

## 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)**

---

**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)  
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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)**

**(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. (b)(5)

(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).**

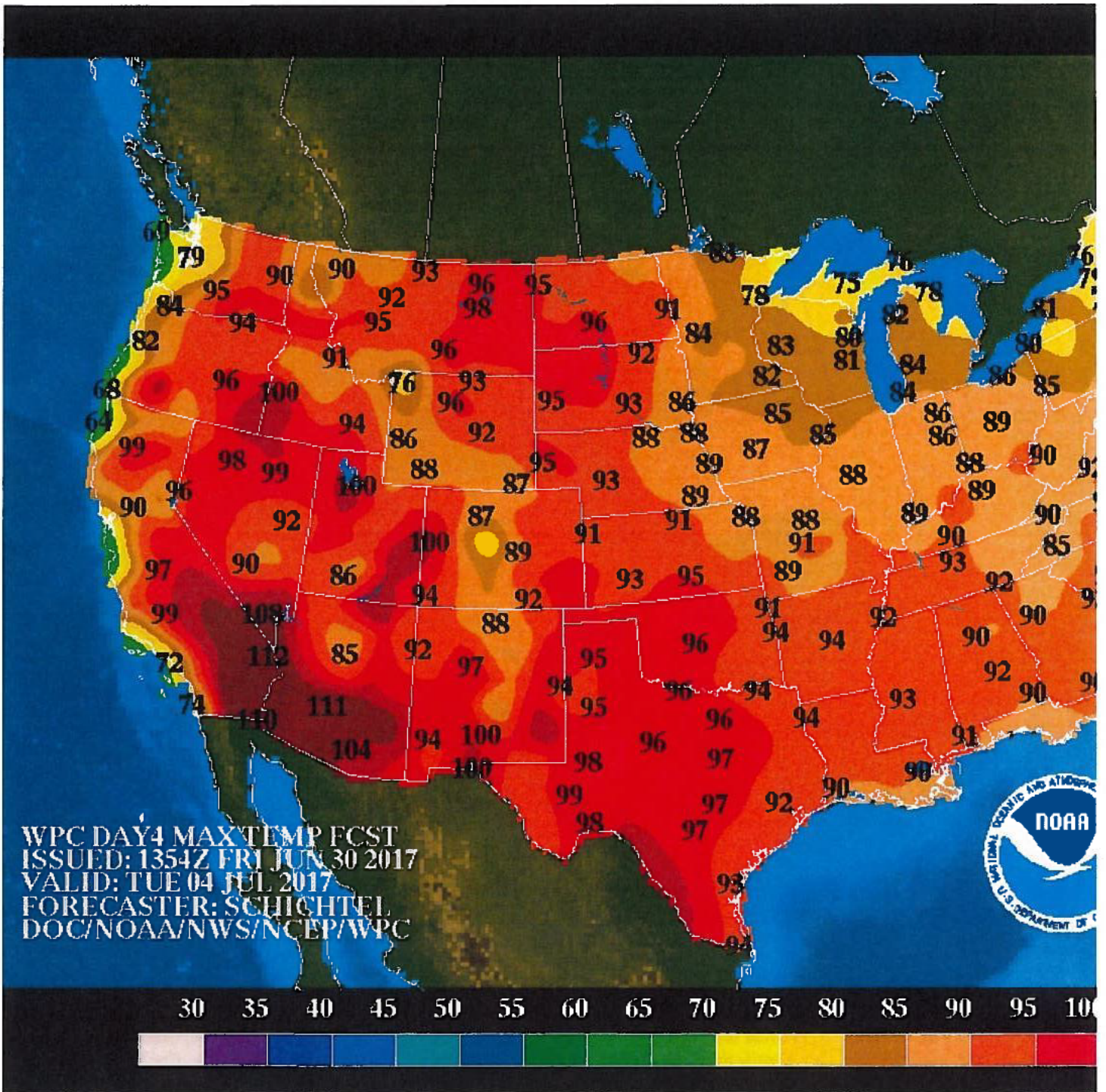
This Afternoon	Tonight	Saturday	Saturday Night	Sunday	Sunday Night
					
Mostly Sunny	Mostly Cloudy	30% → 60% Chance T-storms then T-storms Likely	70% T-storms Likely	Mostly Sunny	Partly Cloudy
High: 94 °F	Low: 76 °F	High: 89 °F	Low: 73 °F	High: 91 °F	Low: 71 °F

<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

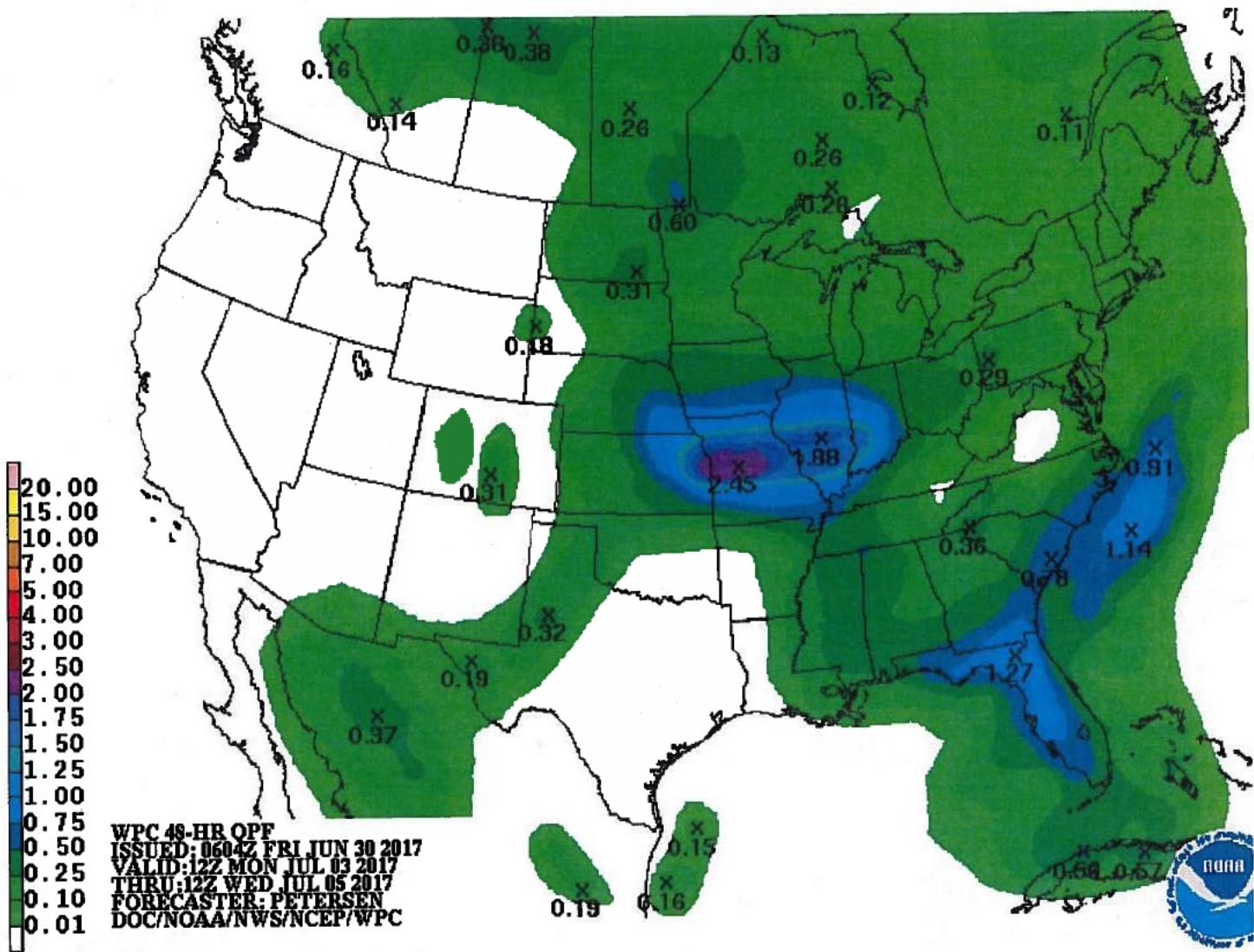
The following airports may experience travel delays due to weather conditions during the holiday period:

- **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,

(b)(5) [Redacted]

- [Redacted]
- [Redacted]

[Redacted]

[Redacted] 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)**



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;

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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](#).

Mark.Graff	Office 365	cholmes
Action Required		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+rmrwRpo1Pp/m4vGg/NNHK/V816MjDLpJBD8ddZJMqtak84Kd59 eAVx308Jer9VqrBoPvRjgqHA03MHmvFR54D44zMDfKefXqXxQwIrKPQum9To7Kx+p2kQ KaHTWnq0/qUUVUv3FVzAP1dNNB5m8eLo+IS1hAmdyk8sSysDYyNCroNmOXxRonpSpFRC kBuWLU0FbvRX13YJzjDzY38NM9pRFGqor2pDE/j4s1/11DY8uIAFFPbwtr+KCFmJPNm

AHncDP1/AII73mK9+Nd15TnJhJLu2h1D6tgqxriYTk4aVZNd594JIghzx2LJWvDQ2pBS  
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  
H3FLKwlyLTW9t1Z9Fd6AHYZoZ+gzjdsqNhD2BG+IRb2fbAZA/TE4vI7M1EPpvXfJaZ  
afBCqMU7e921YXVXBNTvmjC00D49LWiguCKEny75IR/2oQCeuZqxWOM/C+3v828GT8K  
OC3DELK0LNU6XFOJX7+c10a6JWz91WBw2nrb4+ldDkQr9dHHUMWbLXMJi5i53014sr1  
hts7o4WCcxzA43omFPeXl71EMyoww7ydCP2tMW43ZwPefyDyVf790ZepTfnfYS0YtCpD  
RLog==  
X Gm Message State: AKWxytcZ8mNS5HWQ4L+mBMy5CwK1XbrTyC5KVRvV+26Muit2w1c1ydmC  
5ufkfn4/dH3hkaVtZjbcQ05cV5fA4SjDdfBJGGGuClvFe9S8=  
X Google SmtP Source: ACJfBouWpccD0b5vyHUHItfgLG561aHXbegXryUyFR51LpiwEr4ymLJaScHQ6pN0o8WovXRmZELTwcY6moNHAXYZQ=  
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+JxgQx2D5U0JoZ1wsw4yFzov72RxfvdZJ6zq@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>,  
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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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Lawrence Charters NOAA Federal <lawrence.charters@noaa.gov>,  
Allison Soussi Tanani NOAA Federal <Allison.Soussi Tanani@noaa.gov>,  
"Bogomolny, Michael (Federal)" <MBogomolny@doc.gov>,  
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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/xc3WRQt3tTtZGfUnN7DQSAIcC8PhauFgVqnT5  
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+AM3pUpEu7Th8ojLR5sAhVxJ5kgH80B9f5eT2WOyoh8cYP50kE01Fj0XZagyJYwow7u4EGmNln5ZgSefBB1+SWVBgmZf1jxRkZ5s8f97  
KBOrzPzYrWCidP5e/+UVZ2XzORn/XQX+RovKehH3r6t/BGkoVSIzEyvfSzwNFJ3aHRLQtYp1OtuFOwqHEQBk0f+EyVSvk+mimqLXAjL3ctQc2/5z5ys/BNxOjJsjoaq  
s8Tbou8bOPh8YU5GZQ5rCMI6puuYSXJ/C601ja2hV/ednYjU/6/4wNxBGkqv7r123ME3ZElr5yRAfioMaMUKvpvrfGHHZhdALD9pWNbzWB/FigwQNoOktvoTIicxmU  
9NeOnOmwxhRDXzNVR;25:hd/dLlWt1E/Bg7aNG2mp/+CZnn+Jbuosvc2g8JvRb4d6wq7gMa3UouRZCUM+/rPKU94B/Og7iTcOv778TSivm4WNBfjs4uFBNc6mitDK0X  
04rEh8Hzqi+/3sY/GiFkh4YeB4mZwSo42NeJkFxnMph3nsV7/+WAeVbW07AK6B7HXEQFjAB4gnLS4giSHCM5WYeDxQOTQ8WNACMHSWdWk1lWVgASTcxkYri/zusZv+4  
4mNpMh1PsHS7VUx8i70T3s19V6nhMO0Eu66/PgIQZirBaIHqMnK03+ZWsARm2nx7Li07E/PcrDHPin5Sme5u9wL6OfAastMw2ZCA8ewE1DA=  
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  
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  
(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

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 "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 director 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,

Has this already g n

(b)(5)

(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,

(b)(5)

**(b) (5)**

**(b)(5)**

. 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  
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Office: 202 482 1588  
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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.

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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).

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)

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*Attorneys for Plaintiff Ocean Conservancy*

**Kristen Gustafson - NOAA Federal**

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**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,

(b)(5) [Redacted]  
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Kristen

Kristen L. Gustafson  
Deputy General Counsel  
General Counsel's Office  
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Office: 202-482-1588  
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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).

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#### **STATEMENT OF FACTS**

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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

1625 Mass. Ave., NW, Ste. 702

Washington, DC 20036

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202-667-2356 Fax

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

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Brettny Hardy (*pro hac vice* pending)

EARTHJUSTICE

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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] 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,

(b)(5)  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

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).

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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

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*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]

[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,

(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

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415-217-2040 Fax  
bhardy@earthjustice.org

*Attorneys for Plaintiff Ocean Conservancy*

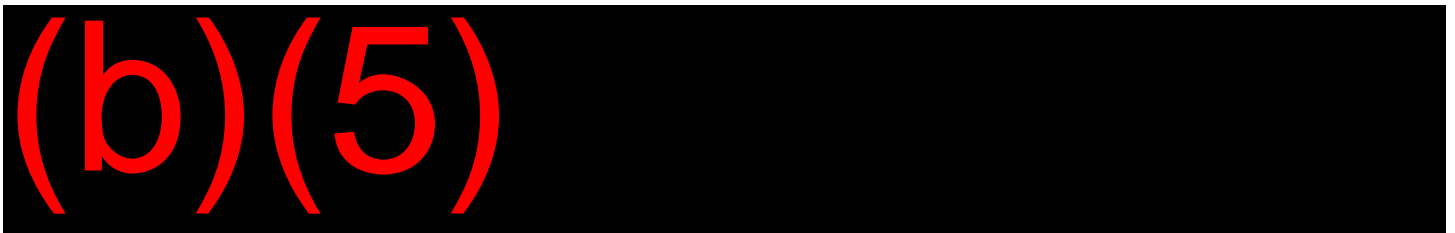
**Parsons, Bobbie (Federal)**

---

**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.



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)  
[Redacted text block]

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]

[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)

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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,

(b)(5)

[Redacted]

[Redacted]

[Redacted]

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

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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

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**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) [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

1625 Mass. Ave., NW, Ste. 702

Washington, DC 20036

202-667-4500 Telephone

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kdesai@earthjustice.org

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

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ceaton@earthjustice.org

Brettny Hardy (*pro hac vice* pending)

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

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 the 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 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

Received: from BN6PR09CA0050.namprd09.prod.outlook.com (2603:10b6:404:7a::12) by DM2PR09MB0589.namprd09.prod.outlook.com (2a01:111:e400:511c::23) with Microsoft SMTP Server (version=TLS1\_2, cipher=TLS\_ECDHE\_RSA\_WITH\_AES\_256\_CBC\_SHA384\_P256) id 15.20.428.17; Wed, 24 Jan 2018 21:14:05 +0000  
Received: from CY1GCC01FT008.eop gcc01.prod.protection.outlook.com (2a01:111:f400:7d02::202) by BN6PR09CA0050.outlook.office365.com (2603:10b6:404:7a::12) with Microsoft SMTP Server (version=TLS1\_2, cipher=TLS\_ECDHE\_RSA\_WITH\_AES\_256\_CBC\_SHA384) id 15.20.444.14 via Frontend Transport; Wed, 24 Jan 2018 21:14:05 +0000  
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;  
Received: from mail qt0 x243.google.com (2607:f8b0:400d:c0d::243) by CY1GCC01FT008.mail.protection.outlook.com (2a01:111:e400:7d00:fc15:b4ff:fe10:a110) with Microsoft SMTP Server (version=TLS1\_2, cipher=TLS\_ECDHE\_RSA\_WITH\_AES\_256\_CBC\_SHA\_P384) id 15.20.444.13 via Frontend Transport; Wed, 24 Jan 2018 21:14:04 +0000  
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

R0nLGRVa7Z40AWp/DT6eA3nr9axmpeC4m9fAYABQhezDEwB6sbtmXnZNLyWfottDM2i  
hC6w==

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;  
bh=NJs0nbtvBMKVyJKr4usBPxqzyB7HONeub6OjMyHtCU=;  
b=Sj6Y2+z4BaNrMGEgkFTP/5rflBm4Ad4jyC+Ypi9TtMoXgwVO9/Bw1aXosJe7RioK  
3snCsbWnKQoRbL9QIrxXwNv6HriI59szqYwOmZk7IZKkBCugFgCFGscJg3TskDTe9k76  
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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: <CAFWH6A9ZzNxmsqXohqJPOMFwCtXgu0KE1iBUeCkmB5 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>,  
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John Almeida NOAA Federal <john.almeida@noaa.gov>,  
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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  
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Reporting-MTA: dns;DM2PR09MB0589.namprd09.prod.outlook.com  
Received-From-MTA: dns;mail-qt0-x243.google.com  
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 the 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 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





**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

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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

**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,

(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 /  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

(b)(5)

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,

(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 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).

Scott Smullen  
Deputy Director  
NOAA Communications [202 482 1097](tel:2024821097) o / (b)(6) 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

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 o / (b)(6) c



**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,

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Mark H. Graff  
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National Oceanic and Atmospheric Administration  
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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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Deputy Director  
NOAA Communications [202 482 1097](tel:202-482-1097) o / 



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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

(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)**

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

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**(b)(5)**

With regards,  
Nikki

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(b)(5)

(b)(5)

Thanks,

Jonelle

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National Ocean Service  
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Nikki,

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Todd Ehret  
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

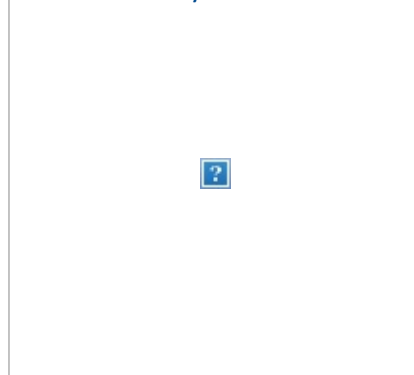
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##### **Trump Names Two More For FTC Posts**

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**

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#### LAW FIRMS

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Bronstein Gewirtz  
Bryan Cave  
Carlton Fields  
Clifford Chance  
Clifford Law Offices  
Cravath Swaine  
DLA Piper  
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**

---

### **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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Securities and Exchange Commission  
U.S. Attorney's Office  
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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]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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**Cc:** Stith, Lola (Contractor) <Lola.M.Stith@noaa.gov>; Morgan, Dennis (Federal) <Dennis.Morgan@noaa.gov>; Nathanson, Stacey (Federal) <Stacey.Nathanson@noaa.gov>  
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**NOAA**

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[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  
(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 Fri, Jan 26, 2018 at 12:48 PM, Bogomolny, Michael (Federal) <[MBogomolny@doc.gov](mailto:MBogomolny@doc.gov)> wrote:

**(b)(5)**

[Redacted]

**From:** Mark Graff NOAA Federal [mailto:[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)]  
**Sent:** Thursday, January 25, 2018 2:15 PM  
**To:** Swisher, Robert (Federal) <[Robert.Swisher@noaa.gov](mailto:Robert.Swisher@noaa.gov)>; Kearns, Ed (Federal) <[Ed.Kearns@noaa.gov](mailto:Ed.Kearns@noaa.gov)>; Bogomolny, Michael (Federal) <[MBogomolny@doc.gov](mailto:MBogomolny@doc.gov)>  
**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)>



**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)>

(b)(5)

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,



(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 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



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NOAA Fisheries declined to respond. "NOAA does not comment on litigation matters," said John Ewald, a NOAA Fisheries spokesman.

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"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

## 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:

(b)(5)

The text "(b)(5)" is followed by three thick black horizontal bars of varying lengths, indicating redacted content. The first bar is the longest, followed by a shorter one, and then a third, even shorter one. There is a significant gap between the third bar and the next block of text.

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)

(b)(5)

**Branson, Ross (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

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----- 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)**

---

**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,

(b)(5)

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,

(b)(5)

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).**

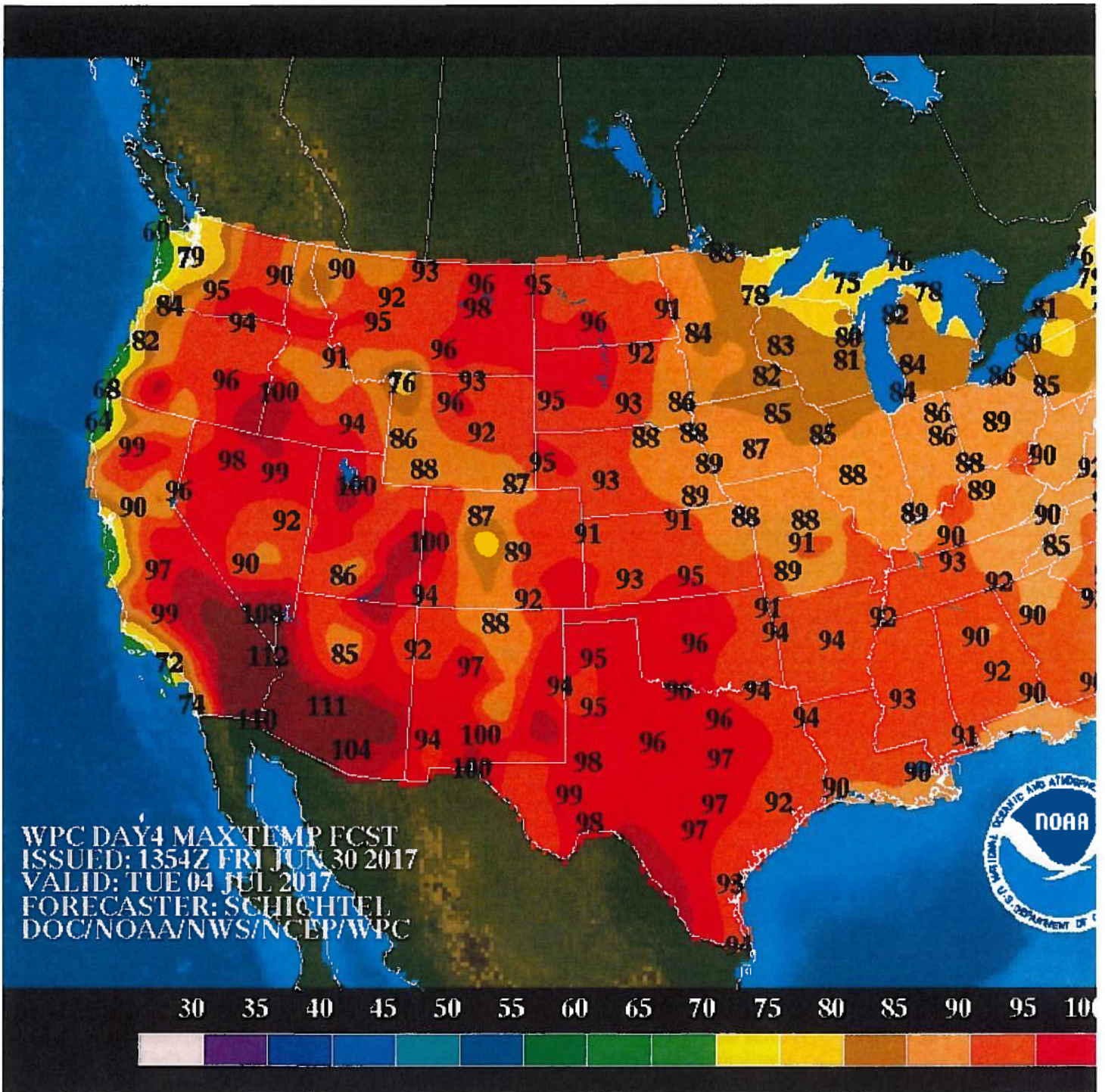
This Afternoon	Tonight	Saturday	Saturday Night	Sunday	Sunday Night
					
Mostly Sunny	Mostly Cloudy	30% → 60% Chance T-storms then T-storms Likely	70% T-storms Likely	Mostly Sunny	Partly Cloudy
High: 94 °F	Low: 76 °F	High: 89 °F	Low: 73 °F	High: 91 °F	Low: 71 °F

<b>This Afternoon</b>	Mostly sunny, with a high near 94. South wind around 15 mph, with gusts as high as 23 mph.
<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

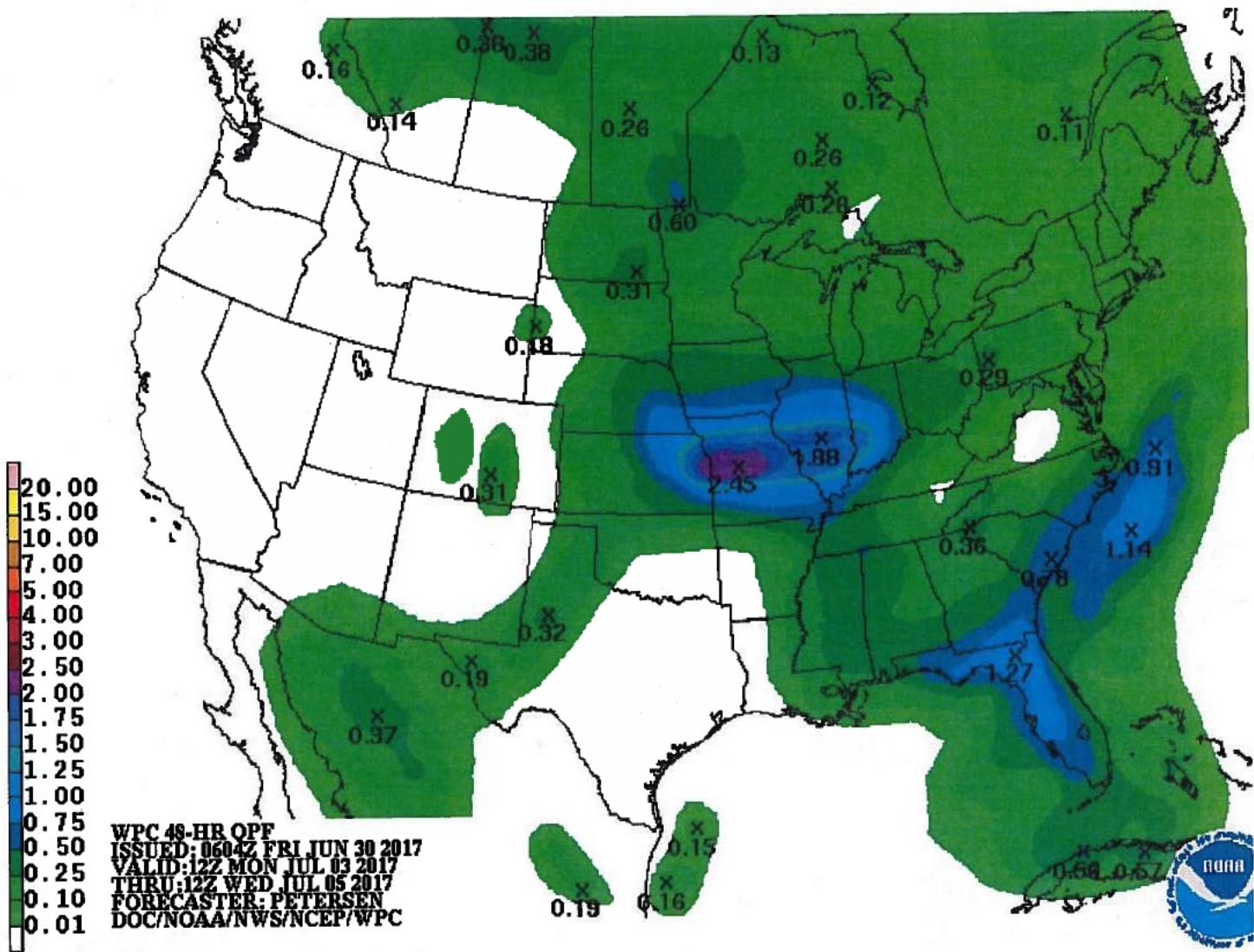
The following airports may experience travel delays due to weather conditions during the holiday period:

- **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)

--

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,

I received a contact for NASA and reached out this morning.

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 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](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)

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)  
[Redacted]

[Redacted] 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]

[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)>



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 phon (b)(5)

. I appreciate any insights you can provide, as I know you have an incredible wealth of experience with this statute.

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]. 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

1625 Mass. Ave., NW, Ste. 702

Washington, DC 20036

202-667-4500 Telephone

202-667-2356 Fax

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

EARTHJUSTICE

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Brettny Hardy (*pro hac vice* pending)

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San Francisco, CA 94111

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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).

\*\*\*

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)  
[Redacted]

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)  
[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]

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)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,

The referring official on the Dec. 22 Memo is Robert Young, the FOIA Officer for NASA. A copy of the original referral memo is attached. 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)

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, Jan 30, 2018 at 12:50 PM, Jonelle Dilley NOAA Federal <[jonelle.dilley@noaa.gov](mailto:jonelle.dilley@noaa.gov)> wrote:

(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:(301)7137383) (direct line)  
Cel (b)(6)  
Fax: [\(301\) 713 4408](tel:(301)7134408)

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)

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)5330937)

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)  
[Redacted]  
[Redacted]  
[Redacted]

[Redacted] 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

In processing this request, we have located the attached document, containing information regarding your agency. For NASA purposes we have marked the portions which are not subject to your Agency's release determination as "RESPONDED TO BY ANOTHER AGENCY", for FOIA Request 18-HQ-F-00022. Please review this document and reply directly to the requester. The NASA equities in this document were withheld in part under Exemption 6.

## 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)  
Fax: [\(301\) 713 4408](tel:3017134408)

On Tue, Jan 30, 2018 at 12:53 PM, Mark Graff NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)> wrote:  
Hi Jonelle,

The referring official on the Dec. 22 Memo is Robert Young, the FOIA Officer for NASA. A copy of the original referral memo is attached. 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) (C)

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On Tue, Jan 30, 2018 at 12:50 PM, Jonelle Dilley NOAA Federal <[jonelle.dilley@noaa.gov](mailto:jonelle.dilley@noaa.gov)> wrote:

(b)(5)

(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](#) (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]  
[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]

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)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,

Yes, as of my last extraction, the attached list represented the EO related requests we currently have on the books. This represents the requests referencing EO 13795 or National Monument designations. I will update you when I have an updated list extracted, but this is relatively recent listing.

Those highlighted in yellow would be part of the larger DOC led request grouping. Those not highlighted relate generally to National Monument Designations, but are pre existing requests, have already had searches completed, and are being processed separate from the larger EO related request intake.

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.

Do you have a list of the FOIA's regarding Executive Order 13795 that were reassigned to DOC for action?

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. GC has recently located an additional set of approximately 85 responsive records. We had previously thought the Interim Release currently under review would be the final release. The additional 85 records located contain privileged material, and illustrate NOAA's decision making process on the retention practice (b)(5)

[REDACTED]  
[REDACTED] The final release in that case is due to be issued no later than February 5.

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)

<b>Tracking Number</b>	<b>Type</b>	<b>Status</b>	<b>Requester</b>
DOC-IOOS-2018-000166	Request	Assignment Determination	Margaret Townsend
DOC-IOOS-2018-000170	Request	Assignment Determination	Chris Saeger
DOC-IOOS-2018-000172	Request	Assignment Determination	Kellie M. Lunney
DOC-IOOS-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-IOOS-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 Department of the Interior, to review, create, 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 the report include a copy of the report and 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 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  
Executive Order. The review should be included or excluded from the expansion of PRIMNM and/or the uses which should be permitted  
view of national monument designations for Northeast Canyons and Seamounts Marine National Monument  
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, including any calendar entries, invitations, itineraries, or communications referencing such meetings; (2) any agency request, including but not limited to all written comments, as well as all communications with non-Federal 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,

ies Act of 1906, recently r

17.

das, minutes, attendee lists, or presentations relati  
governm

- 12/31/16) Pacific Remote Islands Marine National Mo  
ise provide the copies of the comments received by NOAA from the Depar  
:t sheet on the Executive Order. That memo can be  
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: t

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]

[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) [REDACTED] (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]

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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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.

**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, below is a proposed search structure. (b)(5) [Redacted]  
[Redacted]  
[Redacted]

[Redacted]  
[Redacted]  
[Redacted]  
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- (b)(5) [redacted]
- [redacted]
- [redacted]
- [redacted]

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[redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]

Again, please let me know if I am missing any specific portions of the requests that you all do not think this structure would be likely to uncover all relevant documents. 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 but not limited to the following records:

1. Documents relating to the expansion of PRIMNM ultimately effectuated by Presidential Proclamation 9173, including but not limited to the following records:

I request 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



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)

and (2) 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 Presidential Proclamation 8331 which could be included or excluded from the expansion of PRIMNM and/or the uses which should be permitted. The report also includes a review of national monument designations for Northeast Canyons and Seamounts Marine National Monument 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 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) 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,

ies Act of 1906, recently r

17.

das, minutes, attendee lists, or presentations relati  
governm

- 12/31/16) Pacific Remote Islands Marine National Mo  
ise provide the copies of the comments received by NOAA from the Depar  
:t sheet on the Executive Order. That memo can be  
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: t

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]

[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,

(b)(5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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)

(b) (5)

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 I found it on PACE (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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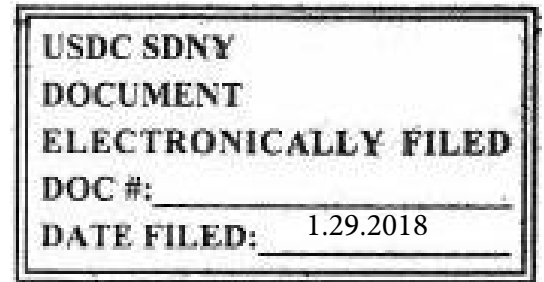
On Thu, Feb 1, 2018 at 3:53 PM, Bogomolny, Michael (Federal) <[MBogomolny@doc.gov](mailto:MBogomolny@doc.gov)> wrote:

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;

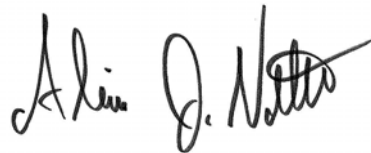
- (5) A list of all prior settlement discussions, including the date, the parties involved, and the approximate duration of such discussions, if any;
- (6) The estimated length of trial; and
- (7) Any other information that the parties believe may assist this Court in resolving the action.

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**

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**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]

A copy of the underlying request and Complaint are attached. The initial conference scheduling has already been issued, which I am also attaching.

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)

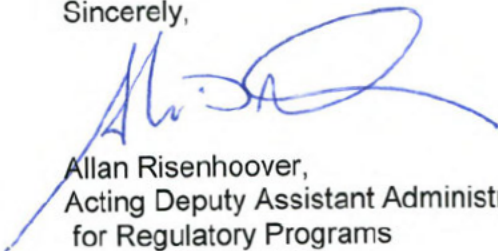
Phone: 301-837-1996

Fax: 301-837-0348

Toll-free: 1-877-684-6448

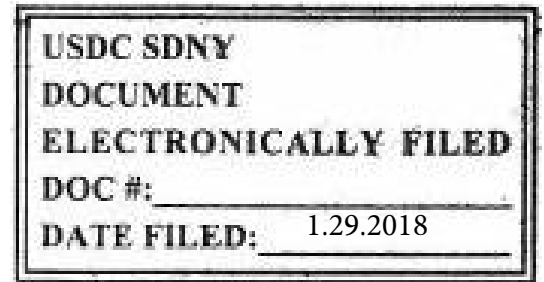
If you have questions regarding this correspondence please contact Jeff Lonergan at [jeff.lonergan@noaa.gov](mailto:jeff.lonergan@noaa.gov) or by phone at 301-427-8577, or the NOAA FOIA Public Liaison Robert Swisher at (301) 628-5755.

Sincerely,



Allan Risenhoover,  
Acting Deputy Assistant Administrator  
for Regulatory Programs

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;

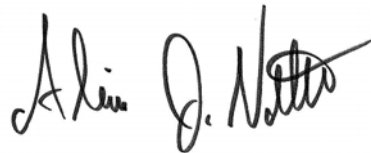
- (5) A list of all prior settlement discussions, including the date, the parties involved, and the approximate duration of such discussions, if any;
- (6) The estimated length of trial; and
- (7) Any other information that the parties believe may assist this Court in resolving the action.

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**

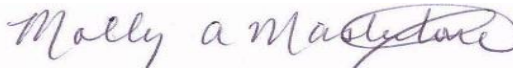
Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; the Department’s search for—or deliberations concerning—certain records should not delay the production of others that the

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 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**

---

**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)

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)

A copy of the underlying request and Complaint are attached. The initial conference scheduling has already been issued, which I am also attaching.

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)

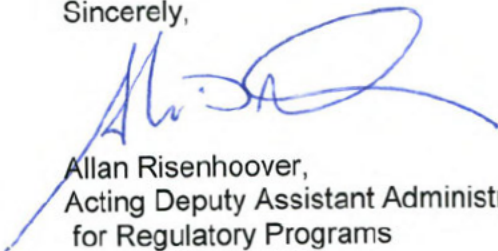
Phone: 301-837-1996

Fax: 301-837-0348

Toll-free: 1-877-684-6448

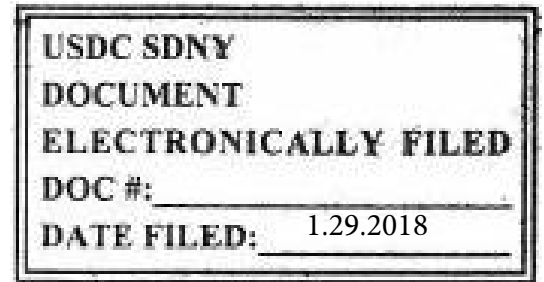
If you have questions regarding this correspondence please contact Jeff Lonergan at [jeff.lonergan@noaa.gov](mailto:jeff.lonergan@noaa.gov) or by phone at 301-427-8577, or the NOAA FOIA Public Liaison Robert Swisher at (301) 628-5755.

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;

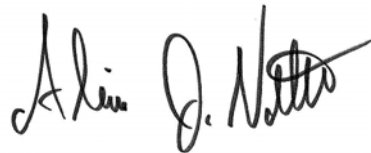
- (5) A list of all prior settlement discussions, including the date, the parties involved, and the approximate duration of such discussions, if any;
- (6) The estimated length of trial; and
- (7) Any other information that the parties believe may assist this Court in resolving the action.

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



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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**

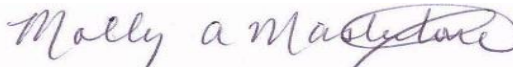
Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; the Department’s search for—or deliberations concerning—certain records should not delay the production of others that the

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 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

**Mark Graff - NOAA Federal**

---

**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)

The Complaint and underlying request are attached, and I sent the narrowed scope on Dec. 20.

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) (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**

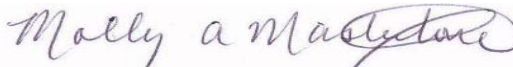
Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; the Department’s search for—or deliberations concerning—certain records should not delay the production of others that the

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**

---

**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 (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 below (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 (b)(5)

[Redacted]

[Redacted]

(b)(5)

[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 "public event" 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**

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**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. Here is the memo I provided to Mike T. last year in support of the position.

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,

I wanted to loop you in to the discussion below (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)>

Date: Mon, Feb 5, 2018 at 11:18 AM

Subject: Re: Direct Cost Retention

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

Cc: Nkolika Ndubisi NOAA Federal <[nkolika.ndubisi@noaa.gov](mailto:nkolika.ndubisi@noaa.gov)>, Jeri Dockett NOAA Affiliate <[jeri.dockett@noaa.gov](mailto:jeri.dockett@noaa.gov)>, Lola Stith NOAA Affiliate <[lola.m.stith@noaa.gov](mailto:lola.m.stith@noaa.gov)>

Hi Mar (b)(5) [REDACTED]  
[REDACTED]  
[REDACTED]. Kim

On Thu, Feb 1, 2018 at 1:52 PM, Kimberly Katzenbarger NOAA Federal <[kimberly.katzenbarger@noaa.gov](mailto:kimberly.katzenbarger@noaa.gov)> wrote:

Hi Mar (b)(5) [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]  
[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) (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  
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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)

(b) (5)

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





(b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)



## 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 c 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 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-maint> 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 processed. 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  
ood 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  
r 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. Pilarcitos Creek. 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)  
3. 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  
3. 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.

3. 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







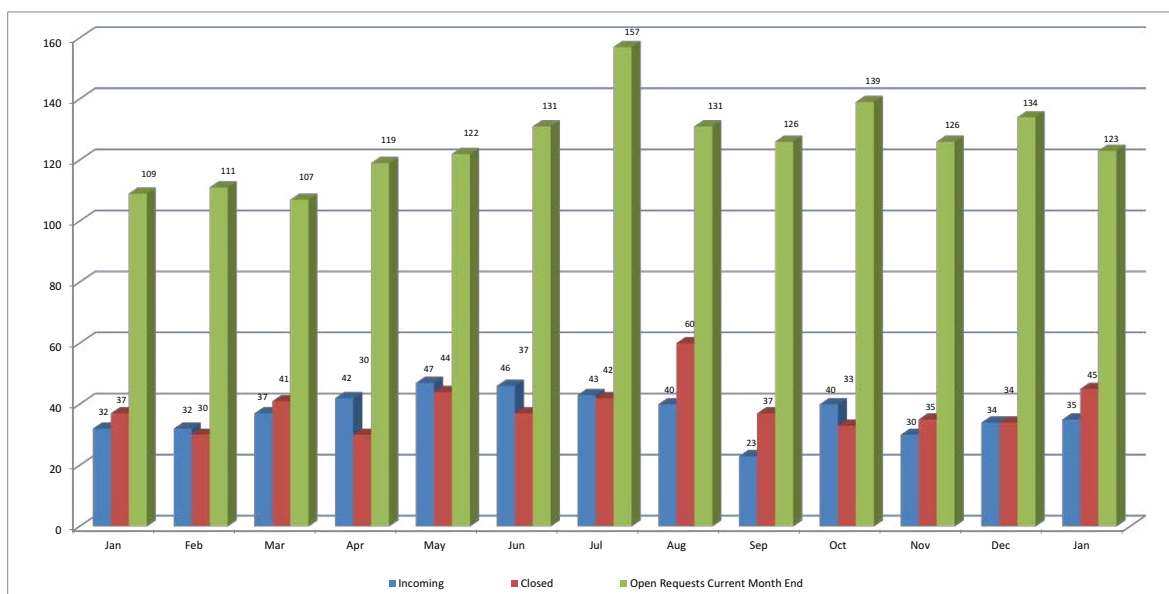




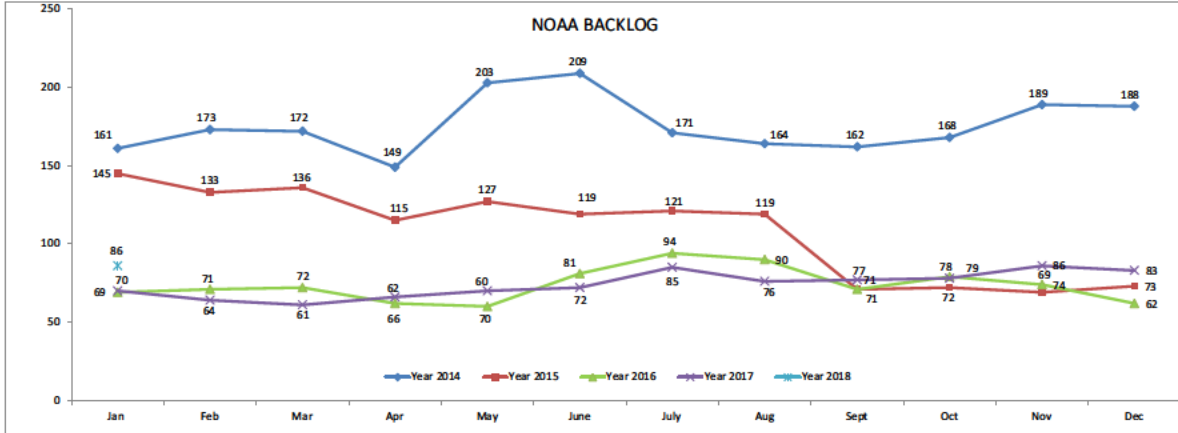
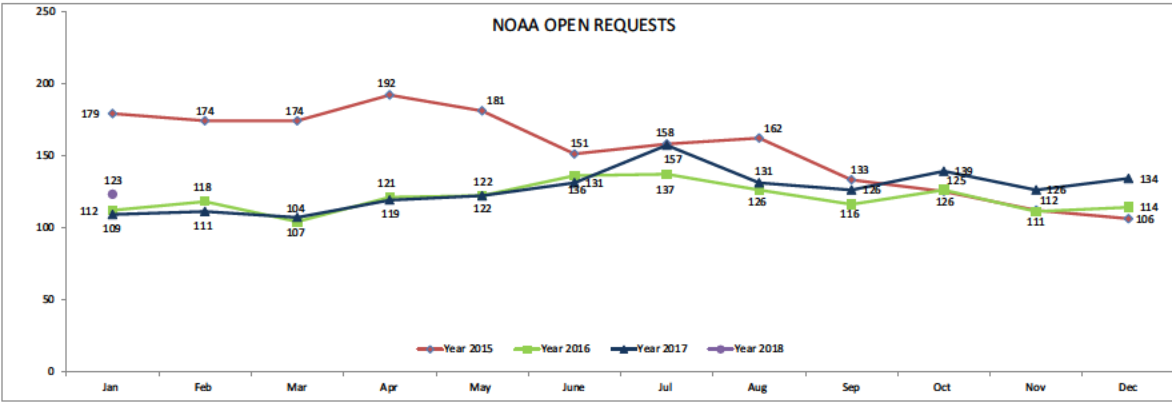


FOIA Monthly Status Report 01 31 2018

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>

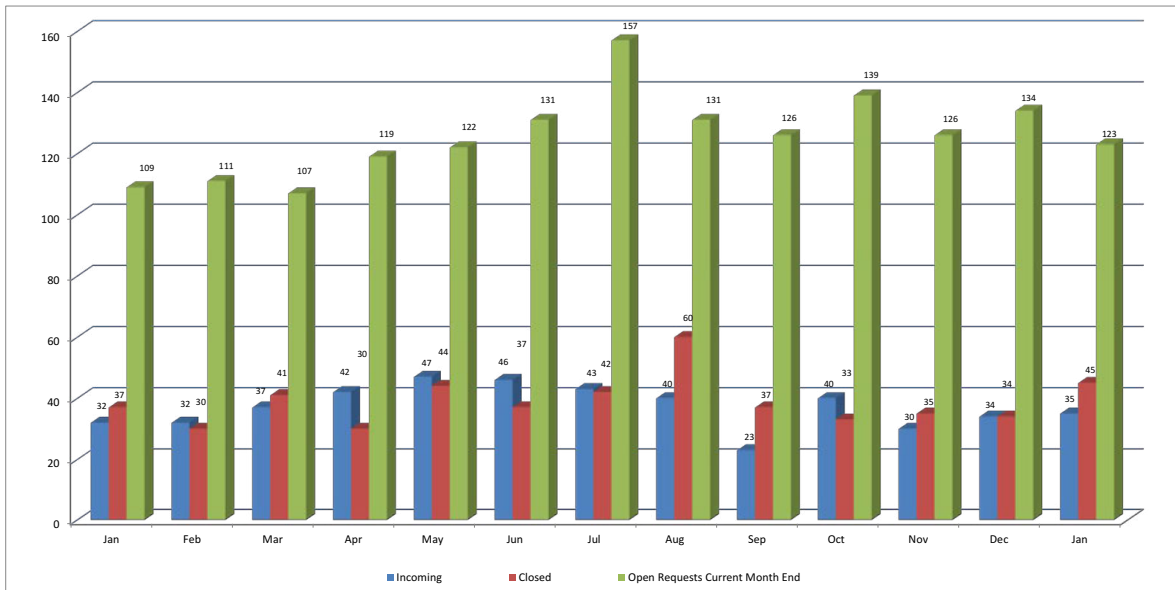


FOIA Monthly Status Report 01 31 2018

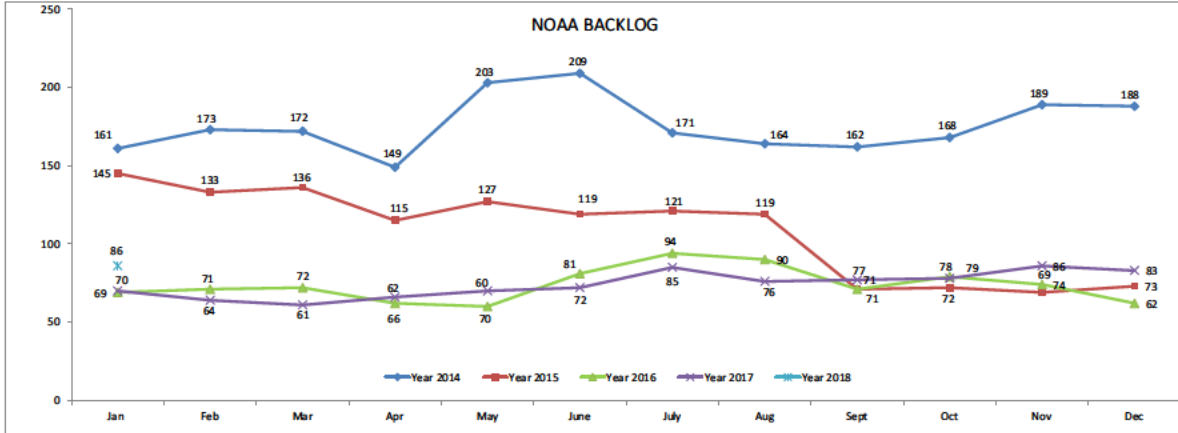
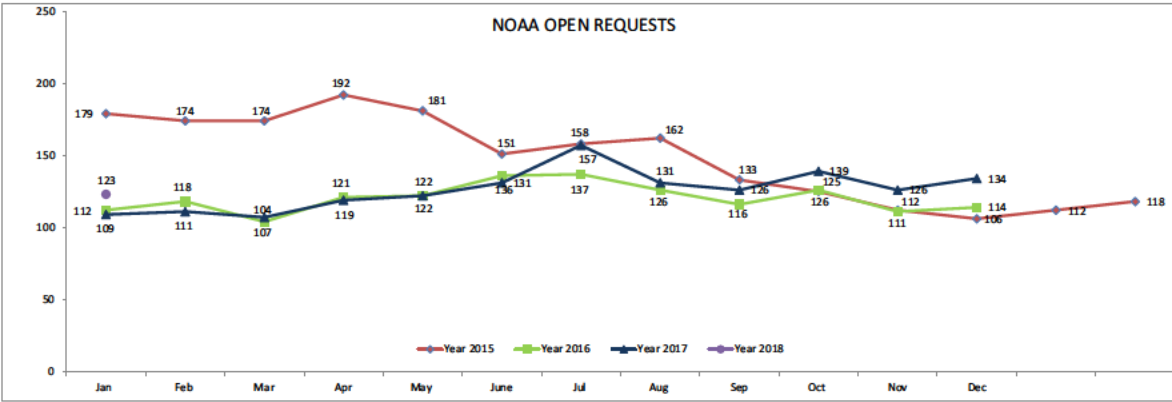


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Organization	Open Requests Previous Month End	Incoming Requests	Closed Requests	Open Requests Current Month End	Backlog 21-120 days	Backlog 121-364 days	Backlog 365 or more days	Total Backlog
AGO	6	7	2	10	1	1	1	3
CAO	2	2	0	6	2	1	0	3
CFO	0	0	0	0	0	0	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>



68fd8dd5c76408291096c2b474720f6.xlsx



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, 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 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 ("NMFS") related to certain documents and meetings, all of which were described in Chapte ("NMFS") related to certain meetings, calls, and webinars, all of which were described in Ch ("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 Form 295 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

DOA Contract No. 50-SPNA-9-00010 <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.201.280>  
and by J. Kirk Essmyer Inquiry Official / Appeals Officer NOAA Fisheries Service, National Appeals Office  
is: "a site tour was conducted with NOAA Fisheries...Hazardous materials were encountered."  
Chapter 2 of the NMFS Biological Opinion for chlorpyrifos, diazinon, and malathion issued on December 29, 2017  
Chapter 2 of the NMFS Biological Opinion for chlorpyrifos, diazinon, and malathion issued on December 29, 2017  
Chapter 2 of the NMFS Biological Opinion for chlorpyrifos, diazinon, and malathion issued on December 29, 2017  
present.

"Fisheries" (NOAA Fisheries) and "National Marine Fisheries Service" (NMFS). All such  
purse 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  
is 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]

& 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 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 dissemination of biological opinions during the Federal Advisory Committee Act, Pesticide Program Dialogue Conference Act, and the preparation of biological opinions during any of the (initially monthly, then weekly) hour-long ESA Steering Committee meetings. I am also requesting information on the preparation of biological opinions during the Interagency Endangered Species Act ("ESA") National Academies

Administration, National Marine Fisheries Service, and their employees, agents, attorneys, and consultants. In addition, I am requesting information on the management of the 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 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 Schneider

meetings for OAR and NOS; 3. Actions that  
The cover letter by OAR Leadership to Mack Cato included  
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 N 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, fil  
We request copies of all memoranda, studies, reports, data, correspondence, comments, conversation records, fil  
We request copies of all memoranda, studies, reports, data, correspondence, comments, conversation records, fil  
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 SLL 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 idence, 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  
) 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  
cretary 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  
1 all sources including, but not limited to, regular pay, overtime, bonuses, cash, profit sharing, commissio  
ient 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  
not 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. & 1531-1544 ("  
mburse the expenses of industry-funded at-sea monitoring.



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: 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 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 regarding 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

Dopies 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 maintained for a period of 7 years after the date of 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,

bill 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

n. (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

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bed by drones or unmanned aeria

astal Resources Management Act of 1978 an

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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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declared; n  
ich proof "be th  
rg: MELISSA SOLDEVILLA.





/il

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 □ Joi  
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 Godfroy □ 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 □ Jonz

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)

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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)

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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

This memorandum addresses whether records of Members<sup>1</sup> of a Fishery Management Council (Council or Councils) established under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) are NOAA or Council records for purposes of the Freedom of Information Act (FOIA). Although the questions raised by this matter require application of principles of FOIA, the legal conclusions for the questions ultimately depend on interpretation of the statutory scheme established under the MSA. In addition, this request raises significant issues for administration of the MSA, NOAA's relationship with the Councils established under the Act, and NOAA's FOIA and Federal Records Act compliance burdens in the context of the Councils. Accordingly, NOAA has a role to play in analysis of the issue here.

**Questions Presented**

This memorandum addresses the following questions.

1. Whether the role and functions of Council Members under the MSA are such that Member records are NOAA records for FOIA purposes?
2. Whether the role and functions of Council Members under the MSA are such that their records are Council records and, as such, subject to FOIA, if a Council is an "agency" for purposes of the Act?

<sup>1</sup> For purposes of this memorandum, "Records of Members of a Fishery Management Council," or "Council Member Records," mean those records of non-federal Council Members that have not been provided to NOAA or a Council.





## Short Answers

1. No. For FOIA purposes, Council Member records are NOAA records if (1) created or obtained by NOAA and (2) subject to NOAA control at the time of the FOIA request. NOAA has not obtained Council Member records and, because of the role and functions of Council Members under the MSA, their records are not “created by” NOAA. Whether NOAA has control over Council Member records is determined through a four-factor test and all factors weigh heavily towards the conclusion that NOAA does not have control of Member records.
2. No. Although a Council, by virtue of its MSA functions and federal nexus, appears to be an “agency” within the meaning of FOIA, Council Member records are not Council records for purposes of the Act because a Council has not obtained Council Member records and, as with NOAA, the role and functions of Council Members under the MSA are such that their records are not “created by” a Council. Further, under the four-factor test, all factors weigh heavily towards the conclusion that a Council does not control Member records.

## Background

The questions presented have arisen in the context of a FOIA request filed with NOAA Fisheries’ Northeast Regional Office (NERO) that seeks Council Member records that reflect communications with a specific member of the public. On February 6, 2012, NERO received a FOIA request from Mr. Paul Muniz requesting “any and all e-mails between Vito Giacalone of Gloucester, Massachusetts and any member of the New England Fishery Management Council (NEFMC) dated after January 1, 2008.” (Muniz FOIA). In responding to this request, NERO searched its own records and directed the NEFMC to conduct a search.

A NOAA regulation, set forth at 50 C.F.R. 600.150(a), provides that:

Council records must be handled in accordance with NOAA records management office procedures. All records and document 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.

On the basis of this regulation, NOAA concluded that it had asserted control over records of the Council, and those created or received by Council employees while in active duty status. By negative implication, the agency has not asserted control over Council Member records.

On May 7, 2012, NERO responded to the Muniz FOIA by providing 13 emails. These emails were those that had been forwarded to NOAA or to the Council and those that included a NOAA or Council employee on the recipient or cc line. On June 6, 2012, Muniz filed an administrative appeal with the Department’s Assistant General Counsel for Administration, General Law

Division (GLD) in which he asserted that NOAA failed to conduct an adequate search because the agency did not ask each Council Member to conduct a search for responsive records.<sup>2</sup>

In response to Muniz's appeal, GLD has indicated that any Council Member records that reflect communications "conducted in an official capacity as a Council Member and in furtherance of Council business" are "agency records," and, therefore, must be searched in response to the FOIA. NOAA Fisheries' Leadership expressed significant policy concerns with GLD's determination because it conflicts with a long-standing agency regulation limiting agency records to those of the Council and those created or obtained by Council employees.

Specifically, the current regulation on Council records is in place to recognize the autonomous and independent role that Council Members have under the MSA. To develop their respective positions on matters before a Council, Members need to engage local constituents. This is consistent with Congress' intent that fishery management under the MSA be a balance between federal, state, and local interests. NOAA is concerned that adoption of GLD's approach to Council Member records would treat Council Members – who represent local interests – essentially as federal officials representing federal points of view on fisheries management issues.<sup>3</sup>

There is a similar policy concern for Council Members who serve as the principal State official on fishery management matters as designated by their respective State Governor: presumably the States would not consider these records to be federal agency records as their Member represents State, not federal interests before a Council.

In addition, NOAA is concerned that GLD's approach would substantially increase NOAA Fisheries' FOIA and Federal Records Act compliance burdens. Treatment of Council Member records as agency records would likely require Council Members to search for records in response to any FOIA request that seeks records related MSA actions. It would also require development of revised regulations for Council records and revisions to NOAA's Records Disposition Handbook as the NOAA's current regulations and Records Handbook do not require maintenance of Council Member records. Finally, GLD's approach could have implications for how NOAA assembles administrative records for purposes of judicial review of agency actions.

## **Analysis**

### **I. Whether Council Member Records are NOAA Records**

The FOIA requires "each agency" to make available "agency records" either proactively or upon request, subject to nine enumerated exceptions.<sup>4</sup> A threshold question for any FOIA request is whether the requested records are "agency records" for purposes of the Act because only those

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<sup>2</sup> NERO's Muniz FOIA response did not indicate the scope of the agency's search. Thus, Muniz's administrative appeal appears to be based on his hunch that Council members have communicated with Giacalone.

<sup>3</sup> Because Council Member's generally communicate with private, non-federal parties in their representative capacity as Council Members, their communications would most likely not be within the scope of any FOIA exemption, and therefore, would be subject to disclosure.

<sup>4</sup> 5 U.S.C. 552(a)(2) (proactive disclosure requirements) and 552(a)(3) (providing right to request records not otherwise made available)

records can be responsive to a request.<sup>5</sup> Congress left the term “agency record” undefined; thus, the Supreme Court in *Department of Justice v. Tax Analysts*<sup>6</sup> adopted a two-part test for determining what records constitute “agency records” for purposes of the Act. Under the Court’s *Tax Analysts* test, Council Member records are NOAA records for FOIA purposes if those records are (1) either created or obtained by NOAA; and (2) under NOAA control at the time of the FOIA request.<sup>7</sup> Council Member records are NOAA records for FOIA purposes only if both elements of this test are satisfied. The analysis below demonstrates that Council Member records satisfy neither element.

#### A. Obtained or Created by NOAA

NOAA has not obtained Council Member records. The obtainment prong of the first element of the *Tax Analysts* test is satisfied when records “have *in fact* been obtained.”<sup>8</sup> In other words, the records must be in the “agency’s possession.”<sup>9</sup> NOAA does not have possession of Council member records.<sup>10</sup>

Likewise, Council Member records are not created by NOAA. The Office of Legal Counsel (OLC) and the U.S. Civil Service Commission have concluded that Council Members are not agency employees.<sup>11</sup> Therefore, records that Council Members create or obtain are not created or obtained by NOAA. This conclusion is consistent with the decision in *Judicial Watch v. Department of Energy*,<sup>12</sup> in which the D.C. Circuit held that records created or obtained by Department of Energy (DOE) employees while on detail to a White House working group were not agency records for purposes of FOIA. The court held that because the detailees were, as a practical matter, employees of the White House and not of the agency, the records those employees created or obtained while on detail were those of the White House, not those of the DOE, and hence not “agency records” under FOIA. Our facts are similar to those before the court in the DOE case. Council Members are not NOAA employees. Therefore, records that Council Members may create or obtain are not created or obtained by NOAA.

Council Member records could, arguably, be NOAA records for FOIA purposes under the constructive control and obtainment theory. This theory applies where an agency exercises

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<sup>5</sup> See *Bureau of National Affairs v. U.S. Department of Justice*, 742 F.2d 1484, 1488 (D.C. Cir. 1984), quoting *Kissinger v. Reporters Committee for Freedom of the Press*, 445 U.S. 136, 150 (1980) (internal quotations omitted) (stating that federal court jurisdiction in any FOIA case is predicated on a showing that “an agency has (1) improperly; (2) withheld; (3) *agency records*”) (emphasis added).

<sup>6</sup> 492 U.S. 136 (1989).

<sup>7</sup> *Id.* at 144-45.

<sup>8</sup> *Bloomberg v. Board of Governors of the Federal Reserve System*, 649 F. Supp. 2d 262, 274 (S.D.N.Y. 2009) (emphasis in original) quoting *Forsham v. Harris*, 445 U.S. 169, 186 (1980).

<sup>9</sup> *Tax Analysts*, 492 U.S. at 145.

<sup>10</sup> In *Physicians Committee for Responsible Medicine v. Glickman*, 117 F. Supp. 2d 1 (D.D.C. 2000), the court addressed a similar issue in the context of the Federal Advisory Committee Act (FACA). In rejecting the plaintiff’s contention that the Agriculture Department did not comply with the FACA by not seeking emails that may have been exchanged between Committee members the court stated that “[a]n agency is under no duty to *disclose documents not in its possession*.” See *id.* at 3 (emphasis added).

<sup>11</sup> 7 O.L.C. 150 (1993), discussed *infra*.

<sup>12</sup> 412 F. 3d 125, 131 (D.C. Cir. 2005).

“*extensive* supervision and control” over an outside party such as a contractor.<sup>13</sup> In these circumstances, the outside party is viewed as “acting on behalf of the agency” and, thus, records created or obtained by the outside party are treated as created or obtained by the agency.<sup>14</sup> Thus, for Council Member records to be NOAA records under the constructive obtainment and control theory, NOAA would need to exercise “*extensive* supervision and control” over Council Members such that they functionally “act on behalf of the agency” when creating or obtaining records.<sup>15</sup>

NOAA exercises little, if any, supervisory control over Council Members, much less the *extensive* supervision and control necessary for application of the constructive obtainment theory. The lack of supervisory control over Council Members was the basis for OLC’s conclusion that Council Members are not Executive Branch employees as defined under 5 U.S.C. 2015.<sup>16</sup> In the absence of a Council recommendation, the Secretary may only remove a Council Member for a violation of specific provisions related to financial disclosure.<sup>17</sup> OLC concluded that the “unusually severe” limits on the Secretary’s authority to remove Council members coupled with the Councils’ authority to “veto” the Secretary’s draft FMPs that provide for limits on access to fisheries “are incompatible with the ordinary meaning of supervision.”<sup>18</sup> To support its conclusion, OLC cited the House Report for the 1983 amendments to the MSA which stated that “Council members . . . are not Federal employees . . . because they are not . . . *subject to the supervision of Federal officials* in their day-to-day activities.”<sup>19</sup>

Indeed, NOAA’s limited supervision and control over Council Members and their records is fundamental to the scheme Congress established when it set up the Councils under the MSA. Congress created the Councils to function like specialized legislative bodies where each Member has an equal vote on matters. Council Members serve in a representative capacity and their principal role is to vote on matters before a Council.<sup>20</sup> NOAA’s interests are represented on each Council through the agency’s Regional Administrators.<sup>21</sup> The role of the other Council Members is to represent the interests of each constituent State or the interests of commercial, recreational

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<sup>13</sup> *Burka v. U.S. Department of Health and Human Services*, 87 F. 3d 508, 515 (D.C. Cir. 1996) (emphasis added); *But see Bloomberg*, 649 F. Supp. 2d at 275 (stating that applicable Supreme Court precedent “[do]es not compel adoption of the constructive obtainment and control theory” and declining to apply the theory to records that may have been created by a Federal Reserve Bank on behalf of the Federal Reserve Board).

<sup>14</sup> *Burka*, 87 F.3d at 515. *See also, American Small Business League v. U.S. Small Business Administration* (SBA), 623 F.3d 1052, 1053 (9th Cir. 2010) (rejecting application of the constructive control and obtainment theory because SBA did not “*extensively* supervise[]” third party’s production and management of records) (emphasis added).

<sup>15</sup> *Burka*, 87 F.3d at 515 citing *Tax Analysts v. Dep’t of Justice*, 845 F.2d 1060, 1069 (D.C. Cir. 1988), *aff’d on other grounds*, 492 U.S. 136.(1989).

<sup>16</sup> 7 O.L.C. 150 at 9. The precise question before OLC was whether Council Members were Executive Branch employees under Executive Order 12674. OLC interpreted the Order to adopt the definition of “employee” under 5 U.S.C. 2105, which defines employees of the Executive Branch. Thus, in finding that Council Members are not employees under 5 U.S.C. 2105, OLC concluded that they are not employees within the meaning of the Order as well.

<sup>17</sup> 16 U.S.C. 1852(b)(6).

<sup>18</sup> 17 O.L.C. 150 at 9.

<sup>19</sup> 17 O.L.C. 150 at 8 (emphasis added).

<sup>20</sup> *See generally*, 16 U.S.C. 1852(b)-(g) (provisions on Council Member appointments and Council functions). The term “vote” is defined as “a usually formal expression of opinion or will in response to a proposed decision.” Merriam-Webster online.

<sup>21</sup> 16 U.S.C. 1852(b)(1) (providing for composition of each Council).

fishermen or other constituencies with an interest in fishery conservation and management.<sup>22</sup> The idea that NOAA would have supervisory authority over each Council Member is antithetical to this concept, which emphasizes autonomous and independent thinking. Representative Studds characterized the Councils this way: “[t]hey are fundamentally independent from the Secretary. They do not enjoy *some* degree of independence from the Secretary; they are *basically, fundamentally and critically independent from the Secretary.*”<sup>23</sup>

The lack of supervision and control over Council Members is also reflected in several places in NOAA’s regulations. While NOAA, has, by regulation, asserted agency control over records of *the Councils* and those of Council employees created or received while in active duty status, it has not asserted control over Council Member records.<sup>24</sup> The MSA authorizes compensation for Council Members only when performing “actual duties” for the Council.<sup>25</sup> By regulation, NOAA has limited Council Member compensation, and, in turn, “actual performance of duties,” to time spent at Council meetings, Council committee meetings or other meetings approved by the Council Chair.<sup>26</sup> This regulation provides that “homework time in preparation for formal Council meetings is not compensable.”<sup>27</sup>

In sum, neither the MSA nor the agency’s current regulations provide a basis for finding that NOAA has “extensive supervisory” authority over Council Members. Congress intended Council Members to have an autonomous and independent role in their service on a Council<sup>28</sup> and NOAA, through its regulations, has disavowed control over Council Member records created or obtained during both compensable and non-compensable time.<sup>29</sup> To treat Council Member records as NOAA records for FOIA purposes under the constructive obtainment and control theory would be inconsistent with the MSA, the NOAA’s regulations, OLC’s opinion on the status of Council Members, and legislative history cited to support that opinion.

## B. Subject to NOAA Control

In addition to Council Member records not having been obtained or created by NOAA, they fail the second element of the test in *Tax Analysts* as they are also not subject to NOAA control. The D.C. Circuit has adopted a four-factor test to determine whether an agency exercises sufficient

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<sup>22</sup> *Id.*

<sup>23</sup> See Fishery Conservation and Management Act: Hearing before the Subcomm. On Fisheries and Wildlife conservation and the Environment of the House Comm. On Merchant Marine and Fisheries, 96th Cong., 1st Sess. 449-50 (1979) (emphasis added). See also comments of Sen. Magnuson, *infra* note 44, emphasizing that the “councils are *self-determinant in their own affairs*” (emphasis added).

<sup>24</sup> 50 C.F.R. 150(a). NOAA’s Records Disposition Handbook establishes agency policy for the handling of five broad categories of Council records. See NOAA Records Disposition Handbook, Chapter 1500 NMFS, 1504-14, Fishery Management Council Organization files, 1504-16, Fishery Management Council Operations files, 1504-17 Fishery Management Council Administration files. These categories do not include Council Member records.

<sup>25</sup> 16 U.S.C. 302(d).

<sup>26</sup> 50 C.F.R. 600.245.

<sup>27</sup> *Id.* at 600.245(a).

<sup>28</sup> See legislative history cited *supra* note 23 and *infra* note 44.

<sup>29</sup> Those records that a Council Member may create or obtain during compensable time do not become “agency records” simply because a Member was paid for actual performance of duties. See generally *Forsham v. Secretary of Health, Education, and Welfare*, 445 U.S. 169, 180 (1980) (rejecting petitioners argument that records of a federal grantee are “agency records” as a result of federal funding and supervision of the grantee’s work performance).

control over a record to render it an “agency record” for FOIA purposes.<sup>30</sup> As applied in this context, the factors to consider are:

- 1) the intent of the documents creator to retain or relinquish control over the records;
- 2) the ability of NOAA to use or dispose of the record as it sees fit;
- 3) the extent to which NOAA personnel have read or relied upon the document; and
- 4) the degree to which the document was integrated into the NOAA's record system or files.

All four factors weigh heavily towards the conclusion that NOAA lacks control over Council Member records. These records reside in Council member personal email accounts and files. The fact that Council Members have never tendered records that they may have prepared in their capacity as Council Members and in furtherance of official council business suggests that they do not intend to relinquish control over such records. Through its Council regulations, NOAA has not asserted control over Council Member records.<sup>31</sup> Therefore, NOAA cannot use or dispose of those records as it sees fit.

Most importantly, NOAA does not use or rely on Council Member records to carry out its official duties. As previously discussed, use or reliance on records by Council Members for official Council business cannot be attributed to NOAA because Council Members are not NOAA employees and are not subject to the agency's supervision.<sup>32</sup> Finally, neither NOAA nor the Council has integrated Council member records into its record systems or files.

## II. Whether Council Member records are Council records for FOIA purposes

Even if not NOAA records, Council Member records would be subject to FOIA if a Council is an agency for purposes of FOIA and Council Member records are Council records. Under NOAA Regulations, a Council must “coordinate promptly” with the appropriate NOAA Fisheries Regional Office on any FOIA request. The regulations further provide for NOAA processing and disposition of any request filed with a Council.<sup>33</sup> Accordingly, if a Council is an “agency”

<sup>30</sup> *Burka*, 87 F.3d 508 at 515.

<sup>31</sup> See *Bloomberg*, 649 F. Supp. 2d at 271 (stating that “[r]egulations promulgated by an agency may be helpful in determining what constitutes the agency's records for FOIA purposes”).

<sup>32</sup> See *McKinley v. Board of Governors of The Federal Reserve System*, 2012 U.S. Dist. LEXIS 43034, 21 (D.C. Cir. 2012) (stating that “[b]ecause the Board could not possibly make use of records that it never consulted . . . such records can reveal nothing about its deliberative process and disclosure would do nothing to advance the core purposes of FOIA, which is to contribute significantly to public understanding of the operations or activities of the Government”) (emphasis in original) (internal quotations omitted). The same is true here. NOAA has never consulted Council Member records. Accordingly, treatment of Council Member records as NOAA records for purposes of FOIA would do nothing to advance the core purposes of the Act.

<sup>33</sup> These regulations, at 50 C.F.R. 600.155 “Freedom of Information Act Requests”, are as follows:

- (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,

for FOIA purposes, and if Council Member records are Council records under the Act, such records might be within the scope of, and subject to, NOAA's handling of a request for Council records such as the Muniz request.

#### A. Whether a Council is an Agency for FOIA purposes

Congress enacted the FOIA as amendments to the public disclosure requirements of the Administrative Procedure Act (APA),<sup>34</sup> and, as such, the definition of "agency" under the APA also applies under FOIA.<sup>35</sup> Under the APA, an agency is defined as "each authority of the Government of the United States, whether or not it is within or subject to review by another agency."<sup>36</sup> In 1974, Congress amended FOIA to include a much broader definition of "agency" that extends to "any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government."<sup>37</sup> In adding this definition to FOIA, Congress intended to extend the Act's coverage to entities that may lack the necessary legal authority to qualify as an agency for purposes of the APA, but nonetheless, perform government functions and control information of interest to the public.<sup>38</sup>

There is little question that a Council controls information of interest to the public. The more difficult question is whether a Council performs government functions under the MSA. OLC has concluded that a Council – based on its statutory functions under the MSA – is an "integral part"<sup>39</sup> of the Department, and, as such, a "federal agency" under the Federal Tort Claims Act<sup>40</sup>

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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.

<sup>34</sup> Pub. L. No. 89-487 (1966) and codified as amendments to section 3 of the APA through Pub. L. No. 90-23 (1967).

<sup>35</sup> See *Cotton v. The Smithsonian Institution*, 63 F.3d 1115, 1120 (D.C. Cir. 1995) (discussing history of FOIA and explaining that "the APA's definition of 'agency' applied to the term 'agency' in FOIA, as FOIA was simply [enacted as] a subsection of the APA").

<sup>36</sup> 5 U.S.C. 551(1). In *J.H. Miles & Co. v. Brown*, the federal court for the Eastern District of Virginia held that the Mid-Atlantic Council was not an "agency" under the APA because "it ha[d] no authority to do anything." 910 F. Supp. 1138, 1159 (E.D.V.A.) (Dec. 4, 1995) (emphasis added). See also *General Category Scallop Fishermen v. United States Department of Commerce*, 635 F.3d 106, 112 n.15 (3d Cir. 2011) (citing favorably *J.H. Miles v. Brown*, *supra*). The court in *J.H. Miles* mainly relied on cases that addressed whether entities were agencies under FOIA when the Act applied the narrow APA definition of agency. Thus, the court's holding is limited to the question of whether the Councils are agencies under the APA, and is not dispositive on whether the Councils are agencies under the broader definition of agency added to the FOIA in 1974. Indeed, *J.H. Miles* specifically noted that "FOIA has a broader reach than the APA." 919 F. Supp. at 1159.

<sup>37</sup> 5 U.S.C. 552(f)(2)(A).

<sup>38</sup> See *Crooker v. Office of the Pardon Attorney*, 614 F.2d 825, 827 (2d Cir. 1980) "[Congress] expanded the 'agency' definition [under FOIA] to 'included those entities which may not be considered agencies under [the APA] but which perform governmental functions and control information of interest to the public. . .'" (emphasis added) (quoting H.R. Rep. No. 93-876, 93d Cong., 2d Sess. See also *Rocap v. Federal Home Loan Mortgage Corporation*, 539 F.2d 174, 177-78 (D.C. Cir. 1976) ("[t]he legislative history of the 1974 Amendments to FOIA reveals that Congress intended to strengthen the Act and expand its coverage to include quasi-governmental entities like the Postal Service, Amtrak, the Federal Deposit Insurance Corporation and, we conclude, the [Federal Home Loan Mortgage] Corporation").

<sup>39</sup> The concept of an entity being an "integral part" of a federal agency stems from the Supreme Court decision in *Standard Oil Co. of California v. Johnson*, 316 U.S. 481, 485 (1942). In that case, the Court held that Army Post



(FTCA) and the Age Discrimination Act (ADA).<sup>41</sup> OLC's decision turned, in part, on its conclusion that a Council engages in federal functions, utilizes statutory national standards, and was established to assist the Secretary of Commerce in his official endeavors. OLC concluded that "[i]f being an integral part of a 'Federal Agency' means facilitating the accomplishment of an agency's mission, then [a] Council[] is indeed a 'Federal Agenc[y]' under the [FTCA]."<sup>42</sup>

While these opinions examine different statutory schemes, the courts or OLC would likely reach the same conclusion under FOIA. As with the FTCA and the ADA, a Council – by virtue of its MSA functions – are likely an "integral part" of the Department for FOIA purposes, and, as such, an "agency" within the meaning of the Act.<sup>43</sup> A Council facilitates the implementation of a federal statute under federal standards in close coordination with, and support from, the Department. The statute assigns specific responsibilities to a Council, including development of fishery management plans, preparation of comments on foreign fishing applications, and preparation of research plans. Although a Council is not "distinctly federal,"<sup>44</sup> it does perform federal functions and facilitates the accomplishment of a federal agency's statutory mission. Just as these characteristics qualified a Council as an agency for purposes of the FTCA and ADA, they also likely qualify a Council as an agency for FOIA purposes.<sup>45</sup>

#### B. Whether Council Member records are Council Records for FOIA Purposes

To determine whether Council Member records are Council records for FOIA purposes requires application of the Supreme Court's two-part *Tax Analysts* "agency records" test discussed above: Council Member records are Council records for FOIA purposes if (1) created or obtained by a

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Exchanges, as a result of their federal nexus and role in facilitating the accomplishment of the Defense Department's mission, were an "integral part" of a federal agency.

<sup>40</sup> See 1 Op. O.L.C. 239, 2 (1977) (concluding that because a Council is an "indispensable element[] in the statutory scheme of the [MSA]" it is an "integral part" of the Department and, thereby, a "Federal Agency" for purposes of the FTCA. OLC specifically qualified a Council as an "independent establishments of the United States" for purposes of the FTCA definition of agency).

<sup>41</sup> See Memorandum for Ginger Lew, General Counsel, Department of Commerce, from Dawn Johnson, Deputy Assistant Attorney General (March 14, 1995) (concluding that a Council is an Executive Agency under 5 U.S.C. 105, and, therefore, employment decisions of a Council are subject to section 15 of the ADA"). OLC has also concluded that because a Council is a "subordinate part of the [Department] and subject to its overall control" it does not have independent litigation authority. See 4 Op. O.L.C. 778 (1980).

<sup>42</sup> *Id.* at 2-3.

<sup>43</sup> A Council specifically appears to qualify as "other establishment[s] within the Executive Branch . . ." for purposes of the FOIA definition of "agency," 5 U.S.C. 552(f)(2)(A).

<sup>44</sup> The principal sponsor of the MSA, Senator Warren Magnuson, characterized the Councils as "unique among institutions that manage natural resources. They are neither state nor federal in character, although they possess qualities of each. Their powers are derived from the constitutional authority of the federal government, *yet councils are self-determinant in their own affairs.* Although the Councils are to be relatively independent, each Council must operate within the uniform standards promulgated by the Secretary of Commerce that govern the administration of the Act." See *The Fishery Conservation and Management Act of 1976: First Step Toward Improved Management of Marine Fisheries*, 52 Wash. L. Rev. 427, 436-437 (1979) (emphasis added).

<sup>45</sup> Based on their functions under the MSA and their federal nexus, the Department's Office of General Counsel has concluded that a Council is a federal agency for purposes of various statutes. See e.g., Memorandum for Executive Director WPFMC, from Federal Assistance Law Division and General Law Division, Office of General Counsel (July 9, 1998) (stating that because a Council is an integral part of the Department when collection or expending funds, it is subject to the restrictions set forth under Title 31 of the United States Code.)



Council; *and* (2) under Council control at the time of a FOIA request.<sup>46</sup> As with application of this test to NOAA, Council Member records satisfy neither element when applied to a Council as an agency for FOIA purposes.

i. Created or Obtained by a Council

Council Members are not Council employees,<sup>47</sup> thus their records are not “created by” a Council.<sup>48</sup> Because a Council does not have possession of Council Member records, it has not obtained such records.<sup>49</sup>

The constructive obtainment and control theory is similarly inapplicable in the context of a Council.<sup>50</sup> Just as NOAA does not have supervisory control over Council Members, a Council does not have such control either. A Council’s authority to remove a member is just as circumscribed as the Secretary’s. The MSA provides that a Council can only “recommend” to the Secretary that a member be removed based on a *two-thirds vote* of the members that are voting.<sup>51</sup> If the Secretary’s removal authority – which is dependent on a Council’s action – is too limited to establish supervisory authority of a Council Member, then the same is true for a Council’s removal authority because it is dependent upon the Secretary’s action.<sup>52</sup> While the MSA provides for each Council to appoint a Chairman, nothing in the Act provides the Chairman with supervisory authority over Council Members.

ii. Subject to Council Control

Whether a Council has control over Council Member records is based on the D.C. Circuit’s four-factor control test. As applied in this context, the factors are:

- 1) the intent of the documents creator to retain or relinquish control over the records;
- 2) the ability of the Council to use or dispose of the record as it sees fit;
- 3) the extent to which Council personnel have read or relied upon the document; and
- 4) the degree to which the document was integrated into the Council’s record system or files.

All four factors weigh heavily towards the conclusion that a Council does not control Council Member records. These records reside in Council member personal email accounts and files.

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<sup>46</sup> See *Tax Analysts* cited and discussed *supra* page 3.

<sup>47</sup> See 16 U.S.C. 1852(b) (establishing procedures and criteria for appointment of Council Members); and 1852(f) (providing authority for Councils to appoint an executive director and administrative employees).

<sup>48</sup> The D.C. Circuit’s decision in *Judicial Watch v. Department of Energy*, discussed *supra* page four, is instructive in this context as well. In that case, whether the requested records were DOE records for FOIA purposes depended on the employment status of the persons that created or obtained the records. The same is true here. Whether Council Member records are Council records for FOIA purposes depends on the employment status of Council Members.

<sup>49</sup> See cases cited *supra* notes 7 and 8 holding that an agency has obtained records only if they are in the agency’s possession.

<sup>50</sup> See cases cited *supra* notes 12 and 13 discussing and applying constructive obtainment and control theory.

<sup>51</sup> 16 U.S.C. 1852(b)(6).

<sup>52</sup> In concluding that the Secretary lacks supervisory authority over Council Members, OLC stated that the MSA “not only circumscribes the removal power, but also vests that power jointly in the Secretary and the Councils themselves.” See 17 Op. O.L.C. 150.

The fact that Council Members have never tendered records to a Council suggests that they do not intend to relinquish control over such records. A Council's Statement of Organization Practice and Procedures (SOPPs) is consistent with NOAA policy in that it asserts control over those records created or received by Council employees but not those created or received by Council Members.<sup>53</sup> Therefore, a Council cannot use or dispose of those records as it sees fit.

Most importantly, a Council does not use or rely on Council Member records to carry out its official duties. As previously discussed, use or reliance on records by Council Members for official Council business cannot be attributed to a Council because they are not Council employees and are not subject to Council supervision. Further, the Council exists and acts only as a body; its individual members have no authority or responsibility to speak or act for the Council on their own.<sup>54</sup> Thus, what a Council Member may say through email is of no relevance to Council business unless presented to the Council. Finally, per a Council's SOPPs, a Council has not integrated Council member records into its record systems or files.

### **Conclusion**

Because of the autonomous and independent role of Council Members under the MSA, Council Member Records are neither NOAA records nor Council records. Neither NOAA nor a Council has possession of Council Member records. Under the MSA Council Members are neither agency employees nor subject to agency or Council supervision. Thus, their records are not "created by" the agency or by a Council. Whether NOAA or a Council has control over records is determined through a four-factor test. All four factors demonstrate that neither NOAA nor a Council controls Council Member records. Thus, Council Member records satisfy neither element of the two-part *Tax Analysts* "agency records" test. This conclusion is consistent with the role that Council Members play under the MSA, as well as with NOAA and Council policy that limits records for purposes to FOIA to those of *the Council* and those records created or maintained by Council employees.

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<sup>53</sup> See e.g. New England Fishery Management Council Standard Operating Practices and Procedures at 7.4 (Sept. 2011) available at <http://www.nefmc.org/about/index.html> (referencing Department and NOAA recordkeeping requirements and requiring maintenance of records created or received by *Council employees*) (emphasis added).

<sup>54</sup> See 16 U.S.C. 1852(e) (transaction of business) and 1852(h) (functions of councils).

***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**

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**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)

Please see below.

(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, we're currently working a cas (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  
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SSMC3, Rm. 13605  
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[\(301\) 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)

Thanks,  
Amy



**Amy R. Scholik-Schlomer, Ph.D.**

Fishery Biologist (Protected Resources Acoustic Coordinator)



(b)(5) ?

Thanks,  
Amy



**Amy R. Scholik-Schlomer, Ph.D.**

Fishery Biologist (Protected Resources Acoustic Coordinator)  
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<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

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<2008 00091 Final Full Denial.pdf>

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**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



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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**

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 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;
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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).

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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,

(b)(5) [Redacted text block]

[Redacted text block]

[Redacted text block]

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- [Redacted list item]

[Redacted text block]

- [Redacted list item]

(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) (cell) (Telework Tues. and Fri)

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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 (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**

_____	)	
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

**Slattery, Elizabeth (Federal)**

---

**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]

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] ?

On Mon, Feb 12, 2018 at 1:24 PM, Mary O'Brien - NOAA Federal <[mary.obrien@noaa.gov](mailto:mary.obrien@noaa.gov)> wrote:

(b)(5)

[Redacted]

[Redacted] ?

On Mon, Feb 12, 2018 at 1:21 PM, Mark Graff - NOAA Federal <[mark.graff@noaa.gov](mailto:mark.graff@noaa.gov)> wrote:

(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) (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)

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)

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)

Mar (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.

Mar (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- (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) [REDACTED]

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





# 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.	)	
<hr/>		

**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.

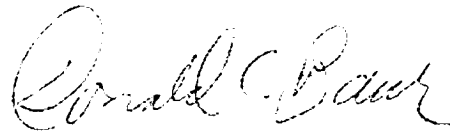
2. Attached as Attachment A is a true and correct copy of a Freedom of Information Act (FOIA) request letter from the Animal Welfare Institute (AWI) to the National Oceanic and Atmospheric Administration (NOAA), U.S. Fish and Wildlife Service (FWS) and the Marine Mammal Commission (MMC), dated September 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](tel: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]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[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> wrote:

Thank you, both (b)(5) [Redacted]  
[Redacted]:

- 1) (b)(5) [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

(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:

(b)(5)

(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:

(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 12, 2018 at 1:16 PM, Slattery, Elizabeth (Federal) <[ESlattery@doc.gov](mailto:ESlattery@doc.gov)> wrote:

(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]  
[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].

Mar (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.

Mar (b)(5) [redacted]  
[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]  
[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]  
[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 (b)(6)

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;

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## AWI Freedom of Information Act Request Follow Up Letter

1 message

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**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



FOIA Office - NOAA Service Account &lt;foia@noaa.gov&gt;

---

**FW: AWI Freedom of Information Act Request Follow Up Letter**

1 message

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**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:

(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 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]

[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 Jos (b)(5) [Redacted]

Mark, any thoughts?

Notes from October 2016 Legal Experts Call:

(b)(5) [Redacted]

[Redacted]

(b)(5)

[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 (b)(5) [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)

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