Suite 205  
Reston, VA 20190  
[\(703\) 787 6665](tel:(703)787-6665)  
[www.jmpa.us](http://www.jmpa.us)

Sincerely,

Mr. Shem S. Yusuf  
Procurement Analyst/FOIA Liaison  
NOAA Acquisition and Grants Office  
Policy and Oversight Division

Richard Bolling Federal Building  
601 East 12th Street, Rm. 1747  
Kansas City, Missouri 64106  
Phone: [\(816\) 823-3859](tel:(816)823-3859)  
Fax: [\(757\) 664-3888](tel:(757)664-3888)

**"Some people spend an entire lifetime wondering if they made a difference...the Marines don't have that problem." - President Ronald Reagan, 1985**



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

February 13, 2018

Mr. John M. Palatiello  
John M. Palatiello & Associates, Inc.  
1856 Old Reston Avenue  
Suite 205  
Reston, VA 20190

**Re: FOIA Request DOC-NOAA-2018-000571**

Dear Mr. Palatiello:

This letter is in response to your Freedom of Information Act (FOIA) request which was received by our office on 01/16/2018, in which you requested:

*A copy of the following documents, or documents containing the following information, be provided to me: Any documents that identify the prime ( Dewberry, Fugro Geospatial, Quantum Spatial, Tetra Tech, Woolpert) contractors and subcontractors (all members of the teams in support of the prime contractors) to the NOAA Office for Coastal Management in Charleston, South Carolina (with contracting officer services provided by NOAA's Eastern Acquisition Division in Norfolk, Virginia), under the Coastal Geospatial Services Contract Vehicle, including but not limited contracts awarded pursuant to Solicitation Number: NCNP0000 15 00223 and/or awarded pursuant to Contract Award Number: EA 133C 16 CQ 0042 0046. Specifically, I am requesting documents to identify the firm, primary individual point(s) of contact, address, telephone and email for each prime and subcontractor on these contracts known to NOAA.*

You can retrieve these public records via the [www.sam.gov](http://www.sam.gov) website. You should conduct a search for the awardee names (ie., Dewberry, Fugro Geospatial, Quantum Spatial, Tetra Tech, Woolpert) as listed in your request.

- Type in the business entity in the Quick Search field and click Search
- Once the result screen appears, click the View Details button for the business entity you want
- On the Entity Dashboard screen, click the POC selection located on the left side of the screen
- Scroll down to Mandatory Points of Contact section to see the list of primary contacts for the business entity

Under the Mandatory Points of Contact section, you will find the primary contacts listed for the business entity including their full name, phone number(s) and address. Please note that NOAA does not keep track of subcontractors, only Prime contractors.

Although this is not a denial of your FOIA request you may appeal this determination. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must be received within 90 calendar days of the date of this response letter at the following address:

Assistant General Counsel for Litigation, Employment, and Oversight  
U.S. Department of Commerce  
Office of General Counsel  
Room 5875  
14th and Constitution Avenue, N.W.

Washington, D.C. 20230

An appeal may also be sent by e-mail to [FOIAAppeals@doc.gov](mailto:FOIAAppeals@doc.gov), or by FOIAonline at <https://foiaonline.regulations.gov/foia/action/public/home#>.

For your appeal to be complete, it must include the following items:

- a copy of the original request,
- our response to your request,
- a statement explaining why the withheld records should be made available, and why the denial of the records was in error.
- “Freedom of Information Act Appeal” must appear on your appeal letter. It should also be written on your envelope, or e-mail subject line.

FOIA appeals posted to the e-mail box, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

FOIA grants requesters the right to challenge an agency's final action in federal court. Before doing so, an adjudication of an administrative appeal is ordinarily required.

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

Office of Government Information Services  
National Archives and Records Administration  
Room 2510  
8601 Adelphi Road  
College Park, MD 20740-6001

Email: [ogis@nara.gov](mailto:ogis@nara.gov)

Phone: 301-837-1996

Fax: 301-837-0348

Toll-free: 1-877-684-6448

If you have questions regarding this correspondence, please contact Shem Yusuf at [shem.s.yusuf@noaa.gov](mailto:shem.s.yusuf@noaa.gov) or the NOAA FOIA Public Liaison Robert Swisher at (301) 628-5755.

Sincerely,



Lola Stith  
NOAA FOIA Office

12/13/17

to nkolika.ndubisi, nosfoia  
Nkolika (Nikki) Ndubisi  
FOIA Liaison Officer  
National Ocean Service (NOS)  
1305 East West Highway  
Silver Spring, MD 20910

Re: Freedom of Information Act Request

Dear Sir or Madam:

This is a request under the Freedom of Information Act.

I request that a copy of the following documents, or documents containing the following information, be provided to me:

Any documents that identify the prime ( Dewberry, Fugro Geospatial, Quantum Spatial, Tetra Tech, Woolpert) contractors and subcontractors (all members of the teams in support of the prime contractors) to the NOAA Office for Coastal Management in Charleston, South Carolina (with contracting officer services provided by NOAA's Eastern Acquisition Division in Norfolk, Virginia), under the Coastal Geospatial Services Contract Vehicle, including but not limited contracts awarded pursuant to Solicitation Number: NCNP0000-15-00223 and/or awarded pursuant to Contract Award Number: EA-133C-16-CQ-0042-0046. Specifically, I am requesting documents to identify the firm, primary individual point(s) of contact, address, telephone and email for each prime and subcontractor on these contracts known to NOAA.

In order to help to determine my status to assess fees, you should know that I am a manager of nonprofit associations organized under section 501(c)(6) of the Internal Revenue Code. As such, I am affiliated with nonprofit scientific, professional and educational institutions, and this request is made for a scholarly or scientific purpose. I request a waiver of all fees for this request. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government. If this waiver is denied, I am willing to pay fees for this request up to a maximum of \$50. If you estimate that the fees will exceed this limit, please inform me first.

Thank you for your consideration of this request. Please do not hesitate to contact me if you have any questions. Please also provide a prompt acknowledgement of receipt of this request.

Sincerely,

John M. Palatiello, President  
John M. Palatiello & Associates, Inc.  
1856 Old Reston Avenue, Suite 205  
Reston, VA 20190  
(703) 787-6665  
[www.jmpa.us](http://www.jmpa.us)

# ARCHITECT-ENGINEER QUALIFICATIONS

OMB Control Number: 9000-0157  
Expiration Date: 12/31/2020

Paperwork Reduction Act Statement - This information collection meets the requirements of 44 USC § 3507, as amended by section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget (OMB) control number. The OMB control number for this collection is 9000-0157. We estimate that it will take 29 hours (25 hours for part 1 and 4 hours for Part 2) to read the instructions, gather the facts, and answer the questions. Send only comments relating to our time estimate, including suggestions for reducing this burden, or any other aspects of this collection of information to: General Services Administration, Regulatory Secretariat Division (M1V1CB), 1800 F Street, NW, Washington, DC 20405.

## PURPOSE

Federal agencies use this form to obtain information from architect-engineer (A-E) firms about their professional qualifications. Federal agencies select firms for A-E contracts on the basis of professional qualifications as required by 40 U.S.C. chapter 11, Selection of Architects Engineers, and Part 36 of the Federal Acquisition Regulation (FAR).

The Selection of Architects and Engineers statute requires the public announcement of requirements for A-E services (with some exceptions provided by other statutes), and the selection of at least three of the most highly qualified firms based on demonstrated competence and professional qualifications according to specific criteria published in the announcement. The Act then requires the negotiation of a contract at a fair and reasonable price starting first with the most highly qualified firm.

The information used to evaluate firms is from this form and other sources, including performance evaluations, any additional data requested by the agency, and interviews with the most highly qualified firms and their references.

## GENERAL INSTRUCTIONS

Part I presents the qualifications for a specific contract.

Part II presents the general qualifications of a firm or a specific branch office of a firm. Part II has two uses:

1. An A-E firm may submit Part II to the appropriate central, regional or local office of each Federal agency to be kept on file. A public announcement is not required for certain contracts, and agencies may use Part II as a basis for selecting at least three of the most highly qualified firms for discussions prior to requesting submission of Part I. Firms are encouraged to update Part II on file with agency offices, as appropriate, according to FAR Part 36. If a firm has branch offices, submit a separate Part II for each branch office seeking work.

2. Prepare a separate Part II for each firm that will be part of the team proposed for a specific contract and submitted with Part I. If a firm has branch offices, submit a separate Part II for each branch office that has a key role on the team.

## INDIVIDUAL AGENCY INSTRUCTIONS

Individual agencies may supplement these instructions. For example, they may limit the number of projects or number of pages submitted in Part I in response to a public announcement for a particular project. Carefully comply with any agency instructions when preparing and submitting this form. Be as concise as possible and provide only the information requested by the agency.

## DEFINITIONS

**Architect-Engineer Services:** Defined in FAR 2.101.

**Branch Office:** A geographically distinct place of business or subsidiary office of a firm that has a key role on the team.

**Discipline:** Primary technical capabilities of key personnel, as evidenced by academic degree, professional registration, certification, and/or extensive experience.

**Firm:** Defined in FAR 36.102.

**Key Personnel:** Individuals who will have major contract responsibilities and/or provide unusual or unique expertise.

## SPECIFIC INSTRUCTIONS

### Part I - Contract-Specific Qualifications

#### Section A. Contract Information.

1. Title and Location. Enter the title and location of the contract for which this form is being submitted, exactly as shown in the public announcement or agency request.

2. Public Notice Date. Enter the posted date of the agency's notice on the Federal Business Opportunity website (FedBizOpps), other form of public announcement or agency request for this contract.

3. Solicitation or Project Number. Enter the agency's solicitation number and/or project number, if applicable, exactly as shown in the public announcement or agency request for this contract.

#### Section B. Architect-Engineer Point of Contact.

4-8. Name, Title, Name of Firm, Telephone Number, Fax (Facsimile) Number and E-mail (Electronic Mail) Address. Provide information for a representative of the prime contractor or joint venture that the agency can contact for additional information.



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Section C. Proposed Team.

9-11. Firm Name, Address, and Role in This Contract. Provide the contractual relationship, name, full mailing address, and a brief description of the role of each firm that will be involved in performance of this contract. List the prime contractor or joint venture partners first. If a firm has branch offices, indicate each individual branch office that will have a key role on the team. The named subcontractors and outside associates or consultants must be used, and any change must be approved by the contracting officer. (See FAR Part 52 Clause "Subcontractors and Outside Associates and Consultants (Architect-Engineer Services)"). Attach an additional sheet in the same format as Section C if needed.

Section D. Organizational Chart of Proposed Team.

As an attachment after Section C, present an organizational chart of the proposed team showing the names and roles of all key personnel listed in Section E and the firm they are associated with as listed in Section C.

Section E. Resumes of Key Personnel Proposed for this Contract.

Complete this section for each key person who will participate in this contract. Group by firm, with personnel of the prime contractor or joint venture partner firms first. The following blocks must be completed for each resume:

12. Name. Self-explanatory.

13. Role in this contract. Self-explanatory.

14. Years Experience. Total years of relevant experience (block 14a), and years of relevant experience with current firm, but not necessarily the same branch office (block 14b).

15. Firm Name and Location. Name, city and state of the firm where the person currently works, which must correspond with one of the firms (or branch office of a firm, if appropriate) listed in Section C.

16. Education. Provide information on the highest relevant academic degree(s) received. Indicate the area(s) of specialization for each degree.

17. Current Professional Registration. Provide information on current relevant professional registration(s) in a State or possession of the United States, Puerto Rico, or the District of Columbia according to FAR Part 36.

18. Other Professional Qualifications. Provide information on any other professional qualifications relating to this contract, such as education, professional registration, publications, organizational memberships, certifications, training, awards, and foreign language capabilities.

19. Relevant Projects. Provide information on up to five projects in which the person had a significant role that demonstrates the person's capability relevant to her/his proposed role in this contract. These projects do not necessarily have to be any of the projects presented in Section F for the project team if the person was not involved in any of those projects or the person worked on other projects that were more relevant than the team projects in Section F. Use the check box provided to indicate if the project was performed with any office of the current firm. If any of the professional services or construction projects are not complete, leave Year Completed blank and indicate the status in Brief Description and Specific Role (block (3)).

Section F. Example Projects Which Best Illustrate Proposed Team's Qualifications for this Contract.

Select projects where multiple team members worked together, if possible, that demonstrate the team's capability to perform work similar to that required for this contract. Complete one Section F for each project. Present ten projects, unless otherwise specified by the agency. Complete the following blocks for each project:

20. Example Project Key Number. Start with "1" for the first project and number consecutively.

21. Title and Location. Title and location of project or contract. For an indefinite delivery contract, the location is the geographic scope of the contract.

22. Year Completed. Enter the year completed of the professional services (such as planning, engineering study, design, or surveying), and/or the year completed of construction, if applicable. If any of the professional services or the construction projects are not complete, leave Year Completed blank and indicate the status in Brief Description of Project and Relevance to this Contract (block 24).

23a. Project Owner. Project owner or user, such as a government agency or installation, an institution, a corporation or private individual.

23b. Point of Contact Name. Provide name of a person associated with the project owner or the organization which contracted for the professional services, who is very familiar with the project and the firm's (or firms') performance.

23c. Point of Contact Telephone Number. Self-explanatory.

24. Brief Description of Project and Relevance to this Contract. Indicate scope, size, cost, principal elements and special features of the project. Discuss the relevance of the example project to this contract. Enter any other information requested by the agency for each example project.

25. Firms from Section C Involved with this Project. Indicate which firms (or branch offices, if appropriate) on the project team were involved in the example project, and their roles. List in the same order as Section C.

**Section G. Key Personnel Participation in Example Projects.**

This matrix is intended to graphically depict which key personnel identified in Section E worked on the example projects listed in Section F. Complete the following blocks (see example below).

26. and 27. Names of Key Personnel and Role in this Contract. List the names of the key personnel and their proposed roles in this contract in the same order as they appear in Section E.

28. Example Projects Listed in Section F. In the column under each project key number (see block 29) and for each key person, place an "X" under the project key number for participation in the same or similar role.

29. Example Projects Key. List the key numbers and titles of the example projects in the same order as they appear in Section F.

**Section H. Additional Information.**

30. Use this section to provide additional information specifically requested by the agency or to address selection criteria that are not covered by the information provided in Sections A-G.

**Section I. Authorized Representative.**

31. and 32. Signature of Authorized Representative and Date. An authorized representative of a joint venture or the prime contractor must sign and date the completed form. Signing attests that the information provided is current and factual, and that all firms on the proposed team agree to work on the project. Joint ventures selected for negotiations must make available a statement of participation by a principal of each member of the joint venture.

33. Name and Title. Self-explanatory.

**SAMPLE ENTRIES FOR SECTION G (MATRIX)**

26. NAMES OF KEY PERSONNEL (From Section E, Block 12)	27. ROLE IN THIS CONTRACT (From Section E, Block 13)	28. EXAMPLE PROJECTS LISTED IN SECTION F (Fill in "Example Projects Key" section below first, before completing table. Place "X" under project key number for participation in same or similar role.)									
		1	2	3	4	5	6	7	8	9	10
Jane A. Smith	Chief Architect	X		X							
Joseph B. Williams	Chief Mechanical Engineer	X	X	X	X						
Tara C. Donovan	Chief Electrical Engineer	X	X		X						

**29. EXAMPLE PROJECTS KEY**

NUMBER	TITLE OF EXAMPLE PROJECT (From Section F)	NUMBER	TITLE OF EXAMPLE PROJECT (From Section F)
1	Federal Courthouse, Denver, CO	6	XYZ Corporation Headquarters, Boston, MA
2	Justin J. Wilson Federal Building, Baton Rouge, LA	7	Founder's Museum, Newport, RI

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## Part II - General Qualifications

See the "**General Instructions**" on page 1 for firms with branch offices. Prepare Part II for the specific branch office seeking work if the firm has branch offices.

1. Solicitation Number. If Part II is submitted for a specific contract, insert the agency's solicitation number and/or project number, if applicable, exactly as shown in the public announcement or agency request.

2a-2e. Firm (or Branch Office) Name and Address. Self-explanatory.

3. Year Established. Enter the year the firm (or branch office, if appropriate) was established under the current name.

4. Unique Entity Identifier. Insert the unique entity identifier issued by the entity designated at SAM. See FAR part 4.6.

5. Ownership.

a. Type. Enter the type of ownership or legal structure of the firm (sole proprietor, partnership, corporation, joint venture, etc.).

b. Small Business Status. Refer to the North American Industry Classification System (NAICS) code in the public announcement, and indicate if the firm is a small business according to the current size standard for that NAICS code (for example, Engineering Services (part of NAICS 541330), Architectural Services (NAICS 541310), Surveying and Mapping Services (NAICS 541370)). The small business categories and the internet website for the NAICS codes appear in FAR part 19. Contact the requesting agency for any questions. Contact your local U.S. Small Business Administration office for any questions regarding Business Status.

6a-6c. Point of Contact. Provide this information for a representative of the firm that the agency can contact for additional information. The representative must be empowered to speak on contractual and policy matters.

7. Name of Firm. Enter the name of the firm if Part II is prepared for a branch office.

8a-8c. Former Firm Names. Indicate any other previous names for the firm (or branch office) during the last six years. Insert the year that this corporate name change was effective and the associated unique entity identifier. This information is used to review past performance on Federal contracts.

9. Employees by Discipline. Use the relevant disciplines and associated function codes shown at the end of these instructions and list in the same numerical order. After the listed disciplines, write in any additional disciplines and leave the function code blank. List no more than 20 disciplines. Group remaining employees under "Other Employees" in column b. Each person can be counted only once according to his/her primary function. If Part II is prepared for a firm (including all branch offices), enter the number of employees by disciplines in column c(1). If Part II is prepared for a branch office, enter the number of employees by discipline in column c(2) and for the firm in column c(1).

10. Profile of Firm's Experience and Annual Average Revenue for Last 5 Years. Complete this block for the firm or branch office for which this Part II is prepared. Enter the experience categories which most accurately reflect the firm's technical capabilities and project experience. Use the relevant experience categories and associated profile codes shown at the end of these instructions, and list in the same numerical order. After the listed experience categories, write in any unlisted relevant project experience categories and leave the profile codes blank. For each type of experience, enter the appropriate revenue index number to reflect the professional services revenues received annually (averaged over the last 5 years) by the firm or branch office for performing that type of work. A particular project may be identified with one experience category or it may be broken into components, as best reflects the capabilities and types of work performed by the firm. However, do not double count the revenues received on a particular project.

11. Annual Average Professional Services Revenues of Firm for Last 3 Years. Complete this block for the firm or branch office for which this Part II is prepared. Enter the appropriate revenue index numbers to reflect the professional services revenues received annually (averaged over the last 3 years) by the firm or branch office. Indicate Federal work (performed directly for the Federal Government, either as the prime contractor or subcontractor), non-Federal work (all other domestic and foreign work, including Federally-assisted projects), and the total. If the firm has been in existence for less than 3 years, see the definition for "Annual Receipts" under FAR 19.101.

12. Authorized Representative. An authorized representative of the firm or branch office must sign and date the completed form. Signing attests that the information provided is current and factual. Provide the name and title of the authorized representative who signed the form.

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List of Disciplines (*Function Codes*)

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<b>Code</b>	<b>Description</b>	<b>Code</b>	<b>Description</b>
01	Acoustical Engineer	32	Hydraulic Engineer
02	Administrative	33	Hydrographic Surveyor
03	Aerial Photographer	34	Hydrologist
04	Aeronautical Engineer	35	Industrial Engineer
05	Archeologist	36	Industrial Hygienist
06	Architect	37	Interior Designer
07	Biologist	38	Land Surveyor
08	CADD Technician	39	Landscape Architect
09	Cartographer	40	Materials Engineer
10	Chemical Engineer	41	Materials Handling Engineer
11	Chemist	42	Mechanical Engineer
12	Civil Engineer	43	Mining Engineer
13	Communications Engineer	44	Oceanographer
14	Computer Programmer	45	Photo Interpreter
15	Construction Inspector	46	Photogrammetrist
16	Construction Manager	47	Planner: Urban/Regional
17	Corrosion Engineer	48	Project Manager
18	Cost Engineer/Estimator	49	Remote Sensing Specialist
19	Ecologist	50	Risk Assessor
20	Economist	51	Safety/Occupational Health Engineer
21	Electrical Engineer	52	Sanitary Engineer
22	Electronics Engineer	53	Scheduler
23	Environmental Engineer	54	Security Specialist
24	Environmental Scientist	55	Soils Engineer
25	Fire Protection Engineer	56	Specifications Writer
26	Forensic Engineer	57	Structural Engineer
27	Foundation/Geotechnical Engineer	58	Technician/Analyst
28	Geodetic Surveyor	59	Toxicologist
29	Geographic Information System Specialist	60	Transportation Engineer
30	Geologist	61	Value Engineer
31	Health Facility Planner	62	Water Resources Engineer

List of Experience Categories (*Profile Codes*)

<b>Code</b>	<b>Description</b>	<b>Code</b>	<b>Description</b>
A01	Acoustics, Noise Abatement	E01	Ecological & Archeological Investigations
A02	Aerial Photography; Airborne Data and Imagery Collection and Analysis	E02	Educational Facilities; Classrooms
A03	Agricultural Development; Grain Storage; Farm Mechanization	E03	Electrical Studies and Design
A04	Air Pollution Control	E04	Electronics
A05	Airports; Nav aids; Airport Lighting; Aircraft Fueling	E05	Elevators; Escalators; People-Movers
A06	Airports; Terminals and Hangars; Freight Handling	E06	Embassies and Chanceries
A07	Arctic Facilities	E07	Energy Conservation; New Energy Sources
A08	Animal Facilities	E08	Engineering Economics
A09	Anti-Terrorism/Force Protection	E09	Environmental Impact Studies, Assessments or Statements
A10	Asbestos Abatement	E10	Environmental and Natural Resource Mapping
A11	Auditoriums & Theaters	E11	Environmental Planning
A12	Automation; Controls; Instrumentation	E12	Environmental Remediation
B01	Barracks; Dormitories	E13	Environmental Testing and Analysis
B02	Bridges	F01	Fallout Shelters; Blast-Resistant Design
C01	Cartography	F02	Field Houses; Gyms; Stadiums
C02	Cemeteries ( <i>Planning &amp; Relocation</i> )	F03	Fire Protection
C03	Charting: Nautical and Aeronautical	F04	Fisheries; Fish ladders
C04	Chemical Processing & Storage	F05	Forensic Engineering
C05	Child Care/Development Facilities	F06	Forestry & Forest products
C06	Churches; Chapels	G01	Garages; Vehicle Maintenance Facilities; Parking Decks
C07	Coastal Engineering	G02	Gas Systems (Propane; Natural, Etc.)
C08	Codes; Standards; Ordinances	G03	Geodetic Surveying: Ground and Air-borne
C09	Cold Storage; Refrigeration and Fast Freeze	G04	Geographic Information System Services: Development, Analysis, and Data Collection
C10	Commercial Building ( <i>low rise</i> ) ; Shopping Centers	G05	Geospatial Data Conversion: Scanning, Digitizing, Compilation, Attributing, Scribing, Drafting
C11	Community Facilities	G06	Graphic Design
C12	Communications Systems; TV; Microwave	H01	Harbors; Jetties; Piers, Ship Terminal Facilities
C13	Computer Facilities; Computer Service	H02	Hazardous Materials Handling and Storage
C14	Conservation and Resource Management	H03	Hazardous, Toxic, Radioactive Waste Remediation
C15	Construction Management	H04	Heating; Ventilating; Air Conditioning
C16	Construction Surveying	H05	Health Systems Planning
C17	Corrosion Control; Cathodic Protection; Electrolysis	H06	Highrise; Air-Rights-Type Buildings
C18	Cost Estimating; Cost Engineering and Analysis; Parametric Costing; Forecasting	H07	Highways; Streets; Airfield Paving; Parking Lots
C19	Cryogenic Facilities	H08	Historical Preservation
D01	Dams ( <i>Concrete; Arch</i> )	H09	Hospital & Medical Facilities
D02	Dams ( <i>Earth; Rock</i> ); Dikes; Levees	H10	Hotels; Motels
D03	Desalinization ( <i>Process &amp; Facilities</i> )	H11	Housing ( <i>Residential, Multi-Family; Apartments; Condominiums</i> )
D04	Design-Build - Preparation of Requests for Proposals	H12	Hydraulics & Pneumatics
D05	Digital Elevation and Terrain Model Development	H13	Hydrographic Surveying
D06	Digital Orthophotography		
D07	Dining Halls; Clubs; Restaurants		
D08	Dredging Studies and Design		

List of Experience Categories (*Profile Codes continued*)

<b>Code</b>	<b>Description</b>	<b>Code</b>	<b>Description</b>
I01	Industrial Buildings; Manufacturing Plants	P09	Product, Machine Equipment Design
I02	Industrial Processes; Quality Control	P10	Pneumatic Structures, Air-Support Buildings
I03	Industrial Waste Treatment	P11	Postal Facilities
I04	Intelligent Transportation Systems	P12	Power Generation, Transmission, Distribution
I05	Interior Design; Space Planning	P13	Public Safety Facilities
I06	Irrigation; Drainage	R01	Radar; Sonar; Radio & Radar Telescopes
J01	Judicial and Courtroom Facilities	R02	Radio Frequency Systems & Shieldings
L01	Laboratories; Medical Research Facilities	R03	Railroad; Rapid Transit
L02	Land Surveying	R04	Recreation Facilities (Parks, Marinas, Etc.)
L03	Landscape Architecture	R05	Refrigeration Plants/Systems
L04	Libraries; Museums; Galleries	R06	Rehabilitation (Buildings; Structures; Facilities)
L05	Lighting (Interior; Display; Theater, Etc.)	R07	Remote Sensing
L06	Lighting (Exteriors; Streets; Memorials; Athletic Fields, Etc.)	R08	Research Facilities
M01	Mapping Location/Addressing Systems	R09	Resources Recovery; Recycling
M02	Materials Handling Systems; Conveyors; Sorters	R10	Risk Analysis
M03	Metallurgy	R11	Rivers; Canals; Waterways; Flood Control
M04	Microclimatology; Tropical Engineering	R12	Roofing
M05	Military Design Standards	S01	Safety Engineering; Accident Studies; OSHA Studies
M06	Mining & Mineralogy	S02	Security Systems; Intruder & Smoke Detection
M07	Missile Facilities (Silos; Fuels; Transport)	S03	Seismic Designs & Studies
M08	Modular Systems Design; Pre-Fabricated Structures or Components	S04	Sewage Collection, Treatment and Disposal
N01	Naval Architecture; Off-Shore Platforms	S05	Soils & Geologic Studies; Foundations
N02	Navigation Structures; Locks	S06	Solar Energy Utilization
N03	Nuclear Facilities; Nuclear Shielding	S07	Solid Wastes; Incineration; Landfill
O01	Office Buildings; Industrial Parks	S08	Special Environments; Clean Rooms, Etc.
O02	Oceanographic Engineering	S09	Structural Design; Special Structures
O03	Ordnance; Munitions; Special Weapons	S10	Surveying; Platting; Mapping; Flood Plain Studies
P01	Petroleum Exploration; Refining	S11	Sustainable Design
P02	Petroleum and Fuel (Storage and Distribution)	S12	Swimming Pools
P03	Photogrammetry	S13	Storm Water Handling & Facilities
P04	Pipelines (Cross-Country - Liquid & Gas)	T01	Telephone Systems ( <i>Rural; Mobile; Intercom, Etc.</i> )
P05	Planning (Community, Regional, Areawide and State)	T02	Testing & Inspection Services
P06	Planning (Site, Installation, and Project)	T03	Traffic & Transportation Engineering
P07	Plumbing & Piping Design	T04	Topographic Surveying and Mapping
P08	Prisons & Correctional Facilities	T05	Towers ( <i>Self-Supporting &amp; Guyed Systems</i> )
		T06	Tunnels & Subways

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List of Experience Categories (*Profile Codes continued*)

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<b>Code</b>	<b>Description</b>
U01	Unexploded Ordnance Remediation
U02	Urban Renewals; Community Development
U03	Utilities (Gas and Steam)
V01	Value Analysis; Life-Cycle Costing
W01	Warehouses & Depots
W02	Water Resources; Hydrology; Ground Water
W03	Water Supply; Treatment and Distribution
W04	Wind Tunnels; Research/Testing Facilities Design
Z01	Zoning; Land Use Studies

# ARCHITECT - ENGINEER QUALIFICATIONS

## PART I - CONTRACT-SPECIFIC QUALIFICATIONS

### A. CONTRACT INFORMATION

1. TITLE AND LOCATION *(City and State)*

2. PUBLIC NOTICE DATE

3. SOLICITATION OR PROJECT NUMBER

### B. ARCHITECT-ENGINEER POINT OF CONTACT

4. NAME AND TITLE

5. NAME OF FIRM

6. TELEPHONE NUMBER

7. FAX NUMBER

8. E-MAIL ADDRESS

### C. PROPOSED TEAM

*(Complete this section for the prime contractor and all key subcontractors.)*

	(Check)			9. FIRM NAME	10. ADDRESS	11. ROLE IN THIS CONTRACT
	PRIME	J-V PARTNER	SUBCONTRACTOR			
a.				<input type="checkbox"/> CHECK IF BRANCH OFFICE		
b.				<input type="checkbox"/> CHECK IF BRANCH OFFICE		
c.				<input type="checkbox"/> CHECK IF BRANCH OFFICE		
d.				<input type="checkbox"/> CHECK IF BRANCH OFFICE		
e.				<input type="checkbox"/> CHECK IF BRANCH OFFICE		
f.				<input type="checkbox"/> CHECK IF BRANCH OFFICE		

### D. ORGANIZATIONAL CHART OF PROPOSED TEAM

*(Attached)*



**E. RESUMES OF KEY PERSONNEL PROPOSED FOR THIS CONTRACT**

*(Complete one Section E for each key person.)*

12. NAME	13. ROLE IN THIS CONTRACT	14. YEARS EXPERIENCE	
		a. TOTAL	b. WITH CURRENT FIRM
15. FIRM NAME AND LOCATION <i>(City and State)</i>			
16. EDUCATION <i>(Degree and Specialization)</i>		17. CURRENT PROFESSIONAL REGISTRATION <i>(State and Discipline)</i>	
18. OTHER PROFESSIONAL QUALIFICATIONS <i>(Publications, Organizations, Training, Awards, etc.)</i>			

**19. RELEVANT PROJECTS**

	(1) TITLE AND LOCATION <i>(City and State)</i>	(2) YEAR COMPLETED	
		PROFESSIONAL SERVICES	CONSTRUCTION <i>(If applicable)</i>
<b>a.</b>	(3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE	<input type="checkbox"/> Check if project performed with current firm	
<b>b.</b>	(1) TITLE AND LOCATION <i>(City and State)</i>	(2) YEAR COMPLETED	
		PROFESSIONAL SERVICES	CONSTRUCTION <i>(If applicable)</i>
<b>b.</b>	(3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE	<input type="checkbox"/> Check if project performed with current firm	
<b>c.</b>	(1) TITLE AND LOCATION <i>(City and State)</i>	(2) YEAR COMPLETED	
		PROFESSIONAL SERVICES	CONSTRUCTION <i>(If applicable)</i>
<b>c.</b>	(3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE	<input type="checkbox"/> Check if project performed with current firm	
<b>d.</b>	(1) TITLE AND LOCATION <i>(City and State)</i>	(2) YEAR COMPLETED	
		PROFESSIONAL SERVICES	CONSTRUCTION <i>(If applicable)</i>
<b>d.</b>	(3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE	<input type="checkbox"/> Check if project performed with current firm	
<b>e.</b>	(1) TITLE AND LOCATION <i>(City and State)</i>	(2) YEAR COMPLETED	
		PROFESSIONAL SERVICES	CONSTRUCTION <i>(If applicable)</i>
<b>e.</b>	(3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE	<input type="checkbox"/> Check if project performed with current firm	

<b>F. EXAMPLE PROJECTS WHICH BEST ILLUSTRATE PROPOSED TEAM'S QUALIFICATIONS FOR THIS CONTRACT</b> <i>(Present as many projects as requested by the agency, or 10 projects, if not specified. Complete one Section F for each project.)</i>		20. EXAMPLE PROJECT KEY NUMBER
21. TITLE AND LOCATION <i>(City and State)</i>	22. YEAR COMPLETED	
	PROFESSIONAL SERVICES	CONSTRUCTION <i>(If applicable)</i>
<b>23. PROJECT OWNER'S INFORMATION</b>		
a. PROJECT OWNER	b. POINT OF CONTACT NAME	c. POINT OF CONTACT TELEPHONE NUMBER
24. BRIEF DESCRIPTION OF PROJECT AND RELEVANCE TO THIS CONTRACT <i>(Include scope, size, and cost)</i>		

**25. FIRMS FROM SECTION C INVOLVED WITH THIS PROJECT**

<b>a.</b>	(1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>	(3) ROLE
<b>b.</b>	(1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>	(3) ROLE
<b>c.</b>	(1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>	(3) ROLE
<b>d.</b>	(1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>	(3) ROLE
<b>e.</b>	(1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>	(3) ROLE
<b>f.</b>	(1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>	(3) ROLE

**G. KEY PERSONNEL PARTICIPATION IN EXAMPLE PROJECTS**

26. NAMES OF KEY PERSONNEL (From Section E, Block 12)	27. ROLE IN THIS CONTRACT (From Section E, Block 13)	28. EXAMPLE PROJECTS LISTED IN SECTION F (Fill in "Example Projects Key" section below before completing table. Place "X" under project key number for participation in same or similar role.)									
		1	2	3	4	5	6	7	8	9	10

**29. EXAMPLE PROJECTS KEY**

NUMBER	TITLE OF EXAMPLE PROJECT (From Section F)	NUMBER	TITLE OF EXAMPLE PROJECT (From Section F)
1		6	
2		7	
3		8	
4		9	
5		10	

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**H. ADDITIONAL INFORMATION**

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30. PROVIDE ANY ADDITIONAL INFORMATION REQUESTED BY THE AGENCY. ATTACH ADDITIONAL SHEETS AS NEEDED.

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**I. AUTHORIZED REPRESENTATIVE**

*The foregoing is a statement of facts.*

31. SIGNATURE

32. DATE

33. NAME AND TITLE



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>ARCHITECT ENGINEER QUALIFICATIONS</p
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Number: 9000 0157 0 0 12506 0 0 0 "Arial" 1 0 9000 ISO 8859 1?><?renderCache.textRun
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>STANDARD FORM 330 (REV. 8/2016) PAGE 1 OF INSTRUCTIONS<span style="letter spacing:0em"  
><span style="xfa spacerun:yes"  
>Â </span  
></span  
><span style="font size:7pt;font weight:normal;letter spacing:0em"  
>Prescribed by GSA FAR (48 CFR) 53.236 2(b)</span  
></p  
></body  
></exData  
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>PURPOSE<span style="xfa spacerun:yes"  
>Â </span  
></p  
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><span style="xfa spacerun:yes"  
>Â </span  
></p  
><p style="margin bottom:0pt;font weight:normal;letter spacing:0in"  
>Federal agencies use this form to obtain information from architect engineer (A E)  
firms about their professional qualifications.<span style="xfa spacerun:yes"  
>Â </span  
>Federal agencies select firms for A E contracts on the basis of professional  
qualifications as required by 40 U.S.C. chapter 11, Selection of Architects Engineers,  
and Part 36 of the Federal Acquisition Regulation (FAR).<span style="font weight:bold"  
><span style="xfa spacerun:yes"  
>Â </span  
></span  
></p  
><p style="margin bottom:0pt;letter spacing:0in"  
><span style="xfa spacerun:yes"  
>Â </span  
></p  
><p style="margin bottom:0pt;font weight:normal;letter spacing:0in"  
>The Selection of Architects and Engineers statute requires the public announcement of  
requirements for A E services (with some exceptions provided by other statutes), and the  
selection of at least three of the most highly qualified firms based on demonstrated  
competence and professional qualifications according to specific criteria published in  
the announcement.<span style="xfa spacerun:yes"  
>Â </span  
>The Act then requires the negotiation of a contract at a fair and reasonable price  
starting first with the most highly qualified firm.<span style="font weight:bold"  
><span style="xfa spacerun:yes"  
>Â </span  
></span  
></p  
><p style="margin bottom:0pt;font weight:normal;letter spacing:0in"  
><span style="xfa spacerun:yes"  
>Â </span  
></p  
><p style="margin bottom:0pt;font weight:normal;letter spacing:0in"  
>The information used to evaluate firms is from this form and other sources, including  
performance evaluations, any additional data requested by the agency, and interviews

with the most highly qualified firms and their references.</p></div>
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<div data-bbox="54 138 461 152" data-label="Text"></div>
<div data-bbox="54 151 539 165" data-label="Text"></div>
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<div data-bbox="54 866 149 880" data-label="Text"></div>
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>2.<span style="xfa spacerun:yes"
>Â </span
>Prepare a separate Part II for each firm that will be part of the team proposed for a
specific contract and submitted with Part I.<span style="xfa spacerun:yes"
>Â </span
>If a firm has branch offices, submit a separate Part II for each branch office that has
a key role on the team.</p
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/></ui
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>INDIVIDUAL AGENCY INSTRUCTIONS</p
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><span style="xfa spacerun:yes"
>Â </span
></p
><p style="font weight:normal;text decoration:none;letter spacing:0in"
>Individual agencies may supplement these instructions.<span style="xfa spacerun:yes"
>Â </span
>For example, they may limit the number of projects or number of<span
style="font weight:bold;letter spacing:0em"
><span style="xfa spacerun:yes"
>Â </span
></span
><span style="letter spacing:0em"
>pages submitted in Part I in response to a public announcement for a particular
project.<span style="xfa spacerun:yes"
>Â </span
>Carefully comply with any agency instructions when preparing and submitting this
form.<span style="xfa spacerun:yes"
>Â </span
>Be as concise as possible and provide only the information requested by the
agency.</span
></p
></body
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>DEFINITIONS</p
><p style="letter spacing:0in"
><span style="xfa spacerun:yes"
>Â </span
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></p>><p style="letter spacing:0in">><span style="xfa spacerun:yes">Architect Engineer Services:<span style="xfa spacerun:yes">Â </span>><span style="font weight:normal">>Defined in FAR 2.101.</span>><span style="xfa spacerun:yes">>Â </span>></p>><p style="letter spacing:0in">><span style="xfa spacerun:yes">>Â </span>></p>><p style="letter spacing:0in">>Branch Office:<span style="xfa spacerun:yes">>Â </span>><span style="font weight:normal">>A geographically distinct place of business or</span>><span style="xfa spacerun:yes">>Â </span>><span style="font weight:normal">>subsidiary office of a firm that has a key role on the</span>><span style="xfa spacerun:yes">>Â </span>><span style="font weight:normal">>team.</span>><span style="xfa spacerun:yes">>Â </span>></p>><p style="letter spacing:0in">><span style="xfa spacerun:yes">>Â </span>></p>><p style="letter spacing:0in">>Discipline:<span style="xfa spacerun:yes">>Â </span>><span style="font weight:normal">>Primary technical capabilities of key personnel,</span>><span style="xfa spacerun:yes">>Â </span>><span style="font weight:normal">>as evidenced by academic degree, professional registration,</span>><span style="xfa spacerun:yes">>Â </span>><span style="font weight:normal">>certification, and/or extensive experience.</span>><span style="xfa spacerun:yes">>Â </span>></p>><p style="letter spacing:0in">><span style="xfa spacerun:yes">>Â </span>></p>><p style="letter spacing:0in">>Firm:<span style="xfa spacerun:yes">>Â </span>><span style="font weight:normal">> Defined in FAR 36.102.</span>><span style="xfa spacerun:yes">>Â </span>></p>><p style="letter spacing:0in">><span style="xfa spacerun:yes">>Â </span>></p>><p style="letter spacing:0in">>Key Personnel:<span style="xfa spacerun:yes">>Â </span>><span style="font weight:normal">>Individuals who will have major contract</span>><span style="xfa spacerun:yes">>Â </span>></p>

```

>Â </span
><span style="font weight:normal"
>responsibilities and/or provide unusual or unique expertise.</span
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>Â </span
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>Part I Contract Specific Qualifications<span style="xfa spacerun:yes"
>Â </span
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>Â </span
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>Â </span
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>1. Title and Location.<span style="xfa spacerun:yes"
>Â </span
>Enter the title and location of the contract for which this form is being submitted,
exactly as shown in the public announcement or agency request.<span
style="xfa spacerun:yes"
>Â </span
></p
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><span style="xfa spacerun:yes"
>Â </span
></p
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>2. Public Notice Date.<span style="xfa spacerun:yes"
>Â </span
>Enter the posted date of the agency's notice on the Federal Business Opportunity
website (FedBizOpps), other form of public announcement or agency request for this
contract.<span style="xfa spacerun:yes"
>Â </span
></p
><p
style="margin bottom:0pt;text indent:14.4pt;font weight:normal;text decoration:none;lette

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r spacing:0in"
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>Â </span
></p
><p
style="margin bottom:0pt;text indent:14.4pt;font weight:normal;text decoration:none;lette
r spacing:0in"
>3. Solicitation or Project Number.<span style="xfa spacerun:yes"
>Â </span
>Enter the agency's solicitation<span style="xfa spacerun:yes"
>Â </span
>number<span style="xfa spacerun:yes"
>Â </span
>and/or<span style="xfa spacerun:yes"
>Â </span
>project<span style="xfa spacerun:yes"
>Â </span
>number,<span style="xfa spacerun:yes"
>Â </span
>if<span style="xfa spacerun:yes"
>Â </span
>applicable, exactly as shown in the public announcement or agency request for this
contract.</p
><p
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><span style="xfa spacerun:yes"
>Â </span
></p
><p
style="margin bottom:0pt;text indent:14.4pt;font weight:normal;text decoration:none;lette
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>Section B.<span style="xfa spacerun:yes"
>Â </span
>Architect Engineer Point of Contact.<span style="xfa spacerun:yes"
>Â </span
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>Â </span
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><p
style="margin bottom:0pt;text indent:14.4pt;font weight:normal;text decoration:none;lette
r spacing:0in"
>4 8.<span style="xfa spacerun:yes"
>Â </span
>Name, Title, Name of Firm, Telephone Number, Fax (Facsimile) Number and E mail
(Electronic Mail) Address.<span style="xfa spacerun:yes"
>Â </span
>Provide information for a representative of the prime contractor or joint venture that
the agency can contact for additional information.</p
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of 44 USC Â§ 3507, as amended by section 2 of the Paperwork Reduction Act of<span
style="xfa spacerun:yes"
>Â </span
></p
><p style="line height:8pt;letter spacing:0in"
>1995.<span style="xfa spacerun:yes"
>Â </span
>You do not need to answer these questions unless we display a valid Office of
Management and Budget (OMB) control number.<span style="xfa spacerun:yes"
>Â </span
>The OMB control number for this collection is 9000 0157.<span style="xfa spacerun:yes"
>Â </span
>We estimate that it will take 29 hours (25 hours for part 1 and 4 hours for Part 2) to
read the instructions, gather the facts, and answer the questions.<span
style="xfa spacerun:yes"
>Â </span
>Send only comments relating to our time estimate, including suggestions for reducing
this burden, or any other aspects of this collection of information to:<span
style="xfa spacerun:yes"
>Â </span
>General Services Administration, Regulatory Secretariat Division (M1V1CB), 1800 F
Street, NW, Washington, DC<span style="xfa spacerun:yes"
>Â </span
>20405.</p
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>Â </span
>Proposed Team.<span style="xfa spacerun:yes"
>Â </span
></p
><p style="letter spacing:0in"
><span style="xfa spacerun:yes"
>Â </span
></p
><p style="letter spacing:0in"
>9 11.<span style="xfa spacerun:yes"
>Â </span
>Firm Name, Address, and Role in This Contract. Provide the contractual relationship,
name, full mailing address, and a brief description of the role of each firm that will
be involved in performance of this contract.<span style="xfa spacerun:yes"
>Â </span
>List the prime contractor or joint venture partners first.<span style="xfa spacerun:yes"
>Â </span
>If a firm has branch offices, indicate each individual branch office that will have a
key role on the team.<span style="xfa spacerun:yes"
>Â </span
>The named subcontractors and outside associates or consultants must be used, and any
change must be approved by the contracting officer. (See FAR Part 52 Clause
"Subcontractors and Outside Associates and Consultants (Architect Engineer
Services)").<span style="xfa spacerun:yes"
>Â </span
>Attach an additional sheet in the same format as Section C if needed.<span
style="xfa spacerun:yes"
>Â </span
></p
><p style="letter spacing:0in"
><span style="xfa spacerun:yes"
>Â </span
></p
><p style="letter spacing:0in"
>Section D.<span style="xfa spacerun:yes"
>Â </span
>Organizational Chart of Proposed Team.<span style="xfa spacerun:yes"
>Â </span
></p
><p style="letter spacing:0in"
><span style="xfa spacerun:yes"
>Â </span
></p
><p style="letter spacing:0in"
>As an attachment after Section C, present an organizational chart of the proposed team
showing the names and roles of all key personnel listed in Section E and the firm they
are associated with as listed in Section C.<span style="xfa spacerun:yes"
>Â </span
></p
><p style="letter spacing:0in"
><span style="xfa spacerun:yes"
>Â </span
></p
><p style="letter spacing:0in"
>Section E.<span style="xfa spacerun:yes"
>Â </span
>Resumes of Key Personnel Proposed for this Contract.<span style="xfa spacerun:yes"
>Â </span
```



></p>><p style="letter spacing:0in">><span style="xfa spacerun:yes">>Â </span>></p>><p style="letter spacing:0in">>Complete this section for each key person who will participate in this contract.<span style="xfa spacerun:yes">>Â </span>>Group by firm, with personnel of the prime contractor or joint venture partner firms first.<span style="xfa spacerun:yes">>Â </span>>The following blocks must be completed for each resume:<span style="xfa spacerun:yes">>Â </span>></p>><p style="letter spacing:0in">><span style="xfa spacerun:yes">>Â </span>></p>><p style="letter spacing:0in">>12.<span style="xfa spacerun:yes">>Â </span>>Name.<span style="xfa spacerun:yes">>Â </span>>Self explanatory.<span style="xfa spacerun:yes">>Â </span>></p>><p style="letter spacing:0in">><span style="xfa spacerun:yes">>Â </span>></p>><p style="letter spacing:0in">>13.<span style="xfa spacerun:yes">>Â </span>>Role in this contract.<span style="xfa spacerun:yes">>Â </span>>Self explanatory.<span style="xfa spacerun:yes">>Â </span>></p>><p style="letter spacing:0in">><span style="xfa spacerun:yes">>Â </span>></p>><p style="letter spacing:0in">>14.<span style="xfa spacerun:yes">>Â </span>>Years Experience.<span style="xfa spacerun:yes">>Â </span>>Total years of relevant experience (block 14a), and years of relevant experience with current firm, but not necessarily the same branch office (block 14b).<span style="xfa spacerun:yes">>Â </span>></p>><p style="letter spacing:0in">><span style="xfa spacerun:yes">>Â </span>></p>><p style="letter spacing:0in">>15.<span style="xfa spacerun:yes">>Â </span>>Firm Name and Location.<span style="xfa spacerun:yes">>Â </span>>Name, city and state of the firm where the person currently works, which must correspond with one of the firms (or branch office of a firm, if appropriate)<span style="xfa spacerun:yes">>Â </span>>listed in Section C.<span style="xfa spacerun:yes">>Â </span>></p>><p style="letter spacing:0in">><span style="xfa spacerun:yes">>Â </span>></p>

```
>Â </span
></p
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>16.<span style="xfa spacerun:yes"
>Â </span
>Education.<span style="xfa spacerun:yes"
>Â </span
>Provide<span style="xfa spacerun:yes"
>Â </span
>information<span style="xfa spacerun:yes"
>Â </span
>on<span style="xfa spacerun:yes"
>Â </span
>the highest relevant academic degree(s) received.<span style="xfa spacerun:yes"
>Â </span
>Indicate the area(s) of specialization for each degree.<span style="xfa spacerun:yes"
>Â </span
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><p style="letter spacing:0in"
><span style="xfa spacerun:yes"
>Â </span
></p
><p style="letter spacing:0in"
>17.<span style="xfa spacerun:yes"
>Â </span
>Current Professional Registration.<span style="xfa spacerun:yes"
>Â </span
>Provide information on current relevant professional registration(s) in a State or
possession of the United States, Puerto Rico, or the District of<span
style="xfa spacerun:yes"
>Â </span
>Columbia according to FAR Part 36.<span style="xfa spacerun:yes"
>Â </span
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><span style="xfa spacerun:yes"
>Â </span
></p
><p style="letter spacing:0in"
>18.<span style="xfa spacerun:yes"
>Â </span
>Other Professional Qualifications.<span style="xfa spacerun:yes"
>Â </span
>Provide information on any other professional qualifications relating to this contract,
such as education, professional registration, publications, organizational memberships,
certifications, training, awards, and foreign language capabilities.</p
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>19.<span style="xfa spacerun:yes"
>Â </span
>Relevant Projects.<span style="xfa spacerun:yes"
>Â </span
>Provide information on up to five projects in which the person had a significant role
that demonstrates the person's capability relevant to her/his proposed role in this
contract.<span style="xfa spacerun:yes"
```

>Â </span  
>These projects do not necessarily have to be any of the projects presented in Section F for the project team if the person was not involved in any of those projects or the person worked on other projects that were more relevant than the team projects in Section F.<span style="xfa spacerun:yes"

>Â </span  
>Use the check box provided to indicate if the project was performed with any office of the current firm.<span style="xfa spacerun:yes"

>Â </span  
>If any of the professional services or construction projects are not complete, leave Year Completed blank and indicate the status in Brief Description and Specific Role (block (3)).<span style="xfa spacerun:yes"

>Â </span  
<</p  
<<p style="letter spacing:0in"  
<<span style="xfa spacerun:yes"  
>Â </span  
<</p  
<<p style="letter spacing:0in"  
>Section F.<span style="xfa spacerun:yes"

>Â </span  
>Example Projects Which Best Illustrate Proposed Team's Qualifications for this Contract.<span style="xfa spacerun:yes"

>Â </span  
<</p  
<<p style="letter spacing:0in"  
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>Â </span  
<</p  
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>Select projects where multiple team members worked together, if possible, that demonstrate the team's capability to perform work similar to that required for this contract.<span style="xfa spacerun:yes"

>Â </span  
>Complete one Section F for each project.<span style="xfa spacerun:yes"

>Â </span  
>Present ten projects, unless otherwise specified by the agency.<span style="xfa spacerun:yes"

>Â </span  
>Complete the following blocks for each project:<span style="xfa spacerun:yes"

>Â </span  
<</p  
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>Â </span  
<</p  
<<p style="letter spacing:0in"  
>20.<span style="xfa spacerun:yes"

>Â </span  
>Example Project Key Number.<span style="xfa spacerun:yes"

>Â </span  
>Start with "1" for the first project and number consecutively.<span style="xfa spacerun:yes"

>Â </span  
<</p  
<<p style="letter spacing:0in"  
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>Â </span  
<</p  
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>21.<span style="xfa spacerun:yes"

>Â </span  
>Title and Location.<span style="xfa spacerun:yes"

>Â </span  
>Title and location of project or contract.<span style="xfa spacerun:yes"

>Â </span  
>For an indefinite delivery contract, the location is the geographic scope of the contract.<span style="xfa spacerun:yes"

>Â </span  
<</p  
<<p style="letter spacing:0in"

><span style="xfa spacerun:yes"  
>Â </span  
></p  
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>22.<span style="xfa spacerun:yes"  
>Â </span  
>Year Completed.<span style="xfa spacerun:yes"  
>Â </span  
>Enter the year completed of the professional services (such as planning, engineering  
study, design, or surveying), and/or the year completed of construction,<span  
style="xfa spacerun:yes"  
>Â </span  
>if applicable.<span style="xfa spacerun:yes"  
>Â </span  
>If any of the professional services or the construction projects are not complete,  
leave Year Completed blank and indicate the status in Brief Description of Project and  
Relevance to this Contract (block 24).<span style="xfa spacerun:yes"  
>Â </span  
></p  
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>Â </span  
></p  
><p style="letter spacing:0in"  
>23a.<span style="xfa spacerun:yes"  
>Â </span  
>Project Owner.<span style="xfa spacerun:yes"  
>Â </span  
>Project owner or user, such as a government agency or installation, an institution, a  
corporation or private individual.<span style="xfa spacerun:yes"  
>Â </span  
></p  
><p style="letter spacing:0in"  
><span style="xfa spacerun:yes"  
>Â </span  
></p  
><p style="letter spacing:0in"  
>23b.<span style="xfa spacerun:yes"  
>Â </span  
>Point of Contact Name.<span style="xfa spacerun:yes"  
>Â </span  
>Provide name of a person associated with the project owner or the organization which  
contracted for the professional services, who is very familiar with the project and the  
firm's (or firms') performance.<span style="xfa spacerun:yes"  
>Â </span  
></p  
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>Â </span  
></p  
><p style="letter spacing:0in"  
>23c.<span style="xfa spacerun:yes"  
>Â </span  
>Point of Contact Telephone Number.<span style="xfa spacerun:yes"  
>Â </span  
>Self explanatory.<span style="xfa spacerun:yes"  
>Â </span  
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><span style="xfa spacerun:yes"  
>Â </span  
></p  
><p style="letter spacing:0in"  
>24.<span style="xfa spacerun:yes"  
>Â </span  
>Brief Description of Project and Relevance to this Contract.<span  
style="xfa spacerun:yes"  
>Â </span  
>Indicate scope, size, cost, principal elements and special features of the  
project.<span style="xfa spacerun:yes"  
>Â </span

```
>Discuss the relevance of the example project to this contract.<span
style="xfa spacerun:yes"
>Ã /span
>Enter any other information requested by the agency for each example project.</p
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>25.<span style="xfa spacerun:yes"
>Â </span
>Firms from Section C Involved with this Project.<span style="xfa spacerun:yes"
>Â </span
>Indicate which firms (or branch offices, if appropriate) on the project team were
involved in the example project, and their roles.<span style="xfa spacerun:yes"
>Â </span
>List in the same order as Section C.<span style="xfa spacerun:yes"
>Â </span
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<<span style="xfa spacerun:yes"
>Â </span
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>Section G.<span style="xfa spacerun:yes"
>Â </span
>Key Personnel Participation in Example Projects.<span style="xfa spacerun:yes"
>Â </span
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<<p style="letter spacing:0in"
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>Â </span
<</p
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>This matrix is intended to graphically depict which key personnel identified in Section
E worked on the example projects listed in Section F.<span style="xfa spacerun:yes"
>Â </span
>Complete the following blocks (see example below).<span style="xfa spacerun:yes"
>Â </span
<</p
<<p style="letter spacing:0in"
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>Â </span
<</p
<<p style="letter spacing:0in"
>26. and 27.<span style="xfa spacerun:yes"
>Â </span

```

```
>Names of Key Personnel and Role in this Contract.<span style="xfa spacerun:yes"
>Â </span
>List the names of the key personnel and their proposed roles in this contract in the
same order as they appear in Section E.<span style="xfa spacerun:yes"
>Â </span
<</p
<<p style="letter spacing:0in"
<<span style="xfa spacerun:yes"
>Â </span
<</p
<<p style="letter spacing:0in"
>28.<span style="xfa spacerun:yes"
>Â </span
>Example Projects Listed in Section F.<span style="xfa spacerun:yes"
>Â </span
>In the column under each project key number (see block 29) and for each key person,
place an "X" under the project key number for<span style="xfa spacerun:yes"
>Â </span
>participation in the same or similar role.</p
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>29.<span style="xfa spacerun:yes"
>Â </span
>Example Projects Key.<span style="xfa spacerun:yes"
>Â </span
>List the key numbers and titles of the example projects in the same order as they
appear in Section F.<span style="xfa spacerun:yes"
>Â </span
<</p
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<<span style="xfa spacerun:yes"
>Â </span
<</p
<<p style="letter spacing:0in"
>Section H.<span style="xfa spacerun:yes"
>Â </span
>Additional Information.<span style="xfa spacerun:yes"
>Â </span
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<<span style="xfa spacerun:yes"
>Â </span
<</p
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>30.<span style="xfa spacerun:yes"
>Â </span
>Use this section to provide additional information specifically requested by the agency
or to address selection criteria that are not covered by the information provided in
Sections A G.<span style="xfa spacerun:yes"
>Â </span
<</p
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>Â </span
<</p
```

```
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>Section I.<span style="xfa spacerun:yes"
>Â </span
>Authorized Representative.<span style="xfa spacerun:yes"
>Â </span
<</p
><p style="letter spacing:0in"
><span style="xfa spacerun:yes"
>Â </span
<</p
><p style="letter spacing:0in"
>31. and 32.<span style="xfa spacerun:yes"
>Â </span
>Signature of Authorized Representative and Date.<span style="xfa spacerun:yes"
>Â </span
>An authorized representative of a joint venture or the prime contractor must sign and
date the completed form.<span style="xfa spacerun:yes"
>Â </span
>Signing attests that the information provided is current and factual, and that all
firms on the proposed team agree to work on the project.<span style="xfa spacerun:yes"
>Â </span
>Joint ventures selected for negotiations must make available a statement of
participation by a principal of each member of the joint venture.<span
style="xfa spacerun:yes"
>Â </span
<</p
><p style="letter spacing:0in"
><span style="xfa spacerun:yes"
>Â </span
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>33.<span style="xfa spacerun:yes"
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>Name and Title.<span style="xfa spacerun:yes"
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/></traversal
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<<value
<<text
>STANDARD FORM 330 (REV. 8/2016) PAGE 3 OF INSTRUCTIONS</text
<</value
<<ui
<<textEdit
/></ui
<<para hAlign="right" vAlign="middle"
/><font weight="bold" size="9pt" typeface="Arial"
/><?renderCache.bounds 172613 19800 0 0 0 0 0 0?><?renderCache.textRun 32 STANDARD FORM
330 (REV. 8/2016) 0 16075 7106 0 0 0 "Arial" 1 0 9000 ISO 8859 1?><?renderCache.textRun
22 PAGE 3 OF INSTRUCTIONS 0 54602 17906 0 0 0 "Arial" 1 0 9000 ISO 8859 1?></draw
<<draw name="T50" x="8.47mm" y="120.516mm" w="186mm" h="5.498mm"
<<value
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xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
><p style="text decoration:none;letter spacing:0in"
>SAMPLE ENTRIES FOR SECTION G<span style="xfa spacerun:yes"
>Â </span
><span style="font weight:normal;font style:italic"
>(MATRIX)</span
```

```

<</p
<</body
<</exData
<</value
<<ui
<<textEdit
/></ui
<<para vAlign="middle" hAlign="center"
/><font weight="bold" size="11pt" typeface="Arial"
/><traversal
><traverse ref="T53[0]"
/></traversal
<</draw
<<draw name="T53" x="3.18mm" y="130.561mm" w="39.171mm" h="14.605mm"
<<value
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<<body xmlns="http://www.w3.org/1999/xhtml"
xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
<<p style="letter spacing:0in"
>26.<span style="xfa spacerun:yes"
>Â </span
>NAMES OF KEY PERSONNEL<span style="xfa spacerun:yes"
>Â </span
<</p
<<p style="font style:italic;letter spacing:0in"
>(From Section E,</p
<<p style="font style:italic;letter spacing:0in"
>Block 12)</p
<</body
<</exData
<</value
<<ui
<<textEdit
/></ui
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/><traversal
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/></traversal
<</draw
<<draw name="T58" x="43.086mm" y="130.041mm" w="54.025mm" h="15.477mm"
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xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
<<p style="letter spacing:0in"
>27.<span style="xfa spacerun:yes"
>Â </span
>ROLE IN THIS<br
/>CONTRACT<br
/><span style="font style:italic"
>(From Section E,<span style="xfa spacerun:yes"
>Â </span
<</span
<</p
<<p style="font style:italic;letter spacing:0in"
>Block 13)</p
<</body
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<<textEdit
/></ui
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/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T176[0]"
/></traversal
<</draw
<<draw name="T63" x="97.37mm" y="130.561mm" w="102.66mm" h="14.605mm"
<<value

```

```

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><p style="letter spacing:0in"
>28.<span style="xfa spacerun:yes"
>Ã </span
>EXAMPLE PROJECTS LISTED IN SECTION F</p
><p style="font style:italic;letter spacing:0in"
>(Fill in "Example Projects Key" section below first, before</p
><p style="font style:italic;letter spacing:0in"
>completing table.<span style="xfa spacerun:yes"
>Ã </span
>Place "X" under project key number for</p
><p style="font style:italic;letter spacing:0in"
>participation in same or similar role.)</p
></body
></exData
></value
><ui
><textEdit
/></ui
><para hAlign="center" lineHeight="10pt"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T86[0]"
/></traversal
></draw
><draw name="T67" x="97.63mm" y="145.701mm" w="10.32mm" h="4.313mm"
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><text
>1</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle" hAlign="center"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T156[0]"
/></traversal
><?renderCache.bounds 29254 12226 0 0 0 0 0 0?><?renderCache.textRun 1 1 0 12124 8719 0
0 0 "Arial" 0 0 9000 ISO 8859 1?></draw
><draw name="T68" x="107.686mm" y="145.701mm" w="10.32mm" h="4.313mm"
><value
><text
>2</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle" hAlign="center"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T70[0]"
/></traversal
><?renderCache.bounds 29254 12226 0 0 0 0 0 0?><?renderCache.textRun 1 2 0 12124 8719 0
0 0 "Arial" 0 0 9000 ISO 8859 1?></draw
><draw name="T70" x="117.742mm" y="145.701mm" minW="10.32mm" minH="4.313mm"
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><text
>3</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle" hAlign="center"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T156[1]"
/></traversal
></draw

```

```
>>draw name="T72" x="128.059mm" y="145.701mm" minW="10.32mm" minH="4.313mm"
>>value
>>text
>4</text
>>/value
>>ui
>>textEdit
/>>/ui
>>para vAlign="middle" hAlign="center"
/>><font size="9pt" typeface="Arial"
/>><traversal
>><traverse ref="T74[0]"
/>></traversal
>>/draw
>>draw name="T74" x="138.115mm" y="145.701mm" minW="10.32mm" minH="4.313mm"
>>value
>>text
>5</text
>>/value
>>ui
>>textEdit
/>>/ui
>>para vAlign="middle" hAlign="center"
/>><font size="9pt" typeface="Arial"
/>><traversal
>><traverse ref="T76[0]"
/>></traversal
>>/draw
>>draw name="T76" x="148.171mm" y="145.701mm" minW="10.32mm" minH="4.313mm"
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>>text
>6</text
>>/value
>>ui
>>textEdit
/>>/ui
>>para vAlign="middle" hAlign="center"
/>><font size="9pt" typeface="Arial"
/>><traversal
>><traverse ref="T78[0]"
/>></traversal
>>/draw
>>draw name="T78" x="158.487mm" y="145.701mm" minW="10.32mm" minH="4.313mm"
>>value
>>text
>7</text
>>/value
>>ui
>>textEdit
/>>/ui
>>para vAlign="middle" hAlign="center"
/>><font size="9pt" typeface="Arial"
/>><traversal
>><traverse ref="T80[0]"
/>></traversal
>>/draw
>>draw name="T80" x="168.284mm" y="145.701mm" minW="10.32mm" minH="4.313mm"
>>value
>>text
>8</text
>>/value
>>ui
>>textEdit
/>>/ui
>>para vAlign="middle" hAlign="center"
/>><font size="9pt" typeface="Arial"
/>><traversal
>><traverse ref="T82[0]"
/>></traversal
>>/draw
>>draw name="T82" x="178.86mm" y="145.701mm" minW="10.32mm" minH="4.313mm"
```

```
>>value
>>text
>9</text
></value
>>ui
>>textEdit
/></ui
>>para vAlign="middle" hAlign="center"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T84[0]"
/></traversal
></draw
><draw name="T84" x="189.699mm" y="145.701mm" w="10.32mm" minH="4.313mm"
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>10</text
></value
>>ui
>>textEdit
/></ui
>>para vAlign="middle" hAlign="center"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T169[0]"
/></traversal
></draw
><draw name="T156" x="97.37mm" y="149.754mm" w="10.32mm" h="8.2mm"
><value
>>text
>X</text
></value
>>ui
>>textEdit
/></ui
>>para vAlign="middle" hAlign="center"
/><font typeface="Courier New"
/><traversal
><traverse ref="T68[0]"
/></traversal
><?renderCache.bounds 29254 23244 0 0 0 0 0 0?><?renderCache.textRun 1 X 0 11627 14737 0
0 0 "Courier New" 0 0 10000 ISO 8859 1?></draw
><draw name="T156" x="118mm" y="149.754mm" w="10.32mm" h="8.2mm"
><value
>>text
>X</text
></value
>>ui
>>textEdit
/></ui
>>para vAlign="middle" hAlign="center"
/><font typeface="Courier New"
/><traversal
><traverse ref="T72[0]"
/></traversal
><?renderCache.bounds 29254 23244 0 0 0 0 0 0?><?renderCache.textRun 1 X 0 11627 14737 0
0 0 "Courier New" 0 0 10000 ISO 8859 1?></draw
><draw name="T156" x="118mm" y="158.214mm" w="10.32mm" h="8.2mm"
><value
>>text
>X</text
></value
>>ui
>>textEdit
/></ui
>>para vAlign="middle" hAlign="center"
/><font typeface="Courier New"
/><traversal
><traverse ref="T156[3]"
/></traversal
><?renderCache.bounds 29254 23244 0 0 0 0 0 0?><?renderCache.textRun 1 X 0 11627 14737 0
```

```
0 0 "Courier New" 0 0 10000 ISO 8859 1?></draw
><draw name="T156" x="128.06mm" y="158.214mm" w="10.32mm" h="8.2mm"
><value
><text
>X</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle" hAlign="center"
/><font typeface="Courier New"
/><traversal
><traverse ref="T172[0]"
/></traversal
><?renderCache.bounds 29254 23244 0 0 0 0 0 0?><?renderCache.textRun 1 X 0 11627 14737 0
0 0 "Courier New" 0 0 10000 ISO 8859 1?></draw
><draw name="T156" x="128.06mm" y="166.934mm" w="10.32mm" h="8.2mm"
><value
><text
>X</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle" hAlign="center"
/><font typeface="Courier New"
/><traversal
><traverse ref="T185[0]"
/></traversal
><?renderCache.bounds 29254 23244 0 0 0 0 0 0?><?renderCache.textRun 1 X 0 11627 14737 0
0 0 "Courier New" 0 0 10000 ISO 8859 1?></draw
><draw name="T156" x="97.37mm" y="158.214mm" w="10.32mm" h="8.2mm"
><value
><text
>X</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle" hAlign="center"
/><font typeface="Courier New"
/><traversal
><traverse ref="T149[0]"
/></traversal
><?renderCache.bounds 29254 23244 0 0 0 0 0 0?><?renderCache.textRun 1 X 0 11627 14737 0
0 0 "Courier New" 0 0 10000 ISO 8859 1?></draw
><draw name="T156" x="107.73mm" y="158.214mm" w="10.32mm" h="8.2mm"
><value
><text
>X</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle" hAlign="center"
/><font typeface="Courier New"
/><traversal
><traverse ref="T156[2]"
/></traversal
><?renderCache.bounds 29254 23244 0 0 0 0 0 0?><?renderCache.textRun 1 X 0 11627 14737 0
0 0 "Courier New" 0 0 10000 ISO 8859 1?></draw
><draw name="T156" x="107.73mm" y="166.934mm" w="10.32mm" h="8.2mm"
><value
><text
>X</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle" hAlign="center"
/><font typeface="Courier New"
```



```

/><traversal
><traverse ref="T156[4]"
/></traversal
><?renderCache.bounds 29254 23244 0 0 0 0 0 0?><?renderCache.textRun 1 x 0 11627 14737 0
0 0 "Courier New" 0 0 10000 ISO 8859 1?></draw
><draw name="T156" x="97.37mm" y="166.934mm" w="10.32mm" h="8.2mm"
><value
><text
>X</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle" hAlign="center"
/><font typeface="Courier New"
/><traversal
><traverse ref="T156[7]"
/></traversal
><?renderCache.bounds 29254 23244 0 0 0 0 0 0?><?renderCache.textRun 1 x 0 11627 14737 0
0 0 "Courier New" 0 0 10000 ISO 8859 1?></draw
><draw name="T188" x="2.291mm" y="217.964mm" w="13.759mm" minH="0.152in"
><value
><text
>NUMBER</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T204[0]"
/></traversal
></draw
><draw name="T190" x="19.895mm" y="217.964mm" w="75.676mm" minH="0.152in"
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><body xmlns="http://www.w3.org/1999/xhtml"
xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
><p style="letter spacing:0in"
>TITLE OF EXAMPLE PROJECT<span style="xfa spacerun:yes"
>Â </span
><span style="font style:italic"
>(From Section F)</span
></p
></body
></exData
></value
><ui
><textEdit
/></ui
><para vAlign="middle"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T201[0]"
/></traversal
></draw
><draw name="T193" x="97.831mm" y="217.964mm" w="13.759mm" minH="0.152in"
><value
><text
>NUMBER</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T208[0]"
/></traversal
></draw

```

```

><draw name="T195" x="117.685mm" y="217.964mm" w="75.676mm" minH="0.152in"
><value
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><body xmlns="http://www.w3.org/1999/xhtml"
xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
><p style="letter spacing:0in"
>TITLE OF EXAMPLE PROJECT<span style="xfa spacerun:yes"
>Â </span
><span style="font style:italic"
>(From Section F)</span
></p
></body
></exData
></value
><ui
><textEdit
/></ui
><para vAlign="middle"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T197[0]"
/></traversal
></draw
><draw name="T197" x="113.454mm" y="224.17mm" w="86.836mm" h="5.508mm"
><value
><text
>XYZ Corporation Headquarters, Boston, MA</text
></value
><ui
><textEdit
/></ui
><font typeface="Courier New"
/><traversal
><traverse ref="T209[0]"
/></traversal
><?renderCache.bounds 246149 15613 0 0 0 0 0 0?><?renderCache.textRun 40 XYZ Corporation
Headquarters, Boston, MA 0 0 8115 0 0 0 "Courier New" 0 0 10000 ISO 8859 1?></draw
><draw name="T199" x="113.2mm" y="230.918mm" w="61.394mm" minH="0.146in"
><value
><text
>Founder's Museum, Newport, RI</text
></value
><ui
><textEdit
/></ui
><font typeface="Courier New"
/><traversal
><traverse ref="T196[0]"
/></traversal
></draw
><draw name="T201" x="17.14mm" y="224.17mm" w="79.71mm" h="4.2mm"
><value
><text
>Federal Courthouse, Denver, CO </text
></value
><ui
><textEdit
/></ui
><font typeface="Courier New"
/><traversal
><traverse ref="T205[0]"
/></traversal
><?renderCache.bounds 225950 11906 0 0 0 0 0 0?><?renderCache.textRun 31 Federal
Courthouse, Denver, CO 0 0 8115 0 0 0 "Courier New" 0 0 10000 ISO 8859 1?></draw
><draw name="T202" x="16.88mm" y="230.918mm" w="80.057mm" h="10.116mm"
><value
><text
>Justin J. Wilson Federal Building, Baton Rouge, LA</text
></value
><ui
><textEdit

```

```
/></ui
><font typeface="Courier New"
/><traversal
><traverse ref="T193[0]"
/></traversal
><?renderCache.bounds 226933 28675 0 0 0 0 0 0?><?renderCache.textRun 35 Justin J.
Wilson Federal Building, 0 0 8115 0 0 0 "Courier New" 0 0 10000
ISO 8859 1?><?renderCache.textRun 15 Baton Rouge, LA 0 0 20115 0 0 0 "Courier New" 0 0
10000 ISO 8859 1?></draw
><draw name="T204" x="8.966mm" y="224.17mm" minW="0.078in" minH="0.152in"
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><text
>1</text
></value
><ui
><textEdit
/></ui
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/><font size="9pt" typeface="Arial"
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><traverse ref="T190[0]"
/></traversal
></draw
><draw name="T205" x="8.966mm" y="230.918mm" minW="0.078in" minH="0.152in"
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><text
>2</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T202[0]"
/></traversal
></draw
><draw name="T208" x="102.946mm" y="224.17mm" minW="0.078in" minH="0.152in"
><value
><text
>6</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T195[0]"
/></traversal
></draw
><draw name="T209" x="102.946mm" y="230.918mm" minW="0.078in" minH="0.152in"
><value
><text
>7</text
></value
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><textEdit
/></ui
><para vAlign="middle"
/><font size="9pt" typeface="Arial"
/><traversal
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/></traversal
></draw
><traversal
><traverse operation="first" ref="T2[0]"
/></traversal
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/><?templateDesigner expand 1?></subform
><subform name="Page4" x="0pt" y="0pt" w="8in" h="266.7mm"
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```

<<bind match="none"
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/></line
<</value
<</draw
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<<value
<<line
<<edge thickness="0.508mm"
/></line
<</value
<</draw
<<draw name="T2" x="4.013mm" y="8.064mm" w="3.611986in" h="8.297986in"
<<value
<<exData contentType="text/html"
<<body xmlns="http://www.w3.org/1999/xhtml"
xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/"
<<p style="margin bottom:0pt;letter spacing:0in"
>Part II General Qualifications<span style="xfa spacerun:yes"
>Â </span
<</p
<<p style="margin bottom:0pt;font weight:normal;letter spacing:0in"
<<span style="xfa spacerun:yes"
>Â </span
<</p
<<p style="margin bottom:0pt;font weight:normal;letter spacing:0in"
>See the "<span style="font weight:bold"
>General Instructions</span
>" on page 1 for firms with<span style="font weight:bold"
<<span style="xfa spacerun:yes"
>Â </span
<</span
>branch offices.<span style="xfa spacerun:yes"
>Â </span
<<span style="font weight:bold"
<<span style="xfa spacerun:yes"
>Â </span
<</span
>Prepare Part II for the specific branch office<span style="font weight:bold"
<<span style="xfa spacerun:yes"
>Â </span
<</span
>seeking work if the firm has branch offices.<span style="font weight:bold"
<<span style="xfa spacerun:yes"
>Â </span
<</span
<</p
<<p style="margin bottom:0pt;font weight:normal;letter spacing:0in"
<<span style="xfa spacerun:yes"
>Â </span
<</p
<<p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in"
>1.<span style="xfa spacerun:yes"
>Â </span
>Solicitation Number.<span style="xfa spacerun:yes"
>Â </span
>If Part II is submitted for a<span style="font weight:bold"
<<span style="xfa spacerun:yes"
>Â </span
<</span
>specific contract, insert the agency's solicitation number<span style="font weight:bold"
<<span style="xfa spacerun:yes"
>Â </span
<</span
>and/or project number, if applicable, exactly as shown in the<span
style="font weight:bold"
<<span style="xfa spacerun:yes"
>Â </span

```

</span>  
>public announcement or agency request.<span style="font weight:bold">  
<span style="xfa spacerun:yes">  
>Â </span>  
</span>  
</p>  
<p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in">  
<span style="xfa spacerun:yes">  
>Â </span>  
</p>  
<p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in">  
>2a 2e.<span style="xfa spacerun:yes">  
>Â </span>  
>Firm (or Branch Office) Name and Address.<span style="xfa spacerun:yes">  
>Â </span>  
>Self explanatory.<span style="font weight:bold">  
<span style="xfa spacerun:yes">  
>Â </span>  
</span>  
</p>  
<p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in">  
<span style="xfa spacerun:yes">  
>Â </span>  
</p>  
<p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in">  
>3.<span style="xfa spacerun:yes">  
>Â </span>  
>Year Established.<span style="xfa spacerun:yes">  
>Â </span>  
>Enter the year the firm (or branch<span style="font weight:bold">  
<span style="xfa spacerun:yes">  
>Â </span>  
</span>  
>office, if appropriate) was established under the current<span style="font weight:bold">  
<span style="xfa spacerun:yes">  
>Â </span>  
</span>  
>name.<span style="font weight:bold">  
<span style="xfa spacerun:yes">  
>Â </span>  
</span>  
</p>  
<p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in">  
<span style="xfa spacerun:yes">  
>Â </span>  
</p>  
<p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in">  
>4.<span style="xfa spacerun:yes">  
>Â </span>  
>Unique Entity Identifier.<span style="xfa spacerun:yes">  
>Â </span>  
>Insert the unique entity identifier issued by the entity designated at SAM.<span style="xfa spacerun:yes">  
>Â </span>  
>See FAR part<span style="font weight:bold">  
<span style="xfa spacerun:yes">  
>Â </span>  
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>4.6.<span style="font weight:bold">  
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>5.<span style="xfa spacerun:yes">  
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>Ownership.<span style="font weight:bold">

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>a. Type.<span style="xfa spacerun:yes"  
>Â </span  
>Enter the type of ownership or legal structure<span style="font weight:bold"  
><span style="xfa spacerun:yes"  
>Â </span  
></span  
>of the firm (sole proprietor, partnership, corporation, joint<span  
style="font weight:bold"  
><span style="xfa spacerun:yes"  
>Â </span  
></span  
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><span style="xfa spacerun:yes"  
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>b. Small Business Status.<span style="xfa spacerun:yes"  
>Â </span  
>Refer to the North American<span style="font weight:bold"  
><span style="xfa spacerun:yes"  
>Â </span  
></span  
>Industry Classification System (NAICS) code in the public<span style="font weight:bold"  
><span style="xfa spacerun:yes"  
>Â </span  
></span  
>announcement, and indicate if the firm is a small business<span style="font weight:bold"  
><span style="xfa spacerun:yes"  
>Â </span  
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>according to the current size standard for that NAICS code<span style="font weight:bold"  
><span style="xfa spacerun:yes"  
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>(for example, Engineering Services (part of NAICS 541330),<span style="font weight:bold"  
><span style="xfa spacerun:yes"  
>Â </span  
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>Architectural Services (NAICS 541310), Surveying and<span style="font weight:bold"  
><span style="xfa spacerun:yes"  
>Â </span  
></span  
>Mapping Services (NAICS 541370)).<span style="xfa spacerun:yes"  
>Â </span  
>The small business<span style="font weight:bold"  
><span style="xfa spacerun:yes"  
>Â </span  
></span  
>categories and the internet website for the NAICS codes<span style="font weight:bold"  
><span style="xfa spacerun:yes"  
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>appear in FAR part 19.<span style="xfa spacerun:yes"  
>Â </span  
>Contact the requesting agency for<span style="font weight:bold"  
><span style="xfa spacerun:yes"  
>Â </span

</span>  
>any questions.<span style="xfa spacerun:yes">  
>Â </span>  
>Contact your local U.S. Small Business<span style="font weight:bold">  
><span style="xfa spacerun:yes">  
>Â </span>  
></span>  
>Administration office for any questions regarding Business<span style="font weight:bold">  
><span style="xfa spacerun:yes">  
>Â </span>  
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>Status.<span style="font weight:bold">  
><span style="xfa spacerun:yes">  
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>6a 6c.<span style="xfa spacerun:yes">  
>Â </span>  
>Point of Contact.<span style="xfa spacerun:yes">  
>Â </span>  
>Provide this information for a<span style="font weight:bold">  
><span style="xfa spacerun:yes">  
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>representative of the firm that the agency can contact for additional information.<span style="xfa spacerun:yes">  
>Â </span>  
>The representative must be<span style="font weight:bold">  
><span style="xfa spacerun:yes">  
>Â </span>  
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>empowered to speak on contractual and policy matters.<span style="font weight:bold">  
><span style="xfa spacerun:yes">  
>Â </span>  
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><span style="xfa spacerun:yes">  
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>7.<span style="xfa spacerun:yes">  
>Â </span>  
>Name of Firm.<span style="xfa spacerun:yes">  
>Â </span>  
>Enter the name of the firm if PartII is<span style="font weight:bold">  
><span style="xfa spacerun:yes">  
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>prepared for a branch office.<span style="font weight:bold">  
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>8a 8c.<span style="xfa spacerun:yes">  
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>Former Firm Names.<span style="xfa spacerun:yes">  
>Â </span>  
>Indicate any other previous<span style="font weight:bold">  
><span style="xfa spacerun:yes">  
>Â </span>

```
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>names for the firm (or branch office) during the last six<span style="font weight:bold"
><span style="xfa spacerun:yes"
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>years. Insert the year that this corporate name change was effective and the associated
unique entity identifier.<span style="xfa spacerun:yes"
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>This information is used to review past performance on Federal contracts.<span
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>9.<span style="xfa spacerun:yes"
>Â </span
>Employees by Discipline.<span style="xfa spacerun:yes"
>Â </span
>Use the relevant disciplines and associated function codes shown at the end of these
instructions and list in the same numerical order.<span style="xfa spacerun:yes"
>Â </span
>After the listed disciplines, write in any additional disciplines and leave the
function code blank.<span style="xfa spacerun:yes"
>Â </span
>List no more than 20 disciplines.<span style="xfa spacerun:yes"
>Â </span
>Group remaining employees under "Other Employees" in column b.<span
style="xfa spacerun:yes"
>Â </span
>Each person can be counted only once according to his/her primary function.<span
style="xfa spacerun:yes"
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>If Part II is prepared for a firm (including all branch offices), enter the number of
employees by disciplines in column c(1).<span style="xfa spacerun:yes"
>Â </span
>If Part II is prepared for a branch office, enter the number of employees by discipline
in column c(2) and for the firm in column c(1).<span style="xfa spacerun:yes"
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>10.<span style="xfa spacerun:yes"
>Â </span
>Profile of Firm's Experience and Annual Average Revenue for Last 5 Years.<span
```



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>Â </span  
>Complete this block for the firm or branch office for which this Part II is prepared.<span style="xfa spacerun:yes"  
>Â </span  
>Enter the experience categories which most accurately reflect the firm's technical capabilities and project experience.<span style="xfa spacerun:yes"  
>Â </span  
>Use the relevant experience categories and associated profile codes shown at the end of these instructions, and list in the same numerical order.<span style="xfa spacerun:yes"  
>Â </span  
>After the listed experience categories, write in any unlisted relevant project experience categories and leave the profile codes blank.<span style="xfa spacerun:yes"  
>Â </span  
>For each type of experience, enter the appropriate revenue index number to reflect the professional services revenues received annually (averaged over the last 5 years) by the firm or branch office for performing that type of work.<span style="xfa spacerun:yes"  
>Â </span  
>A particular project may be identified with one experience category or it may be broken into components, as best reflects the capabilities and types of work performed by the firm.<span style="xfa spacerun:yes"  
>Â </span  
>However, do not double count the revenues received on a particular project.<span style="xfa spacerun:yes"  
>Â </span  
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>11.<span style="xfa spacerun:yes"  
>Â </span  
>Annual Average Professional Services Revenues of Firm for Last 3 Years.<span style="xfa spacerun:yes"  
>Â </span  
>Complete this block for the firm or branch office for which this Part II is prepared.<span style="xfa spacerun:yes"  
>Â </span  
>Enter the appropriate revenue index numbers to reflect the professional services revenues received annually (averaged over the last 3 years) by the firm or branch office.<span style="xfa spacerun:yes"  
>Â </span  
>Indicate Federal work (performed directly for the Federal Government, either as the prime contractor or subcontractor), non Federal work (all other domestic and foreign work, including Federally assisted projects), and the total.<span style="xfa spacerun:yes"  
>Â </span  
>If the firm has been in existence for less than 3 years, see the definition for "Annual Receipts" under FAR 19.101.<span style="xfa spacerun:yes"  
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>12.<span style="xfa spacerun:yes"  
>Â </span  
>Authorized Representative.<span style="xfa spacerun:yes"  
>Â </span  
>An authorized representative of the firm or branch office must sign and date the completed form.<span style="xfa spacerun:yes"  
>Â </span  
>Signing attests that the information provided is current and factual.<span style="xfa spacerun:yes"  
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>Provide the name and title of the authorized representative who signed the form.</p  
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>Codes; Standards; Ordinances</text
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Refrigeration and Fast Freeze 0 0 7106 0 0 0 "Arial" 0 0 9000 ISO 8859 1?></draw
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>Â /></span
><span style="font style:italic"
>(low rise)</span
> ; Shopping Centers</p
></body
></exData
></value
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><textEdit
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Building 0 0 7132 0 0 0 "Arial" 0 0 9000 ISO 8859 1?><?renderCache.textRun 10 (low
rise) 0 85030 7132 0 0 0 "Arial" 0 1 9000 ISO 8859 1?><?renderCache.textRun 19 ;
Shopping Centers 0 121531 7132 0 0 0 "Arial" 0 0 9000 ISO 8859 1?></draw
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>Community Facilities</text
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>Communications Systems; TV; Microwave</text
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>Corrosion Control; Cathodic Protection; Electrolysis</text
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Control; Cathodic Protection; Electrolysis 0 0 7106 0 0 0 "Arial" 0 0 9000
ISO 8859 1?></draw
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Estimating; Cost Engineering and 0 0 7106 0 0 0 "Arial" 0 0 9000
ISO 8859 1?><?renderCache.textRun 41 Analysis; Parametric Costing; Forecasting 0 0 17906
0 0 0 "Arial" 0 0 9000 ISO 8859 1?></draw
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>Dams<span style="xfa spacerun:yes"
>Â />span
><span style="font style:italic"
>(Concrete; Arch)</span
></p
></body
></exData
></value
```

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0 0 "Arial" 0 0 9000 ISO 8859 1?><?renderCache.textRun 16 (Concrete; Arch) 0 26002 7132
0 0 0 "Arial" 0 1 9000 ISO 8859 1?></draw
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>Dams<span style="xfa spacerun:yes"
>Â </span
><span style="font style:italic"
>(Earth; Rock);</span
> Dikes; Levees</p
></body
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></value
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0 0 "Arial" 0 0 9000 ISO 8859 1?><?renderCache.textRun 14 (Earth; Rock); 0 26002 7132 0
0 0 "Arial" 0 1 9000 ISO 8859 1?><?renderCache.textRun 14 Dikes; Levees 0 81514 7132 0
0 0 "Arial" 0 0 9000 ISO 8859 1?></draw
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>Â </span
><span style="font style:italic"
>(Process & Facilities)</span
></p
></body
></exData
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><textEdit
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0 0 7132 0 0 0 "Arial" 0 0 9000 ISO 8859 1?><?renderCache.textRun 22 (Process &
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>Â </span
><span style="font weight:bold"
> </span
> Preparation of Requests for Proposals</p
></body
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0 7106 0 0 0 "Arial" 0 0 9000 ISO 8859 1?><?renderCache.textRun 1 0 53525 7106 0 0 0
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Elevation and Terrain Model Development 0 0 7106 0 0 0 "Arial" 0 0 9000
ISO 8859 1?></draw
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Archeological Investigations 0 0 7106 0 0 0 "Arial" 0 0 9000 ISO 8859 1?></draw
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Conservation; New Energy Sources 0 0 7106 0 0 0 "Arial" 0 0 9000 ISO 8859 1?></draw
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Impact Studies, 0 0 7106 0 0 0 "Arial" 0 0 9000 ISO 8859 1?><?renderCache.textRun 25
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and Natural Resource 0 0 7106 0 0 0 "Arial" 0 0 9000 ISO 8859 1?><?renderCache.textRun
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Vehicle Maintenance Facilities; 0 0 7106 0 0 0 "Arial" 0 0 9000
ISO 8859 1?><?renderCache.textRun 13 Parking Decks 0 0 17906 0 0 0 "Arial" 0 0 9000
ISO 8859 1?></draw
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Surveying: Ground and Air borne 0 0 7106 0 0 0 "Arial" 0 0 9000 ISO 8859 1?></draw
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Collection</text
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Information System Services: 0 0 7106 0 0 0 "Arial" 0 0 9000
ISO 8859 1?><?renderCache.textRun 42 Development, Analysis, and Data Collection 0 0
17906 0 0 0 "Arial" 0 0 9000 ISO 8859 1?></draw
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Drafting</text
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Conversion: Scanning, 0 0 7106 0 0 0 "Arial" 0 0 9000 ISO 8859 1?><?renderCache.textRun
48 Digitizing, Compilation, Attributing, Scribing, 0 0 17906 0 0 0 "Arial" 0 0 9000
ISO 8859 1?><?renderCache.textRun 8 Drafting 0 0 28706 0 0 0 "Arial" 0 0 9000
ISO 8859 1?></draw
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>Â </span
><span style="font style:italic"
>(Residential, Multi Family;</span
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>Â </span
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Processes; Quality Control 0 0 7106 0 0 0 "Arial" 0 0 9000 ISO 8859 1?></draw
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Medical Research Facilities 0 0 7106 0 0 0 "Arial" 0 0 9000 ISO 8859 1?></draw
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(Interior; Display; Theater, Etc.) 0 0 7106 0 0 0 "Arial" 0 0 9000 ISO 8859 1?>>/draw
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(Exteriors; Streets; Memorials; 0 0 7106 0 0 0 "Arial" 0 0 9000
ISO 8859 1?>>?renderCache.textRun 22 Athletic Fields, Etc.) 0 0 17906 0 0 0 "Arial" 0 0
9000 ISO 8859 1?>>/draw
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>Materials Handling Systems; Conveyors; Sorters</text
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Handling Systems; Conveyors; Sorters 0 0 7106 0 0 0 "Arial" 0 0 9000 ISO 8859 1?>>/draw
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Microclimatology; Tropical Engineering 0 0 7106 0 0 0 "Arial" 0 0 9000 ISO 8859 1?>>/draw
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Facilities (Silos; Fuels; Transport) 0 0 7106 0 0 0 "Arial" 0 0 9000 ISO 8859 1?>>/draw
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Design; Pre Fabricated Structures or 0 0 7106 0 0 0 "Arial" 0 0 9000
ISO 8859 1?><?renderCache.textRun 10 Components 0 0 17906 0 0 0 "Arial" 0 0 9000
ISO 8859 1?></draw
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Architecture; Off Shore Platforms 0 0 7106 0 0 0 "Arial" 0 0 9000 ISO 8859 1?></draw
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Munitions; Special Weapons 0 0 7106 0 0 0 "Arial" 0 0 9000 ISO 8859 1?></draw
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Fuel (Storage and Distribution) 0 0 7106 0 0 0 "Arial" 0 0 9000 ISO 8859 1?></draw
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(Cross Country Liquid & Gas) 0 0 7106 0 0 0 "Arial" 0 0 9000 ISO 8859 1?></draw
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ISO 8859 1?></draw
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330 (REV. 8/2016) 0 25078 7106 0 0 0 "Arial" 1 0 9000 ISO 8859 1?><?renderCache.textRun
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>>(City and State)</span
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>(Complete this section for the prime contractor and all key subcontractors.)</p
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>OTHER PROFESSIONAL QUALIFICATIONS<span style="xfa-spacerun:yes"
>Â </span
><span style="font-style:italic"
>(Publications, Organizations, Training, Awards, etc.)</span
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>Â </span
>RESUMES OF KEY PERSONNEL PROPOSED FOR THIS CONTRACT<span style="xfa-spacerun:yes"
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>(Complete one Section E for each key person.)</p
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>Â </span
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>Â </span
<<span style="font style:italic"
>(State and Discipline)</span
<</p
<</body
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>Â </span
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>Â </span
<<span style="font style:italic"
>(Degree and Specialization)</span
<</p
<</body
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>Â </span
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>Â </span
><span style="font-style:italic"
>(City and State)</span
></p
></body
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>Â </span
><span style="font-weight:normal"
>(REV. 8/2016)</span
> PAGE 2</p
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>Â </span
><span style="font style:italic"
>(City and State)</span
></p
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>Â </span
<<span style="font-style:italic"
>(If applicable)</span
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<<span style="font-style:italic"
>(City and State)</span
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<</value
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<<textEdit
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<<font size="7pt" typeface="Arial"
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>Â </span
<<span style="font-style:italic"
>(If applicable)</span
<</p
<</body
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<</value
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>Â </span
><span style="font-style:italic"
>(If applicable)</span
></p
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>(City and State)</span
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>Â </span
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>(If applicable)</span
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>(Brief scope, size, cost, etc.)</span
> AND SPECIFIC ROLE</p
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>(Brief scope, size, cost, etc.)</span
> AND SPECIFIC ROLE</p
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>(Brief scope, size, cost, etc.)</span
> AND SPECIFIC ROLE</p
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PROJECTS 0 221748 7948 0 0 0 "Arial" 0 0 9000 ISO 8859 1?></draw
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>Â </span
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>(If applicable)</span
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><span style="font style:italic"
>(Brief scope, size, cost, etc.)</span
> AND SPECIFIC ROLE</p
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>Â </span
>EXAMPLE PROJECTS WHICH BEST ILLUSTRATE PROPOSED TEAM'S</p
><p style="text-decoration:none;letter-spacing:0in"
>QUALIFICATIONS FOR THIS CONTRACT<span style="xfa-spacerun:yes"
>Â </span
></p
><p style="font-weight:normal;font-style:italic;text-decoration:none;letter-spacing:0in"
>(Present as many projects as requested by the agency, or 10 projects, if not
specified.<span style="xfa-spacerun:yes"
>Â </span
><span style="font-weight:bold;font-style:normal"
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>Â </span
></span
></p
><p style="font-weight:normal;font-style:italic;text-decoration:none;letter-spacing:0in"
>Complete one Section F for each project.)</p
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>Â </span
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>(City and State)</span
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>(Include scope, size, and cost)</span
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>Â Â Â Â Â Â </span
>NUMBER</p
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>(City and State)</span
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>Â </span
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>(REV. 8/2016)</span
> PAGE 3</p
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xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
><p style="text-decoration:none;letter-spacing:0in"
>(2) FIRM LOCATION<span style="xfa spacerun:yes"
>Â </span
><span style="font style:italic"
>(City and State)</span
></p
></body
></exData
></value
><ui
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/></ui
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><text
>(3) ROLE</text
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><font size="7pt" typeface="Arial"
/><traversal
><traverse ref="RoleA[0]"
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/></draw
><draw name="T76" x="70.258mm" y="41.269mm" w="1.442in" minH="0.118in"
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>b. POINT OF CONTACT NAME</text
<</value
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>23. PROJECT OWNER'S INFORMATION</text
<</value
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/></ui
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OWNER'S INFORMATION 0 194650 8031 0 0 0 "Arial" 0 0 9000 ISO 8859 1?></draw
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```

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>Â </span
><span style="font style:italic"
>(City and State)</span
></p
></body
></exData
></value
><ui
><textEdit
/></ui
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/></traversal
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>PROFESSIONAL SERVICES</text
></value
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>CONSTRUCTION<span style="xfa spacerun:yes"
>Â </span
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>(If applicable)</span
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></draw
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><traverse operation="first" ref="T4[0]"
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/></textEdit
<</ui
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><edge presence="hidden"
/><corner thickness="0.1753mm" presence="hidden"
/></border
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>21. TITLE AND LOCATION (City and State)</toolTip
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/></assist
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/></textEdit
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/><corner thickness="0.1753mm" presence="hidden"
/></border
><assist
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/></assist
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/><corner thickness="0.1753mm" presence="hidden"
/></border
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/></textEdit
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<<assist
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/></textEdit
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><toolTip
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><toolTip
>25. FIRMS FROM SECTION C INVOLVED WITH THIS PROJECT. a. 2. FIRM LOCATION (City and
State)</toolTip
><speak priority="toolTip"
/></assist
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/></border
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>25. FIRMS FROM SECTION C INVOLVED WITH THIS PROJECT. c. 2. FIRM LOCATION (City and
State)</toolTip
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><edge presence="hidden"
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/></border
><assist
><toolTip
>25. FIRMS FROM SECTION C INVOLVED WITH THIS PROJECT. d. 2. FIRM LOCATION (City and
State)</toolTip
```



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>> traverse ref="T44[0]"
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>> border presence="hidden"
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>> edge presence="hidden"
/>< corner thickness="0.1753mm" presence="hidden"
/></border
>> assist
>> toolTip
>25. FIRMS FROM SECTION C INVOLVED WITH THIS PROJECT. e. 2. FIRM LOCATION (City and
State)</toolTip
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/></assist
>> traversal
>> traverse ref="T51[0]"
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/>< border
>> edge presence="hidden"
/>< corner thickness="0.1753mm" presence="hidden"
/></border
>> assist
>> toolTip
>25. FIRMS FROM SECTION C INVOLVED WITH THIS PROJECT. f. 2. FIRM LOCATION (City and
State)</toolTip
>> speak priority="toolTip"
/></assist
>> traversal
>> traverse ref="T83[0]"
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>> para vAlign="bottom"
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>> edge presence="hidden"
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State)</toolTip
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/><border
><edge presence="hidden"
/><corner thickness="0.1753mm" presence="hidden"
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/></border
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```
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><assist
><toolTip
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/><border
><edge presence="hidden"
/><corner thickness="0.1753mm" presence="hidden"
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```

```
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/><corner thickness="0.1753mm" presence="hidden"
/></border
><assist
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and cost)</toolTip
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><edge presence="hidden"
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><assist
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>(REV. 8/2016)</span
> PAGE 4</p
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>ROLE IN THIS</p
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/></textEdit
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></value
></draw
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>>/draw
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>>text
>H. ADDITIONAL INFORMATION</text
>>/value
>>ui
>>textEdit
/>>/ui
>>para vAlign="middle" hAlign="center"
/>>font weight="bold" size="9pt" typeface="Arial"
/>>traversal
>>traverse ref="T5[0]"
/>>/traversal
>>?renderCache.bounds 558000 12112 0 0 0 0 0 0?>>?renderCache.textRun 26 H. ADDITIONAL
INFORMATION 0 211256 8662 0 0 0 "Arial" 1 0 9000 ISO 8859 1?>>/draw
>>draw name="T5" x="3.678mm" y="15.68mm" w="5.789in" minH="0.118in"
>>value
>>text
>30. PROVIDE ANY ADDITIONAL INFORMATION REQUESTED BY THE AGENCY. ATTACH ADDITIONAL
SHEETS AS NEEDED.</text
>>/value
>>ui
>>textEdit
/>>/ui
>>para vAlign="middle"
/>>font size="7pt" typeface="Arial"
/>>traversal
>>traverse ref="AdditionalInfo[0]"
/>>/traversal
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xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
>>p style="text-decoration:none;letter-spacing:0in"
>I.<span style="xfa-spacerun:yes"
>Â </span
>AUTHORIZED REPRESENTATIVE<span style="xfa-spacerun:yes"
>Â </span
>>/p
>>p style="font-weight:normal;font-style:italic;text-decoration:none;letter-spacing:0in"
>The foregoing is a statement of facts.</p
>>/body
>>/exData
>>/value
>>ui
>>textEdit
/>>/ui
>>para vAlign="middle" hAlign="center"
/>>font weight="bold" size="9pt" typeface="Arial"
/>>traversal
>>traverse ref="T9[0]"
/>>/traversal
>>/draw
>>draw name="T9" x="3.678mm" y="231.301mm" w="0.789in" minH="0.118in"
>>value
>>text
>31. SIGNATURE</text
>>/value
>>ui
>>textEdit
/>>/ui
>>para vAlign="middle"
/>>font size="7pt" typeface="Arial"
/>>traversal
>>traverse ref="SignatureField2[0]"
/>>/traversal
>>/draw
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```

<<draw name="T11" x="166.213mm" y="231.301mm" w="0.495in" minH="0.118in"
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<<text
>32. DATE</text
<</value
<<ui
<<textEdit
/></ui
<<para vAlign="middle"
/><font size="7pt" typeface="Arial"
/><traversal
<<traverse ref="DateSigned[0]"
/></traversal
<</draw
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<<value
<<text
>33. NAME AND TITLE</text
<</value
<<ui
<<textEdit
/></ui
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/><font size="7pt" typeface="Arial"
/><traversal
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xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
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>STANDARD FORM 330<span style="xfa spacerun:yes"
>Â </span
<<span style="font-weight:normal"
>(REV. 8/2016)</span
> PAGE 5<span style="xfa spacerun:yes"
>Â </span
<</p
<</body
<</exData
<</value
<<ui
<<textEdit
/></ui
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<<margin
/></textEdit
<</ui
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/><border
<<edge presence="hidden"
/><corner thickness="0.1753mm" presence="hidden"
/></border
<<assist
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>30. PROVIDE ANY ADDITIONAL INFORMATION REQUESTED BY THE AGENCY. ATTACH ADDITIONAL
SHEETS AS NEEDED.</toolTip

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```

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/></assist
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<<traverse ref="T6[0]"
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/></dateTimeEdit
<<picture
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YYYY}|date{MM DD YYYY}|date{M D YYYY}|date{MM,DD,YYYY}|date{M,D,YYYY}|date{MM.DD.YYYY}|da
te{M.D.YYYY}|date{DD MMM YYYY}|date{M/D/YY}|date{M D YY}|date{M D
YY}|date{MM/DD/YY}|date{MM DD YY}|date{MMDDYY}|date{MM DD YY}</picture
<</ui
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/><value
<<date
/></value
<<border
<<edge presence="hidden"
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/></border
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<<message
<<text name="formatTest"
>Invalid Date. Enter 2 digit month, 2 digit day and 4 digit year.</text
<</message
<<picture
>MM/DD/YYYY</picture
<</validate
<<format
<<picture
>MM/DD/YYYY</picture
<</format
<<assist
<<speak priority="toolTip"
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>32. DATE OF SIGNATURE. Enter 2 digit month, 2 digit day and 4 digit year.</toolTip
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/></traversal
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<<edge presence="hidden"
/><corner thickness="0.1753mm" presence="hidden"
/></border
<<para vAlign="bottom"
/><assist
<<toolTip
>33. NAME AND TITLE</toolTip
<<speak priority="toolTip"
/></assist

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xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/"
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>PART II GENERAL QUALIFICATIONS</p
><p
>(If a firm has branch offices, complete for each specific branch office seeking
work.)</p
></body
></exData
></value
><ui
><textEdit
/></ui
><para vAlign="middle" hAlign="center" lineHeight="11pt"
/><font posture="italic" size="11pt" typeface="Arial"
/><traversal
><traverse ref="T12[0]"
/></traversal
><?renderCache.bounds 558000 24200 0 0 0 0 0 0?><?renderCache.textRun 33 PART II
GENERAL QUALIFICATIONS 0 179390 10885 0 0 0 "Arial" 1 0 11000
ISO 8859 1?><?renderCache.textRun 86 (If a firm has branch offices, complete for each
specific branch office seeking work.) 0 76024 21917 0 0 0 "Arial" 0 1 11000
ISO 8859 1?></draw
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>>/value
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/>>/line
>>/value
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>>/value
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>>/value
>>/draw
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>>/value
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>>/value
>>/draw
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>>/value
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><value
><line
><edge thickness="0.254mm"
/></line
></value
></draw
><draw name="R84" y="197.025mm" x="3.728mm" w="196.664mm" h="0in"
><value
><line
><edge thickness="0.254mm"
/></line
></value
></draw
><draw name="R85" y="100.013mm" x="71.71mm" w="0in" h="130.607mm"
><value
><line slope="/"
><edge thickness="0.254mm"
/></line
></value
></draw
><draw name="R87" y="104.379mm" x="87.31mm" w="0in" h="96.871mm"
><value
><line slope="/"
><edge thickness="0.254mm"
/></line
></value
></draw
><draw name="R45" y="99.762mm" x="176.363mm" w="0in" h="101.331mm"
><value
```



```
>>line
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R47" y="116.612mm" x="3.728mm" w="196.664mm" h="0in"
>>value
>>line
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R74" y="78.322mm" x="3.728mm" w="196.032mm" h="0in"
>>value
>>line slope="/"
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R27" y="40.434mm" x="133.183mm" w="66.843mm" h="0in"
>>value
>>line slope="/"
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R32" y="104.14mm" x="71.97mm" w="30.435mm" h="0in"
>>value
>>line slope="/"
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R44" y="99.762mm" x="117.922mm" w="0in" h="101.331mm"
>>value
>>line
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R0" y="5.98mm" x="3.728mm" w="196.032mm" h="0in"
>>value
>>line slope="/"
>>edge thickness="0.508mm"
/>>/line
>>/value
>>/draw
>>draw name="R1" y="255.995mm" x="3.728mm" w="196.664mm" h="0in"
>>value
>>line
>>edge thickness="0.508mm"
/>>/line
>>/value
>>/draw
>>draw name="R2" y="239.443mm" x="158.562mm" w="0in" h="8.575mm"
>>value
>>line
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R5" y="6.371mm" x="133.08mm" w="0in" h="12.471mm"
>>value
>>line slope="/"
>>edge thickness="0.254mm"
/>>/line
>>/value
>>/draw
>>draw name="R6" y="19.14mm" x="3.097mm" w="196.664mm" h="0in"
>>value
>>line
```

```
><edge thickness="0.254mm"
/></line
></value
></draw
><draw name="R8" y="27.692mm" x="3.27mm" w="196.491mm" h="0in"
><value
><line
><edge thickness="0.254mm"
/></line
></value
></draw
><draw name="R11" y="36.158mm" x="3.27mm" w="196.491mm" h="0in"
><value
><line
><edge thickness="0.254mm"
/></line
></value
></draw
><draw name="R13" y="44.625mm" x="3.27mm" w="129.627mm" h="0in"
><value
><line
><edge thickness="0.254mm"
/></line
></value
></draw
><draw name="R15" y="44.709mm" x="92.522mm" w="0in" h="8.281mm"
><value
><line
><edge thickness="0.254mm"
/></line
></value
></draw
><draw name="R17" y="44.709mm" x="107.762mm" w="0in" h="8.281mm"
><value
><line
><edge thickness="0.254mm"
/></line
></value
></draw
><draw name="R20" y="27.798mm" x="132.895mm" w="0in" h="45.844mm"
><value
><line slope="/"
><edge thickness="0.254mm"
/></line
></value
></draw
><draw name="R20" y="53.182mm" x="133.138mm" w="0in" h="20.692mm"
><value
><line slope="/"
><edge thickness="0.508mm"
/></line
></value
></draw
><draw name="R21" y="28.058mm" x="162.332mm" w="0in" h="7.835mm"
><value
><line
><edge thickness="0.254mm"
/></line
></value
></draw
><bind match="none"
/><draw name="T4" x="4.236mm" y="239.422mm" w="0.753in" minH="0.118in"
><value
><text
>a. SIGNATURE </text
></value
><ui
><textEdit
/></ui
><font size="7pt" typeface="Arial"
/></traversal
```

```

<<traverse ref="SignatureField3[0]"
/></traversal
<<para vAlign="middle"
/></draw
<<draw name="T7" x="3.651mm" y="6.51mm" w="128.503mm" h="12.124mm"
<<value
<<text
>ARCHITECT ENGINEER QUALIFICATIONS</text
<</value
<<ui
<<textEdit
/></ui
<<para vAlign="middle" hAlign="center"
/><font weight="bold" size="14pt" typeface="Arial"
/><traversal
<<traverse ref="T71[0]"
/></traversal
<<?renderCache.bounds 364260 34367 0 0 0 0 0 0?><?renderCache.textRun 33
ARCHITECT ENGINEER QUALIFICATIONS 0 41354 21237 0 0 0 "Arial" 1 0 14000
ISO 8859 1?></draw
<<draw name="T12" x="4.236mm" y="28.309mm" w="1.846in" minH="0.118in"
<<value
<<exData contentType="text/html"
<<body xmlns="http://www.w3.org/1999/xhtml"
xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
<<p style="letter spacing:0in"
>2a.<span style="xfa spacerun:yes"
>Â </span
>FIRM (<span style="font style:italic"
>or Branch Office</span
>) NAME</p
<</body
<</exData
<</value
<<ui
<<textEdit
/></ui
<<font size="7pt" typeface="Arial"
/><traversal
<<traverse ref="FirmName[0]"
/></traversal
<</draw
<<draw name="T14" x="4.236mm" y="36.424mm" w="15.011mm" h="3.316mm"
<<value
<<text
>2b. STREET</text
<</value
<<ui
<<textEdit
/></ui
<<font size="7pt" typeface="Arial"
/><traversal
<<traverse ref="Street[0]"
/></traversal
<<para vAlign="middle"
/><?renderCache.bounds 42551 9400 0 0 0 0 0 0?><?renderCache.textRun 11 2b. STREET 0 0
6727 0 0 0 "Arial" 0 0 7000 ISO 8859 1?></draw
<<draw name="T16" x="4.236mm" y="45.2mm" w="0.45in" minH="0.118in"
<<value
<<text
>2c. CITY</text
<</value
<<ui
<<textEdit
/></ui
<<font size="7pt" typeface="Arial"
/><traversal
<<traverse ref="City[0]"
/></traversal
<<para vAlign="middle"
/></draw

```

```
>>draw name="T18" x="93.11mm" y="45.2mm" w="0.544in" minH="0.118in"
>>value
>>text
>2d. STATE</text
>>/value
>>ui
>>textEdit
/>>/ui
>>font size="7pt" typeface="Arial"
/>><para vAlign="middle"
/>></traversal
>><traverse ref="State[0]"
/>></traversal
>>/draw
>>draw name="T19" x="108.376mm" y="45.2mm" w="17.043mm" minH="0.118in"
>>value
>>text
>2e. ZIP CODE</text
>>/value
>>ui
>>textEdit
/>>/ui
>>font size="7pt" typeface="Arial"
/>><traversal
>><traverse ref="ZipCode[0]"
/>></traversal
>><para vAlign="middle"
/>></draw
>>draw name="T23" x="133.776mm" y="28.018mm" w="27.86mm" h="3.029mm"
>>value
>>text
>3. YEAR ESTABLISHED</text
>>/value
>>ui
>>textEdit
/>>/ui
>>font size="7pt" typeface="Arial"
/>><traversal
>><traverse ref="YearEstablished[0]"
/>></traversal
>><para vAlign="middle"
/>><?renderCache.bounds 78973 8586 0 0 0 0 0 0?><?renderCache.textRun 20 3. YEAR
ESTABLISHED 0 0 6320 0 0 0 "Arial" 0 0 7000 ISO 8859 1?></draw
>>draw name="T25" x="163.206mm" y="28.049mm" w="36.908mm" minH="0.118in"
>>value
>>text
>4. UNIQUE ENTITY IDENTIFIER </text
>>/value
>>ui
>>textEdit
/>>/ui
>>font size="7pt" typeface="Arial"
/>><traversal
>><traverse ref="DunsNumber[0]"
/>></traversal
>><para vAlign="middle"
/>></draw
>>draw name="T28" x="155.086mm" y="36.615mm" w="24.155mm" minH="0.152in"
>>value
>>text
>5. OWNERSHIP</text
>>/value
>>ui
>>textEdit
/>>/ui
>><para vAlign="middle"
/>><font size="9pt" typeface="Arial"
/>></traversal
>><traverse ref="T285[0]"
/>></traversal
>>/draw
```

```

<<draw name="T31" x="18.877mm" y="102.237mm" w="53.44mm" minH="0.134in"
<<value
<<text
<b. Discipline</text
<</value
<<ui
<<textEdit
/></ui
<<para vAlign="middle" hAlign="center"
/><font size="8pt" typeface="Arial"
/><traversal
<<traverse ref="Discipline[0]"
/></traversal
<</draw
<<draw name="T33" x="71.797mm" y="100.078mm" w="30.9mm" h="3.746mm"
<<value
<<text
<c. Number of Employees</text
<</value
<<ui
<<textEdit
/></ui
<<para vAlign="middle" hAlign="center"
/><font size="8pt" typeface="Arial"
/><traversal
<<traverse ref="T88[0]"
/></traversal
<<?renderCache.bounds 87591 10619 0 0 0 0 0 0?><?renderCache.textRun 22 c. Number of
Employees 0 17625 0 0 0 "Arial" 0 0 8000 ISO 8859 1?></draw
<<draw name="T35" x="102.66mm" y="92.317mm" w="97.63mm" h="0.277in"
<<value
<<exData contentType="text/html"
<<body xmlns="http://www.w3.org/1999/xhtml"
xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
<<p style="text-decoration:none;letter-spacing:0in"
>10.<span style="xfa spacerun:yes"
>Â </span
>PROFILE OF FIRM'S EXPERIENCE<span style="xfa spacerun:yes"
>Â </span
<</p
<<p style="text-decoration:none;letter-spacing:0in"
>AND ANNUAL AVERAGE REVENUE FOR LAST 5 YEARS</p
<</body
<</exData
<</value
<<ui
<<textEdit
/></ui
<<para vAlign="middle" hAlign="center"
/><font size="9pt" typeface="Arial"
/><traversal
<<traverse ref="T272[0]"
/></traversal
<</draw
<<draw name="T39" x="118.004mm" y="102.237mm" w="58.289mm" minH="0.134in"
<<value
<<text
<b. Experience</text
<</value
<<ui
<<textEdit
/></ui
<<para vAlign="middle" hAlign="center"
/><font size="8pt" typeface="Arial"
/><traversal
<<traverse ref="Experience[0]"
/></traversal
<</draw
<<draw name="T41" x="176.626mm" y="99.49mm" w="23.4mm" h="8.68mm"
<<value
<<exData contentType="text/html"

```

```

<<body xmlns="http://www.w3.org/1999/xhtml"
xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/"
<<p
>c. Revenue Index Number<span style="xfa spacerun:yes"
>Â </span
<</p
<<p style="font style:italic"
>(see below)</p
<</body
<</exData
<</value
<<ui
<<textEdit
/></ui
<<para vAlign="middle" hAlign="center" lineHeight="8pt"
/><font size="8pt" typeface="Arial"
/><traversal
<<traverse ref="RevenueIndexNumber[0]"
/></traversal
<<?renderCache.bounds 66331 24605 0 0 0 0 0 0?><?renderCache.textRun 17 c. Revenue Index
0 2035 7418 0 0 0 "Arial" 0 0 8000 ISO 8859 1?><?renderCache.textRun 8 Number 0 18939
15418 0 0 0 "Arial" 0 0 8000 ISO 8859 1?><?renderCache.textRun 11 (see below) 0 12490
23442 0 0 0 "Arial" 0 1 8000 ISO 8859 1?></draw
<<draw name="T67" x="132.153mm" y="256.307mm" w="68.695mm" h="4.16mm"
<<value
<<exData contentType="text/html"
<<body xmlns="http://www.w3.org/1999/xhtml"
xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
<<p style="text decoration:none;letter spacing:0in"
>STANDARD FORM 330<span style="xfa spacerun:yes"
>Â </span
<<span style="font weight:normal"
>(REV. 8/2016)</span
> PAGE 6</p
<</body
<</exData
<</value
<<ui
<<textEdit
/></ui
<<para hAlign="right" vAlign="middle"
/><font weight="bold" size="9pt" typeface="Arial"
/></draw
<<draw name="T71" x="133.776mm" y="6.594mm" w="1.643986in" h="0.118in"
<<value
<<exData contentType="text/html"
<<body xmlns="http://www.w3.org/1999/xhtml"
xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
<<p style="letter spacing:0in"
>1.<span style="xfa spacerun:yes"
>Â </span
>SOLICITATION NUMBER<span style="xfa spacerun:yes"
>Â </span
<<span style="font style:italic"
>(If any)</span
<</p
<</body
<</exData
<</value
<<ui
<<textEdit
/></ui
<<font size="7pt" typeface="Arial"
/><traversal
<<traverse ref="SolicitationNumber[0]"
/></traversal
<<para vAlign="middle"
/></draw
<<draw name="T75" x="44.8mm" y="74.703mm" w="48.59mm" h="0.134in"
<<value
<<exData contentType="text/html"

```

```

<<body xmlns="http://www.w3.org/1999/xhtml"
xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
><p style="letter spacing:0in"
>8a.<span style="xfa spacerun:yes"
>Â </span
>FORMER FIRM NAME(S)<span style="xfa spacerun:yes"
>Â </span
><span style="font style:italic"
>(If any)</span
></p
></body
></exData
></value
><ui
><textEdit
/></ui
><para vAlign="middle"
/><font size="8pt" typeface="Arial"
/><traversal
><traverse ref="FormerNames[0]"
/></traversal
></draw
><draw name="T79" x="122.024mm" y="74.753mm" w="33.41mm" h="3.354mm"
><value
><text
>8b. YEAR ESTABLISHED</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle"
/><font size="8pt" typeface="Arial"
/><traversal
><traverse ref="YearEstablished[1]"
/></traversal
><?renderCache.bounds 94706 9507 0 0 0 0 0 0?><?renderCache.textRun 21 8b. YEAR
ESTABLISHED 0 0 7069 0 0 0 "Arial" 0 0 8000 ISO 8859 1?></draw
><draw name="T82" x="3.35mm" y="93.765mm" w="99.66mm" minH="0.152in"
><value
><text
>9. EMPLOYEES BY DISCIPLINE </text
></value
><ui
><textEdit
/></ui
><para vAlign="middle" hAlign="center"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T192[0]"
/></traversal
></draw
><draw name="T86" x="62.3mm" y="197.473mm" w="0.343in" minH="0.15in"
><value
><text
>Total</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle"
/><font weight="bold" size="9pt" typeface="Arial"
/><traversal
><traverse ref="TotalFirm[0]"
/></traversal
></draw
><draw name="T88" x="72.317mm" y="104.783mm" w="15.173mm" minH="0.118in"
><value
><text
>(1) FIRM</text
></value
><ui

```

```

><textEdit
/></ui
><para vAlign="middle" hAlign="center"
/><font size="7pt" typeface="Arial"
/><traversal
><traverse ref="Firm1[0]"
/></traversal
></draw
><draw name="T89" x="87.485mm" y="104.783mm" w="0.613in" minH="0.118in"
><value
><text
>(2) BRANCH</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle" hAlign="center"
/><font size="7pt" typeface="Arial"
/><traversal
><traverse ref="Branch1[0]"
/></traversal
></draw
><draw name="T141" x="74.848mm" y="208.766mm" w="0.211in" minH="0.152in"
><value
><text
> 1.</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T142[0]"
/></traversal
></draw
><draw name="T142" x="82.468mm" y="208.766mm" w="1.237in" minH="0.152in"
><value
><text
>Less than $100,000</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T143[0]"
/></traversal
></draw
><draw name="T143" x="74.848mm" y="212.728mm" w="0.211in" minH="0.152in"
><value
><text
> 2.</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T144[0]"
/></traversal
></draw
><draw name="T144" x="82.468mm" y="212.728mm" w="1.913in" minH="0.152in"
><value
><text
>$100,000 to less than $250,000</text
></value
><ui
><textEdit

```



```
/></ui>
<<para vAlign="middle"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T145[0]"
/></traversal
<</draw
<<draw name="T145" x="74.848mm" y="216.716mm" w="0.211in" minH="0.152in"
<<value
<<text
> 3.</text
<</value
<<ui
<<textEdit
/></ui
<<para vAlign="middle"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T146[0]"
/></traversal
<</draw
<<draw name="T146" x="82.468mm" y="216.716mm" w="1.991in" minH="0.152in"
<<value
<<text
>$250,000 to less than $500,000</text
<</value
<<ui
<<textEdit
/></ui
<<para vAlign="middle"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T147[0]"
/></traversal
<</draw
<<draw name="T147" x="74.848mm" y="220.704mm" w="0.211in" minH="0.152in"
<<value
<<text
> 4.</text
<</value
<<ui
<<textEdit
/></ui
<<para vAlign="middle"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T148[0]"
/></traversal
<</draw
<<draw name="T148" x="82.468mm" y="220.704mm" w="1.971in" minH="0.152in"
<<value
<<text
>$500,000 to less than $1 million</text
<</value
<<ui
<<textEdit
/></ui
<<para vAlign="middle"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T149[0]"
/></traversal
<</draw
<<draw name="T149" x="74.848mm" y="224.666mm" w="0.211in" minH="0.152in"
<<value
<<text
> 5.</text
<</value
<<ui
<<textEdit
/></ui
```

```

<<para vAlign="middle"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T150[0]"
/></traversal
></draw
><draw name="T150" x="82.468mm" y="224.666mm" w="1.951in" minH="0.152in"
><value
><text
>$1 million to less than $2 million</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T291[0]"
/></traversal
></draw
><draw name="T152" x="3.391mm" y="201.219mm" w="68.049mm" h="16.67mm"
><value
><exData contentType="text/html"
><body xmlns="http://www.w3.org/1999/xhtml"
xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
><p style="text-decoration:none;letter-spacing:0in"
>11.<span style="xfa-spacerun:yes"
>Â /span
>ANNUAL AVERAGE PROFESSIONAL SERVICES REVENUES OF FIRM</p
><p style="text-decoration:none;letter-spacing:0in"
>FOR LAST 3 YEARS</p
><p style="font-style:italic;text-decoration:none;letter-spacing:0in"
>(Insert revenue index number shown at right)</p
></body
></exData
></value
><ui
><textEdit
/></ui
><para vAlign="middle" hAlign="center"
/><font size="9pt" typeface="Arial"
/><traversal
><traverse ref="T170[0]"
/></traversal
></draw
><draw name="T161" x="133.776mm" y="57.9mm" w="2.280972in" h="0.118in"
><value
><exData contentType="text/html"
><body xmlns="http://www.w3.org/1999/xhtml"
xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
><p style="text-decoration:none;letter-spacing:0in"
>7.<span style="xfa-spacerun:yes"
>Â /span
>NAME OF FIRM<span style="xfa-spacerun:yes"
>Â /span
><span style="font-style:italic"
>(If Block 2a is a Branch Office)</span
></p
></body
></exData
></value
><ui
><textEdit
/></ui
><font size="7pt" typeface="Arial"
/><traversal
><traverse ref="NameofFirm[0]"
/></traversal
></draw
><draw name="T163" x="4.236mm" y="53.684mm" w="2.034in" minH="0.118in"
><value

```

```
><text
>6a. POINT OF CONTACT NAME AND TITLE</text
></value
><ui
><textEdit
/></ui
><font size="7pt" typeface="Arial"
/><traversal
><traverse ref="PointofContact[0]"
/></traversal
></draw
><draw name="T166" x="70.276mm" y="66.124mm" w="1.044in" minH="0.118in"
><value
><text
>6c. E MAIL ADDRESS</text
></value
><ui
><textEdit
/></ui
><font size="7pt" typeface="Arial"
/><traversal
><traverse ref="Email[0]"
/></traversal
><para vAlign="middle"
/></draw
><draw name="T168" x="156.195mm" y="74.703mm" w="43.592mm" minH="0.134in"
><value
><text
>8c. UNIQUE ENTITY IDENTIFIER</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle"
/><font size="8pt" typeface="Arial"
/><traversal
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>12.<span style="xfa spacerun:yes"
>Â </span
>AUTHORIZED REPRESENTATIVE<span style="xfa spacerun:yes"
>Â </span
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>The foregoing is a statement of facts.</p
<</body
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0 0 0 "Arial" 0 0 8000 ISO 8859 1?></draw
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4135 9516 0 0 0 "Arial" 0 0 8000 ISO 8859 1?><?renderCache.textRun 4 Code 0 10358 19116
0 0 0 "Arial" 0 0 8000 ISO 8859 1?></draw
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SERVICES REVENUE INDEX NUMBER 0 62224 9999 0 0 0 "Arial" 0 0 9000 ISO 8859 1?></draw
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> 7.</text
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> 8.</text
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>$50 million or greater</text
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0 0 7790 0 0 0 "Arial" 0 0 9000 ISO 8859 1?></draw
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>1. SOLICITATION NUMBER (If any)</toolTip
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>5. a. TYPE</toolTip
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>2. a. FIRM (OR BRANCH OFFICE) NAME</toolTip
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>2. c. CITY</toolTip
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>6. a. POINT OF CONTACT NAME AND TITLE</toolTip
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Profile Code. Line 1 of 22.</toolTip
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```

```
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Profile Code. Line 2 of 22.</toolTip
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>10. PROFILE OF FIRM'S EXPERIENCE &#xD;AND ANNUAL AVERAGE REVENUE FOR LAST 5 YEARS. a.
Profile Code. Line 3 of 22.</toolTip
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```
><toolTip
>10. PROFILE OF FIRM'S EXPERIENCE &#xD;AND ANNUAL AVERAGE REVENUE FOR LAST 5 YEARS. a.
Profile Code. Line 4 of 22.</toolTip
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/><corner thickness="0.1753mm" presence="hidden"
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><toolTip
>10. PROFILE OF FIRM'S EXPERIENCE &#xD;AND ANNUAL AVERAGE REVENUE FOR LAST 5 YEARS. a.
Profile Code. Line 5 of 22.</toolTip
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Profile Code. Line 6 of 22.</toolTip
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Firm11 + Firm12 + Firm13 + Firm14 + Firm15 + Firm16 + Firm17 + Firm18 + Firm19 + Firm20
+ Firm21)
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myRegex = /^[^0123456789.]+/g
if (myString != null){
  myNewString = myString.match(myRegex)
  if (myNewString != null){
    xfa.host.messageBox("Please enter 4 digit year!");
    myNewString = myString.replace(myRegex, "");
    this.rawValue = myNewString
  }
}
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>
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myRegEx = /^[^0123456789.]+/g
if (myString != null){
  myNewString = myString.match(myRegEx)
  if (myNewString != null){
    xfa.host.messageBox("Please enter 4 digit year!");
    myNewString = myString.replace(myRegEx,"")
    this.rawValue = myNewString
  }
}
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if (myString != null){
  myNewString = myString.match(myRegex)
  if (myNewString != null){
    xfa.host.messageBox("Please use only digits!");
    myNewString = myString.replace(myRegex,"")
    this.rawValue = myNewString
  }
}
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>myString = this.rawValue
myRegex = /^[^0123456789.]+/g
if (myString != null){
  myNewString = myString.match(myRegex)
  if (myNewString != null){
    xfa.host.messageBox("Please use only digits!");
    myNewString = myString.replace(myRegex,"")
    this.rawValue = myNewString
  }
}
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Revenue Index Number (see below)</toolTip
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>myString = this.rawValue
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if (myString != null){
  myNewString = myString.match(myRegex)
  if (myNewString != null){
    xfa.host.messageBox("Please use only digits!");
    myNewString = myString.replace(myRegex,"")
    this.rawValue = myNewString
  }
}
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>myString = this.rawValue
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  myNewString = myString.match(myRegex)
  if (myNewString != null){
    xfa.host.messageBox("Please use only digits!");
    myNewString = myString.replace(myRegex,"")
    this.rawValue = myNewString
  }
}
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<<script contentType="application/x javascript"
>myString = this.rawValue
myRegex = /^[^0123456789.]+/g
if (myString != null){
  myNewString = myString.match(myRegex)
  if (myNewString != null){
    xfa.host.messageBox("Please use only digits!");
    myNewString = myString.replace(myRegex,"")
    this.rawValue = myNewString
  }
}
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<<traversal

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Revenue Index Number (see below)</toolTip
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>myString = this.rawValue
myRegex = /^[^0123456789.]+/g
if (myString != null){
  myNewString = myString.match(myRegex)
  if (myNewString != null){
    xfa.host.messageBox("Please use only digits!");
    myNewString = myString.replace(myRegex,"")
    this.rawValue = myNewString
  }
}
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>myString = this.rawValue
myRegex = /^[^0123456789.]+/g
if (myString != null){
  myNewString = myString.match(myRegex)
  if (myNewString != null){
    xfa.host.messageBox("Please use only digits!");

```

```

    myNewString = myString.replace(myRegEx,"")
    this.rawValue = myNewString
}
}
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myRegEx = /^[^0123456789.]+/g
if (myString != null){
    myNewString = myString.match(myRegEx)
    if (myNewString != null){
        xfa.host.messageBox("Please use only digits!");
        myNewString = myString.replace(myRegEx,"")
        this.rawValue = myNewString
    }
}
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myRegExp = /^[^0123456789.]+/g
if (myString != null){
  myNewString = myString.match(myRegExp)
  if (myNewString != null){
    xfa.host.messageBox("Please use only digits!");
    myNewString = myString.replace(myRegExp,"")
    this.rawValue = myNewString
  }
}
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myRegExp = /^[^0123456789.]+/g
if (myString != null){
  myNewString = myString.match(myRegExp)
  if (myNewString != null){
    xfa.host.messageBox("Please use only digits!");
    myNewString = myString.replace(myRegExp,"")
    this.rawValue = myNewString
  }
}
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if (myString != null){
  myNewString = myString.match(myRegex)
  if (myNewString != null){
    xfa.host.messageBox("Please use only digits!");
    myNewString = myString.replace(myRegex,"")
    this.rawValue = myNewString
  }
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>myString = this.rawValue
myRegex = /^[^0123456789.]+/g
if (myString != null){
  myNewString = myString.match(myRegex)
  if (myNewString != null){
    xfa.host.messageBox("Please use only digits!");
    myNewString = myString.replace(myRegex,"")
    this.rawValue = myNewString
  }
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>myString = this.rawValue
myRegex = /^[^0123456789.]+/g
if (myString != null){
  myNewString = myString.match(myRegex)
  if (myNewString != null){
    xfa.host.messageBox("Please use only digits!");
    myNewString = myString.replace(myRegex,"")
    this.rawValue = myNewString
  }
}
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>myString = this.rawValue
myRegex = /^[^0123456789.]+/g
if (myString != null){
  myNewString = myString.match(myRegex)
  if (myNewString != null){
    xfa.host.messageBox("Please use only digits!");
    myNewString = myString.replace(myRegex,"")
    this.rawValue = myNewString
  }
}
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>myString = this.rawValue
myRegex = /^[^0123456789.]+/g
if (myString != null){
  myNewString = myString.match(myRegex)
  if (myNewString != null){
    xfa.host.messageBox("Please use only digits!");
    myNewString = myString.replace(myRegex,"")
    this.rawValue = myNewString
  }
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<</assist
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><script contentType="application/x javascript"
>myString = this.rawValue
myRegex = /^[^0123456789.]+/g
if (myString != null){
  myNewString = myString.match(myRegex)
  if (myNewString != null){
    xfa.host.messageBox("Please use only digits!");
    myNewString = myString.replace(myRegex,"")
    this.rawValue = myNewString
  }
}
}

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Revenue Index Number (see below)</toolTip
></assist
><event activity="exit" name="event__exit"
><script contentType="application/x javascript"
>myString = this.rawValue
myRegex = /^[^0123456789.]+/g
if (myString != null){
  myNewString = myString.match(myRegex)
  if (myNewString != null){
    xfa.host.messageBox("Please use only digits!");
    myNewString = myString.replace(myRegex,"");
    this.rawValue = myNewString
  }
}
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>10. PROFILE OF FIRM'S EXPERIENCE AND ANNUAL AVERAGE REVENUE FOR LAST 5 YEARS. c.
Revenue Index Number (see below)</toolTip
></assist
><event activity="exit" name="event__exit"
><script contentType="application/x javascript"
>myString = this.rawValue
myRegex = /^[^0123456789.]+/g
if (myString != null){

```

```

myNewString = myString.match(myRegEx)
if (myNewString != null){
  xfa.host.messageBox("Please use only digits!");
  myNewString = myString.replace(myRegEx,"");
  this.rawValue = myNewString
}
}
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Revenue Index Number (see below)</tooltip
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>myString = this.rawValue
myRegEx = /^[^0123456789.]+/g
if (myString != null){
  myNewString = myString.match(myRegEx)
  if (myNewString != null){
    xfa.host.messageBox("Please use only digits!");
    myNewString = myString.replace(myRegEx,"")
    this.rawValue = myNewString
  }
}
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>10. PROFILE OF FIRM'S EXPERIENCE AND ANNUAL AVERAGE REVENUE FOR LAST 5 YEARS. c.

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Revenue Index Number (see below)</toolTip
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><script contentType="application/x javascript"
>myString = this.rawValue
myRegex = /^[^0123456789.]+/g
if (myString != null){
  myNewString = myString.match(myRegex)
  if (myNewString != null){
    xfa.host.messageBox("Please use only digits!");
    myNewString = myString.replace(myRegex,"")
    this.rawValue = myNewString
  }
}
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Revenue Index Number (see below)</toolTip
></assist
><event activity="exit" name="event__exit"
><script contentType="application/x javascript"
>myString = this.rawValue
myRegex = /^[^0123456789.]+/g
if (myString != null){
  myNewString = myString.match(myRegex)
  if (myNewString != null){
    xfa.host.messageBox("Please use only digits!");
    myNewString = myString.replace(myRegex,"")
    this.rawValue = myNewString
  }
}
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Revenue Index Number (see below)</toolTip
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myRegEx = /^[^0123456789.]+/g
if (myString != null){
  myNewString = myString.match(myRegEx)
  if (myNewString != null){
    xfa.host.messageBox("Please use only digits!");
    myNewString = myString.replace(myRegEx,"");
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>myString = this.rawValue
myRegEx = /^[^0123456789.]+/g
if (myString != null){
  myNewString = myString.match(myRegEx)
  if (myNewString != null){
    xfa.host.messageBox("Please use only digits!");
    myNewString = myString.replace(myRegEx,"");
    this.rawValue = myNewString
  }
}
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>11. ANNUAL AVERAGE PROFESSIONAL SERVICES REVENUES OF FIRM FOR LAST 3 YEARS (Insert
revenue index number shown at right). a. Federal work</toolTip
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**Bogomolny, Michael (Federal)**

---

**From:** Bogomolny, Michael (Federal)  
**Sent:** Monday, February 26, 2018 4:39 PM  
**To:** Lynch, Charles (Federal)  
**Cc:** Graff, Mark (Federal); Nathanson, Stacey (Federal)  
**Subject:** RE: DOC NOAA 2017 001606; NRDC v. DOC, No. 18 cv 583 (S.D.N.Y.)  
**Attachments:** Draft Answer 2 21 18 mhg comments.docx; 01 complaint.pdf

Thanks, Chi (b)(5)

Sincerely,  
bogo

**From:** Charles Lynch - NOAA Federal [mailto:charles.lynch@noaa.gov]  
**Sent:** Monday, February 26, 2018 4:24 PM  
**To:** Nathanson, Stacey (Federal) <Stacey.Nathanson@noaa.gov>  
**Cc:** Bogomolny, Michael (Federal) <MBogomolny@doc.gov>; Almeida, John (Federal) <John.Almeida@noaa.gov>  
**Subject:** Re: DOC-NOAA-2017-001606; NRDC v. DOC, No. 18-cv-583 (S.D.N.Y.)

Sure, happy to help. I worked on the underlying FOIA.

On Mon, Feb 26, 2018 at 4:20 PM, Stacey Nathanson - NOAA Federal <[stacey.nathanson@noaa.gov](mailto:stacey.nathanson@noaa.gov)> wrote:

Hi Chip,

I hope you are doing well (b)(5)

Thanks!

*Stacey*

Stacey Nathanson  
Attorney-Advisor

NOAA Office of the General Counsel  
Fisheries and Protected Resources Section

Phone: [301-713-9673](tel:301-713-9673)

Email: [Stacey.Nathanson@noaa.gov](mailto:Stacey.Nathanson@noaa.gov)

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----- Forwarded message -----

From: **Amanda Patterson - NOAA Federal** <[amanda.patterson@noaa.gov](mailto:amanda.patterson@noaa.gov)>

Date: Mon, Feb 26, 2018 at 4:01 PM

Subject: Re: DOC-NOAA-2017-001606; NRDC v. DOC, No. 18-cv-583 (S.D.N.Y.)

To: Stacey Nathanson - NOAA Federal <[stacey.nathanson@noaa.gov](mailto:stacey.nathanson@noaa.gov)>

Hi Stacey,

(b)(5)

Best,

Amanda J. Patterson  
FOIA Coordinator  
National Marine Fisheries Service  
Greater Atlantic Region  
Gloucester, MA  
[978-281-9210](tel:978-281-9210)

On Mon, Feb 26, 2018 at 3:57 PM, Stacey Nathanson - NOAA Federal <[stacey.nathanson@noaa.gov](mailto:stacey.nathanson@noaa.gov)> wrote:

Hi Amanda!

Hope you are doing well (b)(5)

Thanks!

*Stacey*

Stacey Nathanson  
Attorney-Advisor  
NOAA Office of the General Counsel  
Fisheries and Protected Resources Section  
Phone: [301-713-9673](tel:301-713-9673)  
Email: [Stacey.Nathanson@noaa.gov](mailto:Stacey.Nathanson@noaa.gov)

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----- Forwarded message -----

**From:** Mark Graff - NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)>  
**Date:** Mon, Feb 26, 2018 at 3:46 PM  
**Subject:** Re: DOC-NOAA-2017-001606; NRDC v. DOC, No. 18-cv-583 (S.D.N.Y.)  
**To:** "Bogomolny, Michael (Federal)" <[MBogomolny@doc.gov](mailto:MBogomolny@doc.gov)>  
**Cc:** Stacey Nathanson - NOAA Federal <[stacey.nathanson@noaa.gov](mailto:stacey.nathanson@noaa.gov)>, John Almeida - NOAA Federal <[john.almeida@noaa.gov](mailto:john.almeida@noaa.gov)>

Hi Bogo--

(b)(5) [Redacted]

[Redacted] ?

Mark H. Graff  
FOIA Officer/Bureau Chief Privacy Officer (BCPO)  
National Oceanic and Atmospheric Administration  
[\(301\) 628-5658](tel:3016285658) (O)  
(b)(6) [Redacted] (C)

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On Mon, Feb 26, 2018 at 3:09 PM, Bogomolny, Michael (Federal) <[MBogomolny@doc.gov](mailto:MBogomolny@doc.gov)> wrote:

Mark,

(b)(5) [Redacted]

[Redacted]

[Redacted] Can you please take a look?

Thanks,  
bogo

---

**From:** Jude, Jennifer (USANYS) [mailto:[Jennifer.Jude@usdoj.gov](mailto:Jennifer.Jude@usdoj.gov)]  
**Sent:** Wednesday, February 21, 2018 7:07 PM  
**To:** Bogomolny, Michael (Federal) <[MBogomolny@doc.gov](mailto:MBogomolny@doc.gov)>  
**Subject:** RE: documents for NRDC v. DOC

Hi again,

Thanks for these files (b)(5)

[Redacted]

Thanks,  
Jen

---

**From:** Bogomolny, Michael (Federal) [<mailto:MBogomolny@doc.gov>]  
**Sent:** Wednesday, February 14, 2018 3:29 PM  
**To:** Jude, Jennifer (USANYS) <[JJude@usa.doj.gov](mailto:JJude@usa.doj.gov)>  
**Subject:** documents for NRDC v. DOC

Jennifer,

(b)(5)  
[Redacted]

[Redacted].

Sincerely,

bogo

-----  
**Michael Bogomolny**  
Acting Chief, Information Law Division  
[mbogomolny@doc.gov](mailto:mbogomolny@doc.gov) (202) 482-0703  
United States Department of Commerce  
Office of the General Counsel

--

Charles N. Lynch, Jr.  
NOAA Office of General Counsel  
Northeast Section  
55 Great Republic Drive  
Gloucester, MA 01930  
(978) 281-9342

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

NATURAL RESOURCES DEFENSE	)	
COUNCIL, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
UNITED STATES DEPARTMENT OF	)	18-cv-583
COMMERCE,	)	ECF Case
	)	
Defendant.	)	
	)	

---

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

**INTRODUCTION**

1. Defendant United States Department of Commerce (Commerce) has violated the Freedom of Information Act (FOIA), 5 U.S.C. § 552, by failing to fully disclose records relating to a July 2017 determination by the Secretary of Commerce that New Jersey had complied with its obligation to implement management measures aimed at conserving summer flounder. Plaintiff Natural Resources Defense Council (NRDC) requested these records from Commerce six months ago.

2. Commerce’s National Oceanic and Atmospheric Administration (NOAA), regional fishery management councils, and the interstate Atlantic States Marine Fisheries Commission (the Fisheries Commission or Commission) work together to conserve and manage various fish populations along the Atlantic coast. As part of these efforts, the Fisheries Commission adopts management plans to protect certain fish species against depletion. Under Federal law, the Commission

identifies Atlantic coastal states to be included in its various management plans and then works to ensure that those states implement and enforce the plans.

3. In June 2017, the Fisheries Commission determined that New Jersey was out of compliance with the Commission's management plan for summer flounder, a fish species that is currently subject to overfishing. In July 2017, contrary to the Commission's determination, the Secretary of Commerce found that the summer flounder management measures New Jersey had failed to implement were not necessary for the conservation of summer flounder. The Secretary's determination allowed New Jersey's recreational summer flounder fishing season to proceed.

4. On July 26, 2017, NRDC submitted a FOIA request to Commerce for documents related to the Secretary's finding that the summer flounder management plan measures New Jersey had failed to implement were unnecessary for conserving summer flounder.

5. In October and November, Commerce via NOAA (a component of Commerce) provided NRDC with two "interim" releases of responsive documents. These interim releases consisted solely of documents from NOAA's files, and nothing from other Commerce components or the Office of the Secretary.

6. After the most recent interim release, Commerce informed NRDC that there were no more responsive documents in NOAA's files. Commerce further informed NRDC that it was unable to provide an update regarding the status of its



search for additional responsive documents outside of NOAA, other than noting a “significant logjam” due to the volume of Commerce FOIA requests.

7. Although Commerce has had six months to search for and produce responsive documents, it has not provided NRDC with any records from components of Commerce other than NOAA. Nor has Commerce provided NRDC with a final determination as to whether it will comply with NRDC’s request. The statutory deadline for such a final determination was, at the latest, September 11, 2017, with the final production of documents due promptly thereafter.

8. It is important that NRDC receives these documents in a timely manner. The Commission has already begun setting management measures for the 2018 summer flounder recreational fishing season, and the Commission and individual states will make key management decisions over the next four months prior to the opening of the season in May 2018. Particularly if New Jersey or other states choose not to comply with the relevant management plan for the 2018 fishing season, the requested documents could provide critical information to NRDC and the public in making advocacy decisions.

9. NRDC seeks a declaration that Commerce has violated FOIA by failing to provide a final determination as to whether it will comply with NRDC’s request, and by failing to produce all non-exempt responsive records, by the statutory deadline. NRDC seeks an injunction ordering Commerce to disclose at no cost and without further delay all non-exempt, responsive records to NRDC.

## THE PARTIES

10. Plaintiff NRDC is a national, non-profit environmental and public health membership organization with hundreds of thousands of members nationwide. NRDC engages in research, advocacy, public education, and litigation related to protecting public health and the environment. The organization's work includes efforts to end overfishing and promote the long-term sustainability of fishing practices in the United States.

11. Defendant Commerce is a federal agency within the meaning of FOIA, 5 U.S.C. § 551(1), and has possession or control of the records that NRDC seeks.

## JURISDICTION AND VENUE

12. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

13. Venue is proper in this court because plaintiff NRDC resides and has its principal place of business in this judicial district. 5 U.S.C. § 552(a)(4)(B).

## STATUTORY AND REGULATORY FRAMEWORK

14. FOIA requires that federal agencies release, upon request, information to the public, 5 U.S.C. § 552(a)(3), unless one of nine statutory exemptions applies, *id.* § 552(b).

15. Within 20 business days of an agency's receipt of a FOIA request, the agency must "determine . . . whether to comply with such request," *id.* § 552(a)(6)(A)(i); *see also* 15 C.F.R. § 4.6(b) (Commerce FOIA regulation), and "immediately notify the person making such request of . . . such determination and

the reasons therefor,” 5 U.S.C. § 552(a)(6)(A)(i). If the agency determines that it will comply with the request, it must “promptly” release responsive, non-exempt records to the requester. *Id.* § 552(a)(6)(C)(i); *see also* 15 C.F.R. § 4.7(c).

16. In “unusual circumstances,” an agency may extend the time limit for responding to a FOIA request by up to 10 business days. 5 U.S.C. § 552(a)(6)(B)(i).

17. If the agency fails to comply with the statutory time limits, the requester is deemed to have exhausted her administrative remedies and may immediately file suit “to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld.” 5 U.S.C. §§ 552(a)(4)(B), 552(a)(6)(C)(i).

#### **FACTUAL BACKGROUND**

18. Summer flounder is an important fish for commercial and recreational fishing industries along the Mid-Atlantic coast, and is found in waters from Nova Scotia, Canada, to the east coast of Florida. Despite conservation efforts, the summer flounder population is below target levels and is currently subject to overfishing.

19. Summer flounder and the fishing of summer flounder collectively known as the summer flounder fishery are jointly managed by NOAA (a component of Commerce), the Mid-Atlantic Fishery Management Council, and the Fisheries Commission. Together, these entities seek to conserve summer flounder and prevent depletion of the species.

20. Under the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act), 16 U.S.C. §§ 5101-5108, the Fisheries Commission is tasked with developing management plans to conserve summer flounder (as well as other fish species in the Atlantic coastal region), *see id.* § 5104(a). The Atlantic Coastal Act provides that, for each management plan, the Commission must identify the states that are required to implement and enforce the plan. *Id.* § 5104(a)(1). Under some management plans, the Commission allows states to implement their own management measures, so long as the state's measures achieve the same level of conservation as the Commission's plan.

21. If the Fisheries Commission finds that a state has failed to implement or enforce measures in compliance with the Commission's management plan for a particular fish species, the Atlantic Coastal Act requires the Commission to make a formal non-compliance determination. *Id.* § 5105(a). This determination is subject to review by the Secretary of Commerce, who makes an independent compliance determination. *Id.* § 5106(a)(1). If the Secretary agrees that the state has failed to implement and enforce the measures contained in the management plan, and also that such measures are "necessary for the conservation of the fishery," the Secretary must declare a moratorium on fishing that species in the waters of the non-complying state. *Id.* § 5106(a), (c)(1).

22. In February 2017, in response to new science indicating the declining population status of summer flounder, the Fisheries Commission tightened measures in its summer flounder management plan applicable to recreational

fishing. These stricter measures included increased minimum size requirements and a reduction in the maximum number of summer flounder allowed to be caught and kept by any one person.

23. State officials from New Jersey—one of several states required to implement and enforce the Commission’s summer flounder management plan—vocally opposed these stricter measures. Soon after the Fisheries Commission voted on the new restrictions, the New Jersey Department of Environmental Protection Commissioner wrote a letter to the Secretary of Commerce, asking the Secretary to stop them from going into effect, claiming the restrictions would lead to the “destruction of” New Jersey’s recreational summer flounder industry.

24. New Jersey ultimately proposed its own summer flounder recreational management measures, instead of implementing the new measures adopted by the Commission. Although the Commission’s summer flounder management plan allowed New Jersey to do so if the measures would achieve the same level of conservation as the Commission’s plan, after reviewing the measures proposed by New Jersey, the Commission found that the measures would not sufficiently protect summer flounder and were therefore inconsistent with the Commission’s plan.

25. New Jersey nonetheless implemented its own measures, prompting a formal non-compliance determination by the Fisheries Commission on June 1, 2017.

26. In July 2017, for the first time in the twenty-four-year history of the Atlantic Coastal Act, the Secretary of Commerce made a finding contrary to the Commission’s non-compliance determination, allowing New Jersey’s recreational

summer flounder season to proceed. Specifically, the Secretary found that the measures New Jersey failed to implement were “not necessary for the conservation of summer flounder.” 82 Fed. Reg. 33,481 (July 20, 2017). The notice announcing the Secretary’s compliance determination was brief and devoid of any substantive explanation. *See id.*

27. On July 26, 2017, NRDC served a FOIA request on Commerce, seeking records supporting, explaining, or otherwise relating to the Secretary’s finding that the summer flounder management measures New Jersey failed to implement were not necessary for the conservation of summer flounder. NRDC also requested a fee waiver.

28. NRDC received an email notification indicating that the request would be processed by NOAA, a component of Commerce. NRDC also received a letter from NOAA on August 4, 2017, acknowledging receipt of the request and stating that the agency was invoking the statutory ten-day extension applicable in “unusual circumstances.” In its letter, NOAA stated that it anticipated completing NRDC’s request by September 7, 2017.

29. On August 23, NRDC received a letter from NOAA recommending that NRDC narrow the scope of its request. After a phone call with NRDC on August 24 and an additional email from NRDC on August 25, NOAA agreed to move forward with the request. Around the same time, Commerce granted NRDC’s fee waiver request.

30. NOAA provided NRDC with two “interim releases” of responsive documents in October and November, but did not provide a final date for Commerce’s completion of NRDC’s request. The interim releases consisted solely of documents from NOAA’s files, and a NOAA representative confirmed that NOAA itself has no other responsive documents. NOAA further informed NRDC that it was unable to provide more information regarding the status of Commerce’s search for additional responsive documents, other than noting a “significant logjam” due to the volume of Commerce FOIA requests.

31. It has been six months since NRDC served its FOIA request on Commerce, and more than four months since the statutory deadline passed, yet Commerce has failed to provide NRDC with a final response to its request.

#### **CLAIM FOR RELIEF**

32. Plaintiff incorporates by reference all preceding paragraphs.

33. NRDC has a statutory right under FOIA to obtain without further delay all records responsive to its request that are not exempt from disclosure.

34. Commerce violated its duty under FOIA, 5 U.S.C. § 552(a), to release by the statutory deadline all non-exempt, responsive records to NRDC.

#### **REQUEST FOR RELIEF**

Plaintiff respectfully requests that this Court enter judgment against Commerce as follows:

A. Declaring that Commerce has violated FOIA by failing to produce all non-exempt records responsive to NRDC’s FOIA request by the statutory deadline;

- B. Ordering that Commerce disclose the remaining requested records to NRDC at no cost and without further delay;
- C. Ordering that Commerce produce an index identifying any documents or parts thereof that it withholds and the basis for the withholdings, in the event Commerce determines that certain responsive records are exempt from disclosure;
- D. Retaining jurisdiction over this case to rule on any challenged assertions by Commerce that certain responsive records are exempt from disclosure;
- E. Awarding NRDC its costs and reasonable attorneys' fees; and
- F. Granting such other relief that the Court considers just and proper.

Respectfully submitted,

/s/ Catherine Marlantes Rahm  
Catherine Marlantes Rahm  
Natural Resources Defense Council  
40 West 20th Street, 11th Floor  
New York, NY 10011  
(212) 727-4628  
crahm@nrdc.org

*Counsel for Plaintiff*

Dated: January 23, 2018



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## Robert Swisher - NOAA Federal

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**From:** Robert Swisher NOAA Federal  
**Sent:** Monday, February 26, 2018 3:34 PM  
**To:** Mark Graff NOAA Affiliate; Lola Stith NOAA Affiliate  
**Subject:** Fwd: Freedom of Information Act Appeal DOC NOAA 2018 000571  
**Attachments:** FAL DOC NOAA 2018 000571.pdf; FOIA Request NOAA Coastal Geospatial.docx; SF330.pdf

FYA...

Forwarded message

From: **John Palatiello** <[john@jmpa.us](mailto:john@jmpa.us)>  
Date: Mon, Feb 26, 2018 at 2:40 PM  
Subject: Freedom of Information Act Appeal DOC NOAA 2018 000571  
To: [FOIAAppeals@doc.gov](mailto:FOIAAppeals@doc.gov)  
Cc: [shem.s.yusuf@noaa.gov](mailto:shem.s.yusuf@noaa.gov), [robert.swisher@noaa.gov](mailto:robert.swisher@noaa.gov)

Assistant General Counsel for Litigation, Employment, and Oversight  
U.S. Department of Commerce  
Office of General Counsel  
Room 5875  
14th and Constitution Avenue, N.W.  
Washington, D.C. 20230

Re: Freedom of Information Act Appeal DOC NOAA 2018 000571

Dear Sir or Madam:

This is to appeal the determination of my Freedom of Information Act request. My original request, and the NOAA determination, are attached.

There is an error of fact in this determination. In its determination letter, the following is stated: "Please note that NOAA does not keep track of sub-contractors, only Prime contractors."

1. In Solicitation NCNP0000-15-00223, NOAA requested that competing firms submit a Standard Form 330. Item C of SF 330 (copy attached) requires the prime contractor to provide information on subcontractors. Therefore, NOAA has information on subcontractors. I am requesting the SF 330 of each of the prime contractors, which included their subcontractor data.
2. Solicitation NCNP0000-15-00223 was conducted pursuant to part 36.6 of the Federal Acquisition Regulation (FAR). Section 36.606 of the FAR includes the following: "(e) Because selection of firms is based upon qualifications, the extent of any subcontracting is an important negotiation topic. The clause prescribed at [44.204\(b\)](#), Subcontractors and Outside Associates and Consultants (Architect-Engineer Services) (see [52.244-4](#)), limits a firm's subcontracting to firms agreed upon during negotiations.
3. The FAR also provides: "3. (b) The contracting officer may insert the clause at [52.244-4](#), Subcontracts and Outside Associates and Consultants (Architect-Engineer Services), in architect-engineer contracts.



4. The FAR also provides: "52.244-4 – Subcontractors and Outside Associates and Consultants (Architect-Engineer Services).

As prescribed in [44.204\(b\)](#), insert the following clause:

**Subcontractors and Outside Associates and Consultants (Architect-Engineer Services)(Aug 1998)**

Any subcontractors and outside associates or consultants required by the Contractor in connection with the services covered by the contract will be limited to individuals or firms that were specifically identified and agreed to during negotiations. The Contractor shall obtain the Contracting Officer's written consent before making any substitution for these subcontractors, associates, or consultants."

Therefore, NOAA has information on subcontractors in each prime contractor's original SF 330, as well as and substitutions approved by the Contracting Officer. We hereby appeal NOAA's determinate and request that information.

Sincerely,

John M. Palatiello, President  
John M. Palatiello & Associates, Inc.  
1856 Old Reston Avenue, Suite 205  
Reston, VA 20190  
[\(703\) 787 6665](tel:(703)787-6665)  
[www.jmpa.us](http://www.jmpa.us)

Rob Swisher  
Director, Governance and Portfolio Division  
[NOAA OCIO](#)  
W 301 628 5755

(b)(6)



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

February 13, 2018

Mr. John M. Palatiello  
John M. Palatiello & Associates, Inc.  
1856 Old Reston Avenue  
Suite 205  
Reston, VA 20190

**Re: FOIA Request DOC-NOAA-2018-000571**

Dear Mr. Palatiello:

This letter is in response to your Freedom of Information Act (FOIA) request which was received by our office on 01/16/2018, in which you requested:

*A copy of the following documents, or documents containing the following information, be provided to me: Any documents that identify the prime ( Dewberry, Fugro Geospatial, Quantum Spatial, Tetra Tech, Woolpert) contractors and subcontractors (all members of the teams in support of the prime contractors) to the NOAA Office for Coastal Management in Charleston, South Carolina (with contracting officer services provided by NOAA's Eastern Acquisition Division in Norfolk, Virginia), under the Coastal Geospatial Services Contract Vehicle, including but not limited contracts awarded pursuant to Solicitation Number: NCNP0000 15 00223 and/or awarded pursuant to Contract Award Number: EA 133C 16 CQ 0042 0046. Specifically, I am requesting documents to identify the firm, primary individual point(s) of contact, address, telephone and email for each prime and subcontractor on these contracts known to NOAA.*

You can retrieve these public records via the [www.sam.gov](http://www.sam.gov) website. You should conduct a search for the awardee names (ie., Dewberry, Fugro Geospatial, Quantum Spatial, Tetra Tech, Woolpert) as listed in your request.

- Type in the business entity in the Quick Search field and click Search
- Once the result screen appears, click the View Details button for the business entity you want
- On the Entity Dashboard screen, click the POC selection located on the left side of the screen
- Scroll down to Mandatory Points of Contact section to see the list of primary contacts for the business entity

Under the Mandatory Points of Contact section, you will find the primary contacts listed for the business entity including their full name, phone number(s) and address. Please note that NOAA does not keep track of subcontractors, only Prime contractors.

Although this is not a denial of your FOIA request you may appeal this determination. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must be received within 90 calendar days of the date of this response letter at the following address:

Assistant General Counsel for Litigation, Employment, and Oversight  
U.S. Department of Commerce  
Office of General Counsel  
Room 5875  
14th and Constitution Avenue, N.W.

Washington, D.C. 20230

An appeal may also be sent by e-mail to [FOIAAppeals@doc.gov](mailto:FOIAAppeals@doc.gov), or by FOIAonline at <https://foiaonline.regulations.gov/foia/action/public/home#>.

For your appeal to be complete, it must include the following items:

- a copy of the original request,
- our response to your request,
- a statement explaining why the withheld records should be made available, and why the denial of the records was in error.
- “Freedom of Information Act Appeal” must appear on your appeal letter. It should also be written on your envelope, or e-mail subject line.

FOIA appeals posted to the e-mail box, FOIAonline, or Office after normal business hours will be deemed received on the next business day. If the 90th calendar day for submitting an appeal falls on a Saturday, Sunday or legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely.

FOIA grants requesters the right to challenge an agency's final action in federal court. Before doing so, an adjudication of an administrative appeal is ordinarily required.

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

Office of Government Information Services  
National Archives and Records Administration  
Room 2510  
8601 Adelphi Road  
College Park, MD 20740-6001

Email: [ogis@nara.gov](mailto:ogis@nara.gov)

Phone: 301-837-1996

Fax: 301-837-0348

Toll-free: 1-877-684-6448

If you have questions regarding this correspondence, please contact Shem Yusuf at [shem.s.yusuf@noaa.gov](mailto:shem.s.yusuf@noaa.gov) or the NOAA FOIA Public Liaison Robert Swisher at (301) 628-5755.

Sincerely,



Lola Stith  
NOAA FOIA Office

12/13/17

to nkolika.ndubisi, nosfoia  
Nkolika (Nikki) Ndubisi  
FOIA Liaison Officer  
National Ocean Service (NOS)  
1305 East West Highway  
Silver Spring, MD 20910

Re: Freedom of Information Act Request

Dear Sir or Madam:

This is a request under the Freedom of Information Act.

I request that a copy of the following documents, or documents containing the following information, be provided to me:

Any documents that identify the prime ( Dewberry, Fugro Geospatial, Quantum Spatial, Tetra Tech, Woolpert) contractors and subcontractors (all members of the teams in support of the prime contractors) to the NOAA Office for Coastal Management in Charleston, South Carolina (with contracting officer services provided by NOAA's Eastern Acquisition Division in Norfolk, Virginia), under the Coastal Geospatial Services Contract Vehicle, including but not limited contracts awarded pursuant to Solicitation Number: NCNP0000-15-00223 and/or awarded pursuant to Contract Award Number: EA-133C-16-CQ-0042-0046. Specifically, I am requesting documents to identify the firm, primary individual point(s) of contact, address, telephone and email for each prime and subcontractor on these contracts known to NOAA.

In order to help to determine my status to assess fees, you should know that I am a manager of nonprofit associations organized under section 501(c)(6) of the Internal Revenue Code. As such, I am affiliated with nonprofit scientific, professional and educational institutions, and this request is made for a scholarly or scientific purpose. I request a waiver of all fees for this request. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government. If this waiver is denied, I am willing to pay fees for this request up to a maximum of \$50. If you estimate that the fees will exceed this limit, please inform me first.

Thank you for your consideration of this request. Please do not hesitate to contact me if you have any questions. Please also provide a prompt acknowledgement of receipt of this request.

Sincerely,

John M. Palatiello, President  
John M. Palatiello & Associates, Inc.  
1856 Old Reston Avenue, Suite 205  
Reston, VA 20190  
(703) 787-6665  
[www.jmpa.us](http://www.jmpa.us)

# ARCHITECT-ENGINEER QUALIFICATIONS

OMB Control Number: 9000-0157  
Expiration Date: 12/31/2020

Paperwork Reduction Act Statement - This information collection meets the requirements of 44 USC § 3507, as amended by section 2 of the Paperwork Reduction Act of 1995. You do not need to answer these questions unless we display a valid Office of Management and Budget (OMB) control number. The OMB control number for this collection is 9000-0157. We estimate that it will take 29 hours (25 hours for part 1 and 4 hours for Part 2) to read the instructions, gather the facts, and answer the questions. Send only comments relating to our time estimate, including suggestions for reducing this burden, or any other aspects of this collection of information to: General Services Administration, Regulatory Secretariat Division (M1V1CB), 1800 F Street, NW, Washington, DC 20405.

## PURPOSE

Federal agencies use this form to obtain information from architect-engineer (A-E) firms about their professional qualifications. Federal agencies select firms for A-E contracts on the basis of professional qualifications as required by 40 U.S.C. chapter 11, Selection of Architects Engineers, and Part 36 of the Federal Acquisition Regulation (FAR).

The Selection of Architects and Engineers statute requires the public announcement of requirements for A-E services (with some exceptions provided by other statutes), and the selection of at least three of the most highly qualified firms based on demonstrated competence and professional qualifications according to specific criteria published in the announcement. The Act then requires the negotiation of a contract at a fair and reasonable price starting first with the most highly qualified firm.

The information used to evaluate firms is from this form and other sources, including performance evaluations, any additional data requested by the agency, and interviews with the most highly qualified firms and their references.

## GENERAL INSTRUCTIONS

Part I presents the qualifications for a specific contract.

Part II presents the general qualifications of a firm or a specific branch office of a firm. Part II has two uses:

1. An A-E firm may submit Part II to the appropriate central, regional or local office of each Federal agency to be kept on file. A public announcement is not required for certain contracts, and agencies may use Part II as a basis for selecting at least three of the most highly qualified firms for discussions prior to requesting submission of Part I. Firms are encouraged to update Part II on file with agency offices, as appropriate, according to FAR Part 36. If a firm has branch offices, submit a separate Part II for each branch office seeking work.

2. Prepare a separate Part II for each firm that will be part of the team proposed for a specific contract and submitted with Part I. If a firm has branch offices, submit a separate Part II for each branch office that has a key role on the team.

## INDIVIDUAL AGENCY INSTRUCTIONS

Individual agencies may supplement these instructions. For example, they may limit the number of projects or number of pages submitted in Part I in response to a public announcement for a particular project. Carefully comply with any agency instructions when preparing and submitting this form. Be as concise as possible and provide only the information requested by the agency.

## DEFINITIONS

**Architect-Engineer Services:** Defined in FAR 2.101.

**Branch Office:** A geographically distinct place of business or subsidiary office of a firm that has a key role on the team.

**Discipline:** Primary technical capabilities of key personnel, as evidenced by academic degree, professional registration, certification, and/or extensive experience.

**Firm:** Defined in FAR 36.102.

**Key Personnel:** Individuals who will have major contract responsibilities and/or provide unusual or unique expertise.

## SPECIFIC INSTRUCTIONS

### Part I - Contract-Specific Qualifications

#### Section A. Contract Information.

1. Title and Location. Enter the title and location of the contract for which this form is being submitted, exactly as shown in the public announcement or agency request.

2. Public Notice Date. Enter the posted date of the agency's notice on the Federal Business Opportunity website (FedBizOpps), other form of public announcement or agency request for this contract.

3. Solicitation or Project Number. Enter the agency's solicitation number and/or project number, if applicable, exactly as shown in the public announcement or agency request for this contract.

#### Section B. Architect-Engineer Point of Contact.

4-8. Name, Title, Name of Firm, Telephone Number, Fax (Facsimile) Number and E-mail (Electronic Mail) Address. Provide information for a representative of the prime contractor or joint venture that the agency can contact for additional information.

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Section C. Proposed Team.

9-11. Firm Name, Address, and Role in This Contract. Provide the contractual relationship, name, full mailing address, and a brief description of the role of each firm that will be involved in performance of this contract. List the prime contractor or joint venture partners first. If a firm has branch offices, indicate each individual branch office that will have a key role on the team. The named subcontractors and outside associates or consultants must be used, and any change must be approved by the contracting officer. (See FAR Part 52 Clause "Subcontractors and Outside Associates and Consultants (Architect-Engineer Services)"). Attach an additional sheet in the same format as Section C if needed.

Section D. Organizational Chart of Proposed Team.

As an attachment after Section C, present an organizational chart of the proposed team showing the names and roles of all key personnel listed in Section E and the firm they are associated with as listed in Section C.

Section E. Resumes of Key Personnel Proposed for this Contract.

Complete this section for each key person who will participate in this contract. Group by firm, with personnel of the prime contractor or joint venture partner firms first. The following blocks must be completed for each resume:

12. Name. Self-explanatory.

13. Role in this contract. Self-explanatory.

14. Years Experience. Total years of relevant experience (block 14a), and years of relevant experience with current firm, but not necessarily the same branch office (block 14b).

15. Firm Name and Location. Name, city and state of the firm where the person currently works, which must correspond with one of the firms (or branch office of a firm, if appropriate) listed in Section C.

16. Education. Provide information on the highest relevant academic degree(s) received. Indicate the area(s) of specialization for each degree.

17. Current Professional Registration. Provide information on current relevant professional registration(s) in a State or possession of the United States, Puerto Rico, or the District of Columbia according to FAR Part 36.

18. Other Professional Qualifications. Provide information on any other professional qualifications relating to this contract, such as education, professional registration, publications, organizational memberships, certifications, training, awards, and foreign language capabilities.

19. Relevant Projects. Provide information on up to five projects in which the person had a significant role that demonstrates the person's capability relevant to her/his proposed role in this contract. These projects do not necessarily have to be any of the projects presented in Section F for the project team if the person was not involved in any of those projects or the person worked on other projects that were more relevant than the team projects in Section F. Use the check box provided to indicate if the project was performed with any office of the current firm. If any of the professional services or construction projects are not complete, leave Year Completed blank and indicate the status in Brief Description and Specific Role (block (3)).

Section F. Example Projects Which Best Illustrate Proposed Team's Qualifications for this Contract.

Select projects where multiple team members worked together, if possible, that demonstrate the team's capability to perform work similar to that required for this contract. Complete one Section F for each project. Present ten projects, unless otherwise specified by the agency. Complete the following blocks for each project:

20. Example Project Key Number. Start with "1" for the first project and number consecutively.

21. Title and Location. Title and location of project or contract. For an indefinite delivery contract, the location is the geographic scope of the contract.

22. Year Completed. Enter the year completed of the professional services (such as planning, engineering study, design, or surveying), and/or the year completed of construction, if applicable. If any of the professional services or the construction projects are not complete, leave Year Completed blank and indicate the status in Brief Description of Project and Relevance to this Contract (block 24).

23a. Project Owner. Project owner or user, such as a government agency or installation, an institution, a corporation or private individual.

23b. Point of Contact Name. Provide name of a person associated with the project owner or the organization which contracted for the professional services, who is very familiar with the project and the firm's (or firms') performance.

23c. Point of Contact Telephone Number. Self-explanatory.

24. Brief Description of Project and Relevance to this Contract. Indicate scope, size, cost, principal elements and special features of the project. Discuss the relevance of the example project to this contract. Enter any other information requested by the agency for each example project.

25. Firms from Section C Involved with this Project. Indicate which firms (or branch offices, if appropriate) on the project team were involved in the example project, and their roles. List in the same order as Section C.

**Section G. Key Personnel Participation in Example Projects.**

This matrix is intended to graphically depict which key personnel identified in Section E worked on the example projects listed in Section F. Complete the following blocks (see example below).

26. and 27. Names of Key Personnel and Role in this Contract. List the names of the key personnel and their proposed roles in this contract in the same order as they appear in Section E.

28. Example Projects Listed in Section F. In the column under each project key number (see block 29) and for each key person, place an "X" under the project key number for participation in the same or similar role.

29. Example Projects Key. List the key numbers and titles of the example projects in the same order as they appear in Section F.

**Section H. Additional Information.**

30. Use this section to provide additional information specifically requested by the agency or to address selection criteria that are not covered by the information provided in Sections A-G.

**Section I. Authorized Representative.**

31. and 32. Signature of Authorized Representative and Date. An authorized representative of a joint venture or the prime contractor must sign and date the completed form. Signing attests that the information provided is current and factual, and that all firms on the proposed team agree to work on the project. Joint ventures selected for negotiations must make available a statement of participation by a principal of each member of the joint venture.

33. Name and Title. Self-explanatory.

**SAMPLE ENTRIES FOR SECTION G (MATRIX)**

26. NAMES OF KEY PERSONNEL (From Section E, Block 12)	27. ROLE IN THIS CONTRACT (From Section E, Block 13)	28. EXAMPLE PROJECTS LISTED IN SECTION F (Fill in "Example Projects Key" section below first, before completing table. Place "X" under project key number for participation in same or similar role.)									
		1	2	3	4	5	6	7	8	9	10
Jane A. Smith	Chief Architect	X		X							
Joseph B. Williams	Chief Mechanical Engineer	X	X	X	X						
Tara C. Donovan	Chief Electrical Engineer	X	X		X						

**29. EXAMPLE PROJECTS KEY**

NUMBER	TITLE OF EXAMPLE PROJECT (From Section F)	NUMBER	TITLE OF EXAMPLE PROJECT (From Section F)
1	Federal Courthouse, Denver, CO	6	XYZ Corporation Headquarters, Boston, MA
2	Justin J. Wilson Federal Building, Baton Rouge, LA	7	Founder's Museum, Newport, RI

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## Part II - General Qualifications

See the "**General Instructions**" on page 1 for firms with branch offices. Prepare Part II for the specific branch office seeking work if the firm has branch offices.

1. Solicitation Number. If Part II is submitted for a specific contract, insert the agency's solicitation number and/or project number, if applicable, exactly as shown in the public announcement or agency request.

2a-2e. Firm (or Branch Office) Name and Address. Self-explanatory.

3. Year Established. Enter the year the firm (or branch office, if appropriate) was established under the current name.

4. Unique Entity Identifier. Insert the unique entity identifier issued by the entity designated at SAM. See FAR part 4.6.

5. Ownership.

a. Type. Enter the type of ownership or legal structure of the firm (sole proprietor, partnership, corporation, joint venture, etc.).

b. Small Business Status. Refer to the North American Industry Classification System (NAICS) code in the public announcement, and indicate if the firm is a small business according to the current size standard for that NAICS code (for example, Engineering Services (part of NAICS 541330), Architectural Services (NAICS 541310), Surveying and Mapping Services (NAICS 541370)). The small business categories and the internet website for the NAICS codes appear in FAR part 19. Contact the requesting agency for any questions. Contact your local U.S. Small Business Administration office for any questions regarding Business Status.

6a-6c. Point of Contact. Provide this information for a representative of the firm that the agency can contact for additional information. The representative must be empowered to speak on contractual and policy matters.

7. Name of Firm. Enter the name of the firm if Part II is prepared for a branch office.

8a-8c. Former Firm Names. Indicate any other previous names for the firm (or branch office) during the last six years. Insert the year that this corporate name change was effective and the associated unique entity identifier. This information is used to review past performance on Federal contracts.

9. Employees by Discipline. Use the relevant disciplines and associated function codes shown at the end of these instructions and list in the same numerical order. After the listed disciplines, write in any additional disciplines and leave the function code blank. List no more than 20 disciplines. Group remaining employees under "Other Employees" in column b. Each person can be counted only once according to his/her primary function. If Part II is prepared for a firm (including all branch offices), enter the number of employees by disciplines in column c(1). If Part II is prepared for a branch office, enter the number of employees by discipline in column c(2) and for the firm in column c(1).

10. Profile of Firm's Experience and Annual Average Revenue for Last 5 Years. Complete this block for the firm or branch office for which this Part II is prepared. Enter the experience categories which most accurately reflect the firm's technical capabilities and project experience. Use the relevant experience categories and associated profile codes shown at the end of these instructions, and list in the same numerical order. After the listed experience categories, write in any unlisted relevant project experience categories and leave the profile codes blank. For each type of experience, enter the appropriate revenue index number to reflect the professional services revenues received annually (averaged over the last 5 years) by the firm or branch office for performing that type of work. A particular project may be identified with one experience category or it may be broken into components, as best reflects the capabilities and types of work performed by the firm. However, do not double count the revenues received on a particular project.

11. Annual Average Professional Services Revenues of Firm for Last 3 Years. Complete this block for the firm or branch office for which this Part II is prepared. Enter the appropriate revenue index numbers to reflect the professional services revenues received annually (averaged over the last 3 years) by the firm or branch office. Indicate Federal work (performed directly for the Federal Government, either as the prime contractor or subcontractor), non-Federal work (all other domestic and foreign work, including Federally-assisted projects), and the total. If the firm has been in existence for less than 3 years, see the definition for "Annual Receipts" under FAR 19.101.

12. Authorized Representative. An authorized representative of the firm or branch office must sign and date the completed form. Signing attests that the information provided is current and factual. Provide the name and title of the authorized representative who signed the form.



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List of Disciplines (*Function Codes*)

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<b>Code</b>	<b>Description</b>	<b>Code</b>	<b>Description</b>
01	Acoustical Engineer	32	Hydraulic Engineer
02	Administrative	33	Hydrographic Surveyor
03	Aerial Photographer	34	Hydrologist
04	Aeronautical Engineer	35	Industrial Engineer
05	Archeologist	36	Industrial Hygienist
06	Architect	37	Interior Designer
07	Biologist	38	Land Surveyor
08	CADD Technician	39	Landscape Architect
09	Cartographer	40	Materials Engineer
10	Chemical Engineer	41	Materials Handling Engineer
11	Chemist	42	Mechanical Engineer
12	Civil Engineer	43	Mining Engineer
13	Communications Engineer	44	Oceanographer
14	Computer Programmer	45	Photo Interpreter
15	Construction Inspector	46	Photogrammetrist
16	Construction Manager	47	Planner: Urban/Regional
17	Corrosion Engineer	48	Project Manager
18	Cost Engineer/Estimator	49	Remote Sensing Specialist
19	Ecologist	50	Risk Assessor
20	Economist	51	Safety/Occupational Health Engineer
21	Electrical Engineer	52	Sanitary Engineer
22	Electronics Engineer	53	Scheduler
23	Environmental Engineer	54	Security Specialist
24	Environmental Scientist	55	Soils Engineer
25	Fire Protection Engineer	56	Specifications Writer
26	Forensic Engineer	57	Structural Engineer
27	Foundation/Geotechnical Engineer	58	Technician/Analyst
28	Geodetic Surveyor	59	Toxicologist
29	Geographic Information System Specialist	60	Transportation Engineer
30	Geologist	61	Value Engineer
31	Health Facility Planner	62	Water Resources Engineer

List of Experience Categories (*Profile Codes*)

<b>Code</b>	<b>Description</b>	<b>Code</b>	<b>Description</b>
A01	Acoustics, Noise Abatement	E01	Ecological & Archeological Investigations
A02	Aerial Photography; Airborne Data and Imagery Collection and Analysis	E02	Educational Facilities; Classrooms
A03	Agricultural Development; Grain Storage; Farm Mechanization	E03	Electrical Studies and Design
A04	Air Pollution Control	E04	Electronics
A05	Airports; Nav aids; Airport Lighting; Aircraft Fueling	E05	Elevators; Escalators; People-Movers
A06	Airports; Terminals and Hangars; Freight Handling	E06	Embassies and Chanceries
A07	Arctic Facilities	E07	Energy Conservation; New Energy Sources
A08	Animal Facilities	E08	Engineering Economics
A09	Anti-Terrorism/Force Protection	E09	Environmental Impact Studies, Assessments or Statements
A10	Asbestos Abatement	E10	Environmental and Natural Resource Mapping
A11	Auditoriums & Theaters	E11	Environmental Planning
A12	Automation; Controls; Instrumentation	E12	Environmental Remediation
B01	Barracks; Dormitories	E13	Environmental Testing and Analysis
B02	Bridges	F01	Fallout Shelters; Blast-Resistant Design
C01	Cartography	F02	Field Houses; Gyms; Stadiums
C02	Cemeteries ( <i>Planning &amp; Relocation</i> )	F03	Fire Protection
C03	Charting: Nautical and Aeronautical	F04	Fisheries; Fish ladders
C04	Chemical Processing & Storage	F05	Forensic Engineering
C05	Child Care/Development Facilities	F06	Forestry & Forest products
C06	Churches; Chapels	G01	Garages; Vehicle Maintenance Facilities; Parking Decks
C07	Coastal Engineering	G02	Gas Systems (Propane; Natural, Etc.)
C08	Codes; Standards; Ordinances	G03	Geodetic Surveying: Ground and Air-borne
C09	Cold Storage; Refrigeration and Fast Freeze	G04	Geographic Information System Services: Development, Analysis, and Data Collection
C10	Commercial Building ( <i>low rise</i> ) ; Shopping Centers	G05	Geospatial Data Conversion: Scanning, Digitizing, Compilation, Attributing, Scribing, Drafting
C11	Community Facilities	G06	Graphic Design
C12	Communications Systems; TV; Microwave	H01	Harbors; Jetties; Piers, Ship Terminal Facilities
C13	Computer Facilities; Computer Service	H02	Hazardous Materials Handling and Storage
C14	Conservation and Resource Management	H03	Hazardous, Toxic, Radioactive Waste Remediation
C15	Construction Management	H04	Heating; Ventilating; Air Conditioning
C16	Construction Surveying	H05	Health Systems Planning
C17	Corrosion Control; Cathodic Protection; Electrolysis	H06	Highrise; Air-Rights-Type Buildings
C18	Cost Estimating; Cost Engineering and Analysis; Parametric Costing; Forecasting	H07	Highways; Streets; Airfield Paving; Parking Lots
C19	Cryogenic Facilities	H08	Historical Preservation
D01	Dams ( <i>Concrete; Arch</i> )	H09	Hospital & Medical Facilities
D02	Dams ( <i>Earth; Rock</i> ); Dikes; Levees	H10	Hotels; Motels
D03	Desalinization ( <i>Process &amp; Facilities</i> )	H11	Housing ( <i>Residential, Multi-Family; Apartments; Condominiums</i> )
D04	Design-Build - Preparation of Requests for Proposals	H12	Hydraulics & Pneumatics
D05	Digital Elevation and Terrain Model Development	H13	Hydrographic Surveying
D06	Digital Orthophotography		
D07	Dining Halls; Clubs; Restaurants		
D08	Dredging Studies and Design		

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List of Experience Categories (*Profile Codes continued*)

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<b>Code</b>	<b>Description</b>	<b>Code</b>	<b>Description</b>
I01	Industrial Buildings; Manufacturing Plants	P09	Product, Machine Equipment Design
I02	Industrial Processes; Quality Control	P10	Pneumatic Structures, Air-Support Buildings
I03	Industrial Waste Treatment	P11	Postal Facilities
I04	Intelligent Transportation Systems	P12	Power Generation, Transmission, Distribution
I05	Interior Design; Space Planning	P13	Public Safety Facilities
I06	Irrigation; Drainage	R01	Radar; Sonar; Radio & Radar Telescopes
J01	Judicial and Courtroom Facilities	R02	Radio Frequency Systems & Shieldings
L01	Laboratories; Medical Research Facilities	R03	Railroad; Rapid Transit
L02	Land Surveying	R04	Recreation Facilities (Parks, Marinas, Etc.)
L03	Landscape Architecture	R05	Refrigeration Plants/Systems
L04	Libraries; Museums; Galleries	R06	Rehabilitation (Buildings; Structures; Facilities)
L05	Lighting (Interior; Display; Theater, Etc.)	R07	Remote Sensing
L06	Lighting (Exteriors; Streets; Memorials; Athletic Fields, Etc.)	R08	Research Facilities
M01	Mapping Location/Addressing Systems	R09	Resources Recovery; Recycling
M02	Materials Handling Systems; Conveyors; Sorters	R10	Risk Analysis
M03	Metallurgy	R11	Rivers; Canals; Waterways; Flood Control
M04	Microclimatology; Tropical Engineering	R12	Roofing
M05	Military Design Standards	S01	Safety Engineering; Accident Studies; OSHA Studies
M06	Mining & Mineralogy	S02	Security Systems; Intruder & Smoke Detection
M07	Missile Facilities (Silos; Fuels; Transport)	S03	Seismic Designs & Studies
M08	Modular Systems Design; Pre-Fabricated Structures or Components	S04	Sewage Collection, Treatment and Disposal
N01	Naval Architecture; Off-Shore Platforms	S05	Soils & Geologic Studies; Foundations
N02	Navigation Structures; Locks	S06	Solar Energy Utilization
N03	Nuclear Facilities; Nuclear Shielding	S07	Solid Wastes; Incineration; Landfill
O01	Office Buildings; Industrial Parks	S08	Special Environments; Clean Rooms, Etc.
O02	Oceanographic Engineering	S09	Structural Design; Special Structures
O03	Ordnance; Munitions; Special Weapons	S10	Surveying; Platting; Mapping; Flood Plain Studies
P01	Petroleum Exploration; Refining	S11	Sustainable Design
P02	Petroleum and Fuel (Storage and Distribution)	S12	Swimming Pools
P03	Photogrammetry	S13	Storm Water Handling & Facilities
P04	Pipelines (Cross-Country - Liquid & Gas)	T01	Telephone Systems ( <i>Rural; Mobile; Intercom, Etc.</i> )
P05	Planning (Community, Regional, Areawide and State)	T02	Testing & Inspection Services
P06	Planning (Site, Installation, and Project)	T03	Traffic & Transportation Engineering
P07	Plumbing & Piping Design	T04	Topographic Surveying and Mapping
P08	Prisons & Correctional Facilities	T05	Towers ( <i>Self-Supporting &amp; Guyed Systems</i> )
		T06	Tunnels & Subways

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List of Experience Categories (*Profile Codes continued*)

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<b>Code</b>	<b>Description</b>
U01	Unexploded Ordnance Remediation
U02	Urban Renewals; Community Development
U03	Utilities (Gas and Steam)
V01	Value Analysis; Life-Cycle Costing
W01	Warehouses & Depots
W02	Water Resources; Hydrology; Ground Water
W03	Water Supply; Treatment and Distribution
W04	Wind Tunnels; Research/Testing Facilities Design
Z01	Zoning; Land Use Studies

# ARCHITECT - ENGINEER QUALIFICATIONS

## PART I - CONTRACT-SPECIFIC QUALIFICATIONS

### A. CONTRACT INFORMATION

1. TITLE AND LOCATION *(City and State)*

2. PUBLIC NOTICE DATE

3. SOLICITATION OR PROJECT NUMBER

### B. ARCHITECT-ENGINEER POINT OF CONTACT

4. NAME AND TITLE

5. NAME OF FIRM

6. TELEPHONE NUMBER

7. FAX NUMBER

8. E-MAIL ADDRESS

### C. PROPOSED TEAM

*(Complete this section for the prime contractor and all key subcontractors.)*

	(Check)			9. FIRM NAME	10. ADDRESS	11. ROLE IN THIS CONTRACT
	PRIME	J-V PARTNER	SUBCONTRACTOR			
a.				<input type="checkbox"/> CHECK IF BRANCH OFFICE		
b.				<input type="checkbox"/> CHECK IF BRANCH OFFICE		
c.				<input type="checkbox"/> CHECK IF BRANCH OFFICE		
d.				<input type="checkbox"/> CHECK IF BRANCH OFFICE		
e.				<input type="checkbox"/> CHECK IF BRANCH OFFICE		
f.				<input type="checkbox"/> CHECK IF BRANCH OFFICE		

### D. ORGANIZATIONAL CHART OF PROPOSED TEAM

*(Attached)*

**E. RESUMES OF KEY PERSONNEL PROPOSED FOR THIS CONTRACT**

*(Complete one Section E for each key person.)*

12. NAME	13. ROLE IN THIS CONTRACT	14. YEARS EXPERIENCE	
		a. TOTAL	b. WITH CURRENT FIRM
15. FIRM NAME AND LOCATION <i>(City and State)</i>			
16. EDUCATION <i>(Degree and Specialization)</i>		17. CURRENT PROFESSIONAL REGISTRATION <i>(State and Discipline)</i>	
18. OTHER PROFESSIONAL QUALIFICATIONS <i>(Publications, Organizations, Training, Awards, etc.)</i>			

**19. RELEVANT PROJECTS**

	(1) TITLE AND LOCATION <i>(City and State)</i>	(2) YEAR COMPLETED	
		PROFESSIONAL SERVICES	CONSTRUCTION <i>(If applicable)</i>
<b>a.</b>	(3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE	<input type="checkbox"/> Check if project performed with current firm	
	(1) TITLE AND LOCATION <i>(City and State)</i>	(2) YEAR COMPLETED	
		PROFESSIONAL SERVICES	CONSTRUCTION <i>(If applicable)</i>
<b>b.</b>	(3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE	<input type="checkbox"/> Check if project performed with current firm	
	(1) TITLE AND LOCATION <i>(City and State)</i>	(2) YEAR COMPLETED	
		PROFESSIONAL SERVICES	CONSTRUCTION <i>(If applicable)</i>
<b>c.</b>	(3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE	<input type="checkbox"/> Check if project performed with current firm	
	(1) TITLE AND LOCATION <i>(City and State)</i>	(2) YEAR COMPLETED	
		PROFESSIONAL SERVICES	CONSTRUCTION <i>(If applicable)</i>
<b>d.</b>	(3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE	<input type="checkbox"/> Check if project performed with current firm	
	(1) TITLE AND LOCATION <i>(City and State)</i>	(2) YEAR COMPLETED	
		PROFESSIONAL SERVICES	CONSTRUCTION <i>(If applicable)</i>
<b>e.</b>	(3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE	<input type="checkbox"/> Check if project performed with current firm	

<b>F. EXAMPLE PROJECTS WHICH BEST ILLUSTRATE PROPOSED TEAM'S QUALIFICATIONS FOR THIS CONTRACT</b> <i>(Present as many projects as requested by the agency, or 10 projects, if not specified. Complete one Section F for each project.)</i>		20. EXAMPLE PROJECT KEY NUMBER
21. TITLE AND LOCATION <i>(City and State)</i>	22. YEAR COMPLETED	
	PROFESSIONAL SERVICES	CONSTRUCTION <i>(If applicable)</i>
<b>23. PROJECT OWNER'S INFORMATION</b>		
a. PROJECT OWNER	b. POINT OF CONTACT NAME	c. POINT OF CONTACT TELEPHONE NUMBER
24. BRIEF DESCRIPTION OF PROJECT AND RELEVANCE TO THIS CONTRACT <i>(Include scope, size, and cost)</i>		

25. FIRMS FROM SECTION C INVOLVED WITH THIS PROJECT		
<b>a.</b>	(1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>
		(3) ROLE
<b>b.</b>	(1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>
		(3) ROLE
<b>c.</b>	(1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>
		(3) ROLE
<b>d.</b>	(1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>
		(3) ROLE
<b>e.</b>	(1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>
		(3) ROLE
<b>f.</b>	(1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>
		(3) ROLE

**G. KEY PERSONNEL PARTICIPATION IN EXAMPLE PROJECTS**

26. NAMES OF KEY PERSONNEL <i>(From Section E, Block 12)</i>	27. ROLE IN THIS CONTRACT <i>(From Section E, Block 13)</i>	28. EXAMPLE PROJECTS LISTED IN SECTION F <i>(Fill in "Example Projects Key" section below before completing table. Place "X" under project key number for participation in same or similar role.)</i>									
		1	2	3	4	5	6	7	8	9	10

**29. EXAMPLE PROJECTS KEY**

NUMBER	TITLE OF EXAMPLE PROJECT <i>(From Section F)</i>	NUMBER	TITLE OF EXAMPLE PROJECT <i>(From Section F)</i>
1		6	
2		7	
3		8	
4		9	
5		10	



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**H. ADDITIONAL INFORMATION**

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30. PROVIDE ANY ADDITIONAL INFORMATION REQUESTED BY THE AGENCY. ATTACH ADDITIONAL SHEETS AS NEEDED.

---

**I. AUTHORIZED REPRESENTATIVE**

*The foregoing is a statement of facts.*

31. SIGNATURE

32. DATE

33. NAME AND TITLE



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>Â </span  
></p  
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>Federal agencies use this form to obtain information from architect engineer (A E)  
firms about their professional qualifications.<span style="xfa spacerun:yes"  
>Â </span  
>Federal agencies select firms for A E contracts on the basis of professional  
qualifications as required by 40 U.S.C. chapter 11, Selection of Architects Engineers,  
and Part 36 of the Federal Acquisition Regulation (FAR).<span style="font weight:bold"  
><span style="xfa spacerun:yes"  
>Â </span  
></span  
></p  
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>Â </span  
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>The Selection of Architects and Engineers statute requires the public announcement of  
requirements for A E services (with some exceptions provided by other statutes), and the  
selection of at least three of the most highly qualified firms based on demonstrated  
competence and professional qualifications according to specific criteria published in  
the announcement.<span style="xfa spacerun:yes"  
>Â </span  
>The Act then requires the negotiation of a contract at a fair and reasonable price  
starting first with the most highly qualified firm.<span style="font weight:bold"  
><span style="xfa spacerun:yes"  
>Â </span  
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>Â </span  
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>The information used to evaluate firms is from this form and other sources, including  
performance evaluations, any additional data requested by the agency, and interviews

with the most highly qualified firms and their references.</p></div>
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>If a firm has branch offices, submit a separate Part II for each branch office that has
a key role on the team.</p
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></p
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>Individual agencies may supplement these instructions.<span style="xfa spacerun:yes"
>Â </span
>For example, they may limit the number of projects or number of<span
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><span style="xfa spacerun:yes"
>Â </span
></span
><span style="letter spacing:0em"
>pages submitted in Part I in response to a public announcement for a particular
project.<span style="xfa spacerun:yes"
>Â </span
>Carefully comply with any agency instructions when preparing and submitting this
form.<span style="xfa spacerun:yes"
>Â </span
>Be as concise as possible and provide only the information requested by the
agency.</span
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>Â </span
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></p>><p style="letter spacing:0in">><span style="xfa spacerun:yes">Architect Engineer Services:<span style="xfa spacerun:yes">Â </span>><span style="font weight:normal">>Defined in FAR 2.101.</span>><span style="xfa spacerun:yes">>Â </span>></p>><p style="letter spacing:0in">><span style="xfa spacerun:yes">>Â </span>></p>><p style="letter spacing:0in">>Branch Office:<span style="xfa spacerun:yes">>Â </span>><span style="font weight:normal">>A geographically distinct place of business or</span>><span style="xfa spacerun:yes">>Â </span>><span style="font weight:normal">>subsidiary office of a firm that has a key role on the</span>><span style="xfa spacerun:yes">>Â </span>><span style="font weight:normal">>team.</span>><span style="xfa spacerun:yes">>Â </span>></p>><p style="letter spacing:0in">><span style="xfa spacerun:yes">>Â </span>></p>><p style="letter spacing:0in">>Discipline:<span style="xfa spacerun:yes">>Â </span>><span style="font weight:normal">>Primary technical capabilities of key personnel,</span>><span style="xfa spacerun:yes">>Â </span>><span style="font weight:normal">>as evidenced by academic degree, professional registration,</span>><span style="xfa spacerun:yes">>Â </span>><span style="font weight:normal">>certification, and/or extensive experience.</span>><span style="xfa spacerun:yes">>Â </span>></p>><p style="letter spacing:0in">><span style="xfa spacerun:yes">>Â </span>></p>><p style="letter spacing:0in">>Firm:<span style="xfa spacerun:yes">>Â </span>><span style="font weight:normal">> Defined in FAR 36.102.</span>><span style="xfa spacerun:yes">>Â </span>></p>><p style="letter spacing:0in">><span style="xfa spacerun:yes">>Â </span>></p>><p style="letter spacing:0in">>Key Personnel:<span style="xfa spacerun:yes">>Â </span>><span style="font weight:normal">>Individuals who will have major contract</span>><span style="xfa spacerun:yes">>Â </span>></p>

```

>Â </span
><span style="font weight:normal"
>responsibilities and/or provide unusual or unique expertise.</span
></p
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>Â </span
>Enter the title and location of the contract for which this form is being submitted,
exactly as shown in the public announcement or agency request.<span
style="xfa spacerun:yes"
>Â </span
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>Â </span
></p
><p
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>2. Public Notice Date.<span style="xfa spacerun:yes"
>Â </span
>Enter the posted date of the agency's notice on the Federal Business Opportunity
website (FedBizOpps), other form of public announcement or agency request for this
contract.<span style="xfa spacerun:yes"
>Â </span
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><p
style="margin bottom:0pt;text indent:14.4pt;font weight:normal;text decoration:none;lette

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>3. Solicitation or Project Number.<span style="xfa spacerun:yes"
>Â </span
>Enter the agency's solicitation<span style="xfa spacerun:yes"
>Â </span
>number<span style="xfa spacerun:yes"
>Â </span
>and/or<span style="xfa spacerun:yes"
>Â </span
>project<span style="xfa spacerun:yes"
>Â </span
>number,<span style="xfa spacerun:yes"
>Â </span
>if<span style="xfa spacerun:yes"
>Â </span
>applicable, exactly as shown in the public announcement or agency request for this
contract.</p
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>Â </span
>Architect Engineer Point of Contact.<span style="xfa spacerun:yes"
>Â </span
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>Â </span
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r spacing:0in"
>4 8.<span style="xfa spacerun:yes"
>Â </span
>Name, Title, Name of Firm, Telephone Number, Fax (Facsimile) Number and E mail
(Electronic Mail) Address.<span style="xfa spacerun:yes"
>Â </span
>Provide information for a representative of the prime contractor or joint venture that
the agency can contact for additional information.</p
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of 44 USC Â§ 3507, as amended by section 2 of the Paperwork Reduction Act of<span
style="xfa spacerun:yes"
>Â /</span
></p
><p style="line height:8pt;letter spacing:0in"
>1995.<span style="xfa spacerun:yes"
>Â /</span
>You do not need to answer these questions unless we display a valid Office of
Management and Budget (OMB) control number.<span style="xfa spacerun:yes"
>Â /</span
>The OMB control number for this collection is 9000 0157.<span style="xfa spacerun:yes"
>Â /</span
>We estimate that it will take 29 hours (25 hours for part 1 and 4 hours for Part 2) to
read the instructions, gather the facts, and answer the questions.<span
style="xfa spacerun:yes"
>Â /</span
>Send only comments relating to our time estimate, including suggestions for reducing
this burden, or any other aspects of this collection of information to:<span
style="xfa spacerun:yes"
>Â /</span
>General Services Administration, Regulatory Secretariat Division (M1V1CB), 1800 F
Street, NW, Washington, DC<span style="xfa spacerun:yes"
>Â /</span
>20405.</p
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>Â </span
>Proposed Team.<span style="xfa spacerun:yes"
>Â </span
></p
><p style="letter spacing:0in"
><span style="xfa spacerun:yes"
>Â </span
></p
><p style="letter spacing:0in"
>9 11.<span style="xfa spacerun:yes"
>Â </span
>Firm Name, Address, and Role in This Contract. Provide the contractual relationship,
name, full mailing address, and a brief description of the role of each firm that will
be involved in performance of this contract.<span style="xfa spacerun:yes"
>Â </span
>List the prime contractor or joint venture partners first.<span style="xfa spacerun:yes"
>Â </span
>If a firm has branch offices, indicate each individual branch office that will have a
key role on the team.<span style="xfa spacerun:yes"
>Â </span
>The named subcontractors and outside associates or consultants must be used, and any
change must be approved by the contracting officer. (See FAR Part 52 Clause
"Subcontractors and Outside Associates and Consultants (Architect Engineer
Services)").<span style="xfa spacerun:yes"
>Â </span
>Attach an additional sheet in the same format as Section C if needed.<span
style="xfa spacerun:yes"
>Â </span
></p
><p style="letter spacing:0in"
><span style="xfa spacerun:yes"
>Â </span
></p
><p style="letter spacing:0in"
>Section D.<span style="xfa spacerun:yes"
>Â </span
>Organizational Chart of Proposed Team.<span style="xfa spacerun:yes"
>Â </span
></p
><p style="letter spacing:0in"
><span style="xfa spacerun:yes"
>Â </span
></p
><p style="letter spacing:0in"
>As an attachment after Section C, present an organizational chart of the proposed team
showing the names and roles of all key personnel listed in Section E and the firm they
are associated with as listed in Section C.<span style="xfa spacerun:yes"
>Â </span
></p
><p style="letter spacing:0in"
><span style="xfa spacerun:yes"
>Â </span
></p
><p style="letter spacing:0in"
>Section E.<span style="xfa spacerun:yes"
>Â </span
>Resumes of Key Personnel Proposed for this Contract.<span style="xfa spacerun:yes"
>Â </span
```

```
></p>
><p style="letter spacing:0in">
><span style="xfa spacerun:yes">
>Â </span>
></p>
><p style="letter spacing:0in">
>Complete this section for each key person who will participate in this contract.<span
style="xfa spacerun:yes">
>Â </span>
>Group by firm, with personnel of the prime contractor or joint venture partner firms
first.<span style="xfa spacerun:yes">
>Â </span>
>The following blocks must be completed for each resume:<span style="xfa spacerun:yes">
>Â </span>
></p>
><p style="letter spacing:0in">
><span style="xfa spacerun:yes">
>Â </span>
></p>
><p style="letter spacing:0in">
>12.<span style="xfa spacerun:yes">
>Â </span>
>Name.<span style="xfa spacerun:yes">
>Â </span>
>Self explanatory.<span style="xfa spacerun:yes">
>Â </span>
></p>
><p style="letter spacing:0in">
><span style="xfa spacerun:yes">
>Â </span>
></p>
><p style="letter spacing:0in">
>13.<span style="xfa spacerun:yes">
>Â </span>
>Role in this contract.<span style="xfa spacerun:yes">
>Â </span>
>Self explanatory.<span style="xfa spacerun:yes">
>Â </span>
></p>
><p style="letter spacing:0in">
><span style="xfa spacerun:yes">
>Â </span>
></p>
><p style="letter spacing:0in">
>14.<span style="xfa spacerun:yes">
>Â </span>
>Years Experience.<span style="xfa spacerun:yes">
>Â </span>
>Total years of relevant experience (block 14a), and years of relevant experience with
current firm, but not necessarily the same branch office (block 14b).<span
style="xfa spacerun:yes">
>Â </span>
></p>
><p style="letter spacing:0in">
><span style="xfa spacerun:yes">
>Â </span>
></p>
><p style="letter spacing:0in">
>15.<span style="xfa spacerun:yes">
>Â </span>
>Firm Name and Location.<span style="xfa spacerun:yes">
>Â </span>
>Name, city and state of the firm where the person currently works, which must
correspond with one of the firms (or branch office of a firm, if appropriate)<span
style="xfa spacerun:yes">
>Â </span>
>listed in Section C.<span style="xfa spacerun:yes">
>Â </span>
></p>
><p style="letter spacing:0in">
><span style="xfa spacerun:yes">
```

```
>Â </span
></p
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>16.<span style="xfa spacerun:yes"
>Â </span
>Education.<span style="xfa spacerun:yes"
>Â </span
>Provide<span style="xfa spacerun:yes"
>Â </span
>information<span style="xfa spacerun:yes"
>Â </span
>on<span style="xfa spacerun:yes"
>Â </span
>the highest relevant academic degree(s) received.<span style="xfa spacerun:yes"
>Â </span
>Indicate the area(s) of specialization for each degree.<span style="xfa spacerun:yes"
>Â </span
></p
><p style="letter spacing:0in"
><span style="xfa spacerun:yes"
>Â </span
></p
><p style="letter spacing:0in"
>17.<span style="xfa spacerun:yes"
>Â </span
>Current Professional Registration.<span style="xfa spacerun:yes"
>Â </span
>Provide information on current relevant professional registration(s) in a State or
possession of the United States, Puerto Rico, or the District of<span
style="xfa spacerun:yes"
>Â </span
>Columbia according to FAR Part 36.<span style="xfa spacerun:yes"
>Â </span
></p
><p style="letter spacing:0in"
><span style="xfa spacerun:yes"
>Â </span
></p
><p style="letter spacing:0in"
>18.<span style="xfa spacerun:yes"
>Â </span
>Other Professional Qualifications.<span style="xfa spacerun:yes"
>Â </span
>Provide information on any other professional qualifications relating to this contract,
such as education, professional registration, publications, organizational memberships,
certifications, training, awards, and foreign language capabilities.</p
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>19.<span style="xfa spacerun:yes"
>Â </span
>Relevant Projects.<span style="xfa spacerun:yes"
>Â </span
>Provide information on up to five projects in which the person had a significant role
that demonstrates the person's capability relevant to her/his proposed role in this
contract.<span style="xfa spacerun:yes"
```

>Â </span  
>These projects do not necessarily have to be any of the projects presented in Section F for the project team if the person was not involved in any of those projects or the person worked on other projects that were more relevant than the team projects in Section F.<span style="xfa spacerun:yes"

>Â </span  
>Use the check box provided to indicate if the project was performed with any office of the current firm.<span style="xfa spacerun:yes"

>Â </span  
>If any of the professional services or construction projects are not complete, leave Year Completed blank and indicate the status in Brief Description and Specific Role (block (3)).<span style="xfa spacerun:yes"

>Â </span  
<</p  
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>Â </span  
<</p  
<<p style="letter spacing:0in"  
>Section F.<span style="xfa spacerun:yes"

>Â </span  
>Example Projects Which Best Illustrate Proposed Team's Qualifications for this Contract.<span style="xfa spacerun:yes"

>Â </span  
<</p  
<<p style="letter spacing:0in"  
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>Â </span  
<</p  
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>Select projects where multiple team members worked together, if possible, that demonstrate the team's capability to perform work similar to that required for this contract.<span style="xfa spacerun:yes"

>Â </span  
>Complete one Section F for each project.<span style="xfa spacerun:yes"

>Â </span  
>Present ten projects, unless otherwise specified by the agency.<span style="xfa spacerun:yes"

>Â </span  
>Complete the following blocks for each project:<span style="xfa spacerun:yes"

>Â </span  
<</p  
<<p style="letter spacing:0in"  
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>Â </span  
<</p  
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>20.<span style="xfa spacerun:yes"

>Â </span  
>Example Project Key Number.<span style="xfa spacerun:yes"

>Â </span  
>Start with "1" for the first project and number consecutively.<span style="xfa spacerun:yes"

>Â </span  
<</p  
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>Â </span  
<</p  
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>21.<span style="xfa spacerun:yes"

>Â </span  
>Title and Location.<span style="xfa spacerun:yes"

>Â </span  
>Title and location of project or contract.<span style="xfa spacerun:yes"

>Â </span  
>For an indefinite delivery contract, the location is the geographic scope of the contract.<span style="xfa spacerun:yes"

>Â </span  
<</p  
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><span style="xfa spacerun:yes"  
>Â </span  
></p  
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>22.<span style="xfa spacerun:yes"  
>Â </span  
>Year Completed.<span style="xfa spacerun:yes"  
>Â </span  
>Enter the year completed of the professional services (such as planning, engineering  
study, design, or surveying), and/or the year completed of construction,<span  
style="xfa spacerun:yes"  
>Â </span  
>if applicable.<span style="xfa spacerun:yes"  
>Â </span  
>If any of the professional services or the construction projects are not complete,  
leave Year Completed blank and indicate the status in Brief Description of Project and  
Relevance to this Contract (block 24).<span style="xfa spacerun:yes"  
>Â </span  
></p  
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>Â </span  
></p  
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>23a.<span style="xfa spacerun:yes"  
>Â </span  
>Project Owner.<span style="xfa spacerun:yes"  
>Â </span  
>Project owner or user, such as a government agency or installation, an institution, a  
corporation or private individual.<span style="xfa spacerun:yes"  
>Â </span  
></p  
><p style="letter spacing:0in"  
><span style="xfa spacerun:yes"  
>Â </span  
></p  
><p style="letter spacing:0in"  
>23b.<span style="xfa spacerun:yes"  
>Â </span  
>Point of Contact Name.<span style="xfa spacerun:yes"  
>Â </span  
>Provide name of a person associated with the project owner or the organization which  
contracted for the professional services, who is very familiar with the project and the  
firm's (or firms') performance.<span style="xfa spacerun:yes"  
>Â </span  
></p  
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><span style="xfa spacerun:yes"  
>Â </span  
></p  
><p style="letter spacing:0in"  
>23c.<span style="xfa spacerun:yes"  
>Â </span  
>Point of Contact Telephone Number.<span style="xfa spacerun:yes"  
>Â </span  
>Self explanatory.<span style="xfa spacerun:yes"  
>Â </span  
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><span style="xfa spacerun:yes"  
>Â </span  
></p  
><p style="letter spacing:0in"  
>24.<span style="xfa spacerun:yes"  
>Â </span  
>Brief Description of Project and Relevance to this Contract.<span  
style="xfa spacerun:yes"  
>Â </span  
>Indicate scope, size, cost, principal elements and special features of the  
project.<span style="xfa spacerun:yes"  
>Â </span

```
>Discuss the relevance of the example project to this contract.<span
style="xfa spacerun:yes"
>Ã /span
>Enter any other information requested by the agency for each example project.</p
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```

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```

```
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```

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>29. EXAMPLE PROJECTS KEY</text
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PROJECTS KEY 0 212997 9369 0 0 0 "Arial" 1 0 9000 ISO 8859 1?><</draw
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>25.<span style="xfa spacerun:yes"
>Â </span
>Firms from Section C Involved with this Project.<span style="xfa spacerun:yes"
>Â </span
>Indicate which firms (or branch offices, if appropriate) on the project team were
involved in the example project, and their roles.<span style="xfa spacerun:yes"
>Â </span
>List in the same order as Section C.<span style="xfa spacerun:yes"
>Â </span
<</p
<<p style="letter spacing:0in"
<<span style="xfa spacerun:yes"
>Â </span
<</p
<<p style="letter spacing:0in"
>Section G.<span style="xfa spacerun:yes"
>Â </span
>Key Personnel Participation in Example Projects.<span style="xfa spacerun:yes"
>Â </span
<</p
<<p style="letter spacing:0in"
<<span style="xfa spacerun:yes"
>Â </span
<</p
<<p style="letter spacing:0in"
>This matrix is intended to graphically depict which key personnel identified in Section
E worked on the example projects listed in Section F.<span style="xfa spacerun:yes"
>Â </span
>Complete the following blocks (see example below).<span style="xfa spacerun:yes"
>Â </span
<</p
<<p style="letter spacing:0in"
<<span style="xfa spacerun:yes"
>Â </span
<</p
<<p style="letter spacing:0in"
>26. and 27.<span style="xfa spacerun:yes"
>Â </span

```

```

>Names of Key Personnel and Role in this Contract.<span style="xfa spacerun:yes"
>Â </span
>List the names of the key personnel and their proposed roles in this contract in the
same order as they appear in Section E.<span style="xfa spacerun:yes"
>Â </span
<</p
<<p style="letter spacing:0in"
<<span style="xfa spacerun:yes"
>Â </span
<</p
<<p style="letter spacing:0in"
>28.<span style="xfa spacerun:yes"
>Â </span
>Example Projects Listed in Section F.<span style="xfa spacerun:yes"
>Â </span
>In the column under each project key number (see block 29) and for each key person,
place an "X" under the project key number for<span style="xfa spacerun:yes"
>Â </span
>participation in the same or similar role.</p
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>29.<span style="xfa spacerun:yes"
>Â </span
>Example Projects Key.<span style="xfa spacerun:yes"
>Â </span
>List the key numbers and titles of the example projects in the same order as they
appear in Section F.<span style="xfa spacerun:yes"
>Â </span
<</p
<<p style="letter spacing:0in"
<<span style="xfa spacerun:yes"
>Â </span
<</p
<<p style="letter spacing:0in"
>Section H.<span style="xfa spacerun:yes"
>Â </span
>Additional Information.<span style="xfa spacerun:yes"
>Â </span
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<<p style="letter spacing:0in"
<<span style="xfa spacerun:yes"
>Â </span
<</p
<<p style="letter spacing:0in"
>30.<span style="xfa spacerun:yes"
>Â </span
>Use this section to provide additional information specifically requested by the agency
or to address selection criteria that are not covered by the information provided in
Sections A G.<span style="xfa spacerun:yes"
>Â </span
<</p
<<p style="letter spacing:0in"
<<span style="xfa spacerun:yes"
>Â </span
<</p

```

```
><p style="letter spacing:0in"
>Section I.<span style="xfa spacerun:yes"
>Â </span
>Authorized Representative.<span style="xfa spacerun:yes"
>Â </span
<</p
><p style="letter spacing:0in"
><span style="xfa spacerun:yes"
>Â </span
<</p
><p style="letter spacing:0in"
>31. and 32.<span style="xfa spacerun:yes"
>Â </span
>Signature of Authorized Representative and Date.<span style="xfa spacerun:yes"
>Â </span
>An authorized representative of a joint venture or the prime contractor must sign and
date the completed form.<span style="xfa spacerun:yes"
>Â </span
>Signing attests that the information provided is current and factual, and that all
firms on the proposed team agree to work on the project.<span style="xfa spacerun:yes"
>Â </span
>Joint ventures selected for negotiations must make available a statement of
participation by a principal of each member of the joint venture.<span
style="xfa spacerun:yes"
>Â </span
<</p
><p style="letter spacing:0in"
><span style="xfa spacerun:yes"
>Â </span
<</p
><p style="letter spacing:0in"
>33.<span style="xfa spacerun:yes"
>Â </span
>Name and Title.<span style="xfa spacerun:yes"
>Â </span
>Self explanatory.</p
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330 (REV. 8/2016) 0 16075 7106 0 0 0 "Arial" 1 0 9000 ISO 8859 1?><?renderCache.textRun
22 PAGE 3 OF INSTRUCTIONS 0 54602 17906 0 0 0 "Arial" 1 0 9000 ISO 8859 1?></draw
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>SAMPLE ENTRIES FOR SECTION G<span style="xfa spacerun:yes"
>Â </span
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>(MATRIX)</span
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```

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>26.<span style="xfa spacerun:yes"
>Â </span
>NAMES OF KEY PERSONNEL<span style="xfa spacerun:yes"
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>(From Section E,</p
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>Block 12)</p
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>27.<span style="xfa spacerun:yes"
>Â </span
>ROLE IN THIS<br
/>CONTRACT<br
/><span style="font style:italic"
>(From Section E,<span style="xfa spacerun:yes"
>Â </span
<</span
<</p
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>Block 13)</p
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>28.<span style="xfa spacerun:yes"
>Ã </span
>EXAMPLE PROJECTS LISTED IN SECTION F</p
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>(Fill in "Example Projects Key" section below first, before</p
><p style="font style:italic;letter spacing:0in"
>completing table.<span style="xfa spacerun:yes"
>Ã </span
>Place "X" under project key number for</p
><p style="font style:italic;letter spacing:0in"
>participation in same or similar role.)</p
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xmlns:xfa="http://www.xfa.org/schema/xfa data/1.0/" xfa:APIVersion="2.7.0.0"
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>TITLE OF EXAMPLE PROJECT<span style="xfa spacerun:yes"
>Â </span
><span style="font style:italic"
>(From Section F)</span
></p
></body
></exData
></value
><ui
><textEdit
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><para vAlign="middle"
/><font size="9pt" typeface="Arial"
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></draw
><draw name="T193" x="97.831mm" y="217.964mm" w="13.759mm" minH="0.152in"
><value
><text
>NUMBER</text
></value
><ui
><textEdit
/></ui
><para vAlign="middle"
/><font size="9pt" typeface="Arial"
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```

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>TITLE OF EXAMPLE PROJECT<span style="xfa spacerun:yes"
>Â </span
><span style="font style:italic"
>(From Section F)</span
></p
></body
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><ui
><textEdit
/></ui
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/><font size="9pt" typeface="Arial"
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><text
>XYZ Corporation Headquarters, Boston, MA</text
></value
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><textEdit
/></ui
><font typeface="Courier New"
/><traversal
><traverse ref="T209[0]"
/></traversal
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Headquarters, Boston, MA 0 0 8115 0 0 0 "Courier New" 0 0 10000 ISO 8859 1?></draw
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>Founder's Museum, Newport, RI</text
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/><traversal
><traverse ref="T196[0]"
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>Federal Courthouse, Denver, CO </text
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Courthouse, Denver, CO 0 0 8115 0 0 0 "Courier New" 0 0 10000 ISO 8859 1?></draw
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>Justin J. Wilson Federal Building, Baton Rouge, LA</text
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```

```
/></ui>
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Wilson Federal Building, 0 0 8115 0 0 0 "Courier New" 0 0 10000
ISO 8859 1?><?renderCache.textRun 15 Baton Rouge, LA 0 0 20115 0 0 0 "Courier New" 0 0
10000 ISO 8859 1?></draw
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>Part II General Qualifications<span style="xfa spacerun:yes"
>Â </span
<</p
<<p style="margin bottom:0pt;font weight:normal;letter spacing:0in"
<<span style="xfa spacerun:yes"
>Â </span
<</p
<<p style="margin bottom:0pt;font weight:normal;letter spacing:0in"
>See the "<span style="font weight:bold"
>General Instructions</span
>" on page 1 for firms with<span style="font weight:bold"
<<span style="xfa spacerun:yes"
>Â </span
<</span
>branch offices.<span style="xfa spacerun:yes"
>Â </span
<<span style="font weight:bold"
<<span style="xfa spacerun:yes"
>Â </span
<</span
>Prepare Part II for the specific branch office<span style="font weight:bold"
<<span style="xfa spacerun:yes"
>Â </span
<</span
>seeking work if the firm has branch offices.<span style="font weight:bold"
<<span style="xfa spacerun:yes"
>Â </span
<</span
<</p
<<p style="margin bottom:0pt;font weight:normal;letter spacing:0in"
<<span style="xfa spacerun:yes"
>Â </span
<</p
<<p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in"
>1.<span style="xfa spacerun:yes"
>Â </span
>Solicitation Number.<span style="xfa spacerun:yes"
>Â </span
>If Part II is submitted for a<span style="font weight:bold"
<<span style="xfa spacerun:yes"
>Â </span
<</span
>specific contract, insert the agency's solicitation number<span style="font weight:bold"
<<span style="xfa spacerun:yes"
>Â </span
<</span
>and/or project number, if applicable, exactly as shown in the<span
style="font weight:bold"
<<span style="xfa spacerun:yes"
>Â </span

```

</span>  
>public announcement or agency request.<span style="font weight:bold">  
<span style="xfa spacerun:yes">  
>Â </span>  
</span>  
</p>  
<p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in">  
<span style="xfa spacerun:yes">  
>Â </span>  
</p>  
<p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in">  
>2a 2e.<span style="xfa spacerun:yes">  
>Â </span>  
>Firm (or Branch Office) Name and Address.<span style="xfa spacerun:yes">  
>Â </span>  
>Self explanatory.<span style="font weight:bold">  
<span style="xfa spacerun:yes">  
>Â </span>  
</span>  
</p>  
<p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in">  
<span style="xfa spacerun:yes">  
>Â </span>  
</p>  
<p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in">  
>3.<span style="xfa spacerun:yes">  
>Â </span>  
>Year Established.<span style="xfa spacerun:yes">  
>Â </span>  
>Enter the year the firm (or branch<span style="font weight:bold">  
<span style="xfa spacerun:yes">  
>Â </span>  
</span>  
>office, if appropriate) was established under the current<span style="font weight:bold">  
<span style="xfa spacerun:yes">  
>Â </span>  
</span>  
>name.<span style="font weight:bold">  
<span style="xfa spacerun:yes">  
>Â </span>  
</span>  
</p>  
<p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in">  
<span style="xfa spacerun:yes">  
>Â </span>  
</p>  
<p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in">  
>4.<span style="xfa spacerun:yes">  
>Â </span>  
>Unique Entity Identifier.<span style="xfa spacerun:yes">  
>Â </span>  
>Insert the unique entity identifier issued by the entity designated at SAM.<span style="xfa spacerun:yes">  
>Â </span>  
>See FAR part<span style="font weight:bold">  
<span style="xfa spacerun:yes">  
>Â </span>  
</span>  
>4.6.<span style="font weight:bold">  
<span style="xfa spacerun:yes">  
>Â </span>  
</span>  
</p>  
<p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in">  
<span style="xfa spacerun:yes">  
>Â </span>  
</p>  
<p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in">  
>5.<span style="xfa spacerun:yes">  
>Â </span>  
>Ownership.<span style="font weight:bold">

><span style="xfa spacerun:yes"  
>Â </span  
></span  
></p  
><p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in"  
><span style="xfa spacerun:yes"  
>Â </span  
></p  
><p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in"  
>a. Type.<span style="xfa spacerun:yes"  
>Â </span  
>Enter the type of ownership or legal structure<span style="font weight:bold"  
><span style="xfa spacerun:yes"  
>Â </span  
></span  
>of the firm (sole proprietor, partnership, corporation, joint<span  
style="font weight:bold"  
><span style="xfa spacerun:yes"  
>Â </span  
></span  
></p  
><p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in"  
><span style="xfa spacerun:yes"  
>Â </span  
></p  
><p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in"  
>b. Small Business Status.<span style="xfa spacerun:yes"  
>Â </span  
>Refer to the North American<span style="font weight:bold"  
><span style="xfa spacerun:yes"  
>Â </span  
></span  
>Industry Classification System (NAICS) code in the public<span style="font weight:bold"  
><span style="xfa spacerun:yes"  
>Â </span  
></span  
>announcement, and indicate if the firm is a small business<span style="font weight:bold"  
><span style="xfa spacerun:yes"  
>Â </span  
></span  
>according to the current size standard for that NAICS code<span style="font weight:bold"  
><span style="xfa spacerun:yes"  
>Â </span  
></span  
>(for example, Engineering Services (part of NAICS 541330),<span style="font weight:bold"  
><span style="xfa spacerun:yes"  
>Â </span  
></span  
>Architectural Services (NAICS 541310), Surveying and<span style="font weight:bold"  
><span style="xfa spacerun:yes"  
>Â </span  
></span  
>Mapping Services (NAICS 541370)).<span style="xfa spacerun:yes"  
>Â </span  
></p  
><p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in"  
>c. The small business<span style="font weight:bold"  
><span style="xfa spacerun:yes"  
>Â </span  
></span  
>categories and the internet website for the NAICS codes<span style="font weight:bold"  
><span style="xfa spacerun:yes"  
>Â </span  
></span  
>appear in FAR part 19.<span style="xfa spacerun:yes"  
>Â </span  
></p  
><p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in"  
>d. Contact the requesting agency for<span style="font weight:bold"  
><span style="xfa spacerun:yes"  
>Â </span  
></span

</span>  
>any questions.<span style="xfa spacerun:yes">  
>Â </span>  
>Contact your local U.S. Small Business<span style="font weight:bold">  
><span style="xfa spacerun:yes">  
>Â </span>  
></span>  
>Administration office for any questions regarding Business<span style="font weight:bold">  
><span style="xfa spacerun:yes">  
>Â </span>  
></span>  
>Status.<span style="font weight:bold">  
><span style="xfa spacerun:yes">  
>Â </span>  
></span>  
></p>  
><p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in">  
><span style="xfa spacerun:yes">  
>Â </span>  
></p>  
><p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in">  
>6a 6c.<span style="xfa spacerun:yes">  
>Â </span>  
>Point of Contact.<span style="xfa spacerun:yes">  
>Â </span>  
>Provide this information for a<span style="font weight:bold">  
><span style="xfa spacerun:yes">  
>Â </span>  
></span>  
>representative of the firm that the agency can contact for additional information.<span style="xfa spacerun:yes">  
>Â </span>  
>The representative must be<span style="font weight:bold">  
><span style="xfa spacerun:yes">  
>Â </span>  
></span>  
>empowered to speak on contractual and policy matters.<span style="font weight:bold">  
><span style="xfa spacerun:yes">  
>Â </span>  
></span>  
></p>  
><p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in">  
><span style="xfa spacerun:yes">  
>Â </span>  
></p>  
><p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in">  
>7.<span style="xfa spacerun:yes">  
>Â </span>  
>Name of Firm.<span style="xfa spacerun:yes">  
>Â </span>  
>Enter the name of the firm if PartII is<span style="font weight:bold">  
><span style="xfa spacerun:yes">  
>Â </span>  
></span>  
>prepared for a branch office.<span style="font weight:bold">  
><span style="xfa spacerun:yes">  
>Â </span>  
></span>  
></p>  
><p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in">  
><span style="xfa spacerun:yes">  
>Â </span>  
></p>  
><p style="margin bottom:0pt;text indent:14.4pt;font weight:normal;letter spacing:0in">  
>8a 8c.<span style="xfa spacerun:yes">  
>Â </span>  
>Former Firm Names.<span style="xfa spacerun:yes">  
>Â </span>  
>Indicate any other previous<span style="font weight:bold">  
><span style="xfa spacerun:yes">  
>Â </span>

```
<</span
>names for the firm (or branch office) during the last six<span style="font weight:bold"
><span style="xfa spacerun:yes"
>Â </span
></span
>years. Insert the year that this corporate name change was effective and the associated
unique entity identifier.<span style="xfa spacerun:yes"
>Â </span
>This information is used to review past performance on Federal contracts.<span
style="xfa spacerun:yes"
>Â </span
></p
></body
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><span style="xfa spacerun:yes"
>Â </span
></p
><p style="margin bottom:0pt;letter spacing:0in"
><span style="xfa spacerun:yes"
>Â </span
></p
><p style="margin bottom:0pt;text indent:14.4pt;letter spacing:0in"
>9.<span style="xfa spacerun:yes"
>Â </span
>Employees by Discipline.<span style="xfa spacerun:yes"
>Â </span
>Use the relevant disciplines and associated function codes shown at the end of these
instructions and list in the same numerical order.<span style="xfa spacerun:yes"
>Â </span
>After the listed disciplines, write in any additional disciplines and leave the
function code blank.<span style="xfa spacerun:yes"
>Â </span
>List no more than 20 disciplines.<span style="xfa spacerun:yes"
>Â </span
>Group remaining employees under "Other Employees" in column b.<span
style="xfa spacerun:yes"
>Â </span
>Each person can be counted only once according to his/her primary function.<span
style="xfa spacerun:yes"
>Â </span
>If Part II is prepared for a firm (including all branch offices), enter the number of
employees by disciplines in column c(1).<span style="xfa spacerun:yes"
>Â </span
>If Part II is prepared for a branch office, enter the number of employees by discipline
in column c(2) and for the firm in column c(1).<span style="xfa spacerun:yes"
>Â </span
></p
><p style="margin bottom:0pt;text indent:14.4pt;letter spacing:0in"
><span style="xfa spacerun:yes"
>Â </span
></p
><p style="margin bottom:0pt;text indent:14.4pt;letter spacing:0in"
>10.<span style="xfa spacerun:yes"
>Â </span
>Profile of Firm's Experience and Annual Average Revenue for Last 5 Years.<span
```

style="xfa spacerun:yes"  
>Â </span  
>Complete this block for the firm or branch office for which this Part II is prepared.<span style="xfa spacerun:yes"  
>Â </span  
>Enter the experience categories which most accurately reflect the firm's technical capabilities and project experience.<span style="xfa spacerun:yes"  
>Â </span  
>Use the relevant experience categories and associated profile codes shown at the end of these instructions, and list in the same numerical order.<span style="xfa spacerun:yes"  
>Â </span  
>After the listed experience categories, write in any unlisted relevant project experience categories and leave the profile codes blank.<span style="xfa spacerun:yes"  
>Â </span  
>For each type of experience, enter the appropriate revenue index number to reflect the professional services revenues received annually (averaged over the last 5 years) by the firm or branch office for performing that type of work.<span style="xfa spacerun:yes"  
>Â </span  
>A particular project may be identified with one experience category or it may be broken into components, as best reflects the capabilities and types of work performed by the firm.<span style="xfa spacerun:yes"  
>Â </span  
>However, do not double count the revenues received on a particular project.<span style="xfa spacerun:yes"  
>Â </span  
<</p  
<<p style="margin bottom:0pt;text indent:14.4pt;letter spacing:0in"  
<<span style="xfa spacerun:yes"  
>Â </span  
<</p  
<<p style="margin bottom:0pt;text indent:14.4pt;letter spacing:0in"  
>11.<span style="xfa spacerun:yes"  
>Â </span  
>Annual Average Professional Services Revenues of Firm for Last 3 Years.<span style="xfa spacerun:yes"  
>Â </span  
>Complete this block for the firm or branch office for which this Part II is prepared.<span style="xfa spacerun:yes"  
>Â </span  
>Enter the appropriate revenue index numbers to reflect the professional services revenues received annually (averaged over the last 3 years) by the firm or branch office.<span style="xfa spacerun:yes"  
>Â </span  
>Indicate Federal work (performed directly for the Federal Government, either as the prime contractor or subcontractor), non Federal work (all other domestic and foreign work, including Federally assisted projects), and the total.<span style="xfa spacerun:yes"  
>Â </span  
>If the firm has been in existence for less than 3 years, see the definition for "Annual Receipts" under FAR 19.101.<span style="xfa spacerun:yes"  
>Â </span  
<</p  
<<p style="margin bottom:0pt;text indent:14.4pt;letter spacing:0in"  
<<span style="xfa spacerun:yes"  
>Â </span  
<</p  
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>Authorized Representative.<span style="xfa spacerun:yes"  
>Â </span  
>An authorized representative of the firm or branch office must sign and date the completed form.<span style="xfa spacerun:yes"  
>Â </span  
>Signing attests that the information provided is current and factual.<span style="xfa spacerun:yes"  
>Â </span  
>Provide the name and title of the authorized representative who signed the form.</p  
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