

and June 19, 2017. This includes documents, records, and materials regarding: 1. extension or reopened by the observer or by observer program staff; 3. Date of complaint; 4. Observer program from which I met the vessel in Spain September 28, 2003, sailed for the Southern Ocean to test CCAMLR seabird/ICE (Pacific Northwest/Washington State) by any of the entities listed below: 1. Any and all representati

ing of the private recreational red snapper season; 2. how or whether this action would affect progress to the observer was deployed; 5. Nature of the complaint (e.g. assault, sexual assault, harassment, verbal and mitigation measures to be confirmed prior to entry into a CCAMLR Ross Sea experimental fishery. My firm and employees of Smith & Lowney PLLC law firm of Seattle, Washington; 2. Any and all representat

oward rebuilding under the red snapper rebuilding plan; 3. how or w
il abuse, intimidation, interference, lack of assistance, death
/ time on board this vessel was from September 28, 200
lives and employees of Puget

Beverly Smith - NOAA Federal

From: Beverly Smith - NOAA Federal
Sent: Monday, June 26, 2017 12:35 PM
To: Mark Graff - NOAA Federal; Lola Stith - NOAA Affiliate
Cc: Beverly Smith; Samuel Dixon - NOAA Affiliate
Subject: ASAP TODAY - Fwd: PLEASE REASSIGN TO DOC FOIA - Fwd: Please contact me - Fwd: FOIA Assignment for DOC-NOAA-2017-001394
Attachments: NOAA FOIA re red snapper order_final.pdf; 2017-001394 Request .pdf

(b)(5)

[REDACTED]

Thanks.
Bev.

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

From: Beverly Smith - NOAA Federal <beverly.smith@noaa.gov>
Date: Wed, Jun 21, 2017 at 8:59 AM
Subject: PLEASE REASSIGN TO DOC FOIA - Fwd: Please contact me - Fwd: FOIA Assignment for DOC-NOAA-2017-001394
To: Samuel Dixon - NOAA Affiliate <samuel.dixon@noaa.gov>
Cc: Beverly Smith <beverly.smith@noaa.gov>, Sophia Howard <sophia.howard@noaa.gov>, John McGovern <john.mcgovern@noaa.gov>

Hi Sam,

I have spoken with Jack McGovern, ARA SFD, who has advise (b)(5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Sophia, I have attached the request as an FYI.

Thank you.
Beverly

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

From: **Beverly Smith - NOAA Federal** <beverly.smith@noaa.gov>
Date: Tue, Jun 20, 2017 at 10:05 AM
Subject: PLEASE CONTACT ME - Fwd: FOIA Assignment for DOC-NOAA-2017-001394
To: John McGovern <john.mcgovern@noaa.gov>
Cc: Beverly Smith <beverly.smith@noaa.gov>

Hi Jack,

Below is a new incoming FOIAonline assignment regarding a request from Ocean Conservancy. A copy of the request is attached.

Please call me (X5762) to discuss the scope and custodian offices identified by the requester; specifically, DOC and NOAA.

Please also note that the requester seeks expedited processing, which means the response must be completed in 10-business days (b)(5) [REDACTED].

Thank you.
Bev.

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

From: foia@regulations.gov <foia@regulations.gov>
Date: Tue, Jun 20, 2017 at 9:08 AM
Subject: FOIA Assignment for DOC-NOAA-2017-001394
To: "nmfs.sero.foia1@noaa.gov" <nmfs.sero.foia1@noaa.gov>

You have been assigned to the FOIA request DOC-NOAA-2017-001394. Additional details for this request are as follows:

- Assigned By: Samuel B. Dixon
- Request Tracking Number: DOC-NOAA-2017-001394
- Due Date: 07/18/2017
- Requester: Ivy N. Fredrickson
- Request Track: Simple
- Short Description: N/A
- Long Description: 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
- Assigned Comments: Hi Bev, let me know if this doesn't belong to SERO.

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Beverly J. Smith
FOIA Coordinator
Southeast Region
NOAA's National Marine Fisheries Service
[727-551-5762](tel:727-551-5762)

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NOAA's National Marine Fisheries Service
727-551-5762

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;**
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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 19th St., NW, 8th Floor
Washington, DC 20036
ifredrickson@oceanconservancy.org

1300 19th Street NW
8th Floor
Washington DC 20036



202.429.5609 Telephone
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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

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Documents Requested

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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:

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We request documents, records, and materials pertaining to the above enumerated subjects involving, but not limited to, the following people:

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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.

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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

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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.

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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.

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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 19th St., NW, 8th Floor
Washington, DC 20036
ifredrickson@oceanconservancy.org

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Monday, June 26, 2017 12:55 PM
To: Beverly Smith - NOAA Federal; Samuel Dixon - NOAA Affiliate
Cc: Lola Stith - NOAA Affiliate; Robert Swisher - NOAA Federal
Subject: Fwd: ASAP TODAY - Fwd: PLEASE REASSIGN TO DOC FOIA - Fwd: Please contact me - Fwd: FOIA Assignment for DOC-NOAA-2017-001394
Attachments: NOAA FOIA re red snapper order_final.pdf; 2017-001394 Request .pdf

FYI on the Red Snapper request below (b)(5) I'll let you know when they reply.

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

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

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

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Date: Mon, Jun 26, 2017 at 12:52 PM
Subject: Fwd: ASAP TODAY - Fwd: PLEASE REASSIGN TO DOC FOIA - Fwd: Please contact me - Fwd: FOIA Assignment for DOC-NOAA-2017-001394
To: "Toland, Michael" <mtoland@doc.gov>
Cc: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>

Hi Mike--

(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)

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: **Beverly Smith - NOAA Federal** <beverly.smith@noaa.gov>
Date: Mon, Jun 26, 2017 at 12:34 PM
Subject: ASAP TODAY - Fwd: PLEASE REASSIGN TO DOC FOIA - Fwd: Please contact me - Fwd: FOIA Assignment for DOC-NOAA-2017-001394
To: Mark Graff - NOAA Federal <mark.graff@noaa.gov>, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>
Cc: Beverly Smith <beverly.smith@noaa.gov>, Samuel Dixon - NOAA Affiliate <samuel.dixon@noaa.gov>

(b)(5) [Redacted]

Thanks.
Bev.

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

From: **Beverly Smith - NOAA Federal** <beverly.smith@noaa.gov>
Date: Wed, Jun 21, 2017 at 8:59 AM
Subject: PLEASE REASSIGN TO DOC FOIA - Fwd: Please contact me - Fwd: FOIA Assignment for DOC-NOAA-2017-001394
To: Samuel Dixon - NOAA Affiliate <samuel.dixon@noaa.gov>
Cc: Beverly Smith <beverly.smith@noaa.gov>, Sophia Howard <sophia.howard@noaa.gov>, John McGovern <john.mcgovern@noaa.gov>

Hi Sam,

I have spoken with Jack McGovern, ARA SFD, who has advise (b)(5) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Sophia, I have attached the request as an FYI.

Thank you.
Beverly

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

From: **Beverly Smith - NOAA Federal** <beverly.smith@noaa.gov>

Date: Tue, Jun 20, 2017 at 10:05 AM

Subject: PLEASE CONTACT ME - Fwd: FOIA Assignment for DOC-NOAA-2017-001394

To: John McGovern <john.mcgovern@noaa.gov>

Cc: Beverly Smith <beverly.smith@noaa.gov>

Hi Jack,

Below is a new incoming FOIAonline assignment regarding a request from Ocean Conservancy. A copy of the request is attached.

Please call me (X5762) to discuss the scope and custodian offices identified by the requester; specifically, DOC and NOAA.

Please also note that the requester seeks expedited processing, which means the response must be completed in 10-business days (b)(5) [REDACTED].

Thank you.

Bev.

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

From: foia@regulations.gov <foia@regulations.gov>

Date: Tue, Jun 20, 2017 at 9:08 AM

Subject: FOIA Assignment for DOC-NOAA-2017-001394

To: "nmfs.sero.foia1@noaa.gov" <nmfs.sero.foia1@noaa.gov>

You have been assigned to the FOIA request DOC-NOAA-2017-001394. Additional details for this request are as follows:

- Assigned By: Samuel B. Dixon
- Request Tracking Number: DOC-NOAA-2017-001394
- Due Date: 07/18/2017
- Requester: Ivy N. Fredrickson
- Request Track: Simple
- Short Description: N/A
- Long Description: 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
- Assigned Comments: Hi Bev, let me know if this doesn't belong to SERO.

--

Beverly J. Smith
FOIA Coordinator
Southeast Region
NOAA's National Marine Fisheries Service
[727-551-5762](tel:727-551-5762)

--

Beverly J. Smith
FOIA Coordinator
Southeast Region
NOAA's National Marine Fisheries Service
[727-551-5762](tel:727-551-5762)

--

Beverly J. Smith
FOIA Coordinator
Southeast Region
NOAA's National Marine Fisheries Service
[727-551-5762](tel:727-551-5762)

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.

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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 19th St., NW, 8th Floor
Washington, DC 20036
ifredrickson@oceanconservancy.org

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.

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- 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
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7. Earl Comstock
8. Bonnie Ponwith
9. Patrick Lynch
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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.

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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 19th St., NW, 8th Floor
Washington, DC 20036
ifredrickson@oceanconservancy.org

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Monday, June 26, 2017 12:52 PM
To: Toland, Michael
Cc: Lola Stith - NOAA Affiliate
Subject: Fwd: ASAP TODAY - Fwd: PLEASE REASSIGN TO DOC FOIA - Fwd: Please contact me - Fwd: FOIA Assignment for DOC-NOAA-2017-001394
Attachments: NOAA FOIA re red snapper order_final.pdf; 2017-001394 Request .pdf

Hi Mike--

(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)

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: Beverly Smith - NOAA Federal <beverly.smith@noaa.gov>
Date: Mon, Jun 26, 2017 at 12:34 PM
Subject: ASAP TODAY - Fwd: PLEASE REASSIGN TO DOC FOIA - Fwd: Please contact me - Fwd: FOIA Assignment for DOC-NOAA-2017-001394
To: Mark Graff - NOAA Federal <mark.graff@noaa.gov>, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>
Cc: Beverly Smith <beverly.smith@noaa.gov>, Samuel Dixon - NOAA Affiliate <samuel.dixon@noaa.gov>

(b)(5)
[Redacted]

Thanks.
Bev.

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

From: **Beverly Smith - NOAA Federal** <beverly.smith@noaa.gov>

Date: Wed, Jun 21, 2017 at 8:59 AM

Subject: PLEASE REASSIGN TO DOC FOIA - Fwd: Please contact me - Fwd: FOIA Assignment for DOC-NOAA-2017-001394

To: Samuel Dixon - NOAA Affiliate <samuel.dixon@noaa.gov>

Cc: Beverly Smith <beverly.smith@noaa.gov>, Sophia Howard <sophia.howard@noaa.gov>, John McGovern <john.mcgovern@noaa.gov>

Hi Sam,

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

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

Sophia, I have attached the request as an FYI.

Thank you.
Beverly

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

From: **Beverly Smith - NOAA Federal** <beverly.smith@noaa.gov>

Date: Tue, Jun 20, 2017 at 10:05 AM

Subject: PLEASE CONTACT ME - Fwd: FOIA Assignment for DOC-NOAA-2017-001394

To: John McGovern <john.mcgovern@noaa.gov>

Cc: Beverly Smith <beverly.smith@noaa.gov>

Hi Jack,

Below is a new incoming FOIAonline assignment regarding a request from Ocean Conservancy. A copy of the request is attached.

Please call me (X5762) to discuss the scope and custodian offices identified by the requester; specifically, DOC and NOAA.

Please also note that the requester seeks expedited processing, which means the response must be completed in 10-business days (b)(5) [Redacted]
[Redacted]

Thank you.
Bev.

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

From: foia@regulations.gov <foia@regulations.gov>
Date: Tue, Jun 20, 2017 at 9:08 AM
Subject: FOIA Assignment for DOC-NOAA-2017-001394
To: "nmfs.sero.foia1@noaa.gov" <nmfs.sero.foia1@noaa.gov>

You have been assigned to the FOIA request DOC-NOAA-2017-001394. Additional details for this request are as follows:

- Assigned By: Samuel B. Dixon
- Request Tracking Number: DOC-NOAA-2017-001394
- Due Date: 07/18/2017
- Requester: Ivy N. Fredrickson
- Request Track: Simple
- Short Description: N/A
- Long Description: 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
- Assigned Comments: Hi Bev, let me know if this doesn't belong to SERO.

--

Beverly J. Smith

FOIA Coordinator
Southeast Region
NOAA's National Marine Fisheries Service
[727-551-5762](tel:727-551-5762)

--

Beverly J. Smith
FOIA Coordinator
Southeast Region
NOAA's National Marine Fisheries Service
[727-551-5762](tel:727-551-5762)

--

Beverly J. Smith
FOIA Coordinator
Southeast Region
NOAA's National Marine Fisheries Service
[727-551-5762](tel:727-551-5762)

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.

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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”).

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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.

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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)).

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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 19th St., NW, 8th Floor
Washington, DC 20036
ifredrickson@oceanconservancy.org

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 19th St., NW, 8th Floor
Washington, DC 20036
ifredrickson@oceanconservancy.org

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Monday, June 26, 2017 1:13 PM
To: Kimberly Katzenbarger - NOAA FEDERAL
Subject: NMFS Training
Attachments: Consultations Referrals and (b)(5) Final.pptx

Here is my slide deck for today's training. Slides 7 and 11 touch on the handling of classified info. The original classifying authority has purview on review of the records, and NOAA should not be substantively reviewing them. The takeaway is: If they see any of that kind of material, call OSY's hotline (here: <http://www.osec.doc.gov/osy/>) and don't access the record on an unclassified system.

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

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Referrals, Consultations, and Exemption (b)(5) Deliberative Process

Prepared by Mark H. Graff
NOAA FOIA Officer/Bureau Chief Privacy
Officer
OCIO/GPD

mark.graff@noaa.gov; (301)-628-5658



Freedom of Information Act (5 USC 552)



Outline

1. Regulatory Structure for Referrals
2. The Risks of Other Agency Docs
3. OIP Guidance
4. (b)(5) Two Prong Test
5. The Extent of the Privilege
6. Questions



Regulatory Structure



MISDIRECTED WITHIN THE DEPARTMENT:

Where a component's FOIA office determines that a request was misdirected within the Department:

- The receiving component's FOIA office needs to route the request to the correct bureau(s).
- The search starts the time cutoff for records



Regulatory Structure (Cont'd)



OTHER BUREAUS MAY HAVE RECORDS:

How the proper Department component to respond to a FOIA Request is determined:

- The component that first receives the request and has responsive records.
 - When no records exist, the component that first receives the request and is likely to have responsive records should process the FOIA request.
- Or, the component to which the Departmental FOIA Officer or component FOIA Officer assigns lead responsibility for responding to the request.



Regulatory Structure (Cont'd)



CONSULTATIONS:

When a record is requested that originated with NOAA and another Federal agency has a *significant interest* in the record, NOAA must allow the other Federal agency to review the record before responding to a requester.





Consultations Continued...



Consultations can be done within FOIAonline by uploading the record requiring consultation and then selecting the “**Create Consultation**” button found in the left hand column in FO (if the agency also uses FO)

- If attempts to consult with outside agencies cause a delay in responding to the request, notify the requester that the request will be processed or completed after the consultation has been completed.
- Consultation with another agency constitutes ***unusual circumstances*** and allows you to invoke a 10 day extension.



Regulatory Structure (Cont'd)



REFERRALS:

When NOAA possesses requested records that originated with another Federal agency.

NOAA routes these records to that agency for direct response to the requester.





OIP Referral Guidance



OIP's Summary:

“The agency that is best able to determine a record's sensitivity, and in turn its exemption status, is the agency that should process that record under the Act.

While this may vary in particular cases, as a general rule the agency that originated a record is usually the most appropriate agency to make a FOIA-disclosure determination regarding it.”



The Risks of Other Agency Docs



There are at least **7** different types of referrals and consultations:

1. External Referrals for direct response to the requester including Exemptions asserted by the referring agency to include their appeal language.

Example: ACOE referrals where we respond to requester with their appeal contact.



The Risks of Other Agency Docs



2. External Referrals of the request in its entirety with no asserted Exemptions or responsive records being located by the referring agency.

Example: Recent DOI Refers us records that fall entirely under our purview.



The Risks of Other Agency Docs (Cont'd)



3. Records in which all or part of the record requires a declassification review by the original classifying authority.

Example: Navy necropsy records OCA is the Director of the office that generated those docs.



The Risks of Other Agency Docs (Cont'd)



4. External Consultations for providing withholding recommendations to another agency

Example: Fisheries Management Council Records found within our Control



The Risks of Other Agency Docs (Cont'd)



5. Intra-Departmental taskings requiring a tasking Memorandum

Example: DOC sends us a tasking to conduct a search in Presidential Transition cases through FOIAOnline, and we, in turn, issue taskings within Bureau.



The Risks of Other Agency Docs (Cont'd)



6. External Litigation consultations seeking NOAA's asserted exemptions

Example: FBI recently asked NOAA in the DB Cooper case to provide withholding recommendations on the weather docs from the plane flight.



The Risks of Other Agency Docs (Cont'd)



7. Referrals asking for non-attribution

Example: If we ever have intelligence agency records, they frequently don't want to be identified as the originator of the records.



NAO 205-14: NOAA FOIA Taskings



There are at least 6 types of taskings—it must be clear which type you are being asked to review:

1. Conduct a search for responsive records (fees waived or non-billable)
2. Prepare a fee estimate in a non-referral
3. Prepare a fee estimate for a case being coordinated by DOC, and the aggregate threshold is not determined by NOAA
4. Review referred records and provide release recommendations to the referring entity
5. Review referred records, and respond directly to the requester, incorporating the referring entities exemptions and appeal language.
6. Respond to an adjudication on appeal



OIP GUIDANCE



If they are Agency Records:

When an agency receives a FOIA request for agency records in its possession it must take responsibility for searching for the records and processing the request. It cannot simply refuse to act on the ground that the documents originated elsewhere.





OIP Guidance (Cont'd)



“When litigation (results), the government generally has not raised any issue over which agency is the “proper party defendant,” but instead has provided affidavits from the originating agencies to justify any contested nondisclosure.”

Plain English: DOJ won’t challenge who the Plaintiff names in Court. If you worked on the request, you can be the one sued, and other agencies will just provide affidavits for the records they created.



(b)(5) Two Prong Test



When (b)(5) Deliberative Process Applies:

- (b)(5) Statute generally protects: “Inter and intra-agency” (internal and external) communications that would not be available by law to a party other than an agency in litigation with the agency”.
- Courts define this as only documents that are typically privileged in civil discovery



(b)(5) Two Prong Test (cont'd)



- As to one of those privileges, Deliberative Process Privilege includes:
 - The Inter-agency (internal) and Intra-agency (external) communication requirement which encompasses the “consultant corollary”.
 - If the consultants, contractors, external advisors provided advice similar to what might have been received from an employee. Must ask—
 - Are they an interested party?
 - Seeking benefit at the expense of other applicants?
 - If yes, no (b)(5) protection.



(b)(5) Two Prong Test (cont'd)



Two Part Test:

- 1) Is the material pre-decisional?
 - a) i.e., antecedent to the adoption of the agency policy? (the making of the “policy sausage”)
- 2) Is it deliberative (not factual)—making recommendations, expressing opinions on legal or policy matters?



The Extent of the Privilege



- **Policy behind DPP:**
 - Encourage open and frank discussions among employees and protect the decision making processes of the government
 - Protect against premature disclosure of proposed policies before adopted
 - Protect against public confusion



The Extent of the Privilege



- Since the 2016 FOIA Improvement Act, a **Risk of Harm** must exist for the Privilege to apply.
- Previously, this was only advisory, although in practice, this should not change NOAA's approach, as NOAA routinely required a Risk of Harm Analysis for (b)(5) Deliberative Process.





Risk of Harm



Foreseeable Harm is now a requirement under the 2016 FOIA Improvement Act:

To Reach Foreseeable Harm, OIP summarizes the considerations:

- How sensitive is the decision?
- How sensitive is the decisionmaking process? (consider peer review)
- Is the decision final yet?
- Would disclosure affect the employees that contributed to the records?
- Would future decisions be jeopardized if the records were released?
- How significant would the “chilling” effect be?
- How old is the record?
- How sensitive are portions of the record?



The Extent of the Privilege



- There is also now a 25 year limit on the use of Deliberative Process.
- After that time—the privilege no longer applies.





Questions



QUESTIONS?

Sarah Brabson - NOAA Federal

From: Sarah Brabson - NOAA Federal
Sent: Tuesday, June 27, 2017 8:18 AM
To: Mark Graff - NOAA Federal
Subject: Fwd: NOAA5009 PTA for signature
Attachments: NOAA5009_PTA_ISSO-CSPM-AO_Signed.pdf

Mark, the only change her (b)(5) .

thx Sarah

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

From: Jason Symonds - NOAA Federal <jason.symonds@noaa.gov>
Date: Mon, Jun 26, 2017 at 9:48 PM
Subject: NOAA5009 PTA
To: Sarah Brabson - NOAA Federal <sarah.brabson@noaa.gov>
Cc: Juanita Sandidge <juanita.sandidge@noaa.gov>, Nancy DeFrancesco <nancy.defrancesco@noaa.gov>

Sarah,

Attached find the updated NOAA5009 PTA ready for Mark's signature.

Thanks,
Jason

--

Jason Symonds
Information System Security Officer (ISSO)
NOAA National Centers for Environmental Information (NCEI)
Phone: [828-271-4733](tel:828-271-4733)

**U.S. Department of Commerce
NOAA**



**Privacy Threshold Analysis
for the
National Centers for Environmental Information - NC NOAA5009**

U.S. Department of Commerce Privacy Threshold Analysis

NOAA/National Centers for Environmental Information - NC (NCEI-NC)

Unique Project Identifier: [006-48-00-00-01-3209-00-108-023]

Introduction: This Privacy Threshold Analysis (PTA) is a questionnaire to assist with determining if a Privacy Impact Assessment (PIA) is necessary for this IT system. This PTA is primarily based from the Office of Management and Budget (OMB) privacy guidance and the Department of Commerce (DOC) IT security/privacy policy. If questions arise or further guidance is needed in order to complete this PTA, please contact your Bureau Chief Privacy Officer (BCPO).

Description of the information system and its purpose: NOAA's National Centers for Environmental Information (NCEI)-NC maintains the world's largest climate data archive and provides climatological services and data to every sector of the U.S. economy and to users worldwide. Records in the archive range from paleoclimate data to centuries-old journals to data less than an hour old. The Center's mission is to preserve these data and make them available to the public, business, industry, government, and researchers.

NCEI-NC develops national and global datasets, which maximize the use of our climatic and natural resources while also minimizing the risks caused by climate variability and weather extremes. NCEI has a statutory mission to describe the climate of the United States and it acts as the "Nation's Scorekeeper" regarding the trends and anomalies of weather and climate. NCEI-NC's climate data have been used in a variety of applications including agriculture, air quality, construction, education, energy, engineering, forestry, health, insurance, landscape design, livestock management, manufacturing, national security, recreation and tourism, retail, transportation, and water resources management.

As part of the National Environmental Satellite, Data, and Information Service (NESDIS), NCEI-NC coordinates with other data centers in related scientific and technical areas to provide standardized, robust, and efficient service. NCEI-NC manages and contributes to a variety of climate service partnerships including the Regional Climate Services Directors, Regional Climate Centers, State Climatologists, and Cooperative Institute for Climate and Satellites—North Carolina. To facilitate a global data and information exchange, the Center also operates two World Data Centers—one for meteorology and one for paleoclimatology—and plays an active role in professional societies and user engagement activities.

NCEI-NC has approximately 310 users that connect within NCEI-NC's security boundary. The NCEI-NC user environment consists mainly of web developers, scientists, system administrators,

administrative assistants, managers, customer service representatives, database administrators, graphic designers, order fulfillers, and computer operators.

Questionnaire:

1. What is the status of this information system?

- This is a new information system. *Continue to answer questions and complete certification.*
- This is an existing information system with changes that create new privacy risks. *Complete chart below, continue to answer questions, and complete certification.*

Changes That Create New Privacy Risks (CTCNPR)					
a. Conversions		d. Significant Merging		g. New Interagency Uses	
b. Anonymous to Non-Anonymous		e. New Public Access		h. Internal Flow or Collection	
c. Significant System Management Changes		f. Commercial Sources		i. Alteration in Character of Data	
j. Other changes that create new privacy risks (specify):					

- This is an existing information system in which changes do not create new privacy risks. *Continue to answer questions, and complete certification.*

2. Is the IT system or its information used to support any activity which may raise privacy concerns?

NIST Special Publication 800-53 Revision 4, Appendix J, states “Organizations may also engage in activities that do not involve the collection and use of PII, but may nevertheless raise privacy concerns and associated risk. The privacy controls are equally applicable to those activities and can be used to analyze the privacy risk and mitigate such risk when necessary.” Examples include, but are not limited to, audio recordings, video surveillance, building entry readers, and electronic purchase transactions.

Yes. *Please describe the activities which may raise privacy concerns.*

- Entry points into the computer room and within the computer room are under video surveillance, with warning signs posted. The cameras record on motion and the video files stored on an air gapped system. Access to that system is restricted to the computer operators (staff and contractors) and the IT Security team.

No

3. Does the IT system collect, maintain, or disseminate business identifiable information (BII)?

As per DOC Privacy Policy: “For the purpose of this policy, business identifiable information consists of (a) information that is defined in the Freedom of Information Act (FOIA) as “trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.” (5 U.S.C.552(b)(4)). This information is exempt from automatic release under the (b)(4) FOIA exemption.

"Commercial" is not confined to records that reveal basic commercial operations" but includes any records [or information] in which the submitter has a commercial interest" and can include information submitted by a nonprofit entity, or (b) commercial or other information that, although it may not be exempt from release under FOIA, is exempt from disclosure by law (e.g., 13 U.S.C.)."

Yes, the IT system collects, maintains, or disseminates BII about: *(Check all that apply.)*

- Companies
- Other business entities

No, this IT system does not collect any BII.

4. Personally Identifiable Information

4a. Does the IT system collect, maintain, or disseminate personally identifiable information (PII)?

As per OMB 07-16, Footnote 1: "The term 'personally identifiable information' refers to information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc... alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc..."

Yes, the IT system collects, maintains, or disseminates PII about: *(Check all that apply.)*

- DOC employees
- Contractors working on behalf of DOC
- Members of the public

No, this IT system does not collect any PII.

If the answer is "yes" to question 4a, please respond to the following questions.

4b. Does the IT system collect, maintain, or disseminate PII other than user ID?

Yes, the IT system collects, maintains, or disseminates PII other than user ID.

No, the user ID is the only PII collected, maintained, or disseminated by the IT system.

4c. Will the purpose for which the PII is collected, stored, used, processed, disclosed, or disseminated (context of use) cause the assignment of a higher PII confidentiality impact level?

Examples of context of use include, but are not limited to, law enforcement investigations, administration of benefits, contagious disease treatments, etc.

Yes, the context of use will cause the assignment of a higher PII confidentiality impact level.

No, the context of use will not cause the assignment of a higher PII confidentiality impact level.

If any of the answers to questions 2, 3, 4b, and/or 4c are “Yes,” a Privacy Impact Assessment (PIA) must be completed for the IT system. This PTA and the approved PIA must be a part of the IT system’s Assessment and Authorization Package.

CERTIFICATION

I certify the criteria implied by one or more of the questions above **apply** to the National Centers for Environmental Information - NC and as a consequence of this applicability, I will perform and document a PIA for this IT system.

I certify the criteria implied by the questions above **do not apply** to the National Centers for Environmental Information - NC and as a consequence of this non-applicability, a PIA for this IT system is not necessary.

Name of Information System Security Officer (ISSO) or System Owner (SO):

Jason Symonds

SYMONDS.JASO

Digitally signed by SYMONDS.JASON.T.1366777411

Date: 2017.06.26 10:51:31 -04'00'

Signature of ISSO or SO: _____

N.T.1366777411

Date: 6/26/2017

Name of Information Technology Security Officer (ITSO):

Nancy DeFrancesco

DEFRANCESCO.NANCY.

Digitally signed by DEFRANCESCO.NANCY.A.1377370917
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI, ou=OTHER, cn=DEFRANCESCO.NANCY.A.1377370917
Date: 2017.06.26 11:03:08 -04'00'

Signature of ITSO: _____

A.1377370917

Date: 06/26/2017

Name of Authorizing Official (AO):

Margarita Gregg

GREGG.MARGARITA.E

Digitally signed by GREGG.MARGARITA.ELENA.1365899017
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI, ou=OTHER, cn=GREGG.MARGARITA.ELENA.1365899017
Date: 2017.06.26 16:47:32 -04'00'

Signature of AO: _____

LENA.1365899017

Date: 06-26-2017

Name of Bureau Chief Privacy Officer (BCPO):

Mark Graff

Signature of BCPO: _____

Date: _____

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Tuesday, June 27, 2017 8:21 AM
To: Sarah Brabson - NOAA Federal
Subject: Re: NOAA5009 PTA for signature
Attachments: NOAA5009_PTA_ISSO-CSPM-AO_Signed mhg.pdf

Yep--I remember. Looks good--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, Jun 27, 2017 at 8:18 AM, Sarah Brabson - NOAA Federal <sarah.brabson@noaa.gov> wrote:

Mark, the only change here (b)(5).

thx Sarah

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

From: Jason Symonds - NOAA Federal <jason.symonds@noaa.gov>

Date: Mon, Jun 26, 2017 at 9:48 PM

Subject: NOAA5009 PTA

To: Sarah Brabson - NOAA Federal <sarah.brabson@noaa.gov>

Cc: Juanita Sandidge <juanita.sandidge@noaa.gov>, Nancy DeFrancesco <nancy.defrancesco@noaa.gov>

Sarah,

Attached find the updated NOAA5009 PTA ready for Mark's signature.

Thanks,
Jason

--

Jason Symonds
Information System Security Officer (ISSO)
NOAA National Centers for Environmental Information (NCEI)
Phone: [828-271-4733](tel:828-271-4733)

**U.S. Department of Commerce
NOAA**



**Privacy Threshold Analysis
for the
National Centers for Environmental Information - NC NOAA5009**

U.S. Department of Commerce Privacy Threshold Analysis

NOAA/National Centers for Environmental Information - NC (NCEI-NC)

Unique Project Identifier: [006-48-00-00-01-3209-00-108-023]

Introduction: This Privacy Threshold Analysis (PTA) is a questionnaire to assist with determining if a Privacy Impact Assessment (PIA) is necessary for this IT system. This PTA is primarily based from the Office of Management and Budget (OMB) privacy guidance and the Department of Commerce (DOC) IT security/privacy policy. If questions arise or further guidance is needed in order to complete this PTA, please contact your Bureau Chief Privacy Officer (BCPO).

Description of the information system and its purpose: NOAA's National Centers for Environmental Information (NCEI)-NC maintains the world's largest climate data archive and provides climatological services and data to every sector of the U.S. economy and to users worldwide. Records in the archive range from paleoclimate data to centuries-old journals to data less than an hour old. The Center's mission is to preserve these data and make them available to the public, business, industry, government, and researchers.

NCEI-NC develops national and global datasets, which maximize the use of our climatic and natural resources while also minimizing the risks caused by climate variability and weather extremes. NCEI has a statutory mission to describe the climate of the United States and it acts as the "Nation's Scorekeeper" regarding the trends and anomalies of weather and climate. NCEI-NC's climate data have been used in a variety of applications including agriculture, air quality, construction, education, energy, engineering, forestry, health, insurance, landscape design, livestock management, manufacturing, national security, recreation and tourism, retail, transportation, and water resources management.

As part of the National Environmental Satellite, Data, and Information Service (NESDIS), NCEI-NC coordinates with other data centers in related scientific and technical areas to provide standardized, robust, and efficient service. NCEI-NC manages and contributes to a variety of climate service partnerships including the Regional Climate Services Directors, Regional Climate Centers, State Climatologists, and Cooperative Institute for Climate and Satellites—North Carolina. To facilitate a global data and information exchange, the Center also operates two World Data Centers—one for meteorology and one for paleoclimatology—and plays an active role in professional societies and user engagement activities.

NCEI-NC has approximately 310 users that connect within NCEI-NC's security boundary. The NCEI-NC user environment consists mainly of web developers, scientists, system administrators,

administrative assistants, managers, customer service representatives, database administrators, graphic designers, order fulfillers, and computer operators.

Questionnaire:

1. What is the status of this information system?

- This is a new information system. *Continue to answer questions and complete certification.*
- This is an existing information system with changes that create new privacy risks. *Complete chart below, continue to answer questions, and complete certification.*

Changes That Create New Privacy Risks (CTCNPR)					
a. Conversions		d. Significant Merging		g. New Interagency Uses	
b. Anonymous to Non-Anonymous		e. New Public Access		h. Internal Flow or Collection	
c. Significant System Management Changes		f. Commercial Sources		i. Alteration in Character of Data	
j. Other changes that create new privacy risks (specify):					

- This is an existing information system in which changes do not create new privacy risks. *Continue to answer questions, and complete certification.*

2. Is the IT system or its information used to support any activity which may raise privacy concerns?

NIST Special Publication 800-53 Revision 4, Appendix J, states “Organizations may also engage in activities that do not involve the collection and use of PII, but may nevertheless raise privacy concerns and associated risk. The privacy controls are equally applicable to those activities and can be used to analyze the privacy risk and mitigate such risk when necessary.” Examples include, but are not limited to, audio recordings, video surveillance, building entry readers, and electronic purchase transactions.

Yes. *Please describe the activities which may raise privacy concerns.*

- Entry points into the computer room and within the computer room are under video surveillance, with warning signs posted. The cameras record on motion and the video files stored on an air gapped system. Access to that system is restricted to the computer operators (staff and contractors) and the IT Security team.

No

3. Does the IT system collect, maintain, or disseminate business identifiable information (BII)?

As per DOC Privacy Policy: “For the purpose of this policy, business identifiable information consists of (a) information that is defined in the Freedom of Information Act (FOIA) as “trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.” (5 U.S.C.552(b)(4)). This information is exempt from automatic release under the (b)(4) FOIA exemption.

"Commercial" is not confined to records that reveal basic commercial operations" but includes any records [or information] in which the submitter has a commercial interest" and can include information submitted by a nonprofit entity, or (b) commercial or other information that, although it may not be exempt from release under FOIA, is exempt from disclosure by law (e.g., 13 U.S.C.)."

Yes, the IT system collects, maintains, or disseminates BII about: *(Check all that apply.)*

- Companies
- Other business entities

No, this IT system does not collect any BII.

4. Personally Identifiable Information

4a. Does the IT system collect, maintain, or disseminate personally identifiable information (PII)?

As per OMB 07-16, Footnote 1: "The term 'personally identifiable information' refers to information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc... alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc..."

Yes, the IT system collects, maintains, or disseminates PII about: *(Check all that apply.)*

- DOC employees
- Contractors working on behalf of DOC
- Members of the public

No, this IT system does not collect any PII.

If the answer is "yes" to question 4a, please respond to the following questions.

4b. Does the IT system collect, maintain, or disseminate PII other than user ID?

Yes, the IT system collects, maintains, or disseminates PII other than user ID.

No, the user ID is the only PII collected, maintained, or disseminated by the IT system.

4c. Will the purpose for which the PII is collected, stored, used, processed, disclosed, or disseminated (context of use) cause the assignment of a higher PII confidentiality impact level?

Examples of context of use include, but are not limited to, law enforcement investigations, administration of benefits, contagious disease treatments, etc.

Yes, the context of use will cause the assignment of a higher PII confidentiality impact level.

No, the context of use will not cause the assignment of a higher PII confidentiality impact level.

If any of the answers to questions 2, 3, 4b, and/or 4c are “Yes,” a Privacy Impact Assessment (PIA) must be completed for the IT system. This PTA and the approved PIA must be a part of the IT system’s Assessment and Authorization Package.

CERTIFICATION

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I certify the criteria implied by the questions above **do not apply** to the National Centers for Environmental Information - NC and as a consequence of this non-applicability, a PIA for this IT system is not necessary.

Name of Information System Security Officer (ISSO) or System Owner (SO):

Jason Symonds

SYMONDS.JASO

Digitally signed by
SYMONDS.JASON.T.1366777411

Signature of ISSO or SO:

N.T.1366777411

Date: 2017.06.26 10:51:31
-04'00'

Date: 6/26/2017

Name of Information Technology Security Officer (ITSO):

Nancy DeFrancesco

DEFRANCESCO.NANCY.

Digitally signed by
DEFRANCESCO.NANCY.A.1377370917
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI, ou=OTHER,
cn=DEFRANCESCO.NANCY.A.1377370917
Date: 2017.06.26 11:03:08 -04'00'

Signature of ITSO:

A.1377370917

Date: 06/26/2017

Name of Authorizing Official (AO):

Margarita Gregg

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ou=OTHER, cn=GREGG.MARGARITA.ELENA.1365899017
Date: 2017.06.26 16:47:32 -04'00'

Signature of AO:

LENA.1365899017

Date: 06-26-2017

Name of Bureau Chief Privacy Officer (BCPO):

Mark Graff

GRAFF.MARK.HY

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: 2017.06.27 08:20:08 -04'00'

Signature of BCPO:

RUM.1514447892

Date: 6/27/2017

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Tuesday, June 27, 2017 3:10 PM
To: Kimberly Katzenbarger - NOAA FEDERAL; Robert Hogan; Robert Swisher - NOAA Federal
Cc: Lola Stith - NOAA Affiliate; Samuel Dixon - NOAA Affiliate; Dennis Morgan - NOAA Federal; Steven Goodman - NOAA Federal
Subject: Proposed Memo on Retention of FOIA Direct Costs
Attachments: Request to Retain Direct Costs Recovered Associated with FOIA Processing.docx

Hi Guys--

Here is the proposed Mem (b)(5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

Any thoughts or suggestions?

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

June 27, 2017

MEMORANDUM FOR: Michael Toland, Deputy Chief FOIA Officer
Office of Privacy and Open Government
Department of Commerce

FROM: Mark Graff, FOIA Officer

THROUGH: Robert Swisher, Director
Governance and Portfolio Division
Office of the Chief Information Officer
National Oceanic and Atmospheric
Administration

SUBJECT: Retention of Direct Contractor-Related
Costs Recovered Associated with
Processing FOIA Requests

(b)(5)
[Redacted]

[Redacted]

[Redacted] Treasury [Redacted]

[Redacted]

(b)(5)

[Redacted text block]

[Redacted text block]

[Redacted text block]



Kimberly Katzenbarger - NOAA Federal

From: Kimberly Katzenbarger - NOAA Federal
Sent: Tuesday, June 27, 2017 5:12 PM
To: Mark Graff - NOAA Federal
Cc: Robert Hogan; Robert Swisher - NOAA Federal; Lola Stith - NOAA Affiliate; Samuel Dixon - NOAA Affiliate; Dennis Morgan - NOAA Federal; Steven Goodman - NOAA Federal
Subject: Re: Proposed Memo on Retention of FOIA Direct Costs
Attachments: Request to Retain Direct Costs Recovered Associated with FOIA Processing (1) kk.docx

Mark, thanks so much for following up on this request (b)(5)

This memo is excellent -- concise and well written. I had just a few comments (attached). Please keep me updated on this issue. Thanks much, Kim

On Tue, Jun 27, 2017 at 3:10 PM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

Hi Guys--

Here is the proposed Mem (b)(5)

Any thoughts or suggestions?

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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--
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
Cel (b)(6)

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(b)(5)

(b)(5)



(b)(5)
[Redacted]

[Redacted]

[Redacted]

[Redacted]

Thanks very much.

Christine

Christine S. Poscablo
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Tel: 212.637.2674
Fax: 212.637.2702
Email: christine.poscablo@usdoj.gov

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(b)(5)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

NATURAL RESOURCES DEFENSE
COUNCIL, INC.,

Plaintiff,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY; U.S. FOOD AND DRUG
ADMINISTRATION; NATIONAL
OCEANIC AND ATMOSPHERIC
ADMINISTRATION; WHITE HOUSE
OFFICE OF MANAGEMENT AND
BUDGET; U.S. DEPARTMENT OF THE
INTERIOR; BUREAU OF LAND
MANAGEMENT; BUREAU OF
RECLAMATION; U.S. FISH AND
WILDLIFE SERVICE; OFFICE OF
SURFACE MINING RECLAMATION
AND ENFORCEMENT; U.S. FOREST
SERVICE; and U.S. DEPARTMENT OF
JUSTICE,

Defendants.

Case No. 17-cv-4084
ECF Case

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiff Natural Resources Defense Council, Inc. (NRDC) brings this suit to compel the federal government to disclose communications between then-President-elect Donald Trump's transition team and several federal agencies charged with safeguarding the environment and public health. The defendant agencies' failure to release responsive records violates the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and deprives the public of critical information regarding the administration's policies with respect to implementation and enforcement of bedrock health and environmental laws.

2. The transition of power from one President to another is a pivotal time in our democratic system. During this period, the incoming administration sets the foundation for future policymaking, integrates the new President's likely appointees, and ensures the continuation of vital federal functions. The transition is primarily paid for by American taxpayers.

3. Between the November 2016 election and Trump's inauguration in January 2017, members of Trump's transition team communicated with federal agency officials to gather information and lay the groundwork for the new administration's policy priorities. In early December 2016, the Washington Post reported that the transition team asked the Department of Energy for a list of names of employees who had participated in international climate talks or worked

on domestic efforts to cut carbon output.¹ Approximately a week after that, the Post reported that the Trump transition team requested that the Department of State report how much money the department contributes annually to “international environmental organizations in which the department participates.”²

4. The press has also reported that the Trump transition team included “secret” members who played a role in defining the Trump administration’s priorities and producing an “action plan” for the U.S. Environmental Protection Agency.³ Climate change denier and JunkScience.com attorney-blogger Steve Milloy was one of the “secret” members.⁴

5. To date, most of the activities of Trump’s transition team and the list of “secret” members comprising the team have not been publicly disclosed.

6. On December 22 and 23, 2016, NRDC submitted FOIA requests to several federal agencies seeking records of their communications with Trump’s transition team. These agencies include: U.S. Environmental Protection Agency; U.S. Food and Drug Administration; National Oceanic and Atmospheric Administration; White House Office of Management and Budget; U.S. Department

¹ Steven Mufson & Juliet Eilperin, *Trump transition team for Energy Department seeks names of employees involved in climate meetings*, Wash. Post (Dec. 9, 2016), http://wapo.st/2hbSDU0?tid=ss_tw&utm_term=.605e7ffea158.

² Juliet Eilperin & Carol Morello, *Trump team asks State Dept. what it spends on international environmental efforts*, Wash. Post (Dec. 20, 2016), http://wapo.st/2hnfZpb?tid=ss_tw&utm_term=.4a2e9aed48f4.

³ Sean Reilly & Amanda Reilly, *Trump team kept some transition members secret*, E&E News (Feb. 24, 2017), <https://www.eenews.net/stories/1060050546/>.

⁴ *Id.*

of the Interior and certain of its components and agencies; U.S. Forest Service; and U.S. Department of Justice.

7. The agencies' responses to NRDC's FOIA requests are past due. Agencies are generally required to respond to FOIA requests within twenty working days. *See* 5 U.S.C. § 552(a)(6)(A)(i). The twentieth working day following NRDC's submission of its FOIA requests was January 24, 2017 (for requests sent by e-mail on December 22, 2016); January 25, 2017 (for requests sent by e-mail on December 23, 2016); or January 27, 2017 (for a request sent by certified mail on December 22, 2016, and received by the agency on December 28, 2016).

8. In "unusual circumstances," an agency may extend this time limit by up to ten working days. *Id.* § 552(a)(6)(B)(i). The thirtieth working day following NRDC's submission of its FOIA requests was February 7, 2017 (for requests sent by e-mail on December 22, 2016); February 8, 2017 (for requests sent by e-mail on December 23, 2016); or February 10, 2017 (for a request sent by certified mail on December 22, 2016, and received by the agency on December 28, 2016). In some "unusual circumstances," an agency may ask that a FOIA requester narrow a request or agree to a longer response schedule. *See id.* § 552(a)(6)(B)(ii). NRDC has not agreed to a longer schedule with any of the agencies, and no unusual circumstances justify the agencies' continuing failure to provide final responses.

9. Long after these statutory deadlines passed, only one of the defendant agencies has started to produce responsive records. None of the defendant agencies

has provided a final response indicating whether and why records are being withheld.

10. The public has a pressing interest in the Trump administration's efforts to redirect the activities of federal agencies. The failure to release responsive records violates FOIA and deprives the public of critical information regarding the administration's assaults on the nation's bedrock health and environmental laws.

11. NRDC is entitled to immediate processing of its FOIA requests and the release of all responsive records.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

13. Venue is proper in this district because plaintiff NRDC resides and has its principal place of business in this judicial district. 5 U.S.C. § 552(a)(4)(B).

PARTIES

14. Plaintiff NRDC is a national, not-for-profit environmental and public health membership organization with hundreds of thousands of members nationwide. NRDC engages in research, advocacy, public education, and litigation related to protecting public health and the environment. NRDC also publishes in several media channels, including online and in print, and regularly communicates newsworthy information to the public, including information obtained under FOIA.

15. Defendant U.S. Environmental Protection Agency (EPA) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

16. Defendant U.S. Food and Drug Administration (FDA) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

17. Defendant National Oceanic and Atmospheric Administration (NOAA) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

18. Defendant White House Office of Management and Budget (OMB) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

19. Defendant U.S. Department of the Interior (DOI) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks. The Office of the Secretary of the Department of the Interior is a component of DOI. The Office of the Solicitor of the Department of the Interior is a component of DOI.

20. Defendant Bureau of Land Management (BLM) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

21. Defendant Bureau of Reclamation (Reclamation) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

22. Defendant U.S. Fish and Wildlife Service (Wildlife Service) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

23. Defendant Office of Surface Mining Reclamation and Enforcement (Surface Mining) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

24. Defendant U.S. Forest Service (Forest Service) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

25. Defendant U.S. Department of Justice (DOJ) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks. The Environment and Natural Resources Division of the Department of Justice is a component of DOJ.

FACTUAL BACKGROUND

26. On December 22, 2016, as detailed below, NRDC filed FOIA requests with EPA, FDA, NOAA, and OMB, for records in each agency's possession, custody, or control that are, include, or reflect communications between agency staff and any member of the transition team of President-elect Donald Trump or Vice-President-elect Mike Pence. Each request explained that "transition team(s)" includes, but is

not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 *note*. These requests were submitted via an online FOIA portal or sent by certified mail, in accordance with each agency's FOIA regulations and guidance.

27. NRDC submitted a FOIA request to EPA via EPA's online FOIA portal on December 22, 2016 (Att. A). EPA's final response was due by January 24, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 40 C.F.R. § 2.104(a). EPA granted NRDC's fee waiver request on December 29, 2016. On January 17, 2017, EPA notified NRDC that it needed an extension until February 13 for its response. On February 9, 2017, EPA notified NRDC that EPA needed another extension of time. NRDC did not agree to either request. EPA's February 9, 2017 email stated that "it is difficult to predict with certainty how many records may be involved," but "EPA estimates it will be able to complete an initial records search and retrieval for your request by 31 March 2017" and that "[o]f course, we will be working diligently on the request and will provide information to you on a rolling basis, if necessary." In a letter dated March 1, 2017, and transmitted to NRDC by email on March 6, 2017, EPA produced certain materials and reiterated its estimate that it would complete its records search and retrieval by March 31, 2017. EPA's online FOIA portal continues to list March 31, 2017, as the agency's "estimated date of completion."⁵ Almost two months after that date, EPA still has not provided a final response to NRDC's FOIA request.

⁵ *See* FOIA Online, <https://foiaonline.regulations.gov/foia/action/public/view/request?objectId=090004d2810b9e80#> (last accessed May 31, 2017).

28. NRDC submitted a FOIA request to FDA via the agency's online FOIA portal on December 22, 2016 (Att. B). FDA's final response was due by January 24, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 21 C.F.R. § 20.41(b). FDA has not sent a final response to NRDC's FOIA request or produced any records.

29. NRDC submitted a FOIA request to NOAA via the agency's online FOIA portal on December 22, 2016 (Att. C). NOAA's final response was due by January 24, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 15 C.F.R. § 4.6(b). NOAA granted NRDC's fee waiver request on January 5, 2017. On February 21, 2017, NOAA sent NRDC an email indicating that the tracking number for the FOIA request had been changed, "which is normally due to the request being transferred to another agency." Neither NOAA nor the Department of Commerce, the cabinet-level agency under which NOAA is housed, has sent a final response to NRDC's request or produced any records.

30. NRDC submitted a FOIA request to OMB via certified mail on December 22, 2016 (Att. D). OMB received the request on December 28, 2016 (Att. E), and its final response was due by January 27, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 5 C.F.R. § 1303.10(c). (The U.S. Postal Service confirmed delivery on December 28, 2016. The certified mail return receipt is signed January 12, 2017 (Att. F).) On January 13, 2017, OMB sent NRDC an e-mail indicating that the FOIA request had been logged. OMB has not sent a final response to NRDC's request or produced any records.

31. On December 23, 2016, as detailed below, NRDC filed FOIA requests with the Department of the Interior and several of its components and agencies (including BLM, Reclamation, Wildlife Service, Surface Mining, and the Office of the Solicitor), the Forest Service, and DOJ, for records in each agency's possession, custody, or control that are, include, or reflect communications between agency staff and any member of the transition team of President-elect Donald Trump or Vice-President-elect Mike Pence. Each request explained that "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 *note*. These FOIA requests were sent by e-mail or certified mail, in accordance with each agency's FOIA regulations and guidance.

32. NRDC submitted a FOIA request to BLM via e-mail on December 23, 2016 (Att. G). BLM's final response was due by January 25, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 43 C.F.R. § 2.16. On December 28, 2016, BLM informed NRDC that the FOIA request was designated as "Normal track," meaning it "can be processed in six to twenty workdays." BLM has not sent a final response to NRDC's request or produced any records. *See* 43 C.F.R. § 2.24.

33. NRDC submitted a FOIA request to Reclamation via e-mail on December 23, 2016 (Att. H). Reclamation's final response was due by January 25, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 43 C.F.R. § 2.16. On December 28, 2016, Reclamation informed NRDC that the request was placed on the "Complex" track for processing "in twenty-one to sixty workdays." On January 25, 2017, Reclamation

informed NRDC that the FOIA request was being consolidated with others and referred to the DOI Office of the Secretary. Neither Reclamation nor the DOI Office of the Secretary has sent a final response to NRDC's request or produced any records. *See* 43 C.F.R. §§ 2.13, 2.16(b).

34. NRDC submitted a FOIA request to Wildlife Service via e-mail on December 23, 2016 (Att. I). Wildlife Service's final response was due by January 25, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 43 C.F.R. § 2.16. On December 27, 2016, Wildlife Service informed NRDC that the FOIA request was being consolidated with others and referred to the DOI Office of the Secretary. Neither Wildlife Service nor the DOI Office of the Secretary has sent a final response to NRDC's request or produced any records. *See* 43 C.F.R. §§ 2.13, 2.16(b).

35. NRDC submitted a FOIA request to Surface Mining via e-mail on December 23, 2016 (Att. J). Surface Mining's final response was due by January 25, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 43 C.F.R. § 2.16. Surface Mining has not sent a final response to NRDC's request or produced any records.

36. NRDC submitted a FOIA request to the DOI Office of the Solicitor (DOI-Solicitor) via e-mail on December 23, 2016 (Att. K). DOI-Solicitor's final response was due by January 25, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 43 C.F.R. § 2.16. DOI-Solicitor notified NRDC on December 28, 2016, that NRDC was being classified as an "other use" requester under 43 C.F.R. § 2.39, and that the agency may charge for duplication fees but would not charge review costs. On January 6, 2017, DOI-Solicitor informed NRDC that the DOI Office of the Secretary would be responding

on its behalf to this request. Neither DOI-Solicitor nor the DOI Office of the Secretary has sent a final response to NRDC's request or produced any records. *See id.* § 2.24.

37. NRDC submitted a FOIA request to the Forest Service via e-mail on December 23, 2016 (Att. L). The Forest Service's final response was due by January 25, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 7 C.F.R. § 1.7(a). On January 6, 2017, the Forest Service notified NRDC that the agency was referring the request to the U.S. Department of Agriculture's FOIA Service Center. NRDC exchanged several e-mails with a U.S. Department of Agriculture employee in January and February, clarifying the scope of the FOIA request. Neither the Forest Service nor the U.S. Department of Agriculture has sent a final response to NRDC's request or produced any records.

38. NRDC submitted a FOIA request to DOJ, through DOJ's Environment and Natural Resources Division, via e-mail on December 23, 2016 (Att. M). DOJ's final response was due by January 25, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 28 C.F.R. § 16.5(c). DOJ has not sent a final response to NRDC's request or produced any records.

39. With each of these FOIA requests, NRDC sought from each agency a waiver of document search, review, and duplication fees on the grounds that disclosure of the requested records is in the public interest because it is "likely to contribute significantly to public understanding of the operations or activities of the government" and is not in NRDC's commercial interest. 5 U.S.C. § 552(a)(4)(A)(iii);

see also 40 C.F.R. § 2.107(*l*) (EPA); 21 C.F.R. § 20.46 (FDA); 15 C.F.R. 4.11(*l*) (NOAA); 5 C.F.R. § 1303.70 (OMB); 43 C.F.R. § 2.45 (DOI); 7 C.F.R. pt. 1, subpart A, app. A, § 6 (Forest Service); 28 C.F.R. § 16.10(k) (DOJ).

40. NRDC also sought a fee waiver because it qualifies as a “representative of the news media” and the records are not for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 40 C.F.R. § 2.107(b)(6), (c)(1)(iii) (EPA); 21 C.F.R. § 20.45(a)(2) (FDA); 15 C.F.R. § 4.11(b)(6), (c) (NOAA); 5 C.F.R. § 1303.50(c) (OMB); 43 C.F.R. §§ 2.39, 2.70 (DOI); 7 C.F.R. pt. 1, subpart A, app. A, § 5(c) (Forest Service); 28 C.F.R. § 16.10(b)(6), (c) (DOJ).

CLAIM FOR RELIEF

41. Plaintiff incorporates by reference all preceding paragraphs.

42. NRDC has a statutory right under FOIA to obtain immediately all records responsive to its requests that are not exempt from disclosure.

43. Each defendant agency has violated its statutory duty under FOIA, 5 U.S.C. § 552(a), and the applicable implementing regulations, to release all non-exempt, responsive records to NRDC.

44. Each defendant agency has violated its statutory duty under FOIA, 5 U.S.C. § 552(a)(3)(C), to make a reasonable effort to search for responsive records.

45. Because the defendant agencies failed to comply with FOIA’s statutory deadlines, NRDC has a right to obtain responsive records without being assessed any search or duplication fees. 5 U.S.C. § 552(a)(4)(A)(viii)(I).

REQUEST FOR RELIEF

NRDC respectfully requests that the Court enter judgment against the defendant agencies as follows:

- A. Declaring that the agencies have violated FOIA by failing to produce non-exempt records responsive to NRDC's FOIA requests by the statutory deadlines;
- B. Ordering the agencies to disclose the requested records to NRDC without further delay, and without charging search or duplication costs;
- C. Ordering defendants FDA, OMB, BLM, Reclamation, Wildlife Service, Surface Mining, Forest Service, and DOJ, to grant NRDC's fee waiver requests;
- D. Retaining jurisdiction over this case to rule on any assertions by any agency that certain responsive records are exempt from disclosure;
- E. Ordering the agencies to produce an index identifying any documents or parts thereof that the agencies withheld and the basis for the withholding, in the event that any agency determines that certain responsive records are exempt from disclosure;
- F. Awarding NRDC its costs and reasonable attorneys' fees; and
- G. Granting such other relief that the Court considers just and proper.

Dated: May 31, 2017

Respectfully submitted,

/s/ Vivian H.W. Wang

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Attachment A

NRDC

December 22, 2016

Via FOIA Online

Re: FOIA request for communications between the President-elect's transition team and EPA staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Environmental Protection Agency (EPA) regulations at 40 C.F.R. § 2.100-2.406.

I. Description of Records Sought

Please produce records¹ in EPA's possession, custody, or control that are, include, or reflect communications between EPA staff and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Scott Pruitt, Myron Ebell, David Kreutzer, Austin Lipari, David Schnare, David Stevenson, George Sugiyama, Amy Oliver Cooke, Christopher Horner, and Harlan Watson.

II. Request for a Fee Waiver

NRDC requests that EPA waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 40 C.F.R. § 2.107(l)(1). The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any EPA office, including, but not limited to, EPA Headquarters offices, and specifically including EPA offices in possession of responsive records.

to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 40 C.F.R. § 2.107(c)(1)(iii).

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(l)(1). Each of the four factors used by EPA to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 40 C.F.R. § 2.107(l)(2).

1. Subject of the request

The records requested here reflect communications between EPA and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 40 C.F.R. § 2.107(l)(2)(i).

2. Informative value of the information to be disclosed

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 40 C.F.R. § 2.107(l)(2)(ii). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, <http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html? r=0>. There may be similar communications with EPA that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at EPA, as further discussed below. However, if EPA were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

3. Contribution to an understanding of the subject by the public is likely to result from disclosure

Because NRDC is a “representative of the news media,” as explained in Part II.C below, EPA must presume that this disclosure is likely to contribute to public understanding of its subject. 40 C.F.R. § 2.107(l)(2)(iii).

However, even if NRDC were not a media requester, NRDC’s expertise in matters concerning EPA staffing and policy, extensive communications capabilities, and proven history

of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject matter. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are "a broad audience of persons interested in the subject" of the transition of power at EPA, 40 C.F.R. § 2.107(l)(2)(iii), and when combined with NRDC's communications to the public at large, the likely audience of interested persons to be reached is certainly "reasonably broad." 40 C.F.R. § 2.107(l)(2)(iii). As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, “The requirement to rebuild US fish stocks: Is it working?” *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 13);
- Article, “Waves of phony charges over new clean water safeguards,” *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
- 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).²

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public's understanding of the subject.

4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: the transition of power at EPA and the communications between the President-elect's transition team and EPA staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate EPA's response to any such requests. Thus, disclosure here would significantly contribute to the public's understanding of government operations or activities. 40 C.F.R. § 2.107(l)(2)(iv).

² There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, "Science Panel Issues Report on Exposure to Pollutant," *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, "Draft of Air Rule is Said to Exempt Many Old Plants," *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., "E-Mail Suggests Energy Official Encouraged Lobbyist on Policy," *N.Y. Times*, Apr. 27, 2002 (Att. 39).

B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(l)(1), (3). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env'tl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by EPA on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

C. NRDC Is a Media Requester

Even if EPA denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and EPA's FOIA regulations, 40 C.F.R. § 2.107(c)(1)(iii); see also 40 C.F.R. § 2.107(b)(6) (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep't of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. See 40 C.F.R. § 2.107(b)(6) (“Examples of news media include . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. See OPEN Government Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and

media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).³

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with EPA’s FOIA regulations at 40 C.F.R. § 2.107(c)(1)(iv) for all or a portion of the requested records. *See* 40 C.F.R. § 2.107(l)(4). Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; EPA’s search for—or deliberations concerning—certain records should not delay the production of others that EPA has already retrieved and elected to produce. *See generally* 40 C.F.R. § 2.104. If EPA concludes that any of the records requested here are publicly available, please let me know.

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange
Staff Attorney
Natural Resources Defense Council, Inc.
111 Sutter St., 21st Floor
San Francisco, CA 94104
jprange@nrdc.org
415-875-6184

Enclosures (sent via FOIA Online):

Attachments 1 through 42 (single .pdf file)

Attachment B



December 22, 2016

Via Online FDA FOIA Portal

Re: FOIA request for communications between the President-elect's transition team and FDA staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Food and Drug Administration (FDA) regulations at 21 C.F.R. § 20.1-20.120.

I. Description of Records Sought

Please produce records¹ in FDA's possession, custody, or control that are, include, or reflect communications between FDA staff in the Office of Foods and Veterinary Medicine (including the Center for Food Safety and Applied Nutrition and the Center for Veterinary Medicine) and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Peter Thiel, Marie Meszaros, John Brooks, Andrew Bremberg, Renee Amooore, Scott Gottlieb, Eric Hargan, Nina Owcharenko Schaefer, Kamran Daravi, Ed Haislmaier, Maggie Wynne, and Paula Stannard.

II. Request for a Fee Waiver

NRDC requests that FDA waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 21 C.F.R. § 20.46(a). The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 21 C.F.R. § 20.45(a)(2).

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any FDA office, including, but not limited to, FDA Headquarters offices, and specifically including FDA offices in possession of responsive records.

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 21 C.F.R. § 20.46(a)(1). Each of the four factors used by FDA to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 21 C.F.R. § 20.46(b).

1. Subject of the request

The records requested here reflect communications between FDA and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 21 C.F.R. § 20.46(b)(1).

2. Informative value of the information to be disclosed

The requested records would “reveal any meaningful information about Government operations or activities that is not already public knowledge.” 21 C.F.R. § 20.46(b)(2). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, <http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html? r=0>. There may be similar communications with FDA that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at FDA, as further discussed below. However, if FDA were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

3. Contribution to an understanding of the subject by the public is likely to result from disclosure

Because NRDC is a “representative of the news media,” as explained in Part II.C below, that is sufficient evidence that this disclosure is likely to contribute to public understanding of its subject. 21 C.F.R. § 20.46(b)(3).

However, even if NRDC were not a media requester, NRDC’s expertise in matters concerning FDA staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the

records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject matter. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request. *See* 21 C.F.R. § 20.46(b)(3).

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, “The requirement to rebuild US fish stocks: Is it working?” *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 13);
- 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).²

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public’s understanding of the subject.

4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: the transition of power at FDA and the communications between the President-elect’s transition team and FDA staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate FDA’s response to any such requests. Thus, disclosure here would significantly contribute to the public’s understanding of government operations or activities. 21 C.F.R. § 20.46(b)(4).

B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 21 C.F.R. § 20.46(c). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res.*

² There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, “Science Panel Issues Report on Exposure to Pollutant,” *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, “Draft of Air Rule is Said to Exempt Many Old Plants,” *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., “E-Mail Suggests Energy Official Encouraged Lobbyist on Policy,” *N.Y. Times*, Apr. 27, 2002 (Att. 39).

Def. Council v. United States Envtl. Prot. Agency, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by FDA on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

C. NRDC Is a Media Requester

Even if FDA denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and FDA's FOIA regulations, 21 C.F.R. § 20.45(a)(2). A representative of the news media is "any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii); *see also Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a "non-profit public interest organization" qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep't of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on "Twitter" and "Facebook," and through content distributed to outlets such as Medium. *See* OPEN Government Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that "as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities"). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements "are regularly

granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the ACLU).³

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with FDA’s FOIA regulations for all or a portion of the requested records. *See* 21 C.F.R. § 20.45. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; FDA’s search for—or deliberations concerning—certain records should not delay the production of others that FDA has already retrieved and elected to produce. *See generally* 21 C.F.R. § 20.22, 20.43. If FDA concludes that any of the records requested here are publicly available, please let me know.

Please do not hesitate to call or email with questions. Thank you.

Sincerely,

Jaclyn H. Prange, Staff Attorney
Natural Resources Defense Council, Inc.
111 Sutter St., 21st Floor
San Francisco, CA 94104
jprange@nrdc.org, 415-875-6184

Enclosures (sent via FOIA Online): Attachments 1 through 42 (single .pdf file)

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media.

Attachment C



December 22, 2016

Via FOIA Online

Re: FOIA request for communications between the President-elect's transition team and NOAA staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Commerce regulations at 15 C.F.R. § 4.1-4.11.

I. Description of Records Sought

Please produce records¹ the Department of Commerce's possession, custody, or control that are, include, or reflect communications between National Oceanic and Atmospheric Administration's (NOAA's) staff and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Wilbur Ross, Ray Washburne, David Bohigian, Joan Maginnis, George Sifakis, William Gaynor, A. Mark Neuman, and Tom Leppert.

II. Request for a Fee Waiver

NRDC requests that NOAA waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 15 C.F.R. § 4.11(l). The requested disclosure would meet both of these

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any NOAA office, including, but not limited to, NOAA Headquarters offices, and specifically including NOAA offices in possession of responsive records.

requirements. In addition, NRDC qualifies as “a representative of the news media” entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 15 C.F.R. § 4.11(c)(1), (d).

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 15 C.F.R. § 4.11(l)(1)(i). Each of the four factors used by NOAA to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 15 C.F.R. § 4.11(l)(2).

1. Subject of the request

The records requested here reflect communications between NOAA and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 15 C.F.R. § 4.11(l)(2)(i).

2. Informative value of the information to be disclosed

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 15 C.F.R. § 4.11(l)(2)(ii). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, <http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html? r=0>. There may be similar communications with NOAA that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at NOAA, as further discussed below. However, if NOAA were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

3. Contribution to an understanding of the subject by the public is likely to result from disclosure

Because NRDC is a “representative of the news media,” as explained in Part II.C below, NOAA must presume that this disclosure is likely to contribute to public understanding of its subject. 15 C.F.R. § 4.11(l)(2)(iii).

However, even if NRDC were not a media requester, NRDC’s expertise in matters concerning NOAA staffing and policy, extensive communications capabilities, and proven

history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject matter. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are "a broad audience of persons interested in the subject" of the transition of power at NOAA, and when combined with NRDC's communications to the public at large, the likely audience of interested persons to be reached is certainly "reasonably broad." 15 C.F.R. § 4.11(l)(2)(iii). As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
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As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public's understanding of the subject.

4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: the transition of power at NOAA and the communications between the President-elect's transition team and NOAA staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate NOAA's response to any such requests. Thus, disclosure here would significantly contribute to the public's understanding of government operations or activities. See 15 C.F.R. § 4.11(l)(2)(iv).

² There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, "Science Panel Issues Report on Exposure to Pollutant," *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, "Draft of Air Rule is Said to Exempt Many Old Plants," *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., "E-Mail Suggests Energy Official Encouraged Lobbyist on Policy," *N.Y. Times*, Apr. 27, 2002 (Att. 39).

B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 15 C.F.R. § 4.11(l)(1)(ii). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env'tl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by NOAA on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

C. NRDC Is a Media Requester

Even if NOAA denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and the Department of Commerce FOIA regulations, 15 C.F.R. § 4.11(c), (d); see also 15 C.F.R. § 4.11(b)(6) (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep't of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. See 15 C.F.R. § 4.11(b)(6) (stating that examples of news media include . . . publishers of periodicals). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. See OPEN Government Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and

media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).³

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with the Department of Commerce’s FOIA regulations for all or a portion of the requested records. *See* 15 C.F.R. § 4.11. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; NOAA’s search for—or deliberations concerning—certain records should not delay the production of others that NOAA has already retrieved and elected to produce. *See generally* 15 C.F.R. § 4.7. If NOAA concludes that any of the records requested here are publicly available, please let me know.

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

Please do not hesitate to call or email with questions. Thank you.

Sincerely,

Jaclyn H. Prange
Staff Attorney
Natural Resources Defense Council, Inc.
111 Sutter St., 21st Floor
San Francisco, CA 94104
jprange@nrdc.org
415-875-6184

Enclosures (sent via FOIA Online):

Attachments 1 through 42 (single .pdf file)

Attachment D



December 22, 2016

Via Certified Mail

Dionne Hardy, FOIA Officer
Office of Management and Budget
725 17th Street NW, Room 9026
Washington, DC 20503

Re: FOIA request for communications between the President-elect's transition team and OMB staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Office of Management and Budget (OMB) regulations at 5 C.F.R. § 1303.1-1303.70.

I. Description of Records Sought

Please produce records¹ in OMB's possession, custody, or control that are, include, or reflect communications between OMB staff and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Edwin Meese, Dan Kowalski, Russ Vought, Justin Bogie, Karen Evans, Pat Pizzella, Mark Robbins, Paul Winfree, Linda Springer, and David Burton.

II. Request for a Fee Waiver

NRDC requests that OMB waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 5 C.F.R. § 1303.70. The requested disclosure would meet both of these

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any OMB office, including, but not limited to, OMB Headquarters offices, and specifically including OMB offices in possession of responsive records.

requirements. In addition, NRDC qualifies as “a representative of the news media” entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 5 C.F.R. § 1303.50(c).

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 5 C.F.R. § 1303.70.

1. Subject of the request

The records requested here reflect communications between OMB and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the Government.” 5 C.F.R. § 1303.70.

2. Informative value of the information to be disclosed

The requested records are “likely to contribute significantly to” the public’s understanding of government operations and activities. 5 C.F.R. § 1303.70. The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, <http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html? r=0>. There may be similar communications with OMB that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at OMB, as further discussed below. However, if OMB were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

3. Contribution to an understanding of the subject by the public is likely to result from disclosure

NRDC’s expertise in matters concerning OMB staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject matter. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a

requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are a broad audience of persons interested in the subject of the transition of power at OMB. As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
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Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate OMB’s response to any such requests. Thus, disclosure here would significantly contribute to the public’s understanding of government operations or activities. See 5 C.F.R. § 1303.70.

B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 5 C.F.R. § 1303.70. NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Envtl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by OMB on the transition relates to a matter

² There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, “Science Panel Issues Report on Exposure to Pollutant,” *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, “Draft of Air Rule is Said to Exempt Many Old Plants,” *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., “E-Mail Suggests Energy Official Encouraged Lobbyist on Policy,” *N.Y. Times*, Apr. 27, 2002 (Att. 39).

of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

C. NRDC Is a Media Requester

Even if OMB denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and OMB's FOIA regulations, 5 C.F.R. § 1303.50(c); *see also* 5 C.F.R. § 1303.30(j) (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); *see also Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, U.S. Dep’t of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. *See* 5 C.F.R. § 1303.30(j) (“Examples of news media include . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on Twitter and Facebook, and through content distributed to outlets such as Medium. *See* OPEN Gov’t Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (accord[ing] media requester status to the ACLU).³

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media.

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC's publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm'n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with OMB's FOIA regulations for all or a portion of the requested records. *See* 5 C.F.R. § 1303.40. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; OMB's search for—or deliberations concerning—certain records should not delay the production of others that OMB has already retrieved and elected to produce. If OMB concludes that any of the records requested here are publicly available, please let me know.

Please do not hesitate to call or email with questions. Thank you.

Sincerely,

Jaclyn H. Prange
Staff Attorney
Natural Resources Defense Council, Inc.
111 Sutter St., 21st Floor
San Francisco, CA 94104
jprange@nrdc.org
415-875-6184

Enclosures (sent via FOIA Online): Attachments 1 through 42 (single .pdf file)

Attachment E

USPS Tracking® Results

FAQs > (<http://faq.usps.com/?articleId=220900>)

Track Another Package +

Remove X

Tracking Number: 70161970000023486185



Delivered

Updated Delivery Day: Wednesday, December 28, 2016 ⓘ

Product & Tracking Information

[See Available Actions](#)

Postal Product:
Priority Mail™

Features:
Certified Mail™
Return Receipt
Up to \$50 insurance included
Restrictions Apply ⓘ

See tracking for related item:
[9590940304065163920575 \(/go/TrackConfirmAction?tLabels=9590940304065163920575\)](#)

DATE & TIME

STATUS OF ITEM

LOCATION

**December 28, 2016, 4:25
am**

Delivered

WASHINGTON, DC 20500



Your item was delivered at 4:25 am on December 28, 2016 in WASHINGTON, DC 20500.

December 27, 2016, 11:18
am

Available for Pickup

WASHINGTON, DC 20500

DATE & TIME	STATUS OF ITEM	LOCATION
December 27, 2016, 10:53 am	Arrived at Unit	WASHINGTON, DC 20018
December 25, 2016, 10:17 pm	In Transit to Destination	

[See More](#) 

Available Actions

[See Less](#) 

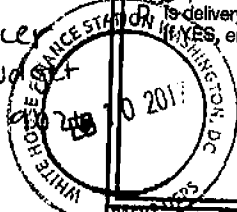
Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

[FAQs \(http://faq.usps.com/?articleId=220900\)](http://faq.usps.com/?articleId=220900)

Attachment F

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature</p> <p>X <i>Dionne Hardy</i></p>	<p><input type="checkbox"/> Agent</p> <p><input type="checkbox"/> Addressee</p>
<p>1. Article Addressed to:</p> <p>Dionne Hardy, FOIA Officer Office of Management + Budget 725 19th St. NW, Room 6185 Washington, DC 20503</p>	<p>B. Received by (Printed Name)</p> <p><i>DIONNE HARDY</i></p>	<p>C. Date of Delivery</p> <p><i>01/12/17</i></p>
<p>Barcode</p> <p>9590 9403 0406 5163 9205 75</p>	<p>Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p>	
<p>2. (Transfer from service label)</p> <p>7016 1970 0000 2348 6185</p>	<p>Service Type</p> <p><input type="checkbox"/> Adult Signature</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery</p> <p><input checked="" type="checkbox"/> Certified Mail®</p> <p><input type="checkbox"/> Certified Mail Restricted Delivery</p> <p><input type="checkbox"/> Collect on Delivery</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery</p> <p><input type="checkbox"/> Insured Mail</p> <p><input type="checkbox"/> Insured Mail Restricted Delivery</p> <p><input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Registered Mail™</p> <p><input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Signature Confirmation™</p> <p><input type="checkbox"/> Signature Confirmation Restricted Delivery</p>	
<p>PS Form 3811, April 2015 PSN 7530-02-000-9033</p>		<p>Domestic Return Receipt</p>



UNITED STATES POSTAL SERVICE
SAN FRANCISCO DISTRICT
MD 207
30 FEB '17
PM 3 1



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4® in this box•
Jackie Prange
NRDC
111 Sutter St, 21st Floor
San Francisco, CA 94104

USPS TRACKING#



9590 9403 0406 5163 9205 75

Attachment G

NRDC

December 23, 2016

Via email

blm_wo_foia@blm.gov

Re: FOIA request for communications between the President-elect's transition team and DOI staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Interior (DOI) regulations at 43 C.F.R. § 2.1-2.290.

I. Description of Records Sought

Please produce records¹ in DOI's possession, custody, or control that are, include, or reflect communications between DOI staff in the Bureau of Land Management and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Ryan Zinke, Doug Domenech, David Bernhardt, Scott Cameron, Daniel Jorjani, Kathy Benedetto, Mary Bomar, Karen Budd-Falen, and Ned Mamula.

II. Request for a Fee Waiver

NRDC requests that DOI waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 43 C.F.R. § 2.45. The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 43 C.F.R. § 2.39.

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any DOI office, including, but not limited to, DOI Headquarters offices, and specifically including DOI offices in possession of responsive records.

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(1). Each of the factors used by DOI to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 43 C.F.R. § 2.48.

1. Subject of the request

The records requested here reflect communications between DOI and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 43 C.F.R. § 2.48(a)(1).

2. Informative value of the information to be disclosed

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 43 C.F.R. § 2.48(a)(2). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, <http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html? r=0>. There may be similar communications with DOI that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

As described below in section II.A.3, disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, and NRDC’s identity, vocation, qualifications, and expertise regarding the requested information explain how NRDC plans to disclose the information to a broad audience of persons. Further, because NRDC is a “representative of the news media,” as explained in Part II.C below, DOI must presume that NRDC has the ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject. 43 C.F.R. § 2.48(a)(2)(v).

3. Contribution to an understanding of the subject by the public is likely to result from disclosure

NRDC’s expertise in matters concerning DOI staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject

matter. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are a broad audience of persons interested in the subject of the transition of power at DOI, and when combined with NRDC's communications to the public at large, the likely audience of interested persons to be reached is certainly "reasonably broad." 43 C.F.R. § 2.48(a)(3). As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, “The requirement to rebuild US fish stocks: Is it working?” *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 13);
- Article, “Waves of phony charges over new clean water safeguards,” *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
- Article, “Don’t Buy the Smear of the EPA,” *L.A. Times*, June 3, 2014 (by NRDC President Frances Beinecke) (Att. 15);
- Transcript, “Conservationists Call For Quiet: The Ocean Is Too Loud!” Nat’l Pub. Radio, *All Things Considered*, July 28, 2013 (featuring NRDC Marine Mammal Protection Program Director Michael Jasny) (Att. 16);
- Testimony of David Doniger, NRDC Climate and Air Program Policy Director and Senior Attorney, before the United States House Subcommittee on Energy and Power, June 19, 2012 (Att. 17);
- Article, “Pollution Still a Hazard to U.S. Beaches,” CBS, *CBS NEWS*, July 29, 2009 (featuring former NRDC Water Program Co-Director Nancy Stoner) (Att. 18);
- Conference brochure, “World Business Summit on Climate Change,” May 24-26, 2009 (featuring former NRDC Director for Market Innovation Rick Duke at 9) (Att. 19);
- Article, “Is there a ‘proper level’ of compliance with environmental law?” *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall) (Att. 20);
- NRDC Document Bank, <http://docs.nrdc.org/> (Att. 21).

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 22). *See also* Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing NRDC’s report) (Att. 23).
- (2) NRDC obtained, through FOIA, FDA review documents on the nontherapeutic use of antibiotic additives in livestock and poultry feed. In January 2014, NRDC published a report, titled *Playing Chicken with Antibiotics*, which is based on the documents obtained, and reveals decades of hesitancy on FDA’s part to ensure

the safety of these drug additives (Att. 24). *See also* P.J. Huffstutter and Brian Grow, “Drug critic slams FDA over antibiotic oversight in meat production,” *Reuters*, Jan. 27, 2014 (discussing NRDC’s report) (Att. 25).

- (3) NRDC has used White House documents obtained through FOIA and from other sources to inform the public about EPA’s decision not to protect wildlife and workers from the pesticide atrazine in the face of industry pressure to keep atrazine on the market. *See Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, <http://www.nrdc.org/health/atrazine/files/atrazine10.pdf> (Apr. 2010) (update to 2009 report) (Att. 26); *see also* William Souder, “It’s Not Easy Being Green: Are Weed-Killers Turning Frogs Into Hermaphrodites?” *Harper’s Bazaar*, Aug. 1, 2006 (referencing documents obtained and posted online by NRDC) (Att. 27).
- (4) NRDC incorporated information obtained through FOIA into a report, available at <http://www.nrdc.org/wildlife/marine/sound/contents.asp>, on the impacts of military sonar and other industrial noise pollution on marine life. *See Sounding the Depths II: The Rising Toll of Sonar, Shipping and Industrial Ocean Noise on Marine Life* (Nov. 2005) (update to 1999 report) (Att. 28). The report also relied upon and synthesized information from other sources. Since the report’s publication, the sonar issue has continued to attract widespread public attention. *See, e.g.*, “Protest Raised over New Tests of Naval Sonar,” Nat’l Pub. Radio, *All Things Considered*, July 24, 2007 (transcript at Att. 29).
- (5) NRDC scientists have used information obtained through FOIA to publish analyses of the United States’ and other nations’ nuclear weapons programs. In 2004, for example, NRDC scientists incorporated information obtained through FOIA into a feature article on the United States’ plans to deploy a ballistic missile system and the implications for global security. *See* Hans M. Kristensen, Matthew G. McKinzie, and Robert S. Norris, “The Protection Paradox,” *Bulletin of Atomic Scientists*, Mar./Apr. 2004 (Att. 30).
- (6) NRDC obtained through FOIA, and made public, records of the operations of the Bush administration’s Energy Task Force, along with analysis of selected excerpts and links to the administration’s index of withheld documents (Att. 31). NRDC’s efforts cast light on an issue of considerable public interest. *See, e.g.*, Elizabeth Shogren, “Bush Gets One-Two Punch on Energy,” *L.A. Times*, Mar. 28, 2002, at A22 (Att. 32).
- (7) Through FOIA, NRDC obtained a memorandum by ExxonMobil, advocating the replacement of the sitting head of the Intergovernmental Panel on Climate Change, and used the document to help inform the public about what may have been behind the Bush administration’s decision to replace Dr. Robert Watson. *See* NRDC Press Release and attached Exxon memorandum, “Confidential Papers Show Exxon Hand in White House Move to Oust Top Scientist from

International Global Warming Panel,” Apr. 3, 2002 (Att. 33); Elizabeth Shogren, “Charges Fly Over Science Panel Pick,” *L.A. Times*, Apr. 4, 2002, at A19 (Att. 34).

- (8) Through FOIA and other sources, NRDC obtained information on nationwide levels of arsenic in drinking water and used it in a report, *Arsenic and Old Laws* (2000), available in print and online at <http://www.nrdc.org/water/drinking/arsenic/aolinx.asp> (Att. 35). The report guided interested members of the public on how to learn more about arsenic in their own drinking water supplies. *Id.*; see also Steve LaRue, “EPA Aims to Cut Levels of Arsenic in Well Water,” *San Diego Union-Tribune*, June 5, 2000, at B1 (referencing NRDC report) (Att. 36).²

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public’s understanding of the subject.

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at DOI, as further discussed below. However, if DOI were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: the transition of power at DOI and the communications between the President-elect’s transition team and DOI staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate DOI’s response to any such requests. Thus, disclosure of these records would contribute significantly to the public’s understanding of the subject in question. See 43 C.F.R. § 2.48(a)(4).

² There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, “Science Panel Issues Report on Exposure to Pollutant,” *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, “Draft of Air Rule is Said to Exempt Many Old Plants,” *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., “E-Mail Suggests Energy Official Encouraged Lobbyist on Policy,” *N.Y. Times*, Apr. 27, 2002 (Att. 39).

B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.48(b). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env'tl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by DOI on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

Also, because NRDC is a representative of the news media, as described below, DOI must presume that the public interest outweighs any commercial interest. 43 C.F.R. § 2.48(b)(3)(ii).

C. NRDC Is a Media Requester

Even if DOI denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and DOI's FOIA regulations, 43 C.F.R. § 2.39; see also 43 C.F.R. § 2.70 (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep't of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. See 43 C.F.R. § 2.70 (“Examples of news media [include] . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. See OPEN Government

Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).³

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with DOI’s FOIA regulations for all or a portion of the requested records. *See* 43 C.F.R. § 2.38-2.44. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; DOI’s search for—or deliberations concerning—certain records should not delay the production of others that DOI has already retrieved and elected to produce. *See generally* 43 C.F.R. § 2.21-2.25. If DOI concludes that any of the records requested here are publicly available, please let me know.

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange
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Natural Resources Defense Council, Inc.
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415-875-6184

Enclosures:

Attachments 1 through 42 (in two emails)

Attachment H

NRDC

December 23, 2016

Via email
bor.foia@usbr.gov

Re: FOIA request for communications between the President-elect's transition team and DOI staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Interior (DOI) regulations at 43 C.F.R. § 2.1-2.290.

I. Description of Records Sought

Please produce records¹ in DOI's possession, custody, or control that are, include, or reflect communications between DOI staff in the Bureau of Reclamation (BOR) and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Ryan Zinke, Doug Domenech, David Bernhardt, Scott Cameron, Daniel Jorjani, Kathy Benedetto, Mary Bomar, Karen Budd-Falen, and Ned Mamula.

II. Request for a Fee Waiver

NRDC requests that DOI waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 43 C.F.R. § 2.45. The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 43 C.F.R. § 2.39.

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any DOI office, including, but not limited to, DOI Headquarters offices, and specifically including DOI offices in possession of responsive records.

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(1). Each of the factors used by DOI to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 43 C.F.R. § 2.48.

1. Subject of the request

The records requested here reflect communications between DOI and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 43 C.F.R. § 2.48(a)(1).

2. Informative value of the information to be disclosed

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 43 C.F.R. § 2.48(a)(2). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html?_r=0. There may be similar communications with DOI that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

As described below in section II.A.3, disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, and NRDC’s identity, vocation, qualifications, and expertise regarding the requested information explain how NRDC plans to disclose the information to a broad audience of persons. Further, because NRDC is a “representative of the news media,” as explained in Part II.C below, DOI must presume that NRDC has the ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject. 43 C.F.R. § 2.48(a)(2)(v).

3. Contribution to an understanding of the subject by the public is likely to result from disclosure

NRDC’s expertise in matters concerning DOI staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject

matter. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are a broad audience of persons interested in the subject of the transition of power at DOI, and when combined with NRDC's communications to the public at large, the likely audience of interested persons to be reached is certainly "reasonably broad." 43 C.F.R. § 2.48(a)(3). As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, “The requirement to rebuild US fish stocks: Is it working?” *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 13);
- Article, “Waves of phony charges over new clean water safeguards,” *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
- Article, “Don’t Buy the Smear of the EPA,” *L.A. Times*, June 3, 2014 (by NRDC President Frances Beinecke) (Att. 15);
- Transcript, “Conservationists Call For Quiet: The Ocean Is Too Loud!” Nat’l Pub. Radio, *All Things Considered*, July 28, 2013 (featuring NRDC Marine Mammal Protection Program Director Michael Jasny) (Att. 16);
- Testimony of David Doniger, NRDC Climate and Air Program Policy Director and Senior Attorney, before the United States House Subcommittee on Energy and Power, June 19, 2012 (Att. 17);
- Article, “Pollution Still a Hazard to U.S. Beaches,” CBS, *CBS NEWS*, July 29, 2009 (featuring former NRDC Water Program Co-Director Nancy Stoner) (Att. 18);
- Conference brochure, “World Business Summit on Climate Change,” May 24-26, 2009 (featuring former NRDC Director for Market Innovation Rick Duke at 9) (Att. 19);
- Article, “Is there a ‘proper level’ of compliance with environmental law?” *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall) (Att. 20);
- NRDC Document Bank, <http://docs.nrdc.org/> (Att. 21).

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 22). *See also* Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing NRDC’s report) (Att. 23).
- (2) NRDC obtained, through FOIA, FDA review documents on the nontherapeutic use of antibiotic additives in livestock and poultry feed. In January 2014, NRDC published a report, titled *Playing Chicken with Antibiotics*, which is based on the documents obtained, and reveals decades of hesitancy on FDA’s part to ensure

the safety of these drug additives (Att. 24). *See also* P.J. Huffstutter and Brian Grow, “Drug critic slams FDA over antibiotic oversight in meat production,” *Reuters*, Jan. 27, 2014 (discussing NRDC’s report) (Att. 25).

- (3) NRDC has used White House documents obtained through FOIA and from other sources to inform the public about EPA’s decision not to protect wildlife and workers from the pesticide atrazine in the face of industry pressure to keep atrazine on the market. *See Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, <http://www.nrdc.org/health/atrazine/files/atrazine10.pdf> (Apr. 2010) (update to 2009 report) (Att. 26); *see also* William Souder, “It’s Not Easy Being Green: Are Weed-Killers Turning Frogs Into Hermaphrodites?” *Harper’s Bazaar*, Aug. 1, 2006 (referencing documents obtained and posted online by NRDC) (Att. 27).
- (4) NRDC incorporated information obtained through FOIA into a report, available at <http://www.nrdc.org/wildlife/marine/sound/contents.asp>, on the impacts of military sonar and other industrial noise pollution on marine life. *See Sounding the Depths II: The Rising Toll of Sonar, Shipping and Industrial Ocean Noise on Marine Life* (Nov. 2005) (update to 1999 report) (Att. 28). The report also relied upon and synthesized information from other sources. Since the report’s publication, the sonar issue has continued to attract widespread public attention. *See, e.g.*, “Protest Raised over New Tests of Naval Sonar,” Nat’l Pub. Radio, *All Things Considered*, July 24, 2007 (transcript at Att. 29).
- (5) NRDC scientists have used information obtained through FOIA to publish analyses of the United States’ and other nations’ nuclear weapons programs. In 2004, for example, NRDC scientists incorporated information obtained through FOIA into a feature article on the United States’ plans to deploy a ballistic missile system and the implications for global security. *See* Hans M. Kristensen, Matthew G. McKinzie, and Robert S. Norris, “The Protection Paradox,” *Bulletin of Atomic Scientists*, Mar./Apr. 2004 (Att. 30).
- (6) NRDC obtained through FOIA, and made public, records of the operations of the Bush administration’s Energy Task Force, along with analysis of selected excerpts and links to the administration’s index of withheld documents (Att. 31). NRDC’s efforts cast light on an issue of considerable public interest. *See, e.g.*, Elizabeth Shogren, “Bush Gets One-Two Punch on Energy,” *L.A. Times*, Mar. 28, 2002, at A22 (Att. 32).
- (7) Through FOIA, NRDC obtained a memorandum by ExxonMobil, advocating the replacement of the sitting head of the Intergovernmental Panel on Climate Change, and used the document to help inform the public about what may have been behind the Bush administration’s decision to replace Dr. Robert Watson. *See* NRDC Press Release and attached Exxon memorandum, “Confidential Papers Show Exxon Hand in White House Move to Oust Top Scientist from

International Global Warming Panel,” Apr. 3, 2002 (Att. 33); Elizabeth Shogren, “Charges Fly Over Science Panel Pick,” *L.A. Times*, Apr. 4, 2002, at A19 (Att. 34).

- (8) Through FOIA and other sources, NRDC obtained information on nationwide levels of arsenic in drinking water and used it in a report, *Arsenic and Old Laws* (2000), available in print and online at <http://www.nrdc.org/water/drinking/arsenic/aolinx.asp> (Att. 35). The report guided interested members of the public on how to learn more about arsenic in their own drinking water supplies. *Id.*; see also Steve LaRue, “EPA Aims to Cut Levels of Arsenic in Well Water,” *San Diego Union-Tribune*, June 5, 2000, at B1 (referencing NRDC report) (Att. 36).²

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public’s understanding of the subject.

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at DOI, as further discussed below. However, if DOI were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: the transition of power at DOI and the communications between the President-elect’s transition team and DOI staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate DOI’s response to any such requests. Thus, disclosure of these records would contribute significantly to the public’s understanding of the subject in question. See 43 C.F.R. § 2.48(a)(4).

² There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, “Science Panel Issues Report on Exposure to Pollutant,” *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, “Draft of Air Rule is Said to Exempt Many Old Plants,” *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., “E-Mail Suggests Energy Official Encouraged Lobbyist on Policy,” *N.Y. Times*, Apr. 27, 2002 (Att. 39).

B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.48(b). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env'tl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by DOI on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

Also, because NRDC is a representative of the news media, as described below, DOI must presume that the public interest outweighs any commercial interest. 43 C.F.R. § 2.48(b)(3)(ii).

C. NRDC Is a Media Requester

Even if DOI denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and DOI's FOIA regulations, 43 C.F.R. § 2.39; see also 43 C.F.R. § 2.70 (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep't of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

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Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).³

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Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with DOI’s FOIA regulations for all or a portion of the requested records. *See* 43 C.F.R. § 2.38-2.44. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

IV. Conclusion

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Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange
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415-875-6184

Enclosures:

Attachments 1 through 42 (in two emails)

Attachment I

NRDC

December 23, 2016

Via email
fwhq.foia@fws.gov

Re: FOIA request for communications between the President-elect's transition team and DOI staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Interior (DOI) regulations at 43 C.F.R. § 2.1-2.290.

I. Description of Records Sought

Please produce records¹ in DOI's possession, custody, or control that are, include, or reflect communications between DOI staff in the United States Fish and Wildlife Service (FWS) and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Ryan Zinke, Doug Domenech, David Bernhardt, Scott Cameron, Daniel Jorjani, Kathy Benedetto, Mary Bomar, Karen Budd-Falen, and Ned Mamula.

II. Request for a Fee Waiver

NRDC requests that DOI waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 43 C.F.R. § 2.45. The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 43 C.F.R. § 2.39.

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any DOI office, including, but not limited to, DOI Headquarters offices, and specifically including DOI offices in possession of responsive records.

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(1). Each of the factors used by DOI to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 43 C.F.R. § 2.48.

1. Subject of the request

The records requested here reflect communications between DOI and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 43 C.F.R. § 2.48(a)(1).

2. Informative value of the information to be disclosed

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 43 C.F.R. § 2.48(a)(2). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html?_r=0. There may be similar communications with DOI that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

As described below in section II.A.3, disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, and NRDC’s identity, vocation, qualifications, and expertise regarding the requested information explain how NRDC plans to disclose the information to a broad audience of persons. Further, because NRDC is a “representative of the news media,” as explained in Part II.C below, DOI must presume that NRDC has the ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject. 43 C.F.R. § 2.48(a)(2)(v).

3. Contribution to an understanding of the subject by the public is likely to result from disclosure

NRDC’s expertise in matters concerning DOI staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject

matter. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

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NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 22). *See also* Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing NRDC’s report) (Att. 23).
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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).²

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public’s understanding of the subject.

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at DOI, as further discussed below. However, if DOI were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: the transition of power at DOI and the communications between the President-elect’s transition team and DOI staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate DOI’s response to any such requests. Thus, disclosure of these records would contribute significantly to the public’s understanding of the subject in question. See 43 C.F.R. § 2.48(a)(4).

² There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, “Science Panel Issues Report on Exposure to Pollutant,” *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, “Draft of Air Rule is Said to Exempt Many Old Plants,” *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., “E-Mail Suggests Energy Official Encouraged Lobbyist on Policy,” *N.Y. Times*, Apr. 27, 2002 (Att. 39).

B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.48(b). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env’tl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by DOI on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

Also, because NRDC is a representative of the news media, as described below, DOI must presume that the public interest outweighs any commercial interest. 43 C.F.R. § 2.48(b)(3)(ii).

C. NRDC Is a Media Requester

Even if DOI denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and DOI’s FOIA regulations, 43 C.F.R. § 2.39; see also 43 C.F.R. § 2.70 (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep’t of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. See 43 C.F.R. § 2.70 (“Examples of news media [include] . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. See OPEN Government

Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).³

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with DOI’s FOIA regulations for all or a portion of the requested records. *See* 43 C.F.R. § 2.38-2.44. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; DOI’s search for—or deliberations concerning—certain records should not delay the production of others that DOI has already retrieved and elected to produce. *See generally* 43 C.F.R. § 2.21-2.25. If DOI concludes that any of the records requested here are publicly available, please let me know.

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange
Staff Attorney
Natural Resources Defense Council, Inc.
111 Sutter St., 21st Floor
San Francisco, CA 94104
jprange@nrdc.org
415-875-6184

Enclosures:

Attachments 1 through 42 (in two emails)

Attachment J

NRDC

December 23, 2016

Via email

osm-foia@osmre.gov

Re: FOIA request for communications between the President-elect's transition team and DOI staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Interior (DOI) regulations at 43 C.F.R. § 2.1-2.290.

I. Description of Records Sought

Please produce records¹ in DOI's possession, custody, or control that are, include, or reflect communications between DOI staff in the Office of Surface Mining Reclamation and Enforcement (OSMRE) and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Ryan Zinke, Doug Domenech, David Bernhardt, Scott Cameron, Daniel Jorjani, Kathy Benedetto, Mary Bomar, Karen Budd-Falen, and Ned Mamula.

II. Request for a Fee Waiver

NRDC requests that DOI waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 43 C.F.R. § 2.45. The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 43 C.F.R. § 2.39.

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any DOI office, including, but not limited to, DOI Headquarters offices, and specifically including DOI offices in possession of responsive records.

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(1). Each of the factors used by DOI to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 43 C.F.R. § 2.48.

1. Subject of the request

The records requested here reflect communications between DOI and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 43 C.F.R. § 2.48(a)(1).

2. Informative value of the information to be disclosed

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 43 C.F.R. § 2.48(a)(2). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html?_r=0. There may be similar communications with DOI that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

As described below in section II.A.3, disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, and NRDC’s identity, vocation, qualifications, and expertise regarding the requested information explain how NRDC plans to disclose the information to a broad audience of persons. Further, because NRDC is a “representative of the news media,” as explained in Part II.C below, DOI must presume that NRDC has the ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject. 43 C.F.R. § 2.48(a)(2)(v).

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As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public’s understanding of the subject.

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at DOI, as further discussed below. However, if DOI were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

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The records requested shed light on a matter of considerable public interest and concern: the transition of power at DOI and the communications between the President-elect’s transition team and DOI staff.

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B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.48(b). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env’tl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by DOI on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

Also, because NRDC is a representative of the news media, as described below, DOI must presume that the public interest outweighs any commercial interest. 43 C.F.R. § 2.48(b)(3)(ii).

C. NRDC Is a Media Requester

Even if DOI denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and DOI’s FOIA regulations, 43 C.F.R. § 2.39; see also 43 C.F.R. § 2.70 (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep’t of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. See 43 C.F.R. § 2.70 (“Examples of news media [include] . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. See OPEN Government

Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).³

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with DOI’s FOIA regulations for all or a portion of the requested records. *See* 43 C.F.R. § 2.38-2.44. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; DOI’s search for—or deliberations concerning—certain records should not delay the production of others that DOI has already retrieved and elected to produce. *See generally* 43 C.F.R. § 2.21-2.25. If DOI concludes that any of the records requested here are publicly available, please let me know.

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange
Staff Attorney
Natural Resources Defense Council, Inc.
111 Sutter St., 21st Floor
San Francisco, CA 94104
jprange@nrdc.org
415-875-6184

Enclosures:

Attachments 1 through 42 (in two emails)

Attachment K

NRDC

December 23, 2016

Via email

sol.foia@sol.doi.gov

Re: FOIA request for communications between the President-elect's transition team and DOI staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Interior (DOI) regulations at 43 C.F.R. § 2.1-2.290.

I. Description of Records Sought

Please produce records¹ in DOI's possession, custody, or control that are, include, or reflect communications between DOI staff in the Office of the Solicitor (SOL) and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Ryan Zinke, Doug Domenech, David Bernhardt, Scott Cameron, Daniel Jorjani, Kathy Benedetto, Mary Bomar, Karen Budd-Falen, and Ned Mamula.

II. Request for a Fee Waiver

NRDC requests that DOI waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 43 C.F.R. § 2.45. The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 43 C.F.R. § 2.39.

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any DOI office, including, but not limited to, DOI Headquarters offices, and specifically including DOI offices in possession of responsive records.

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(1). Each of the factors used by DOI to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 43 C.F.R. § 2.48.

1. Subject of the request

The records requested here reflect communications between DOI and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 43 C.F.R. § 2.48(a)(1).

2. Informative value of the information to be disclosed

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 43 C.F.R. § 2.48(a)(2). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html?_r=0. There may be similar communications with DOI that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

As described below in section II.A.3, disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, and NRDC’s identity, vocation, qualifications, and expertise regarding the requested information explain how NRDC plans to disclose the information to a broad audience of persons. Further, because NRDC is a “representative of the news media,” as explained in Part II.C below, DOI must presume that NRDC has the ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject. 43 C.F.R. § 2.48(a)(2)(v).

3. Contribution to an understanding of the subject by the public is likely to result from disclosure

NRDC’s expertise in matters concerning DOI staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject

matter. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are a broad audience of persons interested in the subject of the transition of power at DOI, and when combined with NRDC's communications to the public at large, the likely audience of interested persons to be reached is certainly "reasonably broad." 43 C.F.R. § 2.48(a)(3). As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, “The requirement to rebuild US fish stocks: Is it working?” *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 13);
- Article, “Waves of phony charges over new clean water safeguards,” *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
- Article, “Don’t Buy the Smear of the EPA,” *L.A. Times*, June 3, 2014 (by NRDC President Frances Beinecke) (Att. 15);
- Transcript, “Conservationists Call For Quiet: The Ocean Is Too Loud!” Nat’l Pub. Radio, *All Things Considered*, July 28, 2013 (featuring NRDC Marine Mammal Protection Program Director Michael Jasny) (Att. 16);
- Testimony of David Doniger, NRDC Climate and Air Program Policy Director and Senior Attorney, before the United States House Subcommittee on Energy and Power, June 19, 2012 (Att. 17);
- Article, “Pollution Still a Hazard to U.S. Beaches,” CBS, *CBS NEWS*, July 29, 2009 (featuring former NRDC Water Program Co-Director Nancy Stoner) (Att. 18);
- Conference brochure, “World Business Summit on Climate Change,” May 24-26, 2009 (featuring former NRDC Director for Market Innovation Rick Duke at 9) (Att. 19);
- Article, “Is there a ‘proper level’ of compliance with environmental law?” *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall) (Att. 20);
- NRDC Document Bank, <http://docs.nrdc.org/> (Att. 21).

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 22). *See also* Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing NRDC’s report) (Att. 23).
- (2) NRDC obtained, through FOIA, FDA review documents on the nontherapeutic use of antibiotic additives in livestock and poultry feed. In January 2014, NRDC published a report, titled *Playing Chicken with Antibiotics*, which is based on the documents obtained, and reveals decades of hesitancy on FDA’s part to ensure

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NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. See 43 C.F.R. § 2.70 (“Examples of news media [include] . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. See OPEN Government

Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).³

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with DOI’s FOIA regulations for all or a portion of the requested records. *See* 43 C.F.R. § 2.38-2.44. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; DOI’s search for—or deliberations concerning—certain records should not delay the production of others that DOI has already retrieved and elected to produce. *See generally* 43 C.F.R. § 2.21-2.25. If DOI concludes that any of the records requested here are publicly available, please let me know.

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange
Staff Attorney
Natural Resources Defense Council, Inc.
111 Sutter St., 21st Floor
San Francisco, CA 94104
jprange@nrdc.org
415-875-6184

Enclosures:

Attachments 1 through 42 (in two emails)

Attachment L

NRDC

December 23, 2016

Via Email

wo_foia@fs.fed.us

Re: FOIA request for communications between the President-elect's transition team and Forest Service staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Agriculture regulations at 7 C.F.R. § 1.1-1.25.

I. Description of Records Sought

Please produce records¹ in the Forest Service's possession, custody, or control that are, include, or reflect communications between Forest Service staff and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Joel Leftwich and Brian Klippenstein.

II. Request for a Fee Waiver

NRDC requests that the Forest Service waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a). The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any Forest Service office, including, but not limited to, Forest Service Headquarters offices, and specifically including Forest Service offices in possession of responsive records.

news media” entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 5(c).

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a). Each of the factors used by the Forest Service to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a).

1. *Subject of the request*

The records requested here reflect communications between the Forest Service and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a)(1)(i).

2. *Informative value of the information to be disclosed*

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a)(1)(ii). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, <http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html? r=0>. There may be similar communications with the Forest Service that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at the Forest Service, as further discussed below. However, if the Forest Service were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

3. *Contribution to an understanding of the subject by the public is likely to result from disclosure*

NRDC’s expertise in matters concerning Forest Service staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons

with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject matter. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are a broad audience of persons interested in the subject of the transition of power at the Forest Service, 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. 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a)(1)(iii). As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, “The requirement to rebuild US fish stocks: Is it working?” *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 13);
- Article, “Waves of phony charges over new clean water safeguards,” *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
- Article, “Don’t Buy the Smear of the EPA,” *L.A. Times*, June 3, 2014 (by NRDC President Frances Beinecke) (Att. 15);
- Transcript, “Conservationists Call For Quiet: The Ocean Is Too Loud!” Nat’l Pub. Radio, *All Things Considered*, July 28, 2013 (featuring NRDC Marine Mammal Protection Program Director Michael Jasny) (Att. 16);
- Testimony of David Doniger, NRDC Climate and Air Program Policy Director and Senior Attorney, before the United States House Subcommittee on Energy and Power, June 19, 2012 (Att. 17);
- Article, “Pollution Still a Hazard to U.S. Beaches,” CBS, *CBS NEWS*, July 29, 2009 (featuring former NRDC Water Program Co-Director Nancy Stoner) (Att. 18);
- Conference brochure, “World Business Summit on Climate Change,” May 24-26, 2009 (featuring former NRDC Director for Market Innovation Rick Duke at 9) (Att. 19);
- Article, “Is there a ‘proper level’ of compliance with environmental law?” *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall) (Att. 20);
- NRDC Document Bank, <http://docs.nrdc.org/> (Att. 21).

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 22). *See also* Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing NRDC’s report) (Att. 23).

- (2) NRDC obtained, through FOIA, FDA review documents on the nontherapeutic use of antibiotic additives in livestock and poultry feed. In January 2014, NRDC published a report, titled *Playing Chicken with Antibiotics*, which is based on the documents obtained, and reveals decades of hesitancy on FDA's part to ensure the safety of these drug additives (Att. 24). *See also* P.J. Huffstutter and Brian Grow, "Drug critic slams FDA over antibiotic oversight in meat production," *Reuters*, Jan. 27, 2014 (discussing NRDC's report) (Att. 25).
- (3) NRDC has used White House documents obtained through FOIA and from other sources to inform the public about EPA's decision not to protect wildlife and workers from the pesticide atrazine in the face of industry pressure to keep atrazine on the market. *See Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, <http://www.nrdc.org/health/atrazine/files/atrazine10.pdf> (Apr. 2010) (update to 2009 report) (Att. 26); *see also* William Souder, "It's Not Easy Being Green: Are Weed-Killers Turning Frogs Into Hermaphrodites?" *Harper's Bazaar*, Aug. 1, 2006 (referencing documents obtained and posted online by NRDC) (Att. 27).
- (4) NRDC incorporated information obtained through FOIA into a report, available at <http://www.nrdc.org/wildlife/marine/sound/contents.asp>, on the impacts of military sonar and other industrial noise pollution on marine life. *See Sounding the Depths II: The Rising Toll of Sonar, Shipping and Industrial Ocean Noise on Marine Life* (Nov. 2005) (update to 1999 report) (Att. 28). The report also relied upon and synthesized information from other sources. Since the report's publication, the sonar issue has continued to attract widespread public attention. *See, e.g.*, "Protest Raised over New Tests of Naval Sonar," *Nat'l Pub. Radio, All Things Considered*, July 24, 2007 (transcript at Att. 29).
- (5) NRDC scientists have used information obtained through FOIA to publish analyses of the United States' and other nations' nuclear weapons programs. In 2004, for example, NRDC scientists incorporated information obtained through FOIA into a feature article on the United States' plans to deploy a ballistic missile system and the implications for global security. *See* Hans M. Kristensen, Matthew G. McKinzie, and Robert S. Norris, "The Protection Paradox," *Bulletin of Atomic Scientists*, Mar./Apr. 2004 (Att. 30).
- (6) NRDC obtained through FOIA, and made public, records of the operations of the Bush administration's Energy Task Force, along with analysis of selected excerpts and links to the administration's index of withheld documents (Att. 31). NRDC's efforts cast light on an issue of considerable public interest. *See, e.g.*, Elizabeth Shogren, "Bush Gets One-Two Punch on Energy," *L.A. Times*, Mar. 28, 2002, at A22 (Att. 32).
- (7) Through FOIA, NRDC obtained a memorandum by ExxonMobil, advocating the replacement of the sitting head of the Intergovernmental Panel on Climate

Change, and used the document to help inform the public about what may have been behind the Bush administration's decision to replace Dr. Robert Watson. See NRDC Press Release and attached Exxon memorandum, "Confidential Papers Show Exxon Hand in White House Move to Oust Top Scientist from International Global Warming Panel," Apr. 3, 2002 (Att. 33); Elizabeth Shogren, "Charges Fly Over Science Panel Pick," *L.A. Times*, Apr. 4, 2002, at A19 (Att. 34).

- (8) Through FOIA and other sources, NRDC obtained information on nationwide levels of arsenic in drinking water and used it in a report, *Arsenic and Old Laws* (2000), available in print and online at <http://www.nrdc.org/water/drinking/arsenic/aolinx.asp> (Att. 35). The report guided interested members of the public on how to learn more about arsenic in their own drinking water supplies. *Id.*; see also Steve LaRue, "EPA Aims to Cut Levels of Arsenic in Well Water," *San Diego Union-Tribune*, June 5, 2000, at B1 (referencing NRDC report) (Att. 36).²

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public's understanding of the subject.

4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: the transition of power at the Forest Service and the communications between the President-elect's transition team and Forest Service staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate the Forest Service's response to any such requests. Thus, disclosure here would significantly contribute to the public's understanding of government operations or activities. See 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a)(1)(iv).

5. *NRDC does not have a commercial interest in the disclosure*

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested

² There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, "Science Panel Issues Report on Exposure to Pollutant," *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, "Draft of Air Rule is Said to Exempt Many Old Plants," *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., "E-Mail Suggests Energy Official Encouraged Lobbyist on Policy," *N.Y. Times*, Apr. 27, 2002 (Att. 39).

disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a)(1)(v), (vi). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env'tl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by the Forest Service on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

B. NRDC is a non-profit organization designed to further public health safety

The Department’s FOIA regulations also give the Forest Service the ability to waive fees if the requester is “engaged in a nonprofit activity designed for the public safety, health, or welfare.” 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a)(3)(ii). NRDC is a non-profit organization whose mission is to “to safeguard the earth—its people, its plants and animals, and the natural systems on which all life depends.” As described in the sections above, NRDC is engaged in nonprofit activity designed to further public health and safety. Therefore, the Forest Service should waive any fees on this basis as well.

C. NRDC Is a Media Requester

Even if the Forest Service denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and the Forest Service’s FOIA regulations, 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 5(c); see also 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 5(c)(1) (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep’t of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. See 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 5(c)(3) (“Examples of news media

entities include . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. *See* OPEN Government Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).³

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with the Forest Service’s FOIA regulations for all or a portion of the requested records. *See* 7 C.F.R. Pt. 1, Subpt. A, App. A. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; the Forest Service's search for—or deliberations concerning—certain records should not delay the production of others that the Forest Service has already retrieved and elected to produce. *See generally* 7 C.F.R. § 1.7. If the Forest Service concludes that any of the records requested here are publicly available, please let me know.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange
Staff Attorney
Natural Resources Defense Council, Inc.
111 Sutter St., 21st Floor
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jprange@nrdc.org
415-875-6184

Enclosures (sent via two emails): Attachments 1 through 40

Attachment M

NRDC

December 23, 2016

Via Email

FOIARouting.enrd@usdoj.gov

Re: FOIA request for communications between the President-elect's transition team and ENRD staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Justice regulations at 28 C.F.R. § 16.1-16.301.

I. Description of Records Sought

Please produce records¹ in the Environment and Natural Resources Division's (ENRD's) possession, custody, or control that are, include, or reflect communications between ENRD staff and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Jeff Sessions, Brian Benczkowski, Zina Bash, Greg Katsas, James Burnham, William Cleveland, David Higbee, J. Patrick Rowan, Jessie Liu, Ronald Tenpas, Lizette Benedi Herraiz, Steven Engel, Thomas Wheeler, Stefani Carter, James Burnham, Michael Battle, and Edmund Searby.

II. Request for a Fee Waiver

NRDC requests that ENRD waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. §

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any ENRD office, including, but not limited to, ENRD Headquarters offices, and specifically including ENRD offices in possession of responsive records.

552(a)(4)(A)(iii); *see also* 28 C.F.R. § 16.10(k)(1)(i), (ii). The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as “a representative of the news media” entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 28 C.F.R. § 16.10(c)(1)(i), (d)(1).

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 28 C.F.R. § 16.10(k)(1)(i). Each of the four factors used by ENRD to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 28 C.F.R. § 16.10(k)(2).

1. Subject of the request

The records requested here reflect communications between ENRD and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 28 C.F.R. § 16.10(k)(2)(i).

2. Informative value of the information to be disclosed

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 28 C.F.R. § 16.10(k)(2)(ii). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, <http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html? r=0>. There may be similar communications with ENRD that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at ENRD, as further discussed below. However, if ENRD were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

3. Contribution to an understanding of the subject by the public is likely to result from disclosure

Because NRDC is a “representative of the news media,” as explained in Part II.C below, ENRD must presume that this disclosure is likely to contribute to public understanding of its subject. 28 C.F.R. § 16.10(k)(2)(iii).

However, even if NRDC were not a media requester, NRDC's expertise in matters concerning ENRD staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject matter. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are a "broad audience of persons interested in the subject" of the transition of power at ENRD, and when combined with NRDC's communications to the public at large, the likely audience of interested persons to be reached is certainly "reasonably broad." 28 C.F.R. § 16.10(k)(2)(iii). As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters

and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, “The requirement to rebuild US fish stocks: Is it working?” *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 13);
- Article, “Waves of phony charges over new clean water safeguards,” *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
- Article, “Don’t Buy the Smear of the EPA,” *L.A. Times*, June 3, 2014 (by NRDC President Frances Beinecke) (Att. 15);
- Transcript, “Conservationists Call For Quiet: The Ocean Is Too Loud!” Nat’l Pub. Radio, *All Things Considered*, July 28, 2013 (featuring NRDC Marine Mammal Protection Program Director Michael Jasny) (Att. 16);
- Testimony of David Doniger, NRDC Climate and Air Program Policy Director and Senior Attorney, before the United States House Subcommittee on Energy and Power, June 19, 2012 (Att. 17);
- Article, “Pollution Still a Hazard to U.S. Beaches,” CBS, *CBS NEWS*, July 29, 2009 (featuring former NRDC Water Program Co-Director Nancy Stoner) (Att. 18);
- Conference brochure, “World Business Summit on Climate Change,” May 24-26, 2009 (featuring former NRDC Director for Market Innovation Rick Duke at 9) (Att. 19);
- Article, “Is there a ‘proper level’ of compliance with environmental law?” *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall) (Att. 20);
- NRDC Document Bank, <http://docs.nrdc.org/> (Att. 21).

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (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).²

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public's understanding of the subject.

4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: the transition of power at ENRD and the communications between the President-elect's transition team and ENRD staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate ENRD's response to any such requests. Thus, disclosure here would significantly contribute to the public's understanding of government operations or activities. See 28 C.F.R. § 16.10(k)(2)(iv).

² There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, "Science Panel Issues Report on Exposure to Pollutant," *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, "Draft of Air Rule is Said to Exempt Many Old Plants," *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., "E-Mail Suggests Energy Official Encouraged Lobbyist on Policy," *N.Y. Times*, Apr. 27, 2002 (Att. 39).

B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 28 C.F.R. § 16.10(k)(3). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env’t. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by ENRD on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

C. NRDC Is a Media Requester

Even if ENRD denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and ENRD’s FOIA regulations, 28 C.F.R. § 16.10(c)(1), (d)(1); see also 28 C.F.R. § 16.10(b)(6) (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep’t of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. See 28 C.F.R. § 16.10(b) (“Examples of news media entities include . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. See OPEN

Government Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).³

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with ENRD’s FOIA regulations for all or a portion of the requested records. *See* 28 C.F.R. § 16.10. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; ENRD’s search for—or deliberations concerning—certain records should not delay the production of others that ENRD has already retrieved and elected to produce. *See generally* 28 C.F.R. § 16.5-16.6. If ENRD concludes that any of the records requested here are publicly available, please let me know.

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange
Staff Attorney
Natural Resources Defense Council, Inc.
111 Sutter St., 21st Floor
San Francisco, CA 94104
jprange@nrdc.org
415-875-6184

Enclosures: Attachments 1 through 40 (sent via two emails)

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Wednesday, June 28, 2017 10:24 AM
To: Toland, Michael
Cc: Douglas Perry - NOAA Federal; Robert Swisher - NOAA Federal; Robert Hogan; Lola Stith - NOAA Affiliate; Kimberly Katzenbarger - NOAA FEDERAL
Subject: Direct Cost Retention
Attachments: Request to Retain Direct Costs Recovered Associated with FOIA Processing FINAL.docx

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 (O)
(b)(6) (C)

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

June 28, 2017

MEMORANDUM FOR: Michael Toland, Deputy Chief FOIA Officer
Office of Privacy and Open Government
Department of Commerce

FROM: Mark Graff, FOIA Officer

THROUGH: Robert Swisher, Director
Governance and Portfolio Division
Office of the Chief Information Officer
National Oceanic and Atmospheric
Administration

SUBJECT: Retention of Direct Contractor-Related
Costs Recovered Associated with
Processing FOIA Requests

(b)(5)
[Redacted]

[Redacted]

[Redacted]

[Redacted]

(b)(5)

[Redacted text block 1]

[Redacted text block 2]

[Redacted text block 3]



Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Wednesday, June 28, 2017 12:00 PM
To: Charles Green - NOAA Federal; Charles Lynch - NOAA Federal; Cheryl Scannell - NOAA Federal; Chris Fontecchio - NOAA Federal; Frederick Tucher - NOAA Federal; Jackie Rolleri - NOAA Federal; Jeff Dillen - NOAA Federal; John Almeida - NOAA Federal; Jonelle Dilley - NOAA Federal; Kamaile Turcan - NOAA Federal; Kate Barfield - NOAA Federal; Kathryn Kempton - NOAA Federal; Kimberly Katzenbarger - NOAA FEDERAL; Lauren Bregman - NOAA Federal; Lauren Smoker - NOAA Federal; Leah Melendy - NOAA Federal; Lola Stith - NOAA Affiliate; Louise Milkman - NOAA Federal; Martha McCoy - NOAA Federal; Robert Hogan - NOAA Federal; Rodney Vieira - NOAA Federal; Roxie Allison-Holman - NOAA Federal; Stacey Nathanson - NOAA Federal
Subject: For the FOIA Call Today
Attachments: Consultations Referrals and (b)(5) Final.pptx

Good Afternoon,

Here is the slide deck from the NMFS presentation we'll discuss today for those who can make the call.

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

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Referrals, Consultations, and Exemption (b)(5) Deliberative Process

Prepared by Mark H. Graff
NOAA FOIA Officer/Bureau Chief Privacy
Officer
OCIO/GPD

mark.graff@noaa.gov; (301)-628-5658



Freedom of Information Act (5 USC 552)



Outline

1. Regulatory Structure for Referrals
2. The Risks of Other Agency Docs
3. OIP Guidance
4. (b)(5) Two Prong Test
5. The Extent of the Privilege
6. Questions



Regulatory Structure



MISDIRECTED WITHIN THE DEPARTMENT:

Where a component's FOIA office determines that a request was misdirected within the Department:

- The receiving component's FOIA office needs to route the request to the correct bureau(s).
- The search starts the time cutoff for records



Regulatory Structure (Cont'd)



OTHER BUREAUS MAY HAVE RECORDS:

How the proper Department component to respond to a FOIA Request is determined:

- The component that first receives the request and has responsive records.
 - When no records exist, the component that first receives the request and is likely to have responsive records should process the FOIA request.
- Or, the component to which the Departmental FOIA Officer or component FOIA Officer assigns lead responsibility for responding to the request.



Regulatory Structure (Cont'd)



CONSULTATIONS:

When a record is requested that originated with NOAA and another Federal agency has a *significant interest* in the record, NOAA must allow the other Federal agency to review the record before responding to a requester.





Consultations Continued...



Consultations can be done within FOIAonline by uploading the record requiring consultation and then selecting the “**Create Consultation**” button found in the left hand column in FO (if the agency also uses FO)

- If attempts to consult with outside agencies cause a delay in responding to the request, notify the requester that the request will be processed or completed after the consultation has been completed.
- Consultation with another agency constitutes *unusual circumstances* and allows you to invoke a 10 day extension.



Regulatory Structure (Cont'd)



REFERRALS:

When NOAA possesses requested records that originated with another Federal agency.

NOAA routes these records to that agency for direct response to the requester.





OIP Referral Guidance



OIP's Summary:

“The agency that is best able to determine a record's sensitivity, and in turn its exemption status, is the agency that should process that record under the Act.

While this may vary in particular cases, as a general rule the agency that originated a record is usually the most appropriate agency to make a FOIA-disclosure determination regarding it.”



The Risks of Other Agency Docs



There are at least **7** different types of referrals and consultations:

1. External Referrals for direct response to the requester including Exemptions asserted by the referring agency to include their appeal language.

Example: ACOE referrals where we respond to requester with their appeal contact.



The Risks of Other Agency Docs



2. External Referrals of the request in its entirety with no asserted Exemptions or responsive records being located by the referring agency.

Example: Recent DOI Refers us records that fall entirely under our purview.



The Risks of Other Agency Docs (Cont'd)



3. Records in which all or part of the record requires a declassification review by the original classifying authority.

Example: Navy necropsy records OCA is the Director of the office that generated those docs.



The Risks of Other Agency Docs (Cont'd)



4. External Consultations for providing withholding recommendations to another agency

Example: Fisheries Management Council Records found within our Control



The Risks of Other Agency Docs (Cont'd)



5. Intra-Departmental taskings requiring a tasking Memorandum

Example: DOC sends us a tasking to conduct a search in Presidential Transition cases through FOIAOnline, and we, in turn, issue taskings within Bureau.



The Risks of Other Agency Docs (Cont'd)



6. External Litigation consultations seeking NOAA's asserted exemptions

Example: FBI recently asked NOAA in the DB Cooper case to provide withholding recommendations on the weather docs from the plane flight.



The Risks of Other Agency Docs (Cont'd)



7. Referrals asking for non-attribution

Example: If we ever have intelligence agency records, they frequently don't want to be identified as the originator of the records.



NAO 205-14: NOAA FOIA Taskings



There are at least 6 types of taskings—it must be clear which type you are being asked to review:

1. Conduct a search for responsive records (fees waived or non-billable)
2. Prepare a fee estimate in a non-referral
3. Prepare a fee estimate for a case being coordinated by DOC, and the aggregate threshold is not determined by NOAA
4. Review referred records and provide release recommendations to the referring entity
5. Review referred records, and respond directly to the requester, incorporating the referring entities exemptions and appeal language.
6. Respond to an adjudication on appeal



OIP GUIDANCE



If they are Agency Records:

When an agency receives a FOIA request for agency records in its possession it must take responsibility for searching for the records and processing the request. It cannot simply refuse to act on the ground that the documents originated elsewhere.





OIP Guidance (Cont'd)



“When litigation (results), the government generally has not raised any issue over which agency is the “proper party defendant,” but instead has provided affidavits from the originating agencies to justify any contested nondisclosure.”

Plain English: DOJ won’t challenge who the Plaintiff names in Court. If you worked on the request, you can be the one sued, and other agencies will just provide affidavits for the records they created.



(b)(5) Two Prong Test



When (b)(5) Deliberative Process Applies:

- (b)(5) Statute generally protects: “Inter and intra-agency” (internal and external) communications that would not be available by law to a party other than an agency in litigation with the agency”.
- Courts define this as only documents that are typically privileged in civil discovery



(b)(5) Two Prong Test (cont'd)



- As to one of those privileges, Deliberative Process Privilege includes:
 - The Inter-agency (internal) and Intra-agency (external) communication requirement which encompasses the “consultant corollary”.
 - If the consultants, contractors, external advisors provided advice similar to what might have been received from an employee. Must ask—
 - Are they an interested party?
 - Seeking benefit at the expense of other applicants?
 - If yes, no (b)(5) protection.



(b)(5) Two Prong Test (cont'd)



Two Part Test:

- 1) Is the material pre-decisional?
 - a) i.e., antecedent to the adoption of the agency policy? (the making of the “policy sausage”)
- 2) Is it deliberative (not factual)—making recommendations, expressing opinions on legal or policy matters?



The Extent of the Privilege



- **Policy behind DPP:**
 - Encourage open and frank discussions among employees and protect the decision making processes of the government
 - Protect against premature disclosure of proposed policies before adopted
 - Protect against public confusion



The Extent of the Privilege



- Since the 2016 FOIA Improvement Act, a **Risk of Harm** must exist for the Privilege to apply.
- Previously, this was only advisory, although in practice, this should not change NOAA's approach, as NOAA routinely required a Risk of Harm Analysis for (b)(5) Deliberative Process.





Risk of Harm



Foreseeable Harm is now a requirement under the 2016 FOIA Improvement Act:

To Reach Foreseeable Harm, OIP summarizes the considerations:

- How sensitive is the decision?
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- How sensitive are portions of the record?



The Extent of the Privilege



- There is also now a 25 year limit on the use of Deliberative Process.
- After that time—the privilege no longer applies.





Questions



QUESTIONS?

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Wednesday, June 28, 2017 12:04 PM
To: Robert Swisher - NOAA Federal; Lola Stith - NOAA Affiliate
Subject: Fwd: For the FOIA Call Today
Attachments: Consultations Referrals and (b)(5) Final.pptx

Here is the slide deck that we used in the NMFS training, and that will be the basis for the legal experts call today. The training was well-received and should give a framework to make sure we're protected going forward.

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>
Date: Wed, Jun 28, 2017 at 12:00 PM
Subject: For the FOIA Call Today
To: Charles Green - NOAA Federal <charles.green@noaa.gov>, Charles Lynch - NOAA Federal <charles.lynch@noaa.gov>, Cheryl Scannell - NOAA Federal <cheryl.scannell@noaa.gov>, Chris Fontecchio - NOAA Federal <chris.fontecchio@noaa.gov>, Frederick Tucher - NOAA Federal <frederick.tucher@noaa.gov>, Jackie Rolleri - NOAA Federal <jackie.rolleri@noaa.gov>, Jeff Dillen - NOAA Federal <jeff.dillen@noaa.gov>, John Almeida - NOAA Federal <john.almeida@noaa.gov>, Jonelle Dilley - NOAA Federal <jonelle.dilley@noaa.gov>, Kamaile Turcan - NOAA Federal <kamaile.turcan@noaa.gov>, Kate Barfield - NOAA Federal <kate.barfield@noaa.gov>, Kathryn Kempton - NOAA Federal <kathryn.kempton@noaa.gov>, Kimberly Katzenbarger - NOAA FEDERAL <kimberly.katzenbarger@noaa.gov>, Lauren Bregman - NOAA Federal <lauren.bregman@noaa.gov>, Lauren Smoker - NOAA Federal <lauren.smoker@noaa.gov>, Leah Melendy - NOAA Federal <leah.melendy@noaa.gov>, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>, Louise Milkman - NOAA Federal <louise.milkman@noaa.gov>, Martha McCoy - NOAA Federal <martha.mccoy@noaa.gov>, Robert Hogan - NOAA Federal <robert.j.hogan@noaa.gov>, Rodney Vieira - NOAA Federal <rod.vieira@noaa.gov>, Roxie Allison-Holman - NOAA Federal <roxie.allison-holman@noaa.gov>, Stacey Nathanson - NOAA Federal <stacey.nathanson@noaa.gov>

Good Afternoon,

Here is the slide deck from the NMFS presentation we'll discuss today for those who can make the call.

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
National Oceanic and Atmospheric Administration
[\(301\) 628-5658](tel:3016285658) (O)
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Referrals, Consultations, and Exemption (b)(5) Deliberative Process

Prepared by Mark H. Graff
NOAA FOIA Officer/Bureau Chief Privacy
Officer
OCIO/GPD

mark.graff@noaa.gov; (301)-628-5658



Freedom of Information Act (5 USC 552)



Outline

1. Regulatory Structure for Referrals
2. The Risks of Other Agency Docs
3. OIP Guidance
4. (b)(5) Two Prong Test
5. The Extent of the Privilege
6. Questions



Regulatory Structure



MISDIRECTED WITHIN THE DEPARTMENT:

Where a component's FOIA office determines that a request was misdirected within the Department:

- The receiving component's FOIA office needs to route the request to the correct bureau(s).
- The search starts the time cutoff for records



Regulatory Structure (Cont'd)



OTHER BUREAUS MAY HAVE RECORDS:

How the proper Department component to respond to a FOIA Request is determined:

- The component that first receives the request and has responsive records.
 - When no records exist, the component that first receives the request and is likely to have responsive records should process the FOIA request.
- Or, the component to which the Departmental FOIA Officer or component FOIA Officer assigns lead responsibility for responding to the request.



Regulatory Structure (Cont'd)



CONSULTATIONS:

When a record is requested that originated with NOAA and another Federal agency has a *significant interest* in the record, NOAA must allow the other Federal agency to review the record before responding to a requester.





Consultations Continued...



Consultations can be done within FOIAonline by uploading the record requiring consultation and then selecting the **“Create Consultation”** button found in the left hand column in FO (if the agency also uses FO)

- If attempts to consult with outside agencies cause a delay in responding to the request, notify the requester that the request will be processed or completed after the consultation has been completed.
- Consultation with another agency constitutes ***unusual circumstances*** and allows you to invoke a 10 day extension.



Regulatory Structure (Cont'd)



REFERRALS:

When NOAA possesses requested records that originated with another Federal agency.

NOAA routes these records to that agency for direct response to the requester.





OIP Referral Guidance



OIP's Summary:

“The agency that is best able to determine a record's sensitivity, and in turn its exemption status, is the agency that should process that record under the Act.

While this may vary in particular cases, as a general rule the agency that originated a record is usually the most appropriate agency to make a FOIA-disclosure determination regarding it.”



The Risks of Other Agency Docs



There are at least **7** different types of referrals and consultations:

1. External Referrals for direct response to the requester including Exemptions asserted by the referring agency to include their appeal language.

Example: ACOE referrals where we respond to requester with their appeal contact.



The Risks of Other Agency Docs



2. External Referrals of the request in its entirety with no asserted Exemptions or responsive records being located by the referring agency.

Example: Recent DOI Refers us records that fall entirely under our purview.



The Risks of Other Agency Docs (Cont'd)



3. Records in which all or part of the record requires a declassification review by the original classifying authority.

Example: Navy necropsy records OCA is the Director of the office that generated those docs.



The Risks of Other Agency Docs (Cont'd)



4. External Consultations for providing withholding recommendations to another agency

Example: Fisheries Management Council Records found within our Control



The Risks of Other Agency Docs (Cont'd)



5. Intra-Departmental taskings requiring a tasking Memorandum

Example: DOC sends us a tasking to conduct a search in Presidential Transition cases through FOIAOnline, and we, in turn, issue taskings within Bureau.



The Risks of Other Agency Docs (Cont'd)



6. External Litigation consultations seeking NOAA's asserted exemptions

Example: FBI recently asked NOAA in the DB Cooper case to provide withholding recommendations on the weather docs from the plane flight.



The Risks of Other Agency Docs (Cont'd)



7. Referrals asking for non-attribution

Example: If we ever have intelligence agency records, they frequently don't want to be identified as the originator of the records.



NAO 205-14: NOAA FOIA Taskings



There are at least 6 types of taskings—it must be clear which type you are being asked to review:

1. Conduct a search for responsive records (fees waived or non-billable)
2. Prepare a fee estimate in a non-referral
3. Prepare a fee estimate for a case being coordinated by DOC, and the aggregate threshold is not determined by NOAA
4. Review referred records and provide release recommendations to the referring entity
5. Review referred records, and respond directly to the requester, incorporating the referring entities exemptions and appeal language.
6. Respond to an adjudication on appeal



OIP GUIDANCE



If they are Agency Records:

When an agency receives a FOIA request for agency records in its possession it must take responsibility for searching for the records and processing the request. It cannot simply refuse to act on the ground that the documents originated elsewhere.





OIP Guidance (Cont'd)



“When litigation (results), the government generally has not raised any issue over which agency is the “proper party defendant,” but instead has provided affidavits from the originating agencies to justify any contested nondisclosure.”

Plain English: DOJ won’t challenge who the Plaintiff names in Court. If you worked on the request, you can be the one sued, and other agencies will just provide affidavits for the records they created.



(b)(5) Two Prong Test



When (b)(5) Deliberative Process Applies:

- (b)(5) Statute generally protects: “Inter and intra-agency” (internal and external) communications that would not be available by law to a party other than an agency in litigation with the agency”.
- Courts define this as only documents that are typically privileged in civil discovery



(b)(5) Two Prong Test (cont'd)



- As to one of those privileges, Deliberative Process Privilege includes:
 - The Inter-agency (internal) and Intra-agency (external) communication requirement which encompasses the “consultant corollary”.
 - If the consultants, contractors, external advisors provided advice similar to what might have been received from an employee. Must ask—
 - Are they an interested party?
 - Seeking benefit at the expense of other applicants?
 - If yes, no (b)(5) protection.



(b)(5) Two Prong Test (cont'd)



Two Part Test:

- 1) Is the material pre-decisional?
 - a) i.e., antecedent to the adoption of the agency policy? (the making of the “policy sausage”)
- 2) Is it deliberative (not factual)—making recommendations, expressing opinions on legal or policy matters?



The Extent of the Privilege



- **Policy behind DPP:**
 - Encourage open and frank discussions among employees and protect the decision making processes of the government
 - Protect against premature disclosure of proposed policies before adopted
 - Protect against public confusion



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- After that time—the privilege no longer applies.





Questions



QUESTIONS?

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Wednesday, June 28, 2017 12:45 PM
To: Charles Green - NOAA Federal; Charles Lynch - NOAA Federal; Cheryl Scannell - NOAA Federal; Chris Fontecchio - NOAA Federal; Frederick Tucher - NOAA Federal; Jackie Rolleri - NOAA Federal; Jeff Dillen - NOAA Federal; John Almeida - NOAA Federal; Jonelle Dilley - NOAA Federal; Kamaile Turcan - NOAA Federal; Kate Barfield - NOAA Federal; Kathryn Kempton - NOAA Federal; Kimberly Katzenbarger - NOAA FEDERAL; Lauren Bregman - NOAA Federal; Lauren Smoker - NOAA Federal; Leah Melendy - NOAA Federal; Lola Stith - NOAA Affiliate; Louise Milkman - NOAA Federal; Martha McCoy - NOAA Federal; Robert Hogan - NOAA Federal; Rodney Vieira - NOAA Federal; Roxie Allison-Holman - NOAA Federal; Stacey Nathanson - NOAA Federal
Subject: Re: For the FOIA Call Today
Attachments: Request to Retain Direct Costs Recovered Associated with FOIA Processing FINAL.docx

Hello All,

As just discussed, attached is NOAA's mem (b)(5) [REDACTED].

Also, the link to DOC/OSY is here, and their emergency contact hotline is in the top right corner of the page:
<http://www.osec.doc.gov/osy/>

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, Jun 28, 2017 at 12:00 PM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

Good Afternoon,

Here is the slide deck from the NMFS presentation we'll discuss today for those who can make the call.

Mark H. Graff
FOIA Officer/Bureau Chief Privacy Officer (BCPO)
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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)



Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Wednesday, June 28, 2017 2:56 PM
To: Stephen Lipps - NOAA Federal; Holmes, Colin; Robert Moller - NOAA Federal; Scott Smullen - NOAA Federal; Jeff Dillen - NOAA Federal; Kristen Gustafson - NOAA Federal; Robert Hogan
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; Cc: OCIO/OPPA; Troy Wilds - NOAA Federal; Lawrence Charters - NOAA Federal; Allison Soussi-Tanani - NOAA Federal; Bogomolny, Michael (Federal); Roxie Allison-Holman - NOAA Federal; John Almeida - NOAA Federal
Subject: Weekly FOIA Incoming and High Visibility Requests
Attachments: Weekly FOIA Incoming and High Visibility Requests 06.21.17 - 06.28.17.xls; NRDC v. EPA_ Complaint.pdf

Good Morning,

Attached is the weekly report.

One referral arrived from USACE, where the original requester (Southern Environmental Law Center) sought documents related to the re-authorization of the Nationwide Permits. (DOC-NOAA-2017-001426).

Also, a request was received from Margaret Townsend at the Center for Biological Diversity that sought records about incidental harassment authorizations for oil and gas seismic exploration in the Atlantic from Jan. .20, 2017 to the present. (DOC-NOAA-2017-001411).

One request, submitted by American Oversight, sought communications between political appointees/SES staff/Office of the Secretary and a group of corporate entities regarding pesticide manufacturers, asking that studies concerning the risks of those pesticides be set aside. (DOC-NOAA-2017-001409).

In litigation, NOAA is currently reviewing the proposed answer to the Complaint filed in the NRDC v. EPA FOIA litigation in SDNY. A copy of the original complaint is attached.

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

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

NATURAL RESOURCES DEFENSE
COUNCIL, INC.,

Plaintiff,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY; U.S. FOOD AND DRUG
ADMINISTRATION; NATIONAL
OCEANIC AND ATMOSPHERIC
ADMINISTRATION; WHITE HOUSE
OFFICE OF MANAGEMENT AND
BUDGET; U.S. DEPARTMENT OF THE
INTERIOR; BUREAU OF LAND
MANAGEMENT; BUREAU OF
RECLAMATION; U.S. FISH AND
WILDLIFE SERVICE; OFFICE OF
SURFACE MINING RECLAMATION
AND ENFORCEMENT; U.S. FOREST
SERVICE; and U.S. DEPARTMENT OF
JUSTICE,

Defendants.

Case No. 17-cv-4084
ECF Case

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiff Natural Resources Defense Council, Inc. (NRDC) brings this suit to compel the federal government to disclose communications between then-President-elect Donald Trump's transition team and several federal agencies charged with safeguarding the environment and public health. The defendant agencies' failure to release responsive records violates the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and deprives the public of critical information regarding the administration's policies with respect to implementation and enforcement of bedrock health and environmental laws.

2. The transition of power from one President to another is a pivotal time in our democratic system. During this period, the incoming administration sets the foundation for future policymaking, integrates the new President's likely appointees, and ensures the continuation of vital federal functions. The transition is primarily paid for by American taxpayers.

3. Between the November 2016 election and Trump's inauguration in January 2017, members of Trump's transition team communicated with federal agency officials to gather information and lay the groundwork for the new administration's policy priorities. In early December 2016, the Washington Post reported that the transition team asked the Department of Energy for a list of names of employees who had participated in international climate talks or worked

on domestic efforts to cut carbon output.¹ Approximately a week after that, the Post reported that the Trump transition team requested that the Department of State report how much money the department contributes annually to “international environmental organizations in which the department participates.”²

4. The press has also reported that the Trump transition team included “secret” members who played a role in defining the Trump administration’s priorities and producing an “action plan” for the U.S. Environmental Protection Agency.³ Climate change denier and JunkScience.com attorney-blogger Steve Milloy was one of the “secret” members.⁴

5. To date, most of the activities of Trump’s transition team and the list of “secret” members comprising the team have not been publicly disclosed.

6. On December 22 and 23, 2016, NRDC submitted FOIA requests to several federal agencies seeking records of their communications with Trump’s transition team. These agencies include: U.S. Environmental Protection Agency; U.S. Food and Drug Administration; National Oceanic and Atmospheric Administration; White House Office of Management and Budget; U.S. Department

¹ Steven Mufson & Juliet Eilperin, *Trump transition team for Energy Department seeks names of employees involved in climate meetings*, Wash. Post (Dec. 9, 2016), http://wapo.st/2hbSDU0?tid=ss_tw&utm_term=.605e7ffea158.

² Juliet Eilperin & Carol Morello, *Trump team asks State Dept. what it spends on international environmental efforts*, Wash. Post (Dec. 20, 2016), http://wapo.st/2hnfZpb?tid=ss_tw&utm_term=.4a2e9aed48f4.

³ Sean Reilly & Amanda Reilly, *Trump team kept some transition members secret*, E&E News (Feb. 24, 2017), <https://www.eenews.net/stories/1060050546/>.

⁴ *Id.*

of the Interior and certain of its components and agencies; U.S. Forest Service; and U.S. Department of Justice.

7. The agencies' responses to NRDC's FOIA requests are past due. Agencies are generally required to respond to FOIA requests within twenty working days. *See* 5 U.S.C. § 552(a)(6)(A)(i). The twentieth working day following NRDC's submission of its FOIA requests was January 24, 2017 (for requests sent by e-mail on December 22, 2016); January 25, 2017 (for requests sent by e-mail on December 23, 2016); or January 27, 2017 (for a request sent by certified mail on December 22, 2016, and received by the agency on December 28, 2016).

8. In "unusual circumstances," an agency may extend this time limit by up to ten working days. *Id.* § 552(a)(6)(B)(i). The thirtieth working day following NRDC's submission of its FOIA requests was February 7, 2017 (for requests sent by e-mail on December 22, 2016); February 8, 2017 (for requests sent by e-mail on December 23, 2016); or February 10, 2017 (for a request sent by certified mail on December 22, 2016, and received by the agency on December 28, 2016). In some "unusual circumstances," an agency may ask that a FOIA requester narrow a request or agree to a longer response schedule. *See id.* § 552(a)(6)(B)(ii). NRDC has not agreed to a longer schedule with any of the agencies, and no unusual circumstances justify the agencies' continuing failure to provide final responses.

9. Long after these statutory deadlines passed, only one of the defendant agencies has started to produce responsive records. None of the defendant agencies

has provided a final response indicating whether and why records are being withheld.

10. The public has a pressing interest in the Trump administration's efforts to redirect the activities of federal agencies. The failure to release responsive records violates FOIA and deprives the public of critical information regarding the administration's assaults on the nation's bedrock health and environmental laws.

11. NRDC is entitled to immediate processing of its FOIA requests and the release of all responsive records.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

13. Venue is proper in this district because plaintiff NRDC resides and has its principal place of business in this judicial district. 5 U.S.C. § 552(a)(4)(B).

PARTIES

14. Plaintiff NRDC is a national, not-for-profit environmental and public health membership organization with hundreds of thousands of members nationwide. NRDC engages in research, advocacy, public education, and litigation related to protecting public health and the environment. NRDC also publishes in several media channels, including online and in print, and regularly communicates newsworthy information to the public, including information obtained under FOIA.

15. Defendant U.S. Environmental Protection Agency (EPA) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

16. Defendant U.S. Food and Drug Administration (FDA) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

17. Defendant National Oceanic and Atmospheric Administration (NOAA) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

18. Defendant White House Office of Management and Budget (OMB) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

19. Defendant U.S. Department of the Interior (DOI) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks. The Office of the Secretary of the Department of the Interior is a component of DOI. The Office of the Solicitor of the Department of the Interior is a component of DOI.

20. Defendant Bureau of Land Management (BLM) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

21. Defendant Bureau of Reclamation (Reclamation) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

22. Defendant U.S. Fish and Wildlife Service (Wildlife Service) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

23. Defendant Office of Surface Mining Reclamation and Enforcement (Surface Mining) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

24. Defendant U.S. Forest Service (Forest Service) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks.

25. Defendant U.S. Department of Justice (DOJ) is an agency within the meaning of 5 U.S.C. §§ 551(1), 552(f)(1), and has possession or control of documents NRDC seeks. The Environment and Natural Resources Division of the Department of Justice is a component of DOJ.

FACTUAL BACKGROUND

26. On December 22, 2016, as detailed below, NRDC filed FOIA requests with EPA, FDA, NOAA, and OMB, for records in each agency's possession, custody, or control that are, include, or reflect communications between agency staff and any member of the transition team of President-elect Donald Trump or Vice-President-elect Mike Pence. Each request explained that "transition team(s)" includes, but is

not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 *note*. These requests were submitted via an online FOIA portal or sent by certified mail, in accordance with each agency's FOIA regulations and guidance.

27. NRDC submitted a FOIA request to EPA via EPA's online FOIA portal on December 22, 2016 (Att. A). EPA's final response was due by January 24, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 40 C.F.R. § 2.104(a). EPA granted NRDC's fee waiver request on December 29, 2016. On January 17, 2017, EPA notified NRDC that it needed an extension until February 13 for its response. On February 9, 2017, EPA notified NRDC that EPA needed another extension of time. NRDC did not agree to either request. EPA's February 9, 2017 email stated that "it is difficult to predict with certainty how many records may be involved," but "EPA estimates it will be able to complete an initial records search and retrieval for your request by 31 March 2017" and that "[o]f course, we will be working diligently on the request and will provide information to you on a rolling basis, if necessary." In a letter dated March 1, 2017, and transmitted to NRDC by email on March 6, 2017, EPA produced certain materials and reiterated its estimate that it would complete its records search and retrieval by March 31, 2017. EPA's online FOIA portal continues to list March 31, 2017, as the agency's "estimated date of completion."⁵ Almost two months after that date, EPA still has not provided a final response to NRDC's FOIA request.

⁵ *See* FOIA Online, <https://foiaonline.regulations.gov/foia/action/public/view/request?objectId=090004d2810b9e80#> (last accessed May 31, 2017).

28. NRDC submitted a FOIA request to FDA via the agency's online FOIA portal on December 22, 2016 (Att. B). FDA's final response was due by January 24, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 21 C.F.R. § 20.41(b). FDA has not sent a final response to NRDC's FOIA request or produced any records.

29. NRDC submitted a FOIA request to NOAA via the agency's online FOIA portal on December 22, 2016 (Att. C). NOAA's final response was due by January 24, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 15 C.F.R. § 4.6(b). NOAA granted NRDC's fee waiver request on January 5, 2017. On February 21, 2017, NOAA sent NRDC an email indicating that the tracking number for the FOIA request had been changed, "which is normally due to the request being transferred to another agency." Neither NOAA nor the Department of Commerce, the cabinet-level agency under which NOAA is housed, has sent a final response to NRDC's request or produced any records.

30. NRDC submitted a FOIA request to OMB via certified mail on December 22, 2016 (Att. D). OMB received the request on December 28, 2016 (Att. E), and its final response was due by January 27, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 5 C.F.R. § 1303.10(c). (The U.S. Postal Service confirmed delivery on December 28, 2016. The certified mail return receipt is signed January 12, 2017 (Att. F).) On January 13, 2017, OMB sent NRDC an e-mail indicating that the FOIA request had been logged. OMB has not sent a final response to NRDC's request or produced any records.

31. On December 23, 2016, as detailed below, NRDC filed FOIA requests with the Department of the Interior and several of its components and agencies (including BLM, Reclamation, Wildlife Service, Surface Mining, and the Office of the Solicitor), the Forest Service, and DOJ, for records in each agency's possession, custody, or control that are, include, or reflect communications between agency staff and any member of the transition team of President-elect Donald Trump or Vice-President-elect Mike Pence. Each request explained that "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 *note*. These FOIA requests were sent by e-mail or certified mail, in accordance with each agency's FOIA regulations and guidance.

32. NRDC submitted a FOIA request to BLM via e-mail on December 23, 2016 (Att. G). BLM's final response was due by January 25, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 43 C.F.R. § 2.16. On December 28, 2016, BLM informed NRDC that the FOIA request was designated as "Normal track," meaning it "can be processed in six to twenty workdays." BLM has not sent a final response to NRDC's request or produced any records. *See* 43 C.F.R. § 2.24.

33. NRDC submitted a FOIA request to Reclamation via e-mail on December 23, 2016 (Att. H). Reclamation's final response was due by January 25, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 43 C.F.R. § 2.16. On December 28, 2016, Reclamation informed NRDC that the request was placed on the "Complex" track for processing "in twenty-one to sixty workdays." On January 25, 2017, Reclamation

informed NRDC that the FOIA request was being consolidated with others and referred to the DOI Office of the Secretary. Neither Reclamation nor the DOI Office of the Secretary has sent a final response to NRDC's request or produced any records. *See* 43 C.F.R. §§ 2.13, 2.16(b).

34. NRDC submitted a FOIA request to Wildlife Service via e-mail on December 23, 2016 (Att. I). Wildlife Service's final response was due by January 25, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 43 C.F.R. § 2.16. On December 27, 2016, Wildlife Service informed NRDC that the FOIA request was being consolidated with others and referred to the DOI Office of the Secretary. Neither Wildlife Service nor the DOI Office of the Secretary has sent a final response to NRDC's request or produced any records. *See* 43 C.F.R. §§ 2.13, 2.16(b).

35. NRDC submitted a FOIA request to Surface Mining via e-mail on December 23, 2016 (Att. J). Surface Mining's final response was due by January 25, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 43 C.F.R. § 2.16. Surface Mining has not sent a final response to NRDC's request or produced any records.

36. NRDC submitted a FOIA request to the DOI Office of the Solicitor (DOI-Solicitor) via e-mail on December 23, 2016 (Att. K). DOI-Solicitor's final response was due by January 25, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 43 C.F.R. § 2.16. DOI-Solicitor notified NRDC on December 28, 2016, that NRDC was being classified as an "other use" requester under 43 C.F.R. § 2.39, and that the agency may charge for duplication fees but would not charge review costs. On January 6, 2017, DOI-Solicitor informed NRDC that the DOI Office of the Secretary would be responding

on its behalf to this request. Neither DOI-Solicitor nor the DOI Office of the Secretary has sent a final response to NRDC's request or produced any records. *See id.* § 2.24.

37. NRDC submitted a FOIA request to the Forest Service via e-mail on December 23, 2016 (Att. L). The Forest Service's final response was due by January 25, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 7 C.F.R. § 1.7(a). On January 6, 2017, the Forest Service notified NRDC that the agency was referring the request to the U.S. Department of Agriculture's FOIA Service Center. NRDC exchanged several e-mails with a U.S. Department of Agriculture employee in January and February, clarifying the scope of the FOIA request. Neither the Forest Service nor the U.S. Department of Agriculture has sent a final response to NRDC's request or produced any records.

38. NRDC submitted a FOIA request to DOJ, through DOJ's Environment and Natural Resources Division, via e-mail on December 23, 2016 (Att. M). DOJ's final response was due by January 25, 2017. 5 U.S.C. § 552(a)(6)(A)(i); 28 C.F.R. § 16.5(c). DOJ has not sent a final response to NRDC's request or produced any records.

39. With each of these FOIA requests, NRDC sought from each agency a waiver of document search, review, and duplication fees on the grounds that disclosure of the requested records is in the public interest because it is "likely to contribute significantly to public understanding of the operations or activities of the government" and is not in NRDC's commercial interest. 5 U.S.C. § 552(a)(4)(A)(iii);

see also 40 C.F.R. § 2.107(*l*) (EPA); 21 C.F.R. § 20.46 (FDA); 15 C.F.R. 4.11(*l*) (NOAA); 5 C.F.R. § 1303.70 (OMB); 43 C.F.R. § 2.45 (DOI); 7 C.F.R. pt. 1, subpart A, app. A, § 6 (Forest Service); 28 C.F.R. § 16.10(k) (DOJ).

40. NRDC also sought a fee waiver because it qualifies as a “representative of the news media” and the records are not for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 40 C.F.R. § 2.107(b)(6), (c)(1)(iii) (EPA); 21 C.F.R. § 20.45(a)(2) (FDA); 15 C.F.R. § 4.11(b)(6), (c) (NOAA); 5 C.F.R. § 1303.50(c) (OMB); 43 C.F.R. §§ 2.39, 2.70 (DOI); 7 C.F.R. pt. 1, subpart A, app. A, § 5(c) (Forest Service); 28 C.F.R. § 16.10(b)(6), (c) (DOJ).

CLAIM FOR RELIEF

41. Plaintiff incorporates by reference all preceding paragraphs.

42. NRDC has a statutory right under FOIA to obtain immediately all records responsive to its requests that are not exempt from disclosure.

43. Each defendant agency has violated its statutory duty under FOIA, 5 U.S.C. § 552(a), and the applicable implementing regulations, to release all non-exempt, responsive records to NRDC.

44. Each defendant agency has violated its statutory duty under FOIA, 5 U.S.C. § 552(a)(3)(C), to make a reasonable effort to search for responsive records.

45. Because the defendant agencies failed to comply with FOIA’s statutory deadlines, NRDC has a right to obtain responsive records without being assessed any search or duplication fees. 5 U.S.C. § 552(a)(4)(A)(viii)(I).

REQUEST FOR RELIEF

NRDC respectfully requests that the Court enter judgment against the defendant agencies as follows:

- A. Declaring that the agencies have violated FOIA by failing to produce non-exempt records responsive to NRDC's FOIA requests by the statutory deadlines;
- B. Ordering the agencies to disclose the requested records to NRDC without further delay, and without charging search or duplication costs;
- C. Ordering defendants FDA, OMB, BLM, Reclamation, Wildlife Service, Surface Mining, Forest Service, and DOJ, to grant NRDC's fee waiver requests;
- D. Retaining jurisdiction over this case to rule on any assertions by any agency that certain responsive records are exempt from disclosure;
- E. Ordering the agencies to produce an index identifying any documents or parts thereof that the agencies withheld and the basis for the withholding, in the event that any agency determines that certain responsive records are exempt from disclosure;
- F. Awarding NRDC its costs and reasonable attorneys' fees; and
- G. Granting such other relief that the Court considers just and proper.

Dated: May 31, 2017

Respectfully submitted,

/s/ Vivian H.W. Wang

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Attachment A

NRDC

December 22, 2016

Via FOIA Online

Re: FOIA request for communications between the President-elect's transition team and EPA staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Environmental Protection Agency (EPA) regulations at 40 C.F.R. § 2.100-2.406.

I. Description of Records Sought

Please produce records¹ in EPA's possession, custody, or control that are, include, or reflect communications between EPA staff and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Scott Pruitt, Myron Ebell, David Kreutzer, Austin Lipari, David Schnare, David Stevenson, George Sugiyama, Amy Oliver Cooke, Christopher Horner, and Harlan Watson.

II. Request for a Fee Waiver

NRDC requests that EPA waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 40 C.F.R. § 2.107(l)(1). The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any EPA office, including, but not limited to, EPA Headquarters offices, and specifically including EPA offices in possession of responsive records.

to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 40 C.F.R. § 2.107(c)(1)(iii).

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(l)(1). Each of the four factors used by EPA to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 40 C.F.R. § 2.107(l)(2).

1. Subject of the request

The records requested here reflect communications between EPA and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 40 C.F.R. § 2.107(l)(2)(i).

2. Informative value of the information to be disclosed

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 40 C.F.R. § 2.107(l)(2)(ii). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, <http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html? r=0>. There may be similar communications with EPA that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at EPA, as further discussed below. However, if EPA were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

3. Contribution to an understanding of the subject by the public is likely to result from disclosure

Because NRDC is a “representative of the news media,” as explained in Part II.C below, EPA must presume that this disclosure is likely to contribute to public understanding of its subject. 40 C.F.R. § 2.107(l)(2)(iii).

However, even if NRDC were not a media requester, NRDC’s expertise in matters concerning EPA staffing and policy, extensive communications capabilities, and proven history

of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject matter. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are "a broad audience of persons interested in the subject" of the transition of power at EPA, 40 C.F.R. § 2.107(l)(2)(iii), and when combined with NRDC's communications to the public at large, the likely audience of interested persons to be reached is certainly "reasonably broad." 40 C.F.R. § 2.107(l)(2)(iii). As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, “The requirement to rebuild US fish stocks: Is it working?” *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 13);
- Article, “Waves of phony charges over new clean water safeguards,” *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
- 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).²

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public's understanding of the subject.

4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: the transition of power at EPA and the communications between the President-elect's transition team and EPA staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate EPA's response to any such requests. Thus, disclosure here would significantly contribute to the public's understanding of government operations or activities. 40 C.F.R. § 2.107(l)(2)(iv).

² There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, "Science Panel Issues Report on Exposure to Pollutant," *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, "Draft of Air Rule is Said to Exempt Many Old Plants," *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., "E-Mail Suggests Energy Official Encouraged Lobbyist on Policy," *N.Y. Times*, Apr. 27, 2002 (Att. 39).

B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(l)(1), (3). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env'tl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by EPA on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

C. NRDC Is a Media Requester

Even if EPA denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and EPA's FOIA regulations, 40 C.F.R. § 2.107(c)(1)(iii); see also 40 C.F.R. § 2.107(b)(6) (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep't of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. See 40 C.F.R. § 2.107(b)(6) (“Examples of news media include . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. See OPEN Government Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and

media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).³

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with EPA’s FOIA regulations at 40 C.F.R. § 2.107(c)(1)(iv) for all or a portion of the requested records. *See* 40 C.F.R. § 2.107(l)(4). Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; EPA’s search for—or deliberations concerning—certain records should not delay the production of others that EPA has already retrieved and elected to produce. *See generally* 40 C.F.R. § 2.104. If EPA concludes that any of the records requested here are publicly available, please let me know.

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange
Staff Attorney
Natural Resources Defense Council, Inc.
111 Sutter St., 21st Floor
San Francisco, CA 94104
jprange@nrdc.org
415-875-6184

Enclosures (sent via FOIA Online):

Attachments 1 through 42 (single .pdf file)

Attachment B



December 22, 2016

Via Online FDA FOIA Portal

Re: FOIA request for communications between the President-elect's transition team and FDA staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Food and Drug Administration (FDA) regulations at 21 C.F.R. § 20.1-20.120.

I. Description of Records Sought

Please produce records¹ in FDA's possession, custody, or control that are, include, or reflect communications between FDA staff in the Office of Foods and Veterinary Medicine (including the Center for Food Safety and Applied Nutrition and the Center for Veterinary Medicine) and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Peter Thiel, Marie Meszaros, John Brooks, Andrew Bremberg, Renee Amooore, Scott Gottlieb, Eric Hargan, Nina Owcharenko Schaefer, Kamran Daravi, Ed Haislmaier, Maggie Wynne, and Paula Stannard.

II. Request for a Fee Waiver

NRDC requests that FDA waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 21 C.F.R. § 20.46(a). The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 21 C.F.R. § 20.45(a)(2).

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any FDA office, including, but not limited to, FDA Headquarters offices, and specifically including FDA offices in possession of responsive records.

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 21 C.F.R. § 20.46(a)(1). Each of the four factors used by FDA to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. See 21 C.F.R. § 20.46(b).

1. Subject of the request

The records requested here reflect communications between FDA and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 21 C.F.R. § 20.46(b)(1).

2. Informative value of the information to be disclosed

The requested records would “reveal any meaningful information about Government operations or activities that is not already public knowledge.” 21 C.F.R. § 20.46(b)(2). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. See “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, <http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html? r=0>. There may be similar communications with FDA that would similarly have informative value to the public. See *Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at FDA, as further discussed below. However, if FDA were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

3. Contribution to an understanding of the subject by the public is likely to result from disclosure

Because NRDC is a “representative of the news media,” as explained in Part II.C below, that is sufficient evidence that this disclosure is likely to contribute to public understanding of its subject. 21 C.F.R. § 20.46(b)(3).

However, even if NRDC were not a media requester, NRDC’s expertise in matters concerning FDA staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the

records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject matter. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request. *See* 21 C.F.R. § 20.46(b)(3).

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, “The requirement to rebuild US fish stocks: Is it working?” *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 13);
- 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).²

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public’s understanding of the subject.

4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: the transition of power at FDA and the communications between the President-elect’s transition team and FDA staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate FDA’s response to any such requests. Thus, disclosure here would significantly contribute to the public’s understanding of government operations or activities. 21 C.F.R. § 20.46(b)(4).

B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 21 C.F.R. § 20.46(c). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res.*

² There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, “Science Panel Issues Report on Exposure to Pollutant,” *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, “Draft of Air Rule is Said to Exempt Many Old Plants,” *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., “E-Mail Suggests Energy Official Encouraged Lobbyist on Policy,” *N.Y. Times*, Apr. 27, 2002 (Att. 39).

Def. Council v. United States Envtl. Prot. Agency, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by FDA on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

C. NRDC Is a Media Requester

Even if FDA denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and FDA's FOIA regulations, 21 C.F.R. § 20.45(a)(2). A representative of the news media is "any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii); *see also Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a "non-profit public interest organization" qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep't of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on "Twitter" and "Facebook," and through content distributed to outlets such as Medium. *See* OPEN Government Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that "as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities"). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements "are regularly

granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the ACLU).³

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with FDA’s FOIA regulations for all or a portion of the requested records. *See* 21 C.F.R. § 20.45. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; FDA’s search for—or deliberations concerning—certain records should not delay the production of others that FDA has already retrieved and elected to produce. *See generally* 21 C.F.R. § 20.22, 20.43. If FDA concludes that any of the records requested here are publicly available, please let me know.

Please do not hesitate to call or email with questions. Thank you.

Sincerely,

Jaclyn H. Prange, Staff Attorney
Natural Resources Defense Council, Inc.
111 Sutter St., 21st Floor
San Francisco, CA 94104
jprange@nrdc.org, 415-875-6184

Enclosures (sent via FOIA Online): Attachments 1 through 42 (single .pdf file)

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media.

Attachment C



December 22, 2016

Via FOIA Online

Re: FOIA request for communications between the President-elect's transition team and NOAA staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Commerce regulations at 15 C.F.R. § 4.1-4.11.

I. Description of Records Sought

Please produce records¹ the Department of Commerce's possession, custody, or control that are, include, or reflect communications between National Oceanic and Atmospheric Administration's (NOAA's) staff and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Wilbur Ross, Ray Washburne, David Bohigian, Joan Maginnis, George Sifakis, William Gaynor, A. Mark Neuman, and Tom Leppert.

II. Request for a Fee Waiver

NRDC requests that NOAA waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 15 C.F.R. § 4.11(l). The requested disclosure would meet both of these

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any NOAA office, including, but not limited to, NOAA Headquarters offices, and specifically including NOAA offices in possession of responsive records.

requirements. In addition, NRDC qualifies as “a representative of the news media” entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 15 C.F.R. § 4.11(c)(1), (d).

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 15 C.F.R. § 4.11(l)(1)(i). Each of the four factors used by NOAA to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 15 C.F.R. § 4.11(l)(2).

1. *Subject of the request*

The records requested here reflect communications between NOAA and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 15 C.F.R. § 4.11(l)(2)(i).

2. *Informative value of the information to be disclosed*

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 15 C.F.R. § 4.11(l)(2)(ii). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, <http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html? r=0>. There may be similar communications with NOAA that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at NOAA, as further discussed below. However, if NOAA were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

3. *Contribution to an understanding of the subject by the public is likely to result from disclosure*

Because NRDC is a “representative of the news media,” as explained in Part II.C below, NOAA must presume that this disclosure is likely to contribute to public understanding of its subject. 15 C.F.R. § 4.11(l)(2)(iii).

However, even if NRDC were not a media requester, NRDC’s expertise in matters concerning NOAA staffing and policy, extensive communications capabilities, and proven

history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject matter. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are "a broad audience of persons interested in the subject" of the transition of power at NOAA, and when combined with NRDC's communications to the public at large, the likely audience of interested persons to be reached is certainly "reasonably broad." 15 C.F.R. § 4.11(l)(2)(iii). As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
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As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public's understanding of the subject.

4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: the transition of power at NOAA and the communications between the President-elect's transition team and NOAA staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate NOAA's response to any such requests. Thus, disclosure here would significantly contribute to the public's understanding of government operations or activities. See 15 C.F.R. § 4.11(l)(2)(iv).

² There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, "Science Panel Issues Report on Exposure to Pollutant," *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, "Draft of Air Rule is Said to Exempt Many Old Plants," *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., "E-Mail Suggests Energy Official Encouraged Lobbyist on Policy," *N.Y. Times*, Apr. 27, 2002 (Att. 39).

B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 15 C.F.R. § 4.11(l)(1)(ii). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env’tl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by NOAA on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

C. NRDC Is a Media Requester

Even if NOAA denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and the Department of Commerce FOIA regulations, 15 C.F.R. § 4.11(c), (d); see also 15 C.F.R. § 4.11(b)(6) (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep’t of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. See 15 C.F.R. § 4.11(b)(6) (stating that examples of news media include . . . publishers of periodicals). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. See OPEN Government Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and

media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).³

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with the Department of Commerce’s FOIA regulations for all or a portion of the requested records. *See* 15 C.F.R. § 4.11. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; NOAA’s search for—or deliberations concerning—certain records should not delay the production of others that NOAA has already retrieved and elected to produce. *See generally* 15 C.F.R. § 4.7. If NOAA concludes that any of the records requested here are publicly available, please let me know.

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

Please do not hesitate to call or email with questions. Thank you.

Sincerely,

Jaclyn H. Prange
Staff Attorney
Natural Resources Defense Council, Inc.
111 Sutter St., 21st Floor
San Francisco, CA 94104
jprange@nrdc.org
415-875-6184

Enclosures (sent via FOIA Online):

Attachments 1 through 42 (single .pdf file)

Attachment D



December 22, 2016

Via Certified Mail

Dionne Hardy, FOIA Officer
Office of Management and Budget
725 17th Street NW, Room 9026
Washington, DC 20503

Re: FOIA request for communications between the President-elect's transition team and OMB staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Office of Management and Budget (OMB) regulations at 5 C.F.R. § 1303.1-1303.70.

I. Description of Records Sought

Please produce records¹ in OMB's possession, custody, or control that are, include, or reflect communications between OMB staff and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Edwin Meese, Dan Kowalski, Russ Vought, Justin Bogie, Karen Evans, Pat Pizzella, Mark Robbins, Paul Winfree, Linda Springer, and David Burton.

II. Request for a Fee Waiver

NRDC requests that OMB waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 5 C.F.R. § 1303.70. The requested disclosure would meet both of these

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any OMB office, including, but not limited to, OMB Headquarters offices, and specifically including OMB offices in possession of responsive records.

requirements. In addition, NRDC qualifies as “a representative of the news media” entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 5 C.F.R. § 1303.50(c).

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 5 C.F.R. § 1303.70.

1. Subject of the request

The records requested here reflect communications between OMB and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the Government.” 5 C.F.R. § 1303.70.

2. Informative value of the information to be disclosed

The requested records are “likely to contribute significantly to” the public’s understanding of government operations and activities. 5 C.F.R. § 1303.70. The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, <http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html? r=0>. There may be similar communications with OMB that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at OMB, as further discussed below. However, if OMB were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

3. Contribution to an understanding of the subject by the public is likely to result from disclosure

NRDC’s expertise in matters concerning OMB staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject matter. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a

requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are a broad audience of persons interested in the subject of the transition of power at OMB. As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
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Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate OMB’s response to any such requests. Thus, disclosure here would significantly contribute to the public’s understanding of government operations or activities. See 5 C.F.R. § 1303.70.

B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 5 C.F.R. § 1303.70. NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Envtl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by OMB on the transition relates to a matter

² There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, “Science Panel Issues Report on Exposure to Pollutant,” *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, “Draft of Air Rule is Said to Exempt Many Old Plants,” *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., “E-Mail Suggests Energy Official Encouraged Lobbyist on Policy,” *N.Y. Times*, Apr. 27, 2002 (Att. 39).

of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

C. NRDC Is a Media Requester

Even if OMB denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and OMB's FOIA regulations, 5 C.F.R. § 1303.50(c); *see also* 5 C.F.R. § 1303.30(j) (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); *see also Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, U.S. Dep’t of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. *See* 5 C.F.R. § 1303.30(j) (“Examples of news media include . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on Twitter and Facebook, and through content distributed to outlets such as Medium. *See* OPEN Gov’t Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (accord[ing] media requester status to the ACLU).³

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media.

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC's publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm'n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with OMB's FOIA regulations for all or a portion of the requested records. *See* 5 C.F.R. § 1303.40. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; OMB's search for—or deliberations concerning—certain records should not delay the production of others that OMB has already retrieved and elected to produce. If OMB concludes that any of the records requested here are publicly available, please let me know.

Please do not hesitate to call or email with questions. Thank you.

Sincerely,

Jaclyn H. Prange
Staff Attorney
Natural Resources Defense Council, Inc.
111 Sutter St., 21st Floor
San Francisco, CA 94104
jprange@nrdc.org
415-875-6184

Enclosures (sent via FOIA Online): Attachments 1 through 42 (single .pdf file)

Attachment E

USPS Tracking® Results

FAQs > (<http://faq.usps.com/?articleId=220900>)

Track Another Package +

Remove X

Tracking Number: 70161970000023486185



Delivered

Updated Delivery Day: Wednesday, December 28, 2016 ⓘ

Product & Tracking Information

[See Available Actions](#)

Postal Product:
Priority Mail™

Features:
Certified Mail™
Return Receipt
Up to \$50 insurance included
Restrictions Apply ⓘ

See tracking for related item:
[9590940304065163920575 \(/go/TrackConfirmAction?tLabels=9590940304065163920575\)](#)

DATE & TIME

STATUS OF ITEM

LOCATION

**December 28, 2016, 4:25
am**

Delivered

WASHINGTON, DC 20500



Your item was delivered at 4:25 am on December 28, 2016 in WASHINGTON, DC 20500.

December 27, 2016, 11:18
am

Available for Pickup

WASHINGTON, DC 20500

DATE & TIME	STATUS OF ITEM	LOCATION
December 27, 2016, 10:53 am	Arrived at Unit	WASHINGTON, DC 20018
December 25, 2016, 10:17 pm	In Transit to Destination	

[See More](#) 

Available Actions

[See Less](#) 

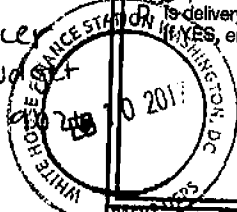
Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

[FAQs \(http://faq.usps.com/?articleId=220900\)](http://faq.usps.com/?articleId=220900)

Attachment F

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	A. Signature X <i>Dionne Hardy</i>	<input type="checkbox"/> Agent <input type="checkbox"/> Addressee
1. Article Addressed to: Dionne Hardy, FOIA Officer Office of Management + Budget 725 19th St. NW, Room 6185 Washington, DC 20503	B. Received by (Printed Name) DIONNE HARDY	C. Date of Delivery 01/12/17
 9590 9403 0406 5163 9205 75	D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No, enter delivery address below:	
2. (Transfer from service label) 7016 1970 0000 2348 6185	Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery	
PS Form 3811, April 2015 PSN 7530-02-000-9033		Domestic Return Receipt



UNITED STATES POSTAL SERVICE
SAN FRANCISCO DISTRICT
MD 207
30 FEB '17
PM 3 1



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4® in this box•
Jackie Prange
NRDC
111 Sutter St, 21st Floor
San Francisco, CA 94104

USPS TRACKING#



9590 9403 0406 5163 9205 75

Attachment G

NRDC

December 23, 2016

Via email

blm_wo_foia@blm.gov

Re: FOIA request for communications between the President-elect's transition team and DOI staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Interior (DOI) regulations at 43 C.F.R. § 2.1-2.290.

I. Description of Records Sought

Please produce records¹ in DOI's possession, custody, or control that are, include, or reflect communications between DOI staff in the Bureau of Land Management and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Ryan Zinke, Doug Domenech, David Bernhardt, Scott Cameron, Daniel Jorjani, Kathy Benedetto, Mary Bomar, Karen Budd-Falen, and Ned Mamula.

II. Request for a Fee Waiver

NRDC requests that DOI waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 43 C.F.R. § 2.45. The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 43 C.F.R. § 2.39.

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any DOI office, including, but not limited to, DOI Headquarters offices, and specifically including DOI offices in possession of responsive records.

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(1). Each of the factors used by DOI to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 43 C.F.R. § 2.48.

1. Subject of the request

The records requested here reflect communications between DOI and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 43 C.F.R. § 2.48(a)(1).

2. Informative value of the information to be disclosed

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 43 C.F.R. § 2.48(a)(2). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, <http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html? r=0>. There may be similar communications with DOI that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

As described below in section II.A.3, disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, and NRDC’s identity, vocation, qualifications, and expertise regarding the requested information explain how NRDC plans to disclose the information to a broad audience of persons. Further, because NRDC is a “representative of the news media,” as explained in Part II.C below, DOI must presume that NRDC has the ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject. 43 C.F.R. § 2.48(a)(2)(v).

3. Contribution to an understanding of the subject by the public is likely to result from disclosure

NRDC’s expertise in matters concerning DOI staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject

matter. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are a broad audience of persons interested in the subject of the transition of power at DOI, and when combined with NRDC's communications to the public at large, the likely audience of interested persons to be reached is certainly "reasonably broad." 43 C.F.R. § 2.48(a)(3). As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, “The requirement to rebuild US fish stocks: Is it working?” *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 13);
- Article, “Waves of phony charges over new clean water safeguards,” *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
- Article, “Don’t Buy the Smear of the EPA,” *L.A. Times*, June 3, 2014 (by NRDC President Frances Beinecke) (Att. 15);
- Transcript, “Conservationists Call For Quiet: The Ocean Is Too Loud!” Nat’l Pub. Radio, *All Things Considered*, July 28, 2013 (featuring NRDC Marine Mammal Protection Program Director Michael Jasny) (Att. 16);
- Testimony of David Doniger, NRDC Climate and Air Program Policy Director and Senior Attorney, before the United States House Subcommittee on Energy and Power, June 19, 2012 (Att. 17);
- Article, “Pollution Still a Hazard to U.S. Beaches,” CBS, *CBS NEWS*, July 29, 2009 (featuring former NRDC Water Program Co-Director Nancy Stoner) (Att. 18);
- Conference brochure, “World Business Summit on Climate Change,” May 24-26, 2009 (featuring former NRDC Director for Market Innovation Rick Duke at 9) (Att. 19);
- Article, “Is there a ‘proper level’ of compliance with environmental law?” *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall) (Att. 20);
- NRDC Document Bank, <http://docs.nrdc.org/> (Att. 21).

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 22). *See also* Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing NRDC’s report) (Att. 23).
- (2) NRDC obtained, through FOIA, FDA review documents on the nontherapeutic use of antibiotic additives in livestock and poultry feed. In January 2014, NRDC published a report, titled *Playing Chicken with Antibiotics*, which is based on the documents obtained, and reveals decades of hesitancy on FDA’s part to ensure

the safety of these drug additives (Att. 24). *See also* P.J. Huffstutter and Brian Grow, “Drug critic slams FDA over antibiotic oversight in meat production,” *Reuters*, Jan. 27, 2014 (discussing NRDC’s report) (Att. 25).

- (3) NRDC has used White House documents obtained through FOIA and from other sources to inform the public about EPA’s decision not to protect wildlife and workers from the pesticide atrazine in the face of industry pressure to keep atrazine on the market. *See Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, <http://www.nrdc.org/health/atrazine/files/atrazine10.pdf> (Apr. 2010) (update to 2009 report) (Att. 26); *see also* William Souder, “It’s Not Easy Being Green: Are Weed-Killers Turning Frogs Into Hermaphrodites?” *Harper’s Bazaar*, Aug. 1, 2006 (referencing documents obtained and posted online by NRDC) (Att. 27).
- (4) NRDC incorporated information obtained through FOIA into a report, available at <http://www.nrdc.org/wildlife/marine/sound/contents.asp>, on the impacts of military sonar and other industrial noise pollution on marine life. *See Sounding the Depths II: The Rising Toll of Sonar, Shipping and Industrial Ocean Noise on Marine Life* (Nov. 2005) (update to 1999 report) (Att. 28). The report also relied upon and synthesized information from other sources. Since the report’s publication, the sonar issue has continued to attract widespread public attention. *See, e.g.*, “Protest Raised over New Tests of Naval Sonar,” Nat’l Pub. Radio, *All Things Considered*, July 24, 2007 (transcript at Att. 29).
- (5) NRDC scientists have used information obtained through FOIA to publish analyses of the United States’ and other nations’ nuclear weapons programs. In 2004, for example, NRDC scientists incorporated information obtained through FOIA into a feature article on the United States’ plans to deploy a ballistic missile system and the implications for global security. *See* Hans M. Kristensen, Matthew G. McKinzie, and Robert S. Norris, “The Protection Paradox,” *Bulletin of Atomic Scientists*, Mar./Apr. 2004 (Att. 30).
- (6) NRDC obtained through FOIA, and made public, records of the operations of the Bush administration’s Energy Task Force, along with analysis of selected excerpts and links to the administration’s index of withheld documents (Att. 31). NRDC’s efforts cast light on an issue of considerable public interest. *See, e.g.*, Elizabeth Shogren, “Bush Gets One-Two Punch on Energy,” *L.A. Times*, Mar. 28, 2002, at A22 (Att. 32).
- (7) Through FOIA, NRDC obtained a memorandum by ExxonMobil, advocating the replacement of the sitting head of the Intergovernmental Panel on Climate Change, and used the document to help inform the public about what may have been behind the Bush administration’s decision to replace Dr. Robert Watson. *See* NRDC Press Release and attached Exxon memorandum, “Confidential Papers Show Exxon Hand in White House Move to Oust Top Scientist from

International Global Warming Panel,” Apr. 3, 2002 (Att. 33); Elizabeth Shogren, “Charges Fly Over Science Panel Pick,” *L.A. Times*, Apr. 4, 2002, at A19 (Att. 34).

- (8) Through FOIA and other sources, NRDC obtained information on nationwide levels of arsenic in drinking water and used it in a report, *Arsenic and Old Laws* (2000), available in print and online at <http://www.nrdc.org/water/drinking/arsenic/aolinx.asp> (Att. 35). The report guided interested members of the public on how to learn more about arsenic in their own drinking water supplies. *Id.*; see also Steve LaRue, “EPA Aims to Cut Levels of Arsenic in Well Water,” *San Diego Union-Tribune*, June 5, 2000, at B1 (referencing NRDC report) (Att. 36).²

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public’s understanding of the subject.

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at DOI, as further discussed below. However, if DOI were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: the transition of power at DOI and the communications between the President-elect’s transition team and DOI staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate DOI’s response to any such requests. Thus, disclosure of these records would contribute significantly to the public’s understanding of the subject in question. See 43 C.F.R. § 2.48(a)(4).

² There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, “Science Panel Issues Report on Exposure to Pollutant,” *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, “Draft of Air Rule is Said to Exempt Many Old Plants,” *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., “E-Mail Suggests Energy Official Encouraged Lobbyist on Policy,” *N.Y. Times*, Apr. 27, 2002 (Att. 39).

B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.48(b). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env'tl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by DOI on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

Also, because NRDC is a representative of the news media, as described below, DOI must presume that the public interest outweighs any commercial interest. 43 C.F.R. § 2.48(b)(3)(ii).

C. NRDC Is a Media Requester

Even if DOI denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and DOI's FOIA regulations, 43 C.F.R. § 2.39; see also 43 C.F.R. § 2.70 (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep't of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. See 43 C.F.R. § 2.70 (“Examples of news media [include] . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. See OPEN Government

Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).³

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with DOI’s FOIA regulations for all or a portion of the requested records. *See* 43 C.F.R. § 2.38-2.44. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; DOI’s search for—or deliberations concerning—certain records should not delay the production of others that DOI has already retrieved and elected to produce. *See generally* 43 C.F.R. § 2.21-2.25. If DOI concludes that any of the records requested here are publicly available, please let me know.

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange
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Natural Resources Defense Council, Inc.
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415-875-6184

Enclosures:

Attachments 1 through 42 (in two emails)

Attachment H

NRDC

December 23, 2016

Via email
bor_foia@usbr.gov

Re: FOIA request for communications between the President-elect's transition team and DOI staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Interior (DOI) regulations at 43 C.F.R. § 2.1-2.290.

I. Description of Records Sought

Please produce records¹ in DOI's possession, custody, or control that are, include, or reflect communications between DOI staff in the Bureau of Reclamation (BOR) and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Ryan Zinke, Doug Domenech, David Bernhardt, Scott Cameron, Daniel Jorjani, Kathy Benedetto, Mary Bomar, Karen Budd-Falen, and Ned Mamula.

II. Request for a Fee Waiver

NRDC requests that DOI waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 43 C.F.R. § 2.45. The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 43 C.F.R. § 2.39.

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any DOI office, including, but not limited to, DOI Headquarters offices, and specifically including DOI offices in possession of responsive records.

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(1). Each of the factors used by DOI to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 43 C.F.R. § 2.48.

1. Subject of the request

The records requested here reflect communications between DOI and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 43 C.F.R. § 2.48(a)(1).

2. Informative value of the information to be disclosed

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 43 C.F.R. § 2.48(a)(2). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html?_r=0. There may be similar communications with DOI that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

As described below in section II.A.3, disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, and NRDC’s identity, vocation, qualifications, and expertise regarding the requested information explain how NRDC plans to disclose the information to a broad audience of persons. Further, because NRDC is a “representative of the news media,” as explained in Part II.C below, DOI must presume that NRDC has the ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject. 43 C.F.R. § 2.48(a)(2)(v).

3. Contribution to an understanding of the subject by the public is likely to result from disclosure

NRDC’s expertise in matters concerning DOI staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject

matter. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are a broad audience of persons interested in the subject of the transition of power at DOI, and when combined with NRDC's communications to the public at large, the likely audience of interested persons to be reached is certainly "reasonably broad." 43 C.F.R. § 2.48(a)(3). As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, “The requirement to rebuild US fish stocks: Is it working?” *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 13);
- Article, “Waves of phony charges over new clean water safeguards,” *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
- Article, “Don’t Buy the Smear of the EPA,” *L.A. Times*, June 3, 2014 (by NRDC President Frances Beinecke) (Att. 15);
- Transcript, “Conservationists Call For Quiet: The Ocean Is Too Loud!” Nat’l Pub. Radio, *All Things Considered*, July 28, 2013 (featuring NRDC Marine Mammal Protection Program Director Michael Jasny) (Att. 16);
- Testimony of David Doniger, NRDC Climate and Air Program Policy Director and Senior Attorney, before the United States House Subcommittee on Energy and Power, June 19, 2012 (Att. 17);
- Article, “Pollution Still a Hazard to U.S. Beaches,” CBS, *CBS NEWS*, July 29, 2009 (featuring former NRDC Water Program Co-Director Nancy Stoner) (Att. 18);
- Conference brochure, “World Business Summit on Climate Change,” May 24-26, 2009 (featuring former NRDC Director for Market Innovation Rick Duke at 9) (Att. 19);
- Article, “Is there a ‘proper level’ of compliance with environmental law?” *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall) (Att. 20);
- NRDC Document Bank, <http://docs.nrdc.org/> (Att. 21).

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 22). *See also* Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing NRDC’s report) (Att. 23).
- (2) NRDC obtained, through FOIA, FDA review documents on the nontherapeutic use of antibiotic additives in livestock and poultry feed. In January 2014, NRDC published a report, titled *Playing Chicken with Antibiotics*, which is based on the documents obtained, and reveals decades of hesitancy on FDA’s part to ensure

the safety of these drug additives (Att. 24). *See also* P.J. Huffstutter and Brian Grow, “Drug critic slams FDA over antibiotic oversight in meat production,” *Reuters*, Jan. 27, 2014 (discussing NRDC’s report) (Att. 25).

- (3) NRDC has used White House documents obtained through FOIA and from other sources to inform the public about EPA’s decision not to protect wildlife and workers from the pesticide atrazine in the face of industry pressure to keep atrazine on the market. *See Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, <http://www.nrdc.org/health/atrazine/files/atrazine10.pdf> (Apr. 2010) (update to 2009 report) (Att. 26); *see also* William Souder, “It’s Not Easy Being Green: Are Weed-Killers Turning Frogs Into Hermaphrodites?” *Harper’s Bazaar*, Aug. 1, 2006 (referencing documents obtained and posted online by NRDC) (Att. 27).
- (4) NRDC incorporated information obtained through FOIA into a report, available at <http://www.nrdc.org/wildlife/marine/sound/contents.asp>, on the impacts of military sonar and other industrial noise pollution on marine life. *See Sounding the Depths II: The Rising Toll of Sonar, Shipping and Industrial Ocean Noise on Marine Life* (Nov. 2005) (update to 1999 report) (Att. 28). The report also relied upon and synthesized information from other sources. Since the report’s publication, the sonar issue has continued to attract widespread public attention. *See, e.g.*, “Protest Raised over New Tests of Naval Sonar,” Nat’l Pub. Radio, *All Things Considered*, July 24, 2007 (transcript at Att. 29).
- (5) NRDC scientists have used information obtained through FOIA to publish analyses of the United States’ and other nations’ nuclear weapons programs. In 2004, for example, NRDC scientists incorporated information obtained through FOIA into a feature article on the United States’ plans to deploy a ballistic missile system and the implications for global security. *See* Hans M. Kristensen, Matthew G. McKinzie, and Robert S. Norris, “The Protection Paradox,” *Bulletin of Atomic Scientists*, Mar./Apr. 2004 (Att. 30).
- (6) NRDC obtained through FOIA, and made public, records of the operations of the Bush administration’s Energy Task Force, along with analysis of selected excerpts and links to the administration’s index of withheld documents (Att. 31). NRDC’s efforts cast light on an issue of considerable public interest. *See, e.g.*, Elizabeth Shogren, “Bush Gets One-Two Punch on Energy,” *L.A. Times*, Mar. 28, 2002, at A22 (Att. 32).
- (7) Through FOIA, NRDC obtained a memorandum by ExxonMobil, advocating the replacement of the sitting head of the Intergovernmental Panel on Climate Change, and used the document to help inform the public about what may have been behind the Bush administration’s decision to replace Dr. Robert Watson. *See* NRDC Press Release and attached Exxon memorandum, “Confidential Papers Show Exxon Hand in White House Move to Oust Top Scientist from

International Global Warming Panel,” Apr. 3, 2002 (Att. 33); Elizabeth Shogren, “Charges Fly Over Science Panel Pick,” *L.A. Times*, Apr. 4, 2002, at A19 (Att. 34).

- (8) Through FOIA and other sources, NRDC obtained information on nationwide levels of arsenic in drinking water and used it in a report, *Arsenic and Old Laws* (2000), available in print and online at <http://www.nrdc.org/water/drinking/arsenic/aolinx.asp> (Att. 35). The report guided interested members of the public on how to learn more about arsenic in their own drinking water supplies. *Id.*; see also Steve LaRue, “EPA Aims to Cut Levels of Arsenic in Well Water,” *San Diego Union-Tribune*, June 5, 2000, at B1 (referencing NRDC report) (Att. 36).²

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public’s understanding of the subject.

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at DOI, as further discussed below. However, if DOI were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: the transition of power at DOI and the communications between the President-elect’s transition team and DOI staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate DOI’s response to any such requests. Thus, disclosure of these records would contribute significantly to the public’s understanding of the subject in question. See 43 C.F.R. § 2.48(a)(4).

² There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, “Science Panel Issues Report on Exposure to Pollutant,” *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, “Draft of Air Rule is Said to Exempt Many Old Plants,” *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., “E-Mail Suggests Energy Official Encouraged Lobbyist on Policy,” *N.Y. Times*, Apr. 27, 2002 (Att. 39).

B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.48(b). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env'tl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by DOI on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

Also, because NRDC is a representative of the news media, as described below, DOI must presume that the public interest outweighs any commercial interest. 43 C.F.R. § 2.48(b)(3)(ii).

C. NRDC Is a Media Requester

Even if DOI denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and DOI's FOIA regulations, 43 C.F.R. § 2.39; see also 43 C.F.R. § 2.70 (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep't of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

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Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).³

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with DOI’s FOIA regulations for all or a portion of the requested records. *See* 43 C.F.R. § 2.38-2.44. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; DOI’s search for—or deliberations concerning—certain records should not delay the production of others that DOI has already retrieved and elected to produce. *See generally* 43 C.F.R. § 2.21-2.25. If DOI concludes that any of the records requested here are publicly available, please let me know.

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Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange
Staff Attorney
Natural Resources Defense Council, Inc.
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415-875-6184

Enclosures:

Attachments 1 through 42 (in two emails)

Attachment I

NRDC

December 23, 2016

Via email
fwhq.foia@fws.gov

Re: FOIA request for communications between the President-elect's transition team and DOI staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Interior (DOI) regulations at 43 C.F.R. § 2.1-2.290.

I. Description of Records Sought

Please produce records¹ in DOI's possession, custody, or control that are, include, or reflect communications between DOI staff in the United States Fish and Wildlife Service (FWS) and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Ryan Zinke, Doug Domenech, David Bernhardt, Scott Cameron, Daniel Jorjani, Kathy Benedetto, Mary Bomar, Karen Budd-Falen, and Ned Mamula.

II. Request for a Fee Waiver

NRDC requests that DOI waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 43 C.F.R. § 2.45. The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 43 C.F.R. § 2.39.

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any DOI office, including, but not limited to, DOI Headquarters offices, and specifically including DOI offices in possession of responsive records.

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(1). Each of the factors used by DOI to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 43 C.F.R. § 2.48.

1. Subject of the request

The records requested here reflect communications between DOI and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 43 C.F.R. § 2.48(a)(1).

2. Informative value of the information to be disclosed

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 43 C.F.R. § 2.48(a)(2). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html?_r=0. There may be similar communications with DOI that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

As described below in section II.A.3, disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, and NRDC’s identity, vocation, qualifications, and expertise regarding the requested information explain how NRDC plans to disclose the information to a broad audience of persons. Further, because NRDC is a “representative of the news media,” as explained in Part II.C below, DOI must presume that NRDC has the ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject. 43 C.F.R. § 2.48(a)(2)(v).

3. Contribution to an understanding of the subject by the public is likely to result from disclosure

NRDC’s expertise in matters concerning DOI staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject

matter. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

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NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 22). *See also* Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing NRDC’s report) (Att. 23).
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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).²

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public’s understanding of the subject.

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at DOI, as further discussed below. However, if DOI were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: the transition of power at DOI and the communications between the President-elect’s transition team and DOI staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate DOI’s response to any such requests. Thus, disclosure of these records would contribute significantly to the public’s understanding of the subject in question. See 43 C.F.R. § 2.48(a)(4).

² There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, “Science Panel Issues Report on Exposure to Pollutant,” *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, “Draft of Air Rule is Said to Exempt Many Old Plants,” *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., “E-Mail Suggests Energy Official Encouraged Lobbyist on Policy,” *N.Y. Times*, Apr. 27, 2002 (Att. 39).

B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.48(b). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env’t. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by DOI on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

Also, because NRDC is a representative of the news media, as described below, DOI must presume that the public interest outweighs any commercial interest. 43 C.F.R. § 2.48(b)(3)(ii).

C. NRDC Is a Media Requester

Even if DOI denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and DOI’s FOIA regulations, 43 C.F.R. § 2.39; see also 43 C.F.R. § 2.70 (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep’t of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. See 43 C.F.R. § 2.70 (“Examples of news media [include] . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. See OPEN Government

Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).³

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with DOI’s FOIA regulations for all or a portion of the requested records. *See* 43 C.F.R. § 2.38-2.44. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; DOI’s search for—or deliberations concerning—certain records should not delay the production of others that DOI has already retrieved and elected to produce. *See generally* 43 C.F.R. § 2.21-2.25. If DOI concludes that any of the records requested here are publicly available, please let me know.

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange
Staff Attorney
Natural Resources Defense Council, Inc.
111 Sutter St., 21st Floor
San Francisco, CA 94104
jprange@nrdc.org
415-875-6184

Enclosures:

Attachments 1 through 42 (in two emails)

Attachment J

NRDC

December 23, 2016

Via email

osm-foia@osmre.gov

Re: FOIA request for communications between the President-elect's transition team and DOI staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Interior (DOI) regulations at 43 C.F.R. § 2.1-2.290.

I. Description of Records Sought

Please produce records¹ in DOI's possession, custody, or control that are, include, or reflect communications between DOI staff in the Office of Surface Mining Reclamation and Enforcement (OSMRE) and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Ryan Zinke, Doug Domenech, David Bernhardt, Scott Cameron, Daniel Jorjani, Kathy Benedetto, Mary Bomar, Karen Budd-Falen, and Ned Mamula.

II. Request for a Fee Waiver

NRDC requests that DOI waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 43 C.F.R. § 2.45. The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 43 C.F.R. § 2.39.

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any DOI office, including, but not limited to, DOI Headquarters offices, and specifically including DOI offices in possession of responsive records.

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(1). Each of the factors used by DOI to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 43 C.F.R. § 2.48.

1. Subject of the request

The records requested here reflect communications between DOI and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 43 C.F.R. § 2.48(a)(1).

2. Informative value of the information to be disclosed

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 43 C.F.R. § 2.48(a)(2). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html?_r=0. There may be similar communications with DOI that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

As described below in section II.A.3, disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, and NRDC’s identity, vocation, qualifications, and expertise regarding the requested information explain how NRDC plans to disclose the information to a broad audience of persons. Further, because NRDC is a “representative of the news media,” as explained in Part II.C below, DOI must presume that NRDC has the ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject. 43 C.F.R. § 2.48(a)(2)(v).

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As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public’s understanding of the subject.

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at DOI, as further discussed below. However, if DOI were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

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The records requested shed light on a matter of considerable public interest and concern: the transition of power at DOI and the communications between the President-elect’s transition team and DOI staff.

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B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.48(b). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env’tl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by DOI on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

Also, because NRDC is a representative of the news media, as described below, DOI must presume that the public interest outweighs any commercial interest. 43 C.F.R. § 2.48(b)(3)(ii).

C. NRDC Is a Media Requester

Even if DOI denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and DOI’s FOIA regulations, 43 C.F.R. § 2.39; see also 43 C.F.R. § 2.70 (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep’t of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. See 43 C.F.R. § 2.70 (“Examples of news media [include] . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. See OPEN Government

Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).³

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with DOI’s FOIA regulations for all or a portion of the requested records. *See* 43 C.F.R. § 2.38-2.44. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; DOI’s search for—or deliberations concerning—certain records should not delay the production of others that DOI has already retrieved and elected to produce. *See generally* 43 C.F.R. § 2.21-2.25. If DOI concludes that any of the records requested here are publicly available, please let me know.

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange
Staff Attorney
Natural Resources Defense Council, Inc.
111 Sutter St., 21st Floor
San Francisco, CA 94104
jprange@nrdc.org
415-875-6184

Enclosures:

Attachments 1 through 42 (in two emails)

Attachment K

NRDC

December 23, 2016

Via email

sol.foia@sol.doi.gov

Re: FOIA request for communications between the President-elect's transition team and DOI staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Interior (DOI) regulations at 43 C.F.R. § 2.1-2.290.

I. Description of Records Sought

Please produce records¹ in DOI's possession, custody, or control that are, include, or reflect communications between DOI staff in the Office of the Solicitor (SOL) and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Ryan Zinke, Doug Domenech, David Bernhardt, Scott Cameron, Daniel Jorjani, Kathy Benedetto, Mary Bomar, Karen Budd-Falen, and Ned Mamula.

II. Request for a Fee Waiver

NRDC requests that DOI waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 43 C.F.R. § 2.45. The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 43 C.F.R. § 2.39.

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any DOI office, including, but not limited to, DOI Headquarters offices, and specifically including DOI offices in possession of responsive records.

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(1). Each of the factors used by DOI to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 43 C.F.R. § 2.48.

1. Subject of the request

The records requested here reflect communications between DOI and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 43 C.F.R. § 2.48(a)(1).

2. Informative value of the information to be disclosed

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 43 C.F.R. § 2.48(a)(2). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html?_r=0. There may be similar communications with DOI that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

As described below in section II.A.3, disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, and NRDC’s identity, vocation, qualifications, and expertise regarding the requested information explain how NRDC plans to disclose the information to a broad audience of persons. Further, because NRDC is a “representative of the news media,” as explained in Part II.C below, DOI must presume that NRDC has the ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject. 43 C.F.R. § 2.48(a)(2)(v).

3. Contribution to an understanding of the subject by the public is likely to result from disclosure

NRDC’s expertise in matters concerning DOI staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject

matter. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are a broad audience of persons interested in the subject of the transition of power at DOI, and when combined with NRDC's communications to the public at large, the likely audience of interested persons to be reached is certainly "reasonably broad." 43 C.F.R. § 2.48(a)(3). As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, “The requirement to rebuild US fish stocks: Is it working?” *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 13);
- Article, “Waves of phony charges over new clean water safeguards,” *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
- Article, “Don’t Buy the Smear of the EPA,” *L.A. Times*, June 3, 2014 (by NRDC President Frances Beinecke) (Att. 15);
- Transcript, “Conservationists Call For Quiet: The Ocean Is Too Loud!” Nat’l Pub. Radio, *All Things Considered*, July 28, 2013 (featuring NRDC Marine Mammal Protection Program Director Michael Jasny) (Att. 16);
- Testimony of David Doniger, NRDC Climate and Air Program Policy Director and Senior Attorney, before the United States House Subcommittee on Energy and Power, June 19, 2012 (Att. 17);
- Article, “Pollution Still a Hazard to U.S. Beaches,” CBS, *CBS NEWS*, July 29, 2009 (featuring former NRDC Water Program Co-Director Nancy Stoner) (Att. 18);
- Conference brochure, “World Business Summit on Climate Change,” May 24-26, 2009 (featuring former NRDC Director for Market Innovation Rick Duke at 9) (Att. 19);
- Article, “Is there a ‘proper level’ of compliance with environmental law?” *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall) (Att. 20);
- NRDC Document Bank, <http://docs.nrdc.org/> (Att. 21).

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 22). *See also* Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing NRDC’s report) (Att. 23).
- (2) NRDC obtained, through FOIA, FDA review documents on the nontherapeutic use of antibiotic additives in livestock and poultry feed. In January 2014, NRDC published a report, titled *Playing Chicken with Antibiotics*, which is based on the documents obtained, and reveals decades of hesitancy on FDA’s part to ensure

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C. NRDC Is a Media Requester

Even if DOI denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and DOI's FOIA regulations, 43 C.F.R. § 2.39; see also 43 C.F.R. § 2.70 (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep't of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. See 43 C.F.R. § 2.70 (“Examples of news media [include] . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. See OPEN Government

Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).³

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with DOI’s FOIA regulations for all or a portion of the requested records. *See* 43 C.F.R. § 2.38-2.44. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; DOI’s search for—or deliberations concerning—certain records should not delay the production of others that DOI has already retrieved and elected to produce. *See generally* 43 C.F.R. § 2.21-2.25. If DOI concludes that any of the records requested here are publicly available, please let me know.

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange
Staff Attorney
Natural Resources Defense Council, Inc.
111 Sutter St., 21st Floor
San Francisco, CA 94104
jprange@nrdc.org
415-875-6184

Enclosures:

Attachments 1 through 42 (in two emails)

Attachment L

NRDC

December 23, 2016

Via Email

wo_foia@fs.fed.us

Re: FOIA request for communications between the President-elect's transition team and Forest Service staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Agriculture regulations at 7 C.F.R. § 1.1-1.25.

I. Description of Records Sought

Please produce records¹ in the Forest Service's possession, custody, or control that are, include, or reflect communications between Forest Service staff and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Joel Leftwich and Brian Klippenstein.

II. Request for a Fee Waiver

NRDC requests that the Forest Service waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a). The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any Forest Service office, including, but not limited to, Forest Service Headquarters offices, and specifically including Forest Service offices in possession of responsive records.

news media” entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 5(c).

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a). Each of the factors used by the Forest Service to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a).

1. *Subject of the request*

The records requested here reflect communications between the Forest Service and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a)(1)(i).

2. *Informative value of the information to be disclosed*

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a)(1)(ii). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, <http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html? r=0>. There may be similar communications with the Forest Service that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at the Forest Service, as further discussed below. However, if the Forest Service were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

3. *Contribution to an understanding of the subject by the public is likely to result from disclosure*

NRDC’s expertise in matters concerning Forest Service staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons

with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject matter. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are a broad audience of persons interested in the subject of the transition of power at the Forest Service, 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. 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a)(1)(iii). As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, “The requirement to rebuild US fish stocks: Is it working?” *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 13);
- Article, “Waves of phony charges over new clean water safeguards,” *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
- Article, “Don’t Buy the Smear of the EPA,” *L.A. Times*, June 3, 2014 (by NRDC President Frances Beinecke) (Att. 15);
- Transcript, “Conservationists Call For Quiet: The Ocean Is Too Loud!” Nat’l Pub. Radio, *All Things Considered*, July 28, 2013 (featuring NRDC Marine Mammal Protection Program Director Michael Jasny) (Att. 16);
- Testimony of David Doniger, NRDC Climate and Air Program Policy Director and Senior Attorney, before the United States House Subcommittee on Energy and Power, June 19, 2012 (Att. 17);
- Article, “Pollution Still a Hazard to U.S. Beaches,” CBS, *CBS NEWS*, July 29, 2009 (featuring former NRDC Water Program Co-Director Nancy Stoner) (Att. 18);
- Conference brochure, “World Business Summit on Climate Change,” May 24-26, 2009 (featuring former NRDC Director for Market Innovation Rick Duke at 9) (Att. 19);
- Article, “Is there a ‘proper level’ of compliance with environmental law?” *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall) (Att. 20);
- NRDC Document Bank, <http://docs.nrdc.org/> (Att. 21).

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (1) In April 2014, NRDC relied on FOIA documents for a report on potentially unsafe chemicals added to food, without the safety oversight of the Food and Drug Administration or the notification of the public. The report, titled *Generally Recognized as Secret: Chemicals Added to Food in the United States*, reveals concerns within the agency about several chemicals used as ingredients in food that manufacturers claim are “generally recognized as safe” (Att. 22). *See also* Kimberly Kindy, “Are secret, dangerous ingredients in your food?” *Wash. Post*, Apr. 7, 2014 (discussing NRDC’s report) (Att. 23).

- (2) NRDC obtained, through FOIA, FDA review documents on the nontherapeutic use of antibiotic additives in livestock and poultry feed. In January 2014, NRDC published a report, titled *Playing Chicken with Antibiotics*, which is based on the documents obtained, and reveals decades of hesitancy on FDA's part to ensure the safety of these drug additives (Att. 24). *See also* P.J. Huffstutter and Brian Grow, "Drug critic slams FDA over antibiotic oversight in meat production," *Reuters*, Jan. 27, 2014 (discussing NRDC's report) (Att. 25).
- (3) NRDC has used White House documents obtained through FOIA and from other sources to inform the public about EPA's decision not to protect wildlife and workers from the pesticide atrazine in the face of industry pressure to keep atrazine on the market. *See Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, <http://www.nrdc.org/health/atrazine/files/atrazine10.pdf> (Apr. 2010) (update to 2009 report) (Att. 26); *see also* William Souder, "It's Not Easy Being Green: Are Weed-Killers Turning Frogs Into Hermaphrodites?" *Harper's Bazaar*, Aug. 1, 2006 (referencing documents obtained and posted online by NRDC) (Att. 27).
- (4) NRDC incorporated information obtained through FOIA into a report, available at <http://www.nrdc.org/wildlife/marine/sound/contents.asp>, on the impacts of military sonar and other industrial noise pollution on marine life. *See Sounding the Depths II: The Rising Toll of Sonar, Shipping and Industrial Ocean Noise on Marine Life* (Nov. 2005) (update to 1999 report) (Att. 28). The report also relied upon and synthesized information from other sources. Since the report's publication, the sonar issue has continued to attract widespread public attention. *See, e.g.*, "Protest Raised over New Tests of Naval Sonar," *Nat'l Pub. Radio, All Things Considered*, July 24, 2007 (transcript at Att. 29).
- (5) NRDC scientists have used information obtained through FOIA to publish analyses of the United States' and other nations' nuclear weapons programs. In 2004, for example, NRDC scientists incorporated information obtained through FOIA into a feature article on the United States' plans to deploy a ballistic missile system and the implications for global security. *See* Hans M. Kristensen, Matthew G. McKinzie, and Robert S. Norris, "The Protection Paradox," *Bulletin of Atomic Scientists*, Mar./Apr. 2004 (Att. 30).
- (6) NRDC obtained through FOIA, and made public, records of the operations of the Bush administration's Energy Task Force, along with analysis of selected excerpts and links to the administration's index of withheld documents (Att. 31). NRDC's efforts cast light on an issue of considerable public interest. *See, e.g.*, Elizabeth Shogren, "Bush Gets One-Two Punch on Energy," *L.A. Times*, Mar. 28, 2002, at A22 (Att. 32).
- (7) Through FOIA, NRDC obtained a memorandum by ExxonMobil, advocating the replacement of the sitting head of the Intergovernmental Panel on Climate

Change, and used the document to help inform the public about what may have been behind the Bush administration's decision to replace Dr. Robert Watson. See NRDC Press Release and attached Exxon memorandum, "Confidential Papers Show Exxon Hand in White House Move to Oust Top Scientist from International Global Warming Panel," Apr. 3, 2002 (Att. 33); Elizabeth Shogren, "Charges Fly Over Science Panel Pick," *L.A. Times*, Apr. 4, 2002, at A19 (Att. 34).

- (8) Through FOIA and other sources, NRDC obtained information on nationwide levels of arsenic in drinking water and used it in a report, *Arsenic and Old Laws* (2000), available in print and online at <http://www.nrdc.org/water/drinking/arsenic/aolinx.asp> (Att. 35). The report guided interested members of the public on how to learn more about arsenic in their own drinking water supplies. *Id.*; see also Steve LaRue, "EPA Aims to Cut Levels of Arsenic in Well Water," *San Diego Union-Tribune*, June 5, 2000, at B1 (referencing NRDC report) (Att. 36).²

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public's understanding of the subject.

4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: the transition of power at the Forest Service and the communications between the President-elect's transition team and Forest Service staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate the Forest Service's response to any such requests. Thus, disclosure here would significantly contribute to the public's understanding of government operations or activities. See 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a)(1)(iv).

5. *NRDC does not have a commercial interest in the disclosure*

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested

² There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, "Science Panel Issues Report on Exposure to Pollutant," *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, "Draft of Air Rule is Said to Exempt Many Old Plants," *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., "E-Mail Suggests Energy Official Encouraged Lobbyist on Policy," *N.Y. Times*, Apr. 27, 2002 (Att. 39).

disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a)(1)(v), (vi). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env'tl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by the Forest Service on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

B. NRDC is a non-profit organization designed to further public health safety

The Department’s FOIA regulations also give the Forest Service the ability to waive fees if the requester is “engaged in a nonprofit activity designed for the public safety, health, or welfare.” 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 6(a)(3)(ii). NRDC is a non-profit organization whose mission is to “to safeguard the earth—its people, its plants and animals, and the natural systems on which all life depends.” As described in the sections above, NRDC is engaged in nonprofit activity designed to further public health and safety. Therefore, the Forest Service should waive any fees on this basis as well.

C. NRDC Is a Media Requester

Even if the Forest Service denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and the Forest Service’s FOIA regulations, 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 5(c); see also 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 5(c)(1) (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep’t of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. See 7 C.F.R. Pt. 1, Subpt. A, App. A, Sec. 5(c)(3) (“Examples of news media

entities include . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. See OPEN Government Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).³

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. See *Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with the Forest Service’s FOIA regulations for all or a portion of the requested records. See 7 C.F.R. Pt. 1, Subpt. A, App. A. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; the Forest Service's search for—or deliberations concerning—certain records should not delay the production of others that the Forest Service has already retrieved and elected to produce. *See generally* 7 C.F.R. § 1.7. If the Forest Service concludes that any of the records requested here are publicly available, please let me know.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange
Staff Attorney
Natural Resources Defense Council, Inc.
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jprange@nrdc.org
415-875-6184

Enclosures (sent via two emails): Attachments 1 through 40

Attachment M

NRDC

December 23, 2016

Via Email

FOIARouting.enrd@usdoj.gov

Re: FOIA request for communications between the President-elect's transition team and ENRD staff

Dear FOIA Officer:

I write on behalf of the Natural Resources Defense Council (NRDC) to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Justice regulations at 28 C.F.R. § 16.1-16.301.

I. Description of Records Sought

Please produce records¹ in the Environment and Natural Resources Division's (ENRD's) possession, custody, or control that are, include, or reflect communications between ENRD staff and any member of the transition team(s) of President-elect Donald Trump and/or Vice-President-elect Mike Pence. The term "transition team(s)" includes, but is not limited to, the staff members described in the Presidential Transition Act of 1963 and all amendments, 3 U.S.C. § 102 note. These members may include, but are not limited to, Jeff Sessions, Brian Benczkowski, Zina Bash, Greg Katsas, James Burnham, William Cleveland, David Higbee, J. Patrick Rowan, Jessie Liu, Ronald Tenpas, Lizette Benedi Herraiz, Steven Engel, Thomas Wheeler, Stefani Carter, James Burnham, Michael Battle, and Edmund Searby.

II. Request for a Fee Waiver

NRDC requests that ENRD waive any fee it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without charge "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. §

¹ "Records" means anything denoted by the use of that word or its singular form in the text of FOIA and includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). This request seeks responsive records in the custody of any ENRD office, including, but not limited to, ENRD Headquarters offices, and specifically including ENRD offices in possession of responsive records.

552(a)(4)(A)(iii); *see also* 28 C.F.R. § 16.10(k)(1)(i), (ii). The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as “a representative of the news media” entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 28 C.F.R. § 16.10(c)(1)(i), (d)(1).

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii); 28 C.F.R. § 16.10(k)(1)(i). Each of the four factors used by ENRD to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 28 C.F.R. § 16.10(k)(2).

1. Subject of the request

The records requested here reflect communications between ENRD and the President-elect’s transition team after a presidential election. The requested records thus directly concern “the operations or activities of the government.” 28 C.F.R. § 16.10(k)(2)(i).

2. Informative value of the information to be disclosed

The requested records are “likely to contribute to” the public’s understanding of government operations and activities. 28 C.F.R. § 16.10(k)(2)(ii). The public does not currently possess comprehensive information regarding the transition of power within the agency. There is more than a reasonable likelihood that these records have informative value to the public because, for example, the President-elect sent a questionnaire to Department of Energy staff asking about involvement in specific areas of research and attendance at climate-related conferences. *See* “Climate Change Conversations Are Targeted in Questionnaire to Energy Department,” Coral Davenport, *New York Times*, Dec. 9, 2016, <http://www.nytimes.com/2016/12/09/us/politics/climate-change-energy-department-donald-trump-transition.html? r=0>. There may be similar communications with ENRD that would similarly have informative value to the public. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

We believe that the records requested are not currently in the public domain. Their disclosure would thus meaningfully inform public understanding with respect to the transition at ENRD, as further discussed below. However, if ENRD were to conclude that some of the requested records are publicly available, NRDC would like to discuss that conclusion and might agree to exclude such records from this request.

3. Contribution to an understanding of the subject by the public is likely to result from disclosure

Because NRDC is a “representative of the news media,” as explained in Part II.C below, ENRD must presume that this disclosure is likely to contribute to public understanding of its subject. 28 C.F.R. § 16.10(k)(2)(iii).

However, even if NRDC were not a media requester, NRDC's expertise in matters concerning ENRD staffing and policy, extensive communications capabilities, and proven history of dissemination of information of public interest—including information obtained from FOIA records requests—indicate that NRDC has the ability to and will use disclosed records to reach a broad audience of interested persons with any relevant and newsworthy information the records reveal. There is a strong likelihood that disclosure of the requested records will increase public understanding of the subject matter. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003) (finding that a requester that specified multiple channels of dissemination and estimated viewership numbers demonstrated a likelihood of contributing to public understanding of government operations and activities).

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC has frequently disseminated newsworthy information to the public for free, and does not intend to resell the information requested here. NRDC's more than one million members and online activists are a "broad audience of persons interested in the subject" of the transition of power at ENRD, and when combined with NRDC's communications to the public at large, the likely audience of interested persons to be reached is certainly "reasonably broad." 28 C.F.R. § 16.10(k)(2)(iii). As NRDC's long history of incorporating information obtained through FOIA into reports, articles, and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information collected from this FOIA request through many channels. As of June 2016, these include, but are not limited to the following:

- NRDC's website, available at <http://www.nrdc.org> (homepage at Att. 1), is updated daily and draws approximately 1.3 million page views and 510,000 unique visitors per month. The new NRDC.org launched in late March 2016 and features NRDC staff blogs, original reporting of environmental news stories, and more.
- NRDC's Activist email list includes more than 2.1 million members and online activists who receive regular communications on urgent environmental issues. (sample email at Att. 2) This information is also made available through NRDC's online Action Center at <https://www.nrdc.org/actions> (Att. 3).
- *NRDC This Week* is a weekly electronic environmental newsletter distributed by email to more than 86,700 subscribers, at <http://www.nrdc.org/newsletter> (Att. 4).
- NRDC updates and maintains several social media accounts: Facebook (565,530 followers) (Att. 5), Twitter (195,426 followers) (Att. 6), Instagram (37,868 followers) (Att. 7), YouTube (19,518 subscribers) (Att. 8), and LinkedIn (9,108 followers) (Att. 9). We also use Medium as another distribution channel for our content (1,478 followers).

NRDC issues press releases, issue papers, and reports; directs and produces movies, such as *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*, narrated by Rachel McAdams, Robert Redford, and Sigourney Weaver, respectively; participates in press conferences and interviews with reporters

and editorial writers; distributes content on Huffington Post (Att. 10); and has more than fifty staff members dedicated to communications work.

NRDC employees provide Congressional testimony; appear on television, radio, and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. A few examples are provided below:

- Research article, “The requirement to rebuild US fish stocks: Is it working?” *Marine Policy*, July 2014 (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell) (Att. 11);
- Issue brief, “The Untapped Potential of California’s Water Supply: Efficiency, Reuse, and Stormwater,” June 2014 (co-authored by NRDC Water Program Senior Attorney Kate Poole and Senior Policy Analyst Ed Osann) (Att. 12); *see also* “Saving Water in California,” *N.Y. Times*, July 9, 2014 (discussing the report’s estimates) (Att. 13);
- Article, “Waves of phony charges over new clean water safeguards,” *The Hill*, June 17, 2014 (by NRDC Executive Director Peter Lehner) (Att. 14);
- Article, “Don’t Buy the Smear of the EPA,” *L.A. Times*, June 3, 2014 (by NRDC President Frances Beinecke) (Att. 15);
- Transcript, “Conservationists Call For Quiet: The Ocean Is Too Loud!” Nat’l Pub. Radio, *All Things Considered*, July 28, 2013 (featuring NRDC Marine Mammal Protection Program Director Michael Jasny) (Att. 16);
- Testimony of David Doniger, NRDC Climate and Air Program Policy Director and Senior Attorney, before the United States House Subcommittee on Energy and Power, June 19, 2012 (Att. 17);
- Article, “Pollution Still a Hazard to U.S. Beaches,” CBS, *CBS NEWS*, July 29, 2009 (featuring former NRDC Water Program Co-Director Nancy Stoner) (Att. 18);
- Conference brochure, “World Business Summit on Climate Change,” May 24-26, 2009 (featuring former NRDC Director for Market Innovation Rick Duke at 9) (Att. 19);
- Article, “Is there a ‘proper level’ of compliance with environmental law?” *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall) (Att. 20);
- NRDC Document Bank, <http://docs.nrdc.org/> (Att. 21).

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air quality. Some specific examples are provided below:

- (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).²

As these examples demonstrate, NRDC has a proven ability to digest, synthesize, and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. Therefore, the requested records disclosure is likely to contribute to the public's understanding of the subject.

4. *Significance of the contribution to public understanding*

The records requested shed light on a matter of considerable public interest and concern: the transition of power at ENRD and the communications between the President-elect's transition team and ENRD staff.

Public understanding of the transition would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the transition and determine whether there have been requests such as the one made to the Department of Energy staff regarding involvement in climate-change issues. Disclosure would also help the public to better understand and evaluate ENRD's response to any such requests. Thus, disclosure here would significantly contribute to the public's understanding of government operations or activities. See 28 C.F.R. § 16.10(k)(2)(iv).

² There are numerous other examples of national news articles that were based in part on documents NRDC obtained through FOIA. See, e.g., Felicity Barringer, "Science Panel Issues Report on Exposure to Pollutant," *N.Y. Times*, Jan. 11, 2005 (Att. 37); Katharine Q. Seelye, "Draft of Air Rule is Said to Exempt Many Old Plants," *N.Y. Times*, Aug. 22, 2003 (Att. 38); Don Van Natta, Jr., "E-Mail Suggests Energy Official Encouraged Lobbyist on Policy," *N.Y. Times*, Apr. 27, 2002 (Att. 39).

B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 28 C.F.R. § 16.10(k)(3). NRDC is a not-for-profit organization and does not act as a middleman to resell information obtained under FOIA. “Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requesters.’” *Rossotti*, 326 F.3d at 1312 (internal citation omitted); see *Natural Res. Def. Council v. United States Env’t. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing, and disclosing newsworthy and presently non-public information about the transition. As noted at Part II.A, any work done by ENRD on the transition relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the transition.

C. NRDC Is a Media Requester

Even if ENRD denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and ENRD’s FOIA regulations, 28 C.F.R. § 16.10(c)(1), (d)(1); see also 28 C.F.R. § 16.10(b)(6) (defining “[r]epresentative of the news media”). A representative of the news media is “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii); see also *Elec. Privacy Info. Ctr. v. Dep’t of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a “non-profit public interest organization” qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep’t of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (Att. 40) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described earlier in this request, NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>. Previously, NRDC published stories like these in its magazine, *OnEarth*, which has won numerous news media awards, including the Independent Press Award for Best Environmental Coverage and for General Excellence, a Gold Eddie Award for editorial excellence among magazines, and the Phillip D. Reed Memorial Award for Outstanding Writing on the Southern Environment. NRDC also publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. See 28 C.F.R. § 16.10(b) (“Examples of news media entities include . . . publishers of periodicals.”). NRDC maintains a significant additional communications presence on the internet through its staff blogs on <http://www.nrdc.org>, which are updated regularly and feature writing about current environmental issues, through daily news messaging on “Twitter” and “Facebook,” and through content distributed to outlets such as Medium. See OPEN

Government Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that “as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities”). The aforementioned publications and media sources routinely include information about current events of interest to the readership and the public. To publish and transmit this news content, NRDC employs more than fifty staff members dedicated full-time to communications with the public, including accomplished journalists and editors. These staff members rely on information acquired under FOIA and through other means. Public interest organizations meeting the requirements “are regularly granted news representative status.” *Serv. Women’s Action Network v. Dep’t of Def.*, 888 F. Supp. 2d 282, 287-88 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union).³

Information obtained as a result of this request will, if appropriately newsworthy, be synthesized with information from other sources and used by NRDC to create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of NRDC’s publications or other suitable media channels. NRDC staff gather information from a variety of sources—including documents provided pursuant to FOIA requests—to write original articles and reports that are featured on its website, in its newsletters and blogs, and on other media outlets. *See Cause of Action v. Fed. Trade Comm’n*, 961 F. Supp. 2d 142, 163 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it “distributes work to an audience and is especially organized around doing so”). NRDC seeks the requested records to aid its own news-disseminating activities by obtaining, analyzing, and distributing information likely to contribute significantly to public understanding, not to resell the information to other media organizations.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, NRDC will, if necessary and under protest, pay fees in accordance with ENRD’s FOIA regulations for all or a portion of the requested records. *See* 28 C.F.R. § 16.10. Please contact me before doing anything that would cause the fee to exceed \$250. NRDC reserves its rights to seek administrative or judicial review of any fee waiver denial.

IV. Conclusion

Please email or (if it is not possible to email) mail the requested records to me at the NRDC office address listed below. Please send them on a rolling basis; ENRD’s search for—or deliberations concerning—certain records should not delay the production of others that ENRD has already retrieved and elected to produce. *See generally* 28 C.F.R. § 16.5-16.6. If ENRD concludes that any of the records requested here are publicly available, please let me know.

³ To be a representative of the news media, an organization need not *exclusively* perform news gathering functions. If that were required, major news and entertainment entities like the National Broadcasting Company (NBC) would not qualify as representatives of the news media. This country has a long history, dating back to its founding, of news organizations engaging in public advocacy.

Please do not hesitate to call or email with questions.

Thank you.

Sincerely,

Jaclyn H. Prange
Staff Attorney
Natural Resources Defense Council, Inc.
111 Sutter St., 21st Floor
San Francisco, CA 94104
jprange@nrdc.org
415-875-6184

Enclosures: Attachments 1 through 40 (sent via two emails)

Tracking Number	Type	Requester	Requester Organization	Submitted
DOC-NOAA-2017-001436	Request	Susan Swartz		06/27/2017
DOC-NOAA-2017-001435	Request	Nathan Eagle	Honolulu Civil Beat	06/27/2017
DOC-NOAA-2017-001431	Request	Margaret Townsend		06/27/2017
DOC-NOAA-2017-001426	Referral	William W. Sapp	Southern Environmental Law Center	06/26/2017
DOC-NOAA-2017-001421	Request	Russ Kick		06/25/2017
DOC-NOAA-2017-001420	Request	Russ Kick		06/25/2017
DOC-NOAA-2017-001419	Request	Russ Kick		06/25/2017
DOC-NOAA-2017-001413	Request	Daniel Seligman		06/22/2017
DOC-NOAA-2017-001412	Request	Daniel Seligman		06/22/2017
DOC-NOAA-2017-001411	Request	Margaret Townsend		06/22/2017
DOC-NOAA-2017-001409	Request	Austin R. Evers	American Oversight	06/22/2017

Custom Report - 06/28/2017 09:00:1'

Received	Assigned To	Case File	Assigned To	Perfect?	Due	Closed Date
06/28/2017	NOAA	NOAA		No	TBD	TBD
06/28/2017	NOAA	NOAA		No	TBD	TBD
06/27/2017	NOAA	NOAA		No	TBD	TBD
06/26/2017	NOAA	NOAA		Yes	07/25/2017	TBD
06/26/2017	NOAA	NOAA		No	TBD	TBD
06/26/2017	NOAA	NOAA		No	TBD	TBD
06/26/2017	NOAA	NOAA		No	TBD	TBD
06/23/2017	NOAA	NOAA		No	TBD	TBD
06/23/2017	NOAA	NOAA		No	TBD	TBD
06/23/2017	NOAA	NOAA		No	TBD	TBD
06/22/2017	NOAA	NOAA		No	TBD	TBD

1

Status	Dispositions
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Submitted

Submitted

Assignment Determination

Initial Evaluation

Submitted

Submitted

Submitted

Submitted

Submitted

Submitted

Submitted

Detail

Investigation on NOAA Ship Fairweather into a pattern of harrassment in the Steward Dept. February through April
Hi, I'd like to request the 2017 nomination packets of the six nominees submitted by the Hawaii governor's office to
The Center requests the following records from the U.S. Department of Commerce ("DOC") from April 1, 2017 to t
REFERRAL FROM USACE: Southern Environmental Law Center (SELC) requests all documents in the possessio
According to the document "Vessel Strike Avoidance Measures and Reporting for Mariners" from NMF
I hereby request all Marine Mammal Stranding Report forms (NOAA Form 89-864) that have been turned in to NM
The following webpage contains the annual "Large Whale Entanglement and Ship Strike Report" for 20
All e-mails (including attachments) between the NOAA Fisheries Northwest Fisheries Science Center in Seattle, W
All e-mails (including attachments) between the NOAA Fisheries office in Portland, Oregon, and the Fish Passage
The Center requests from the National Marine Fisheries Service ("NMFS") all records generated in connection with
Please see attached. COMM-17-0190.

[REDACTED]
of 2017

to fill two at-large seats on the Western Pacific Regional Fishery Management Council that are set to become effective on the date of this search: 1. All records mentioning, including, and/or referencing the draft and/or final biological opinion or control of the U.S. Army Corps of Engineers Headquarters (the Corps) that relate to the reauthorization of the Southeast Region, when a vessel injures or kills a marine mammal, a "vessel strike reporting for the Southeast Region since July 1, 2016. Further, I ask that these documents be sent to me in any digital formats in which they are available (04-2008: <https://www.greateratlantic.fisheries.noaa.gov/whaletrp/plan/dissent/> 1) I hereby request all submittals to the Fish Passage Center (____@fpc.org) between January 1, 2015 and July 1, 2015, regarding juvenile fish passage on the Atlantic coast, and the Fish Passage Center (____@fpc.org) between January 1, 2015 and July 1, 2015, regarding juvenile fish passage on the Atlantic coast, and the issuance of incidental harassment authorizations for oil and gas seismic exploration in the Atlantic

ome open in August 2017. The nominees were: Tim Johns, Trisha Kehaulani Watson, 'Aulani Wilhelm, \n gical evaluation of chlorpyrifos under the Endangered Species Act, 16 U.S.C. §§ 1531-1544 (' ition of the Nationwide Permits. We are particularly interested in obtaining the proposed decision docum 'm" must be filed. [http://sero.nmfs.noaa.gov/protected_resources/section_7/guidance_docs/docur they exist. Under the terms of the E-FOIA Amendments of 1996, Section 5, if a document exists in elect sequent reports (or their equivalent). That is, the reports for 2009 to present. 2) These reports appear to garding juvenile fish passage on the Snake River (including the fish transportation program, in-river pas he Snake River (including the fish transportation program, in-river passage, project spill and project by-ç Ocean under the Marine Mammal Protection Act, 16 U.S.C. §§ 1361-1389 ("MMPA"), from Ja

[REDACTED]

William Aila, Sol Kaho'ohalahala and Sean Martin. I'd also like to request the successful nomination pack ("ESA"); 2. All records mentioning, including, and/or referencing the draft and/or final biological evaluation report for the NWPs, as well as any supporting documents.

Documents/copy_of_vessel_strike_avoidance_february_2008.pdf] I hereby request all completed forms that if in electronic format, it must be released in that format upon request.

to cover the Atlantic / Eastern seaboard exclusively. I am also requesting the equivalent annual reports (annual reports, project spill and project by-pass).

by-pass). The FPC is a contractor of the Bonneville Power Administration.

from January 20, 2017 to the date of the search.

[REDACTED]

ackets for the 2014 appointments of Edwin Ebisui and Frederick McGrew Rice; the 2015 nomination package of malathion under the ESA; 3. All records mentioning, including, and/or referencing the draft and/or final rule have been sent to NMFS, including all regional offices, from January 1, 2017, to present. Further, I ask that you provide information about whale entanglements and/or ship strikes) for all other areas, such as the Pacific, Gulf of Mexico, and

ets for Michael Duenas and Michael Goto; and the 2016 nomination packets for Archie Soliai, Dean Sen:
ral biological evaluation of diazinon under ESA; 4. All records mentioning, including, and/or referencing t
rat these documents be sent to me in any digital formats in which they exist. Under the terms of the E-F
l-inclusive, etc., for 2000 to present. Further, I ask that these documents be sent to me in any digital forr

sui and Christinna Lutu Sanchez. Thanks, Nathan Eagle Honolulu Civil Beat
the draft and/or final biological opinion of chlorpyrifos under the ESA; 5. All records mentioning, including
OIA Amendments of 1996, Section 5, if a document exists in electronic format, it must be released in the
formats in which they exist. Under the terms of the E-FOIA Amendments of 1996, Section 5, if a document

), and/or referencing the draft and/or final biological opinion of malathion under the ESA; and 6. All records in electronic format upon request.

If a record exists in electronic format, it must be released in that format upon request. I believe that NMFS has two

ds mentioning, including, and/or referencing the draft and/or final biological opinion of diazinon under E5

positions titled Large Whale Disentanglement Coordinator and Ship Strike Coordinator. I believe they w

3A. Please note that this request does not apply to documents

ould be in the best position to know about these reports.

Maria Williams - NOAA Federal

From: Maria Williams - NOAA Federal
Sent: Thursday, June 29, 2017 11:37 AM
To: Ruth Ann Lowery - NOAA Federal
Cc: Mark Graff - NOAA Federal
Subject: Re: Appeal in BuzzFeed FOIA (2017-000613)
Attachments: GREY 579&613_2nd IR.pdf

This is what I copied from FO

(b)(5) (b)(5)

Respectfully,

Maria S. Williams

Property | NESDIS FOIA Liaison | Admin Officer | FAC-COR II

National Oceanic and Atmospheric Administration
Satellite and Information Service
Office of the Assistant Chief Information Officer
Phone: 202-308-4959

Follow NOAASatellites on Social Media: [Facebook](#), [Twitter](#), [YouTube](#)

"Talent wins games, but teamwork and intelligence wins championship"

On Thu, Jun 29, 2017 at 11:16 AM, Ruth Ann Lowery - NOAA Federal <ruthann.lowery@noaa.gov> wrote:

Thanks, Maria (b)(5) ?

Ruth Ann Lowery, Attorney-Advisor

NOAA Office of General Counsel

Fisheries & Protected Resources Section

1315 East-West Highway, SSMC III, Room 15114

Silver Spring, MD 20910

[\(301\)713-9671](tel:(301)713-9671)

Fax: [\(301\) 713-0658](tel:(301)713-0658)

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><(((o>`.,.,.·'~·.,.><(((o>.,.,.·'~·.,.,.><(((o>

From: Maria Williams - NOAA Federal [mailto:maria.williams@noaa.gov]
Sent: Thursday, June 29, 2017 11:14 AM
To: Ruth Ann Lowery - NOAA Federal <ruthann.lowery@noaa.gov>
Cc: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Subject: Re: Appeal in BuzzFeed FOIA (2017-000613)

Ruth Ann,

I have attached a grayed out version that was exported from clearwell.

Respectfully,

Maria S. Williams

Property | NESDIS FOIA Liaison | Admin Officer | FAC-COR II

National Oceanic and Atmospheric Administration

Satellite and Information Service

Office of the Assistant Chief Information Officer

Phone: [202-308-4959](tel:202-308-4959)

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"Talent wins games, but teamwork and intelligence wins championship"

On Thu, Jun 29, 2017 at 10:27 AM, Ruth Ann Lowery - NOAA Federal <ruthann.lowery@noaa.gov> wrote:

Good morning.

I have been contacted by Kathy McClure in DOC GC (b)(5)

Ruth Ann

Ruth Ann Lowery, Attorney-Advisor

NOAA Office of General Counsel

Fisheries & Protected Resources Section

1315 East-West Highway, SSMC III, Room 15114

Silver Spring, MD 20910

[\(301\)713-9671](tel:(301)713-9671)

Fax: [\(301\) 713-0658](tel:(301)713-0658)

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Ruth Ann Lowery - NOAA Federal

From: Ruth Ann Lowery - NOAA Federal
Sent: Thursday, June 29, 2017 2:19 PM
To: cathy.mcclure@doc.gov
Cc: Mark Graff - NOAA Federal
Subject: FW: Appeal in BuzzFeed FOIA (2017-000613)
Attachments: GREY 579&613_2nd IR.pdf

Hi, Cathy,

Thanks so much for your call today. As we discusse (b)(5)

[REDACTED]

[REDACTED]

[REDACTED]

I'd be happy to discuss the context and background for this request, including the scientific deliberative process that was at issue, at your convenience.

Ruth Ann

Cc: Mark Graff, NOAA FOIA Officer

Ruth Ann Lowery, Attorney-Advisor
NOAA Office of General Counsel
Fisheries & Protected Resources Section
1315 East-West Highway, SSMC III, Room 15114
Silver Spring, MD 20910
(301)713-9671
Fax: (301) 713-0658

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From: Maria Williams - NOAA Federal [mailto:maria.williams@noaa.gov]
Sent: Thursday, June 29, 2017 11:37 AM
To: Ruth Ann Lowery - NOAA Federal <ruthann.lowery@noaa.gov>
Cc: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Subject: Re: Appeal in BuzzFeed FOIA (2017-000613)

This is what I copied from FOL (b)(5)

[REDACTED]

[REDACTED]

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Respectfully,

Maria S. Williams

Property|NESDIS FOIA Liaison |Admin Officer|FAC-COR II

National Oceanic and Atmospheric Administration

Satellite and Information Service

Office of the Assistant Chief Information Officer

Phone: 202-308-4959

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"Talent wins games, but teamwork and intelligence wins championship"

On Thu, Jun 29, 2017 at 11:16 AM, Ruth Ann Lowery - NOAA Federal <ruthann.lowery@noaa.gov> wrote:

Thanks, Maria. Do you have access to their notice of appeal letter?

Ruth Ann Lowery, Attorney-Advisor
NOAA Office of General Counsel
Fisheries & Protected Resources Section
1315 East-West Highway, SSMC III, Room 15114
Silver Spring, MD 20910
[\(301\)713-9671](tel:(301)713-9671)
Fax: [\(301\) 713-0658](tel:(301)713-0658)

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From: Maria Williams - NOAA Federal [mailto:maria.williams@noaa.gov]
Sent: Thursday, June 29, 2017 11:14 AM
To: Ruth Ann Lowery - NOAA Federal <ruthann.lowery@noaa.gov>
Cc: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Subject: Re: Appeal in BuzzFeed FOIA (2017-000613)

Ruth Ann,

I have attached a grayed out version that was exported from clearwell.

Respectfully,

Maria S. Williams

Property|*NESDIS FOIA Liaison*|*Admin Officer*|*FAC-COR II*

National Oceanic and Atmospheric Administration

Satellite and Information Service

Office of the Assistant Chief Information Officer

Phone: [202-308-4959](tel:202-308-4959)

Follow NOAA Satellites on Social Media: [Facebook](#), [Twitter](#), [YouTube](#)

"Talent wins games, but teamwork and intelligence wins championship"

On Thu, Jun 29, 2017 at 10:27 AM, Ruth Ann Lowery - NOAA Federal <ruthann.lowery@noaa.gov> wrote:

Good morning.

I have been contacted by Kathy McClure in DOC GC (b)(5)

[Redacted]

Ruth Ann

Ruth Ann Lowery, Attorney-Advisor
NOAA Office of General Counsel
Fisheries & Protected Resources Section
1315 East-West Highway, SSMC III, Room 15114
Silver Spring, MD 20910
[\(301\)713-9671](tel:3017139671)
Fax: [\(301\) 713-0658](tel:3017130658)

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Stacey Nathanson - NOAA Federal

From: Stacey Nathanson - NOAA Federal
Sent: Thursday, July 6, 2017 1:59 PM
To: Caroline Park; Samuel Dixon; Mark Graff - NOAA Federal; Robert Hogan - NOAA Federal
Subject: Fwd: Did you see this?

FYI. I haven't read the complaint yet, but we should probably discuss.

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

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

From: Kristin Rusello - NOAA Federal <kristin.rusello@noaa.gov>
Date: Thu, Jul 6, 2017 at 1:54 PM
Subject: Did you see this?
To: Stacey Nathanson <stacey.nathanson@noaa.gov>

Watchdog alleges agency hiding instant messages

Kevin Bogardus, E&E News reporter
Published: Thursday, July 6, 2017

A conservative-leaning watchdog group is suing the National Oceanic and Atmospheric Administration over failing to respond to its public records requests.

In a **complaint** filed yesterday in the U.S. District Court for the District of Columbia, the Cause of Action Institute took NOAA to task for not providing records in response to two of the group's Freedom of Information Act requests.

Further, Cause of Action alleges that guidance from NOAA's general counsel tells agency employees to consider instant messages sent through Google Chat or Google Hangouts as "off the record" and not to be recorded, which would run afoul of FOIA and the Federal Records Act.

Through its lawsuit, the group is seeking a copy of that guidance as well as communications sent or received by employees of NOAA's National Marine Fisheries Service during a New England Fishery Management Council meeting this April.

In a statement on the group's complaint, Cause of Action Institute Vice President Julie Smith said, "NOAA appears to have created an internal messaging platform to hide records from public disclosure."

"Any directive to make certain communications be considered 'off-the-record' clearly violates transparency laws. Americans have a right to know how decisions are made that could jeopardize their livelihoods," Smith said.

Cause of Action has tangled with NOAA before, especially over the agency's requirement that fishermen pay for at-sea monitors. In 2015, the group filed a lawsuit on behalf of fishermen over the program ([Greenwire](#), Dec. 10, 2015).

NOAA's at-sea monitor program has been controversial, attracting attention from Capitol Hill. Last year, the agency said it would partially reimburse fishermen for the costs ([Greenwire](#), June 23, 2016).

Ana Liza Malabanan - NOAA Federal

From: Ana Liza Malabanan - NOAA Federal
Sent: Thursday, July 6, 2017 7:30 PM
To: Laurie Beale - NOAA Federal
Cc: Samuel Dixon - NOAA Affiliate; Lola Stith - NOAA Affiliate; Mark Graff - NOAA Federal; Doug Chow
Subject: NFIP Litigation - Amendment to FOIA DOC-NOAA-2016-001479
Attachments: 7-06-2017 version - amended Partial Grant FAL DOC-NOAA-2016-001479 revised per LKB.docx; Amended 16-1479 per DOJ-GCNW.xlsx

Hi Laurie,

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I will schedule a call for tomorrow and invite Sam Dixon (NMFS FOIA) and Lola Stith (NOAA FOIA for Mark, who I think is out tomorrow).

Thanks!

Ana Liza

--

Ana Liza S. Malabanan
Freedom of Information Act (FOIA) Coordinator
Information Services and Management Branch
Operations, Management & Information Division
NOAA Fisheries West Coast Region

U.S. Department of Commerce
Office: 562-980-4008



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Lola Stith - NOAA Affiliate

From: Lola Stith - NOAA Affiliate
Sent: Monday, July 10, 2017 7:06 AM
To: Mark Graff - NOAA Affiliate
Subject: June 2017 FOIA Monthly Report (DRAFT FOR YOUR REVIEW/APPROVAL)
Attachments: FOIA Monthly Status Report 06-30-2017.xlsx; FOIA Monthly Status Report 06-30-2017.pdf; Backlog - Jun 2017.xls; Incoming - Jun 2017.xls; Closed - Jun 2017.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

Tracking Number	Type	Requester	Submitted
DOC-NOAA-2017-000298	Request	Charles Mouton	11/30/2016
DOC-NOAA-2015-001484	Request	Richard Knudsen	06/29/2015
DOC-NOAA-2015-001485	Request	Richard Knudsen	06/29/2015
DOC-NOAA-2015-001487	Request	Richard Knudsen	06/29/2015
DOC-NOAA-2017-000580	Request	Bill Marshall	02/08/2017
DOC-NOAA-2017-000613	Request	Dan Vergano	02/07/2017
DOC-NOAA-2017-000579	Request	Emily Yehle	02/08/2017
DOC-NOAA-2016-000351	Request	Bill Marshall	10/30/2015
DOC-NOAA-2017-001238	Request	Dale Perkins	05/19/2017
DOC-NOAA-2017-001200	Request	Meera Gajjar	05/11/2017
DOC-NOAA-2017-001038	Request	Sean Sherman	04/17/2017
DOC-NOAA-2017-001264	Request	Mirabai H. Galashan	05/23/2017
DOC-NOAA-2017-001217	Request	Nathan Eagle	05/16/2017
DOC-NOAA-2017-001219	Request	Nathan Eagle	05/16/2017
DOC-NOAA-2017-001130	Request	Nicholas Patton	05/01/2017
DOC-NOAA-2017-001195	Request	David Gotfredson	05/10/2017
DOC-NOAA-2017-000994	Request	Mariel Combs	04/10/2017
DOC-NOAA-2017-001068	Request	Zeenat Mian	04/21/2017
DOC-NOAA-2017-000539	Referral	Jamie Pang	01/30/2017
DOC-NOAA-2017-000865	Request	Zeenat Mian	03/23/2017
DOC-NOAA-2017-000986	Request	Tristan R. Armer	04/10/2017
DOC-NOAA-2017-000744	Request	Zeenat Mian	03/08/2017
DOC-NOAA-2017-000304	Request	Bryn Blomberg	11/30/2016
DOC-NOAA-2017-000615	Request	Russ Rector	02/07/2017
DOC-NOAA-2017-000342	Request	Ryan P. Mulvey	12/13/2016
DOC-NOAA-2017-000170	Request	Kara McKenna	11/09/2016
DOC-NOAA-2017-000195	Request	Thomas Knudson	11/17/2016
DOC-NOAA-2016-001214	Request	bruce weyhrauch	05/27/2016
DOC-NOAA-2016-001762	Request	Thomas Knudson	09/14/2016
DOC-NOAA-2016-001751	Request	Thomas Knudson	09/14/2016
DOC-NOAA-2016-001763	Request	Thomas Knudson	09/14/2016
DOC-NOAA-2016-001390	Request	Jennie Frost	07/05/2016
DOC-NOAA-2016-001299	Request	Thomas Knudson	06/15/2016
DOC-NOAA-2016-001533	Request	J W August	07/27/2016
DOC-NOAA-2016-001326	Request	Thomas Knudson	06/21/2016
DOC-NOAA-2016-000959	Request	Office Administrator	04/12/2016
DOC-NOAA-2016-000423	Request	Ryan P. Mulvey	12/21/2015
DOC-NOAA-2016-000807	Request	Basil Scott	03/16/2016
DOC-NOAA-2015-001860	Request	Delcianna Winders	09/04/2015
DOC-NOAA-2016-000603	Request	Margaret Townsend	02/10/2016
DOC-NOAA-2016-000094	Request	Josh Schopf	10/14/2015
DOC-NOAA-2014-001474	Request	Eric Huber	08/12/2014
DOC-NOAA-2015-000295	Request	Office Administrator	11/21/2014
DOC-NOAA-2015-000190	Request	Miyo Sakashita	11/02/2014
DOC-NOAA-2017-000438	Request	Claudia Lucio	01/11/2017
DOC-NOAA-2017-000299	Request	Chris Hogan	11/30/2016
DOC-NOAA-2017-000204	Request	Belinda Brannon	11/21/2016
DOC-NOAA-2016-001743	Request	John Greenewald	09/12/2016
DOC-NOAA-2017-000384	Request	Marshall R. Morales	01/03/2017
DOC-NOAA-2017-001161	Request	Karen MacDonald	05/04/2017
DOC-NOAA-2017-000414	Request	Arnold & Porter Kaye Scholer LLP	01/09/2017

DOC-NOAA-2016-001599	Request Machelie R. Hall	08/12/2016
DOC-NOAA-2016-000192	Request John Ferro	11/03/2015
DOC-NOAA-2015-000706	Request Megan R. Wilson	02/18/2015
DOC-NOAA-2017-001059	Request Richard Hirn	04/18/2017
DOC-NOAA-2017-001055	Request Richard Hirn	04/17/2017
DOC-NOAA-2017-000768	Request Julio C. Gomez	03/10/2017
DOC-NOAA-2017-000912	Request James Renaldi	03/29/2017
DOC-NOAA-2017-000186	Request Elizabeth Nowicki	11/16/2016
DOC-NOAA-2016-001403	Request Ivria Fried	07/07/2016
DOC-NOAA-2017-000058	Request Christopher T. Clack	10/13/2016
DOC-NOAA-2017-000034	Request Christopher T. Clack	10/11/2016
DOC-NOAA-2017-000794	Request Jared E. Knicley	03/14/2017
DOC-NOAA-2017-001101	Request Ryan P. Mulvey	04/27/2017
DOC-NOAA-2017-001163	Request Jacqueline Iwata	05/05/2017
DOC-NOAA-2017-000917	Request James Renaldi	03/30/2017
DOC-NOAA-2017-001220	Request Nathan Eagle	05/16/2017
DOC-NOAA-2017-001079	Request Austin R. Evers	04/24/2017
DOC-NOAA-2017-001007	Request Seth Borenstein	03/31/2017
DOC-NOAA-2017-000846	Request Elizabeth N. Moran	03/16/2017
DOC-NOAA-2017-000845	Request Elizabeth N. Moran	03/16/2017
DOC-NOAA-2016-001346	Request Tammy Murphy	06/10/2016

Assigned To	Due	Days Backlogged
AGO	01/13/2017	79
AGO	10/08/2015	438
AGO	10/08/2015	438
AGO	07/31/2015	486
NESDIS	04/05/2017	66
NESDIS	03/29/2017	71
NESDIS	03/24/2017	74
NESDIS	01/14/2016	373
NMFS	07/12/2017	3
NMFS	06/30/2017	5
NMFS	05/16/2017	9
NMFS	06/23/2017	10
NMFS	06/20/2017	13
NMFS	06/20/2017	13
NMFS	06/23/2017	15
NMFS	06/16/2017	15
NMFS	05/09/2017	26
NMFS	06/01/2017	26
NMFS	03/01/2017	30
NMFS	05/08/2017	39
NMFS	05/09/2017	42
NMFS	04/06/2017	65
NMFS	01/13/2017	75
NMFS	03/15/2017	81
NMFS	02/03/2017	98
NMFS	01/05/2017	128
NMFS	12/30/2016	131
NMFS	07/31/2017	164
NMFS	11/10/2016	164
NMFS	10/28/2016	173
NMFS	10/27/2016	174
NMFS	10/14/2016	193
NMFS	07/20/2016	201
NMFS	08/29/2016	215
NMFS	07/26/2016	239
NMFS	05/25/2016	274
NMFS	02/04/2016	275
NMFS	05/04/2016	283
NMFS	10/23/2015	287
NMFS	03/15/2016	325
NMFS	02/18/2016	359
NMFS	09/10/2014	452
NMFS	12/24/2014	629
NMFS	12/05/2014	642
NOAA FOIA	02/24/2017	94
NOAA FOIA	01/13/2017	122
NOAA FOIA	12/30/2016	124
NOAA FOIA	10/13/2016	184
NOS	02/24/2017	9
NOS	06/16/2017	12
NOS	03/07/2017	64

NOS	09/29/2016	169
NOS	12/04/2015	400
NOS	10/13/2015	580
NWS	05/19/2017	1
NWS	05/17/2017	3
NWS	04/12/2017	27
NWS	05/08/2017	38
NWS	12/15/2016	141
NWS	08/12/2016	226
OAR	11/25/2016	15
OAR	11/09/2016	18
OC	04/17/2017	58
OGC	06/16/2017	15
OGC	06/16/2017	15
OMAO	05/08/2017	38
USEC	06/22/2017	11
USEC	06/16/2017	15
USEC	05/09/2017	42
USEC	04/18/2017	57
USEC	04/13/2017	60
WFMO	08/31/2016	213

Tracking Number	Type	Requester
DOC-NOAA-2017-001252	Request	Karen Markin
DOC-NOAA-2016-001241	Request	Shomari B. Wade
DOC-NOAA-2017-000965	Request	Sandra K. Stewart
DOC-NOAA-2016-001775	Request	Ehsan Naranji
DOC-NOAA-2017-000169	Request	Kara McKenna
DOC-NOAA-2017-001191	Request	Kris Hutchison
DOC-NOAA-2016-001094	Request	Anthony Arguez
DOC-NOAA-2017-001362	Request	John Whiteside
DOC-NOAA-2017-001355	Request	Matthew Owens
DOC-NOAA-2017-001354	Request	Matthew Owens
DOC-NOAA-2017-001392	Request	Gabe Flick
DOC-NOAA-2016-001270	Request	scott A. doyle
DOC-NOAA-2017-001318	Request	Chris Saeger
DOC-NOAA-2017-001314	Request	Michael S. Warren
DOC-NOAA-2017-001265	Request	Mirabai H. Galashan
DOC-NOAA-2017-001164	Request	John R. Leek
DOC-NOAA-2017-001192	Request	KENNETH KNOBLOCK
DOC-NOAA-2017-001084	Request	Nathan Eagle
DOC-NOAA-2017-001003	Request	Amy Haddow
DOC-NOAA-2017-000993	Request	Anna Crowder
DOC-NOAA-2017-000834	Request	Shannon M. Cremeans
DOC-NOAA-2017-000811	Request	Christopher Hudak
DOC-NOAA-2017-000737	Request	Matthew Johnston
DOC-NOAA-2017-000596	Request	Adam Carlesco
DOC-NOAA-2016-001582	Request	Amy Gaskins
DOC-NOAA-2017-001438	Request	Christine N. Walz
DOC-NOAA-2017-001437	Request	Christine N. Walz
DOC-NOAA-2017-001319	Request	Chris Saeger
DOC-NOAA-2017-001282	Request	David Petersen
DOC-NOAA-2017-001247	Request	Dan Vergano (Matt Schafer)
DOC-NOAA-2017-001030	Request	Bob Hepler
DOC-NOAA-2017-000881	Request	Radu Munteanu
DOC-NOAA-2017-001393	Request	Scott Noya
DOC-NOAA-2017-001332	Request	Alexandra N. Copeland
DOC-NOAA-2017-000535	Request	John Ullom
DOC-NOAA-2017-000844	Request	Benjamin Levitan
DOC-NOAA-2017-000187	Request	Elizabeth Nowicki

Requester Organization	Submitted	Received	Case File Assigned To
	05/23/2017	05/23/2017	AGO
TROUTMAN SANDERS LLP	05/18/2016	05/18/2016	AGO
Global Science & Technology Inc.	04/06/2017	04/06/2017	AGO
ENFA Corporation	09/19/2016	09/19/2016	CAO
Cause of Action	11/09/2016	11/09/2016	LA
Aviation Spectrum Resources, Inc.	05/09/2017	05/09/2017	NESDIS
NOAA	05/02/2016	05/02/2016	NESDIS
Sustainable Fisheries Assoc.	06/13/2017	06/13/2017	NMFS
Tri Marine	06/12/2017	06/13/2017	NMFS
Tri Marine	06/12/2017	06/13/2017	NMFS
	06/12/2017	06/12/2017	NMFS
	06/08/2016	06/08/2016	NMFS
Western Values Project	06/07/2017	06/07/2017	NMFS
NJ Advance Media	06/07/2017	06/07/2017	NMFS
	05/23/2017	05/24/2017	NMFS
San Diego Council of Divers	05/07/2017	05/08/2017	NMFS
	05/02/2017	05/02/2017	NMFS
Honolulu Civil Beat	04/25/2017	04/26/2017	NMFS
Cruise Line Agencies of Alaska	04/11/2017	04/11/2017	NMFS
SOUTHERN ENVIRONMENTAL LAW CENTER	03/27/2017	03/27/2017	NMFS
	03/19/2017	03/20/2017	NMFS
Environmental Advocates	03/15/2017	03/16/2017	NMFS
Lewis Brisbois Bisgaard & Smith LLP	03/07/2017	03/07/2017	NMFS
Public Employees for Environmental Responsibility (PEER)	02/02/2017	02/02/2017	NMFS
	08/09/2016	08/10/2016	NOAA FOIA
Holland & Knight, LLP	06/28/2017	06/28/2017	NOAA FOIA
Holland & Knight, LLP	06/28/2017	06/28/2017	NOAA FOIA
Western Values Project	06/07/2017	06/07/2017	NOAA FOIA
	05/30/2017	05/30/2017	NOAA FOIA
BuzzFeed	05/22/2017	05/22/2017	NOAA FOIA
	04/14/2017	04/14/2017	NOAA FOIA
	03/28/2017	03/28/2017	NOAA FOIA
Daley and Heft	06/13/2017	06/13/2017	NOS
Fowler White Burnett	06/07/2017	06/07/2017	NOS
	01/18/2017	01/18/2017	NOS
Environmental Defense Fund	03/20/2017	03/20/2017	OC
	11/16/2016	11/16/2016	WFMO

Perfected?	Due	Closed Date	Status	Dispositions
Yes	06/22/2017	06/19/2017	Closed	Full grant
Yes	06/30/2016	06/28/2017	Closed	Request withdrawn
Yes	05/09/2017	06/28/2017	Closed	Partial grant/partial denial
Yes	11/01/2016	06/30/2017	Closed	Other - Admin close - still interested letter
Yes	01/05/2017	06/14/2017	Closed	Other - Aggregate cases
Yes	06/07/2017	06/21/2017	Closed	Partial grant/partial denial
Yes	07/20/2016	06/21/2017	Closed	Partial grant/partial denial
Yes	07/27/2017	06/28/2017	Closed	Full grant
Yes	07/13/2017	06/30/2017	Closed	Full grant
Yes	07/13/2017	06/30/2017	Closed	Full grant
Yes	07/17/2017	06/20/2017	Closed	Duplicate request
Yes	08/03/2016	06/02/2017	Closed	Partial grant/partial denial
Yes	07/11/2017	06/14/2017	Closed	Duplicate request
Yes	07/21/2017	06/28/2017	Closed	Full grant
Yes	06/23/2017	06/01/2017	Closed	Full grant
Yes	06/30/2017	06/06/2017	Closed	Full grant
Yes	07/05/2017	06/28/2017	Closed	Request withdrawn
Yes	06/16/2017	06/07/2017	Closed	Full grant
Yes	05/31/2017	06/30/2017	Closed	Partial grant/partial denial
Yes	06/16/2017	06/13/2017	Closed	Partial grant/partial denial
Yes	05/17/2017	06/01/2017	Closed	Partial grant/partial denial
Yes	06/27/2017	06/14/2017	Closed	Full grant
Yes	04/06/2017	06/30/2017	Closed	Partial grant/partial denial
Yes	03/28/2017	06/14/2017	Closed	Partial grant/partial denial
Yes	10/28/2016	06/12/2017	Closed	Other - Admin close - no response from requester
No	TBD	06/30/2017	Closed	Improper FOIA request for other reason
No	TBD	06/30/2017	Closed	Improper FOIA request for other reason
Yes	07/11/2017	06/14/2017	Closed	Duplicate request
No	TBD	06/30/2017	Closed	Other - Admin close - no response from requester
Yes	06/20/2017	06/12/2017	Closed	Partial grant/partial denial
Yes	05/16/2017	06/23/2017	Closed	No records
Yes	05/08/2017	06/30/2017	Closed	Duplicate request
Yes	07/18/2017	06/30/2017	Closed	Other - Publicly available information
Yes	07/10/2017	06/27/2017	Closed	Full grant
Yes	02/27/2017	06/06/2017	Closed	Fee-related reason
Yes	05/17/2017	06/19/2017	Closed	No records
Yes	12/15/2016	06/28/2017	Closed	Partial grant/partial denial

Detail

Proposal titled "Archaeological oceanographic exploration of the Northern Black Sea and Eastern Aegean -- /

1. All contract and subcontract numbers and release numbers awarded by your agency to Ingram Micro, Inc. (&qu

We are requesting information under the Freedom of Information Act for NOAA SciTech Contract DOCDG133E12

A complete copy of all notes, correspondence, records, evidence, complaints, charges, research, analysis, memor

CoA Institute hereby requests access to the following records for the time period of January 1, 2014, to the present

****SCOPE CHANGE ON MAY 11, 2017 TO INCLUDE (E-MAILS)**** Any letters, written records, correspondence (in

The information requested pertains to hiring and personnel actions by the Department of Commerce (DOC) Nation

NOAA Office of Law Enforcement reports that were previously released to the public at the New England Fisheries

Fisheries data for US purse seine vessels fishing in the Western and Central Pacific Fisheries Commission (WCPF

Fisheries catch data for tuna caught by purse seine vessels in the Western and Central Pacific Fisheries Commiss

To Whom It Concerns - Under the Federal Freedom of Information Act, please provide copies of the following reco

I request copies of any records, written, electronic, emails, personal notes etc as it relates to these items. 1. Any C

I request access to and copies of any information used to inform the development of the following national monum

I am requesting annual reports from the NOAA Office of Law Enforcement's Northeast Division regarding the total

Transcript of NOAA public meeting September 8, 2016, 5:30-9:30 p.m. Kealakehe High School Cafeteria, 74-5000

This is to initiate an FOIA request for documents and correspondence sent to and from the South West Office of P

I am requesting the following documents: 1.) Any and all documents that contain data concerning population surve

I'm requesting: (1) a copy of the most recent agreement between Guam and Quota Management Inc., of Honolulu,

We are requesting a copy of findings from a National Marine Fisheries Service investigation into the death of a fin

All records regarding documented take (lethal or non-lethal) of threatened or endangered species associated with

I am writing to request copies of the application for import of (2) killer whales by Six Flags in 2001 Ref: Marine Man

UPDATE TO SCOPE: Narrow the request to exclude FYI emails, cc's, generic meeting scheduling, conference cal

This is a request under the Freedom of Information Act, 5 U.S.C. §552, et seq., and made pursuant to the inst

Each year, my organization submits requests under the Freedom of Information Act (5 U.S.C. 552, as amended) s

Revised request description 8/22 - Updated 9/15: I request that documents containing the following information be

Any aviation weather or turbulence information available for the 100nm radius around waypoint GTK on May 9, 201

Any aviation weather or turbulence information available for the 200nm radius around Crazy Woman VOR (CZI) on

Pursuant to the Freedom of Information Act, I request access to and copies of documents addressed or directed to

This is a request under the Freedom of Information Act (5 U.S.C. 552). I request that a copy of the following docum

Please consider this a request pursuant to FOIA for any and all records requested by Judicial Watch and currently

ASOS Operation and Monitoring Center had a long running website (<http://www3.amss.nws.noaa.gov/>), which wa

FOIA REQUEST Dear FOIA Officer: As a candidate for the following position: Job title: Grants Management Spec

This email communication is to request a copy of the georeferenced version of T-333 (an 1850-era survey of port

I am trying to access the public comments requested by the NOAA on September 26, 2013 regarding the "m

1: The permit issued for the 2015-2016 Season 2: The permit issued for the 2016-2017 Season 3: All written com

1) a copy of all Agency records related to climate change, including any information that pertains to monitoring or a

Please accept this e-mail as my request pursuant to FOIA for all e-mails, text-messages, or "pings" (e.g

Archaeological landscape surveys using AUV/ROV and sonar vehicles in the water. Awardee was
Ingram Micro (DUN 004919486) or any of Ingram Micro's subsidiary companies, including but not
CQ0021, Task Order DOCDG133E12CQ0021T0006, Atmospheric Science and Technology Application
anda, witness statements, reports, conclusions, and findings relating to any investigation of alleged misc
t: 1. All records or communications produced to the U.S. House of Representatives Committee on Natur
cluding but not limited to e-mails), documents and/or reports in whatever form, whether existing in hard
al Oceanic and Atmospheric Administration (NOAA) National Satellite and Information Service (NESDIS
Management Council public meetings between January 2016 through April 2017.

(C) convention area, broken down as follows. See attached spreadsheet. -Number of purse seine sets u
ion (WCPFC) convention area, broken down as follows. See attached spreadsheet. -Skipjack tuna caug
rds: For the time period of May 8, 2015 through May 8, 2017 all text messages, facsimiles and emails (li
omplaints or internal investigations that was conducted by the NOAA office of Professional Responsibilit
ent proclamations or expansions during the specified time periods: Northeast Canyons and Seamounts I
number of investigations between 2007 and 2016. I am always requesting any Office of Law Enforceme
Puohulihuli St., Kailua-Kona, HI 96740

rotected Resources in Long Beach (Ruvelas and Yates) and the San Diego office of the Director of Park
ys of the Vaquita 2.) Any and all documents that contain data concerning the by-catch mortalities of Vaq
that pertains to a quota-sharing agreement for bigeye tuna; (2) a copy of the most recent agreement be
whale in Resurrection Bay on May 29, 2016, when it was struck by the Zaandam, a Holland America crui
the Savannah Harbor Expansion Project, including but not limited to dredging activities; • All communica
nmals; File Application No. 1004-1656 & Permit No. 1004- 1656-00 I am requesting copies of all c
ll-in notifications, out of office automated responses and other generic non-informative records. -----
ructions of Elena Onaga, the Deputy Section Chief of NOAA's Office of General Counsel. I am and at al
eeking information from major federal agencies about the incidence of violence and threats against their
provided to me: - Any and all electronic communications from DOC, ESA staff (Economics and Statistic
16 from 18:00 EST to 24:00 EST.

August 11, 2016 from 16:00 EST to 23:00 EST.

the President of the United States that include recommendations regarding monument designation for i
ent be provided to me: a list of every construction project completed with your agency in the last 20 yea
subject to litigation in Judicial Watch, Inc. v. Dep't of Commerce, No. 15-cv-2088. This includes all recor
s available for access by the general public. This website was available for many years, however in early
alist (MAP) Agency: Department Of Commerce, National Oceanic and Atmospheric Administration Job e
ons of San Diego Bay), as recently posted on the NOAA Shoreline Data Explorer website. According to a
agenta line

unications, documents, memos, and emails regarding the surf contest. Limit response to Oct 1, 2016 fo
ddressing climate change, that appeared on the Agency's websites on January 19, 2017 but no longer a
j. SMS) that you (Ms. Desrosiers) sent or received regarding me (Elizabeth Nowicki) or the concerns the

[REDACTED]

Sea Research Foundation, Inc., of Connecticut. Start date, August 1, 2008. Award number NA08OAR4 not limited to Premark Technology, Inc. ("Premark") (DUN 074839986) since 2011. 2. All deli s awarded to IMSG. The original period of performance was 09/18/12 to 09/17/2017. The task order was :conduct by ENFA Corporation and/or Ehsan Naranji, including but not limited to any investigation of any al Resources in response to the Committee's October 7, 2015, document request (attached as Exhibit 1 copy, stored electronically, or otherwise recorded from the Under Secretary of Commerce for Oceans ar s). Specifically, information is requested from a predecessor agency known as the National Climatic Data

unassociated with fish aggregating devices by the Tri Marine fleet (f/v's Cape Ann, Cape Breton, Cape C ght by purse seine sets unassociated with fish aggregating devices by the Tri Marine fleet (f/v's Cape An ncluaing attachments) sent or received by: 1. Will Ellis, NOAA OLE, Alaska Division Assistant Director 2 y and NOAA OLE concerning Me, (Scott Doyle) in the years 2013, 2014, 2015, 2016 2. Any Records of Marine National Monument (01/01/14 – 12/31/16) Papahanaumokuakea Marine National Monument Ex nt reports providing analysis of trends in crimes and regulation violations during that time. I am hoping to

s and Recreation. Just during 2017, correspondence concerning placement, fabrication, intent, design, uita in the artisanal fishing fleet in the Sea of Cortez 3.) Any and all documents that contain data derived :etween American Samoa and Quota Management Inc., of Honolulu, that pertains to a quota-sharing agre ise ship en route to the port of Seward, Alaska. An article in the Alaska Dispatch News in late December tions or other records regarding potential adjustments to Endangered Species Act take limits for the Sav ocumentation, inventories, necropsy reports, correspondence, etc. associated with the Application and l ----- 1. Please provide any and all "documents" from l times relevant to this inquiry was the owner and operator of the SEA QUEEN II, a commercial fishing v :employees. Accordingly, Public Employees for Environmental Responsibility (PEER) now asks that, as :s Administration), and NOAA staff including appointees, involving the NOAA Big Data Project (also know

the National Monuments listed below, during the specified time periods: Northeast Canyons and Seam rs (1997-2017). Please include the name of the contractor that worked on the project, and the amount o ds previously produced to Judicial Watch in that litigation and referenced below in my May 16 correspor y April of 2017 it was taken offline. The website provided real-time open and closed trouble tickets in relc announcement number: SO-AGO-2016-0001 Series and Grade: GS-1109-09/12 and pursuant to the fed i May 9, 2017 email correspondence from NOAA employee Doug Graham to Matt Fossum at California

orward to the day this request is responded to. ppear, or were modified, as of January 20, 2017 or any date thereafter. This request encompasses, but at I raised to you. Please only search for materials sent or received by you (Ms. Desroiers) between Nov

gram Micro 's subsidiary companies, including but not limited to Premark. 3. The award amount in each
ing, MD 20910.

poration or Ehsan Naranji.

sentatives Committee on Natural Resources October 7, 2015, document request (attached as Exhibit 1
the Assistant Administrator, National Environmental Satellite, Data & Information Service (NESDIS) (for
The information requested is as follows (privacy information such as social security numbers may be sa

cent Gann) for 2014, 2015, and 2016. Number of instances of shark finning for these sets by year. -Nur
pe San Lucas, Capt Vincent Gann) for 2014, 2015, and 2016. We would like this by area- PNA waters, i
iger - NOAA, Alaska Regional Administrator 2. Robert D. Mecum - NOAA, Alaska Deputy Regional Adm
rce IG or OSY during the above time period. 3. Any Records that relate to New Paper Articles in the Balt
- 12/31/14) Marianas Trench Marine National Monument (01/01/2007 – 12/31/2009) Rose Atoll Marine I
r. I prefer that these records be delivered to me in an electronic format.

ne matters by citizen groups and/or California Fish and Wildlife.

the past 4.) Any and all documents that contain data cornering the sex, age, and reproductive populatio
Northern Mariana Islands and Quota Management Inc., of Honolulu, that pertains to a quota-sharing a
asked us for a copy of the report on which that article was based.

unications or other records regarding potential re-initiation of ESA consultation with the Army Corps of E
ssociated documentation for both.

did caus

contact information of all observers assigned to the SEA QUEEN II in August 1, 2009 - June 1, 2010 thro
e following records and/or documents concerning acts of violence or threats against National Oceanic a

5/2014 to 9/25/2014 Marianas Trench 7 /06/2008 to 1/06/2009 Rose Atoll 7 /06/2008 to 1/06/2009 This
know that I am an individual seeking information for personal use and not for a commercial use. I am will

ntation concerning the decision making process on why the website was removed from online access a
ssful candidate selected for hire, their resume submitted in application, education and experience histor
Shoreline Data Explorer application. Viewing the georeferenced position of T-333 in an overlay over NC

yperlink or other means, including web pages linking to climate and air quality information on White Ho
tronic device(s). Please spend no more than two hours searching for the responsive materials to this rec

[REDACTED]

of these contracts, subcontracts and related task/delivery orders. 4

to this FOIA request). 3. All records or communications responsive to the U.S. House of Representatives (or acting), or (2) the Deputy Administrator (or acting): 1. All documentation related to the hiring of

number of purse seine sets associated with fish aggregating devices by the Tri Marine International waters, US territorial waters, and all other areas. -Skipjack tuna cause of action. 3. Glenn G. Merrill - NOAA Administrator. Please refer to me (scott doyle) either directly or indirectly. This should include, but not be limited to, the period from 01/01/2007 to 12/31/2009.

on distribution of the Vaquero fishery management plan for bigeye tuna.

engineers for the Savannah Harbor Expansion Project.

through the National Marine Fisheries Service Observer Program; 2. A list of all records held by the National Oceanic and Atmospheric Administration.

should include, but is not limited to, copies of all records responsive to this request. Please pay the appropriate fees for this request.

and is no longer available to the general public. Please provide the position title and starting salary upon hire in the position. Please also provide a list of all records held by NOAA's current aerial imagery on the NOAA Shoreline Data E

US. Please keep confidentiality in mind. Thank you for your assistance.





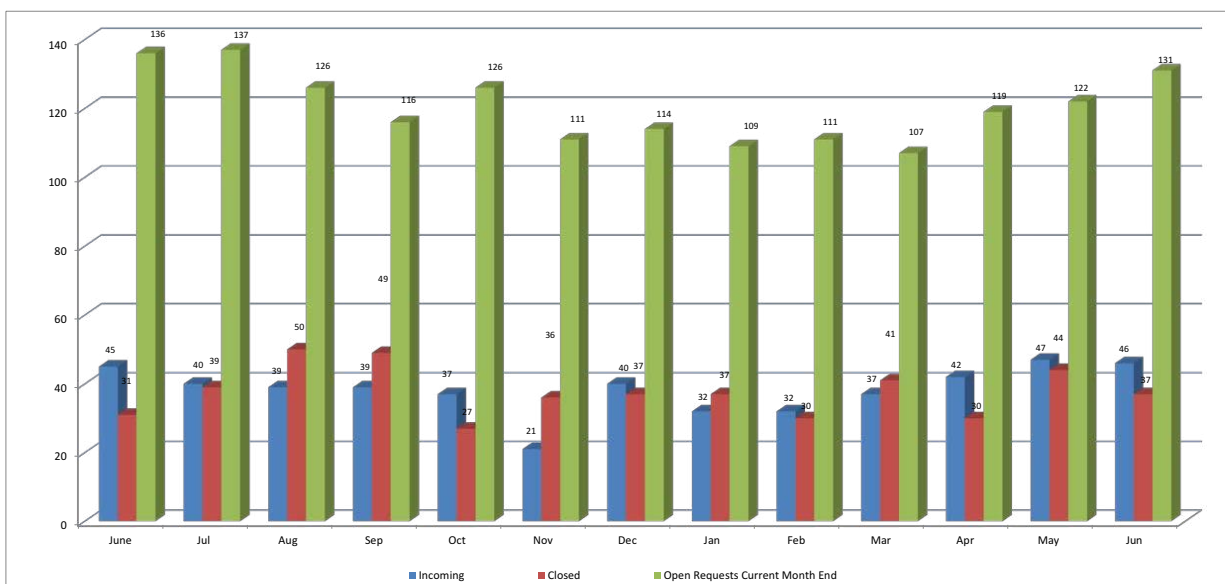




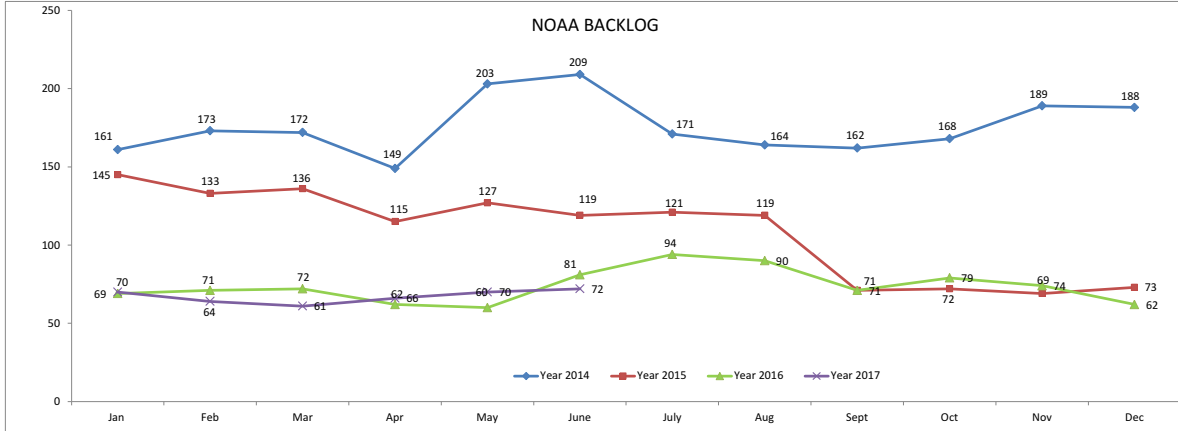
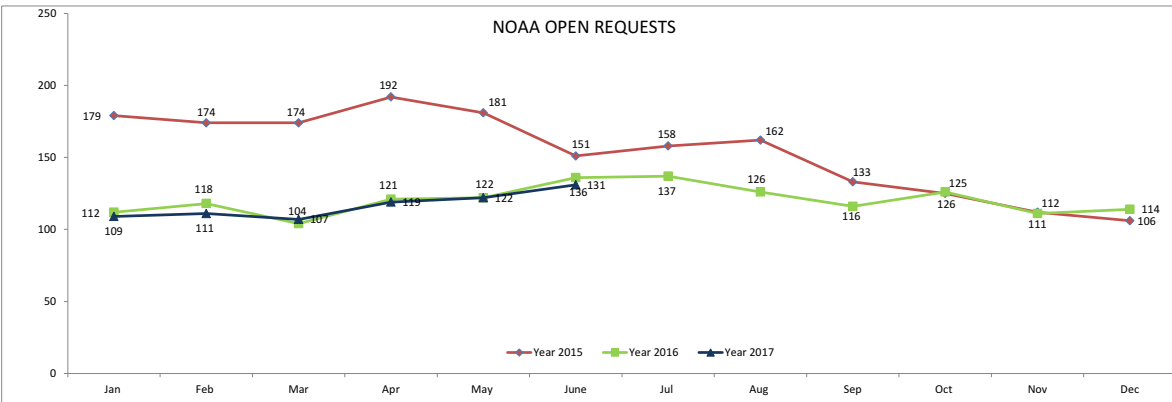
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FOIA Monthly Status Report 06-30-2017

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	3	0	3	0	1	0	3	4
CAO	0	1	1	0	0	0	0	0
CFO	0	0	0	0	0	0	0	0
CIO	2	0	0	2	0	0	0	0
CIO/FOIA	40	4	8	36	1	3	0	4
GC	4	0	0	4	2	0	0	2
IA	0	0	0	0	0	0	0	0
LA	1	1	1	1	0	0	0	0
NESDIS	15	1	2	14	3	0	1	4
NMFS	17	30	17	30	17	16	3	36
NOS	13	3	3	13	3	1	2	6
NWS	13	2	0	15	4	2	0	6
OAR	1	1	0	2	2	0	0	2
OMAO	0	0	0	0	1	0	0	1
OC	3	0	1	2	1	0	0	1
PPI	0	0	0	0	0	0	0	0
USAO	3	1	0	4	5	0	0	5
WFMO	7	2	1	8	0	1	0	1
NOAA Totals	122	46	37	131	40	23	9	72

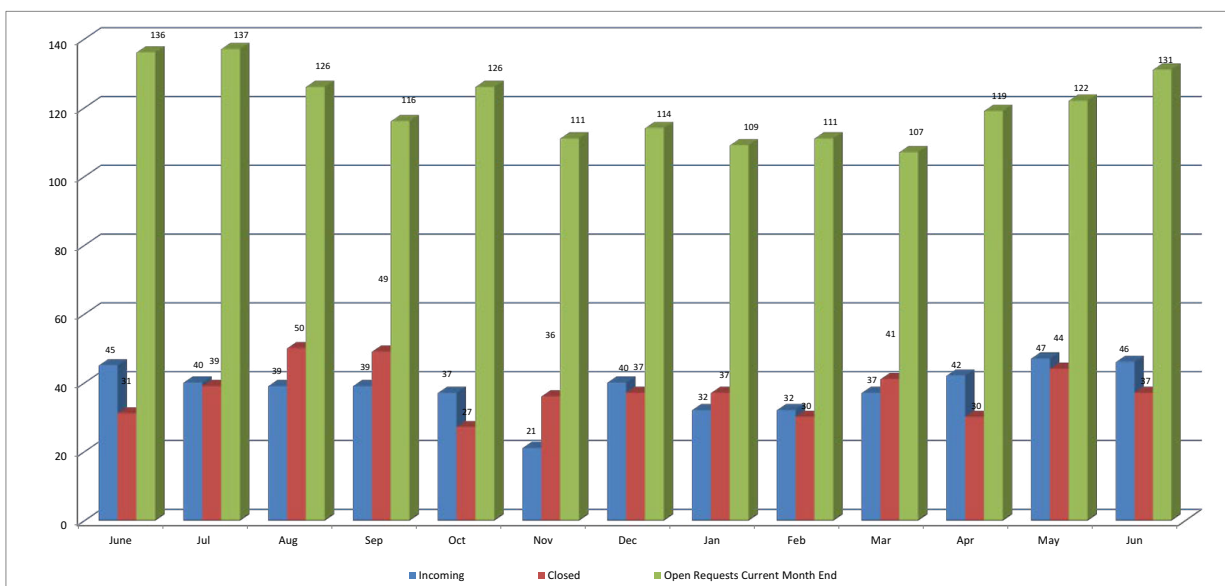


FOIA Monthly Status Report 06-30-2017

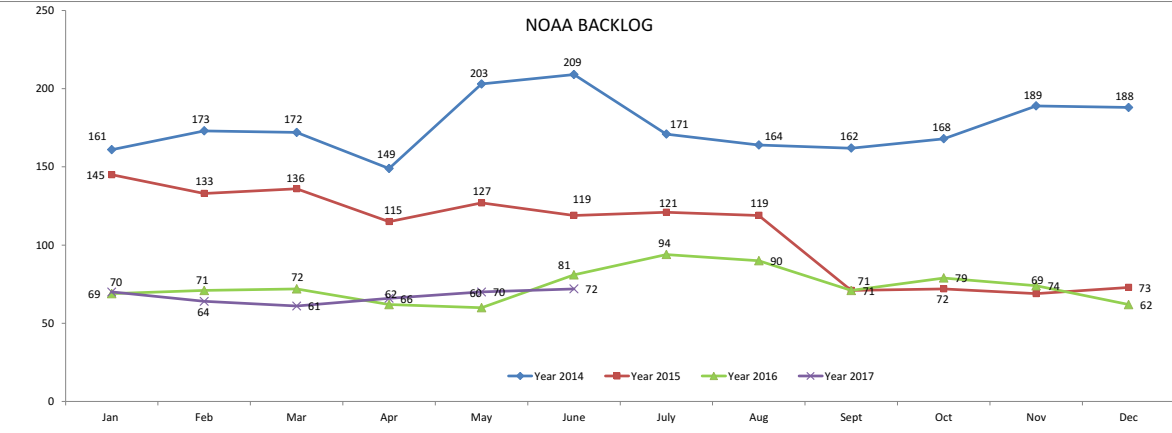
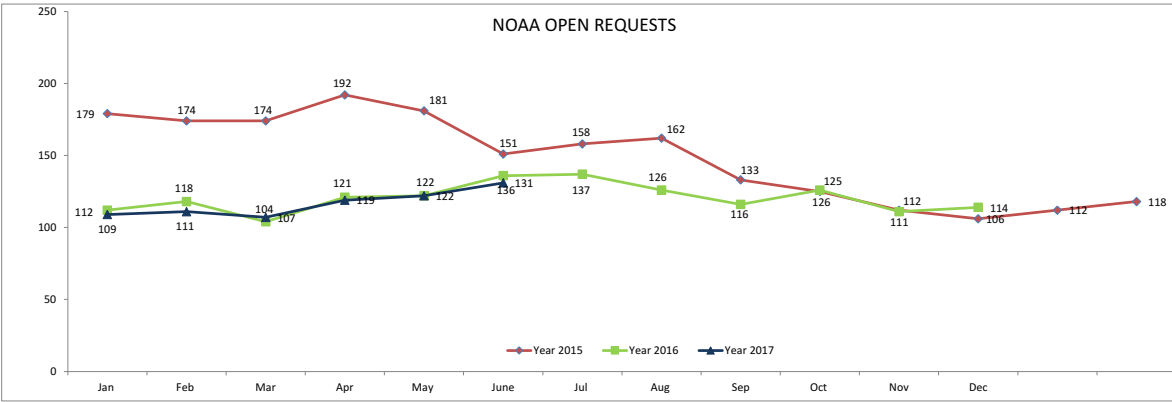


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Organization	Open Requests Previous Month End	Incoming Requests	Closed Requests	Open Requests Current Month End	Backlog 21-120 days	Backlog 121-364 days	Backlog 365 or more days	Total Backlog
AGO	3	0	3	0	1	0	3	4
CAO	0	1	1	0	0	0	0	0
CFO	0	0	0	0	0	0	0	0
CIO	2	0	0	2	0	0	0	0
CIO/FOIA	40	4	8	36	1	3	0	4
GC	4	0	0	4	2	0	0	2
IA	0	0	0	0	0	0	0	0
LA	1	1	1	1	0	0	0	0
NESDIS	15	1	2	14	3	0	1	4
NMFS	17	30	17	30	17	16	3	36
NOS	13	3	3	13	3	1	2	6
NWS	13	2	0	15	4	2	0	6
OAR	1	1	0	2	2	0	0	2
OMAO	0	0	0	0	1	0	0	1
OC	3	0	1	2	1	0	0	1
PPI	0	0	0	0	0	0	0	0
USAO	3	1	0	4	5	0	0	5
WFMO	7	2	1	8	0	1	0	1
NOAA Totals	122	46	37	131	40	23	9	72



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Tracking Number	Type	Requester	Requester Organization
DOC-NOAA-2017-001329	Request	Ronald B. Hardwig	
DOC-NOAA-2017-001382	Request	Margaret Townsend	
DOC-NOAA-2017-001321	Request	Elizabeth N. Moran	GARY GILBERT & ASSOCIATES, P.C
DOC-NOAA-2017-001448	Request	Elizabeth A. Mitchell	Association for Professional Observers
DOC-NOAA-2017-001442	Request	Chandra Taylor	SOUTHERN ENVIRONMENTAL LAW CEN
DOC-NOAA-2017-001435	Request	Nathan Eagle	Honolulu Civil Beat
DOC-NOAA-2017-001431	Request	Margaret Townsend	
DOC-NOAA-2017-001421	Request	Russ Kick	
DOC-NOAA-2017-001420	Request	Russ Kick	
DOC-NOAA-2017-001419	Request	Russ Kick	
DOC-NOAA-2017-001413	Request	Daniel Seligman	
DOC-NOAA-2017-001412	Request	Daniel Seligman	
DOC-NOAA-2017-001411	Request	Margaret Townsend	
DOC-NOAA-2017-001409	Request	Austin R. Evers	American Oversight
DOC-NOAA-2017-001394	Request	Ivy N. Fredrickson	Ocean Conservancy
DOC-NOAA-2017-001391	Request	Elizabeth A. Mitchell	Association for Professional Observers
DOC-NOAA-2017-001390	Request	Elizabeth A. Mitchell	Association for Professional Observers
DOC-NOAA-2017-001380	Request	Tom McDonald	Cascadia Law Group PLLC
DOC-NOAA-2017-001367	Request	Shannon M. Cremeans	
DOC-NOAA-2017-001362	Request	John Whiteside	Sustainable Fisheries Assoc.
DOC-NOAA-2017-001359	Request	Jordan Waltz	
DOC-NOAA-2017-001383	Request	Margaret Townsend	
DOC-NOAA-2017-001381	Request	Margaret Townsend	
DOC-NOAA-2017-001355	Request	Matthew Owens	Tri Marine
DOC-NOAA-2017-001354	Request	Matthew Owens	Tri Marine
DOC-NOAA-2017-001376	Request	Gabe Flick	
DOC-NOAA-2017-001392	Request	Gabe Flick	
DOC-NOAA-2017-001328	Request	Andrew G. Ogden	Turtle Island Restoration Network
DOC-NOAA-2017-001346	Request	Catha Lewey	Penobscot Nation
DOC-NOAA-2017-001318	Request	Chris Saeger	Western Values Project
DOC-NOAA-2017-001316	Request	Chris Saeger	Western Values Project
DOC-NOAA-2017-001314	Request	Michael S. Warren	NJ Advance Media
DOC-NOAA-2017-001333	Request	Russ Rector	
DOC-NOAA-2017-001482	Request	Robin McDowell	Associated Press
DOC-NOAA-2017-001438	Request	Christine N. Walz	Holland & Knight, LLP
DOC-NOAA-2017-001437	Request	Christine N. Walz	Holland & Knight, LLP
DOC-NOAA-2017-001319	Request	Chris Saeger	Western Values Project
DOC-NOAA-2017-001393	Request	Scott Noya	Daley and Heft
DOC-NOAA-2017-001332	Request	Alexandra N. Copeland	Fowler White Burnett
DOC-NOAA-2017-001348	Request	Sarah Emerson	MuckRock
DOC-NOAA-2017-001326	Request	Hans Bader	Competitive Enterprise Institute
DOC-NOAA-2017-001306	Request	Paula M. Rychtar	NOAA
DOC-NOAA-2017-001403	Request	Robert Shuchman	MTRI, Michigan Technological University
DOC-NOAA-2017-001436	Request	Susan Swartz	
DOC-NOAA-2017-001317	Request	Chris Saeger	Western Values Project
DOC-NOAA-2017-001347	Request	Alexander Rony	MuckRock

Submitted	Received	Case File Assigned To	Perfected?	Due	Closed Date
06/08/2017	06/08/2017	CAO	Yes	07/11/2017	TBD
06/13/2017	06/13/2017	LA	Yes	07/13/2017	TBD
06/02/2017	06/02/2017	NESDIS	Yes	07/07/2017	TBD
06/29/2017	06/29/2017	NMFS	Yes	07/31/2017	TBD
06/28/2017	06/28/2017	NMFS	Yes	08/11/2017	TBD
06/27/2017	06/28/2017	NMFS	Yes	07/28/2017	TBD
06/27/2017	06/27/2017	NMFS	Yes	07/28/2017	TBD
06/25/2017	06/26/2017	NMFS	Yes	07/28/2017	TBD
06/25/2017	06/26/2017	NMFS	Yes	07/28/2017	TBD
06/25/2017	06/26/2017	NMFS	Yes	07/28/2017	TBD
06/22/2017	06/23/2017	NMFS	Yes	08/11/2017	TBD
06/22/2017	06/23/2017	NMFS	Yes	08/11/2017	TBD
06/22/2017	06/23/2017	NMFS	Yes	07/28/2017	TBD
06/22/2017	06/22/2017	NMFS	Yes	07/28/2017	TBD
06/19/2017	06/19/2017	NMFS	Yes	07/18/2017	TBD
06/16/2017	06/16/2017	NMFS	Yes	08/01/2017	TBD
06/16/2017	06/16/2017	NMFS	Yes	08/01/2017	TBD
06/14/2017	06/15/2017	NMFS	Yes	07/14/2017	TBD
06/13/2017	06/14/2017	NMFS	Yes	07/13/2017	TBD
06/13/2017	06/13/2017	NMFS	Yes	07/27/2017	06/28/2017
06/13/2017	06/13/2017	NMFS	Yes	07/13/2017	TBD
06/13/2017	06/13/2017	NMFS	Yes	07/13/2017	TBD
06/13/2017	06/13/2017	NMFS	Yes	07/27/2017	TBD
06/12/2017	06/13/2017	NMFS	Yes	07/13/2017	06/30/2017
06/12/2017	06/13/2017	NMFS	Yes	07/13/2017	06/30/2017
06/12/2017	06/12/2017	NMFS	Yes	07/26/2017	TBD
06/12/2017	06/12/2017	NMFS	Yes	07/17/2017	06/20/2017
06/08/2017	06/08/2017	NMFS	Yes	07/25/2017	TBD
06/08/2017	06/08/2017	NMFS	Yes	07/11/2017	TBD
06/07/2017	06/07/2017	NMFS	Yes	07/11/2017	06/14/2017
06/07/2017	06/07/2017	NMFS	Yes	07/07/2017	TBD
06/07/2017	06/07/2017	NMFS	Yes	07/21/2017	06/28/2017
06/05/2017	06/05/2017	NMFS	Yes	07/10/2017	TBD
06/23/2017	06/23/2017	NOAA	No	TBD	TBD
06/28/2017	06/28/2017	NOAA FOIA	No	TBD	06/30/2017
06/28/2017	06/28/2017	NOAA FOIA	No	TBD	06/30/2017
06/07/2017	06/07/2017	NOAA FOIA	Yes	07/11/2017	06/14/2017
06/13/2017	06/13/2017	NOS	Yes	07/18/2017	06/30/2017
06/07/2017	06/07/2017	NOS	Yes	07/10/2017	06/27/2017
06/01/2017	06/01/2017	NOS	Yes	07/11/2017	TBD
06/07/2017	06/07/2017	NWS	Yes	07/07/2017	TBD
06/05/2017	06/05/2017	NWS	Yes	07/03/2017	TBD
06/20/2017	06/20/2017	OAR	Yes	07/25/2017	TBD
06/27/2017	06/28/2017	WFMO	Yes	07/28/2017	TBD
06/07/2017	06/07/2017	USEC	Yes	07/07/2017	TBD
06/01/2017	06/01/2017	WFMO	Yes	07/11/2017	TBD

Detail

I am requesting the findings of my sufficiency review on OIG referral 17-0468-N on my tornado research meteorolo

The Center requests the following records from the National Oceanic and Atmospheric Administration ("NOAA"): 1.

- Copies of any and all documents and communications related to the application, review, and consideration of The

I request copies of NOAA communications (fax, e-mail, supporting documents) to other departments within NOAA.

Pursuant to the Freedom informational Act (5 U.S.C. § 552), the Southern Environmental Law Center ("S

Hi, I'd like to request the 2017 nomination packets of the six nominees submitted by the Hawaii governor's office to

The Center requests the following records from the U.S. Department of Commerce ("DOC") from April 1, 2017 to th

According to the document "Vessel Strike Avoidance Measures and Reporting for Mariners" from NMF:

I hereby request all Marine Mammal Stranding Report forms (NOAA Form 89-864) that have been turned in to NMI

The following webpage contains the annual "Large Whale Entanglement and Ship Strike Report" for 20

All e-mails (including attachments) between the NOAA Fisheries Northwest Fisheries Science Center in Seattle, W

All e-mails (including attachments) between the NOAA Fisheries office in Portland, Oregon, and the Fish Passage

The Center requests from the National Marine Fisheries Service ("NMFS") all records generated in connection with

American Oversight and EWG request that the Department of Commerce and its components the National Oceani

We request copies of all memoranda, studies, reports, data, correspondence, comments, conversation records, fil

On 28 June 2017, via email, the requester clarified the search scope of the request to: "I would like both foreign of

Through the Freedom of Information Act, I request the following documents: 1. E-mails, photographs and possibly

This request is directed to the National Marine Fisheries Service and pertains to the Pacific Northwest region (Was

am writing to request a copy of the Marine Mammal Inventory Report (MMIR). I would like this copy to include all m

NOAA Office of Law Enforcement reports that were previously released to the public at the New England Fisheries

I wish to request a copy of the most recent 2017 Marine Mammal Inventory Report.

The Center requests from the National Marine Fisheries Service ("NMFS"): all records mentioning, including, and/c

The Center requests from the National Marine Fisheries Service ("NMFS") from January 1, 2015 to May 1, 2017: al

Fisheries data for US purse seine vessels fishing in the Western and Central Pacific Fisheries Commission (WCPF

Fisheries catch data for tuna caught by purse seine vessels in the Western and Central Pacific Fisheries Commiss

REVISED SCOPE 6/20: For the time period of May 8, 2015 through May 8, 2017 all text messages, facsimiles and

To Whom It Concerns - Under the Federal Freedom of Information Act, please provide copies of the following reco

(1) The 2015 West Coast Entanglement Summary; (2) The 2016 West Coast Entanglement Summary; (3) The sta

Any and all documents consisting of or related to the National Oceanic and Atmospheric Administration ("NO

I request access to and copies of any information used to inform the development of the following national monum

SCOPE REVISION 6/20 - To exclude the following information: out-of-office replies, duplicates of the same emails

I am requesting annual reports from the NOAA Office of Law Enforcement's Northeast Division regarding the total

Attached is an 1989 nmfs mmir. please send me all the necropsy's for all animals listed with a "YES" ur

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request the following information: Comn

Any aviation weather or turbulence information available for the 100nm radius around waypoint GTK on May 9, 201

Any aviation weather or turbulence information available for the 200nm radius around Crazy Woman VOR (CZI) on

Pursuant to the Freedom of Information Act, I request access to and copies of documents addressed or directed to

This email communication is to request a copy of the georeferenced version of T-333 (an 1850-era survey of portic

I am trying to access the public comments requested by the NOAA on September 26, 2013 regarding the "m

Copies of all complaints (written, emailed, faxed, or called in) to the Monterey Bay National Marine Sanctuary abou

1. Any records memorializing, quoting, citing, or summarizing a conference call among National Weather Service n

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of: I am s

Michigan Tech kindly requests a formal debrief on the CILER21 proposal that was not selected for funding. NOAA-

Investigation on NOAA Ship Fairweather into a pattern of harrassment in the Steward Dept. February through April

I request access to and copies of documents addressed or directed to the President of the United States that inclu

A list of the vacant positions that the National Oceanic and Atmospheric Administration cannot fill due to the presid

gists have overlooked.

. All records from January 20, 2017 to the date of this search that mention, include, or reference national marine mammals (NMM) such as the Department of Homeland Security, Department of State, and the US Fish and Wildlife Service (USFWS) requests the following for the Kerr-McGee Chemical Corp. site: The full attendance list, agenda, and minutes for the Western Pacific Regional Fishery Management Council that are set to become available on the date of this search: 1. All records mentioning, including, and/or referencing the draft and/or final biological opinion for the Southeast Region, when a vessel injures or kills a marine mammal, a "vessel strike reporting for the Southeast Region since July 1, 2016. Further, I ask that these documents be sent to me in any digital formats in which they are available. 2014-2008: <https://www.greateratlantic.fisheries.noaa.gov/whaletrp/plan/dissent/> 1) I hereby request all submittals between Washington, DC, and the Fish Passage Center (____@fpc.org) between January 1, 2015 and July 1, 2015, regarding juvenile fish passage on the Atlantic coast. 2) I request all submittals between Washington, DC, and the Fish Passage Center (____@fpc.org) between January 1, 2015 and July 1, 2015, regarding juvenile fish passage on the Atlantic coast. 3) I request all submittals between the Department of Commerce (collectively, "Commerce") and the National Marine Fisheries Service (collectively, "Commerce") regarding, received, kept, and/or considered on servers (on US vessels) and US observers. For all observers I would like to know the regional observer reports, including but not limited to, faxes and other communications before and after and relating to my observer trip on board the America's Cup (in the Washington state). Full text of the request is contained on the uploaded .pdf file entitled FOIA - NMFS-Pacific Northwest Marine Mammals (pinnipeds, cetaceans). I would like it to include all living and dead animals and include all records of the Western Pacific Regional Fishery Management Council public meetings between January 2016 through April 2017.

or referencing NMFS's decision to deny the petition to list the Lillamna Lake Seal under the Endangered Species Act. 2) I request all records of correspondence between, from, to, or with any NMFS employee and/or agent and any member of the public (including FOIA requests) in the (WCPFC) convention area, broken down as follows. See attached spreadsheet. -Number of purse seine sets used in the (WCPFC) convention area, broken down as follows. See attached spreadsheet. -Skipjack tuna catch and effort data (including attachments) sent or received by: Will Ellis, NOAA OLE, Alaska Division Assistant Director. 3) I request all records for the time period of May 8, 2015 through May 8, 2017 all text messages, facsimiles and emails (including attachments) sent or received by: Will Ellis, NOAA OLE, Alaska Division Assistant Director. 4) I request all records and/or criteria for information or data that was sufficient (or, in the alternative, insufficient) to make a decision regarding the relicensing of the Mattaceunk Hydroelectric Project on the Penobscot River, Maine (including all records of proclamations or expansions during the specified time periods: Northeast Canyons and Seamounts Marine National Monument and duplicate attachments disseminated to large volumes of recipients. 5) I request access to and copies of all records of investigations between 2007 and 2016. I am always requesting any Office of Law Enforcement records regarding the right column stating necrp filed with nmfs. 6) I request all Commercial Landing Statistics for Yellowfin Tuna by MONTH for New York state from Jan. 1, 2013 until present. 7) I request all records from 16 from 18:00 EST to 24:00 EST.

8) I request all records from August 11, 2016 from 16:00 EST to 23:00 EST.

9) I request all records of the President of the United States that include recommendations regarding monument designation for the San Diego Bay (including all records of San Diego Bay), as recently posted on the NOAA Shoreline Data Explorer website. According to the NOAA website, "the agency line";

10) I request all records of wildlife being harassed or disturbed by drones or unmanned aerial vehicles. This request is for January 2017. 11) I request all records of meteorologists in Boston, New York, Philadelphia, and/or Washington on the afternoon of March 13, 2017. 12) I request the job announcement (if there was one) for National Weather Service Voluntary Observing Ship (VOS) OAR-CIPO-2017-2005127 - candice.jongsma@noaa.gov. 13) I request all records of 2017.

14) I request all records of recommendations regarding monument designation for the National Monuments listed below, during the current hiring freeze. Please include the job title, GS level, office, and division.

monument designations made by any President of the United States since January 1, 1996 (See Attachment NSDIS-OSP0-2016-0037, located in Suitland, Maryland, from January 1, 2016 to present, including but not limited to Coast Guard, that were made in response to observer reports - documentation notebooks or field journals, agenda and handouts for the public meeting held by the Navassa Trustee Council, in Navassa, regarding the opening of the monument in August 2017. The nominees were: Tim Johns, Trisha Kehaulani Watson, 'Aulani Wilhelm, and a biological evaluation of chlorpyrifos under the Endangered Species Act, 16 U.S.C. § 1531-1544 ("ESA") must be filed. [http://sero.nmfs.noaa.gov/protected_resources/section_7/guidance_docs/documents/]. If they exist. Under the terms of the E-FOIA Amendments of 1996, Section 5, if a document exists in electronic format, please provide the following reports (or their equivalent). That is, the reports for 2009 to present. 2) These reports appear to be regarding juvenile fish passage on the Snake River (including the fish transportation program, in-river passage, the Snake River (including the fish transportation program, in-river passage, project spill and project by-pass), and the Ocean under the Marine Mammal Protection Act, 16 U.S.C. § 1361-1389 ("MMPA"), from January 1, 2016 to present. Produce the following records within twenty business days: 1) All communications between any of the field offices of NMFS relating to the reopening of the red snapper season, between the dates of January 20, 2017 and the end of the program from which the observers are deployed. 2) Through the Freedom of Information Act, I request that you provide me with the following information: No. 1, a US-flagged Patagonia Toothfish longline vessel then owned by Lawrence Lasarow, PacFish, Inc. (W-WA 061417). All public disclosure records requests made to NATIONAL MARINE FISHERIES SERVICE should be made at every facility. Please sort/organize this request first by holder/facility then chronologically.

Endangered Species Act, 16 U.S.C. § 1531-1544 ("ESA").

observer and/or agent of the California Department of Fish and Wildlife mentioning, including, and/or referring to, unassociated with fish aggregating devices by the Tri Marine fleet (f/v's Cape Ann, Cape Breton, Cape Cod, and Cape Light by purse seine sets unassociated with fish aggregating devices by the Tri Marine fleet (f/v's Cape Ann, Cape Breton, Cape Cod, and Cape Light) to or from James W. B. (including attachments) sent or received by: 1. Will Ellis, NOAA OLE, Alaska Division Assistant Director 2) Request an identification of fishery or gear type under "Identified Sources of Entanglement" for the summaries of the project. This includes, but is not limited to, all internal and external emails and other communications related to the Marine National Monument (01/01/14 – 12/31/16) Papahānaumokuākea Marine National Monument Expansion of any information used to inform the development of the following national monument proclamations concerning reports providing analysis of trends in crimes and regulation violations during that time. I am hoping to receive the information in electronic format.

the National Monuments listed below, during the specified time periods: Northeast Canyons and Seamounts Marine National Monument May 9, 2017 email correspondence from NOAA employee Doug Graham to Matt Fossum at California Department of Fish and Wildlife January 1, 2016 until the time this request is processed.

7 about reductions in predicted snow amounts or about computer models that cut predicted snow amounts for the VOS Program Manager (VOS PM). This position was vacant for quite some time and hiring of a particular individual was not possible.

the specified time periods: Northeast Canyons and Seamounts 3/15/2016 to 9/15/2016 Papahānaumokuākea

hment A. State by State Monuments List); and 2. All records mentioning, including, or referencing Exec. not limited to assessments and communications regarding his qualifications for the position. • Copies of als (with associated photos/video documentation), post-cruise questionnaires, e-mails and legal affidavit :he Natural Resource Damage Assessment process.

William Aila, Sol Kaho'ohalahala and Sean Martin. I'd also like to request the successful nomination pack 'ESA"); 2. All records mentioning, including, and/or referencing the draft and/or final biological evaluation nents/copy_of_vessel_strike_avoidance_february_2008.pdf] I hereby request all completed forms that h ronic format, it must be released in that format upon request.

cover the Atlantic / Eastern seaboard exclusively. I am also requesting the equivalent annual reports (al sage, project spill and project by-pass).

ass). The FPC is a contractor of the Bonneville Power Administration.

bruary 20, 2017 to the date of the search.

llowing Commerce officials—(a) all political appointees and any career SES staff in the Office of the Sec and June 19, 2017. This includes documents, records, and materials regarding: 1. extension or reopeni he following documents: A summary of all complaints of violence, threats, or harassment against fisherie r. I met the vessel in Spain September 28, 2003, sailed for the Southern Ocean to test CCAMLR seabir /ICE (Pacific Northwest/Washington State) by any of the entities listed below: 1. Any and all representati

cing whales and/or sea turtles entangled and/or possibly entangled in fishing gear on the U.S. West Coa od, Cape Elizabeth III, Cape Ferrat, Cape Finisterre, Cape Horn, Cape May, Cape San Lucas, Capt Vin n, Cape Breton, Cape Cod, Cape Elizabeth III, Cape Ferrat, Cape Finisterre, Cape Horn, Cape May, Ca alsiger – NOAA, Alaska Regional Administrator Robert D. Mecum – NOAA, Alaska Deputy Regional Adr . Nathan Lagerwey, OLE, Alaska Division, Deputy Special Agent in Charge to or from 1. James W. Bals specified in (1) and (2), above; (4) The standards and/or criteria for information or data that was sufficee munciations pertaining to the Project, all NOAA meeting notes and minutes regarding or discussing th ansion (01/01/14 – 12/31/16) Pacific Remote Islands Marine National Monument Expansion (01/01/12 - or expansions during the specified time periods: Northeast Canyons and Seamounts Marine National Mc) get an idea of any trends occurring in the region, with particular interest in the waters off of New Jersey

ounts 3/15/2016 to 9/15/2016 Papahānaumokuākea 2/26/2016 to 8/26/2016 Pacific Remote Islands 3/2: State Lands Commission, the current georeferenced version of T-333 was posted on the website NOAA

nts, for any storm occurring on March 13, 2017 or March 13-14, 2017. 2. Any records about a realizatio ividual was discussed to have started around November 2016 and the actual date of hire was advertise

uakea 2/26/2016 to 8/26/2016 Pacific Remote Islands 3/25/2014 to 9/25/2014 Marianas Trench 7 /06/21

Order No. 13792, 82 F.R. 20429 (Apr. 26, 2017), "Review of Designations Under the Antiquities Act" (S any and all documents and com_munications which refer or relate to potentially placing Thomas E. Smit s – which pertain to the following vessel conditions on board the Hawaii-based and American Samoa-ba

sets for the 2014 appointments of Edwin Ebisui and Frederick McGrew Rice; the 2015 nomination packe 1 of malathion under the ESA; 3. All records mentioning, including, and/or referencing the draft and/or fin ave been sent to NMFS, including all regional offices, from January 1, 2017, to present. Further, I ask th bout whale entanglements and/or ship strikes) for all other areas, such as the Pacific, Gulf of Mexico, all

retary; (b) all political appointees in the National Oceanic and Atmospheric Administration; and (c) all □ ing of the private recreational red snapper season; 2. how or whether this action would affect progress to s observers in US fisheries observer programs that occurred in calendar year 2013, 2014, 2015, and 20 rd mitigation measures to be confirmed prior to entry into a CCAMLR Ross Sea experimental fishery. My ves and employees of Smith & Lowney PLLC law firm of Seattle, Washington; 2. Any and all represental

ist.

cent Gann) for 2014, 2015, and 2016. Number of instances of shark finning for these sets by year. -Nun pe San Lucas, Capt Vincent Gann) for 2014, 2015, and 2016. We would like this by area- PNA waters, i nistrator Glenn G. Merrill – NOAA, Alaska Region Sustainable Fisheries Fish and Wi iger - NOAA, Alaska Regional Administrator 2. Robert D. Mecum - NOAA, Alaska Deputy Regional Adm nt (or, in the alternative, insufficient) to make an identification of a whale species under "Unidentified (U ie Project, and any and all memoranda, agreements, notes, letters, and c01Tespondences relating to or – 12/31/14) Marianas Trench Marine National Monument (01/01/2007 – 12/31/2009) Rose Atoll Marine I onument (01/01/14 – 12/31/16) Papahanaumokuakea Marine National Monument Expansion (01/01/14 - 1. I prefer that these records be delivered to me in an electronic format.

5/2014 to 9/25/2014 Marianas Trench 7 /06/2008 to 1/06/2009 Rose Atoll 7 /06/2008 to 1/06/2009 This : \ Shoreline Data Explorer application. Viewing the georeferenced position of T-333 in an overlay over NC

1 or conclusion by National Weather Service meteorologists on or before the afternoon of March 13, 201 d that this person, Michael Potochney, started on February 6, 2017. I don't believe this job vacancy was

008 to 1/06/2009 Rose Atoll 7 /06/2008 to 1/06/2009 This should include, but is not limited to, copies of

ee Attachment B. Presidential Executi
th, Jr., in the Physical
ised longline vessels and the

its for Michael Duenas and M
ial biological evaluation of diaz
iat these documents be sent to me in any digital f

l-inclusive, etc., for 2000 to present. Further, I ask

oward rebuilding under the red snapper rebuilding plan; 3. how or w
)16, separated by: 1. Year; 2. Whether the complaint was i
/ time on board this vessel was from September 28, 200
tives and employees of Puget

umber of purse seine sets associated with fish aggregating devices by the Tri Ma
nternational waters, US territorial waters, and all other areas. -Skipjack tuna cau

inistrator 3. Glenn G. Merrill - NOA
nk)" for the summaries specified i
discussing the Project, whethe
National Monument (01/01/2007 – 12/31/2009) This should include, but not be lim
– 12/31/16) Pacific Remote Islands Marine National Mo

should include, but is not limited to, copi
NOAA's current aerial imagery on the NOAA Shoreline Data E

7, that a winter storm was not likely to produce snow totals in northeastern cities in general, or in B
advertised and thus not open to all qualified applicants

memoranda from the NOAA Administrator or their











Martha McCoy - NOAA Federal

From: Martha McCoy - NOAA Federal
Sent: Monday, July 10, 2017 3:45 PM
To: Aida Pettegrue; Mark Graff - NOAA Federal
Cc: Michelle Mills; Jackie Rolleri - NOAA Federal; Scott Kathey; Nkolika Ndubisi
Subject: Re: Freedom of Information Request: NOAA Monterey Bay seals and drone harassment

ATTORNEY-CLIENT CONFIDENTIAL

Hi Aida and Mark,

Aida, thank you for your email. (b)(5)

[Redacted]

[Redacted]

[Redacted]

- [Redacted]
- [Redacted]
- [Redacted]

[Redacted]

[Redacted]

(b)(5)

On Mon, Jul 10, 2017 at 2:46 PM, Aida Pettegrue <aida.pettegrue@noaa.gov> wrote:

Hi Marty:

(b)(5)

Thanks

aida

----- Forwarded Message -----

Subject:Fwd: RE: Freedom of Information Request: NOAA Monterey Bay seals and drone harassment

Date:Mon, 10 Jul 2017 14:43:30 -0400

From:Aida Pettegrue <aida.pettegrue@noaa.gov>

To:Martha McCoy - NOAA Federal <martha.mccoy@noaa.gov>

Hi Marty:

Please see the e-mail below from Ms. Emerson.

Please advise on how to respond to her.

Thanks

aida

----- Forwarded Message -----

Subject:RE: Freedom of Information Request: NOAA Monterey Bay seals and drone harassment

Date:Mon, 10 Jul 2017 18:41:05 +0000

From:35730-28639645@requests.muckrock.com

To:aida.pettegrue@noaa.gov

July 10, 2017

National Oceanic and Atmospheric Administration
National Oceanic and Atmospheric Administration
ATTN: FOIA Officer
Room 10641, SSMC-3
1315 East West Highway
Silver Spring, MD 20910-3281

This is a follow up to a previous request:

Hi Aida,

Before agreeing to any fees, I would like to ask that you re-categorize my request as a "media use request," thus qualifying me for a fee waiver. I am a science journalist for VICE's technology website, Motherboard, and frequently report stories based on documents received through FOIA requests. Below are some examples that prove 1) I am a member of the media, and 2) that information obtained through this FOIA request will be made available to the public, and not for commercial reasons, as I have done in the past.

https://motherboard.vice.com/en_us/article/59mezb/hawaii-prepares-new-nuclear-contingency-plan-north-korea
https://motherboard.vice.com/en_us/article/vv54nd/trump-salary-donation-national-park-service-nps-foia
https://motherboard.vice.com/en_us/article/kbvbky/office-of-science-and-technology-policy-trump-jobs
https://motherboard.vice.com/en_us/article/jp3yab/epa-investigated-which-one-of-its-employees-called-donald-trump-a-fucking-fascist-documents-reveal
https://motherboard.vice.com/en_us/article/yp3kkg/hawaiis-cursed-lava-rocks-are-driving-national-park-staff-insane
https://motherboard.vice.com/en_us/article/qkjnkwboston-is-covered-in-goose-poop-and-people-are-mad-as-hell

I would also argue that this information, if made available, would serve the public's best interests by informing them about the human/wildlife conflicts created through drone use. Drone disturbances near Monterey Bay and its wildlife have been extensively reported on, and these records would contribute significantly to public understanding of the operations and activities of the government to protect Monterey Bay's wildlife.

<http://www.kion546.com/news/monterey-county/drones-banned-in-four-monterey-bay-nationally-protected-areas-/66543075>
<https://ww2.kqed.org/science/2017/03/27/drones-on-monterey-beaches-frighten-seals-during-mating-season/>
<http://www.sfgate.com/science/article/Officials-Drones-are-illegal-over-Monterey-Bay-5573773.php>

Lastly, I am requesting an itemized cost breakdown of the \$8,314.04 fee estimate that I was provided. Can you please list, in more detailed terms, how these funds will be applied, beyond the hours of search time and salary rates of staff needed to locate records.

Best,
Sarah

On July 10, 2017:
Dear Ms. Emerson:

This e-mail is in reference to your Freedom of Information (FOIA) request received by the National Ocean Service on June 15, 2017, in which you requested copies of the following:

Copies of all complaints (written, e-mailed, faxed, or called in) to the Monterey Bay National Marine Sanctuary about wildlife being harassed or disturbed by drones or unmanned aerial vehicles. This request is for January 1, 2016 until the time this request is processed.

Please find attached a copy of the fee estimate letter. The original letter was mailed to you today via USPS.

If you would like to discuss this matter in order to modify your request in an effort to lower the estimated fee, please contact me at (240) 533-0670.

Sincerely,

Aida Pettegrue
FOIA Liaison
Office of National Marine Sanctuaries

On June 15, 2017:
Thank you so much!

Best,
Sarah

On June 15, 2017:
06/15/2017 12:36 PM FOIA Request: DOC-NOAA-2017-001348

Ms. Emerson,

Please see the attached letter acknowledging the receipt of your FOIA request.

Sincerely,
Nkolika Ndubisi
NOS FOIA Officer

On June 12, 2017:
Good afternoon,

Thank you for inquiring about your FOIA request. Your request has been received and assigned to the National Ocean Service (NOS) for fulfillment. It will be processed as quickly as possible.

There will be no FOIA fees charged for the processing of your request.

Thank you very much for your patience. Please let me know if you have any questions.

Regards,

Lola Stith
NOAA FOIA Office

Mark H. Graff
FOIA Officer
National Oceanic and Atmospheric Administration
[\(301\)-628-5658](tel:(301)628-5658)

On June 12, 2017:

This message is to confirm your request submission to the FOIAonline application: View Request. Request information is as follows: (<https://foiaonline.regulations.gov:443/foia/action/public/view/request?objectId=090004d281394c89>)

* Tracking Number: DOC-NOAA-2017-001348

* Requester Name: Sarah Emerson

* Date Submitted: 06/01/2017

* Request Status: Submitted

* Description: Copies of all complaints (written, emailed, faxed, or called in) to the Monterey Bay National Marine Sanctuary about wildlife being harassed or disturbed by drones or unmanned aerial vehicles. This request is for January 1, 2016 until the time this request is processed.

On June 12, 2017:

To Whom It May Concern:

I wanted to follow up on the following Freedom of Information request, copied below, and originally submitted on April 3, 2017. Please let me know when I can expect to receive a response, or if further clarification is needed.

Thanks for your help, and let me know if further clarification is needed.

On May 22, 2017:

To Whom It May Concern:

I wanted to follow up on the following Freedom of Information request, copied below, and originally submitted on April 3, 2017. Please let me know when I can expect to receive a response, or if further clarification is needed.

Thanks for your help, and let me know if further clarification is needed.

On May 1, 2017:

To Whom It May Concern:

I wanted to follow up on the following Freedom of Information request, copied below, and originally submitted on April 3, 2017. Please let me know when I can expect to receive a response, or if further clarification is needed.

Thanks for your help, and let me know if further clarification is needed.

On April 3, 2017:

To Whom It May Concern:

This is a request under the Freedom of Information Act. I hereby request the following records:

Copies of all complaints (written, emailed, faxed, or called in) to the Monterey Bay National Marine Sanctuary about wildlife being harassed or disturbed by drones or unmanned aerial vehicles. This request is for January 1, 2016 until the time this request is processed.

In order to help to determine my status to assess fees, you should know that I am a journalist writing for Motherboard, VICE's technology and science site, and that this request is being made as part of news gathering.

The requested documents will be made available to the general public, and this request is not being made for commercial purposes. They will be used in the course of my reporting for Motherboard (www.motherboard.vice.com).

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request, and I ask that this be processed in the "media" fee category. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 20 business days, as the statute requires.

Sincerely,

Sarah Emerson

Filed via MuckRock.com

E-mail (Preferred): 35730-28639645@requests.muckrock.com

Upload documents directly: https://www.muckrock.com/accounts/agency_login/national-oceanic-and-atmospheric-administration-121/noaa-monterey-bay-seals-and-drone-harassment-35730/?uuid-login=92638f9f-3424-4ec0-acfd-76d81f11e61c&email=aida.pettegrue%40noaa.gov#agency-reply

Is this email coming to the wrong contact? Something else wrong? Use the above link to let us know.

For mailed responses, please address (see note):

MuckRock

DEPT MR 35730

411A Highland Ave

Somerville, MA 02144-2516

PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.

--

Martha McCoy

Attorney-Advisor

NOAA Office of the General Counsel, Oceans and Coasts Section

SSMC-4 /Room 6128

1305 East-West Highway

Silver Spring, MD 20910

[301-713-7391](tel:301-713-7391)

--

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Jerenda Burroughs - NOAA Affiliate

From: Jerenda Burroughs - NOAA Affiliate
Sent: Monday, July 10, 2017 6:01 PM
To: Mark Graff - NOAA Federal
Cc: Samuel Dixon - NOAA Affiliate; Lola Stith - NOAA Affiliate; NMFS HQ PR FOIA Requests - NOAA Service Account
Subject: Re: Interim review DOC-NOAA-2016-000603
Attachments: DOC-NOAA-2016-000603 Signed 6th Interim FAL.pdf

Mark,

[Here attached 6th Interim Letter signed by AA](#)

... this is the 6th Interim
... I know FO is so confusing to try and locate the necessary docs

On Mon, Jul 10, 2017 at 5:38 PM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

Hi Jerenda,

I'm a bit confused on this one--

(b)(5)
[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) (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.

--

"Opportunity: when nothing is sure, everything is possible" ... Margaret Dabbler

Jerenda Burroughs
FOIA Admin & Point of Contact / Planning & Program Coordination Division (PR4)
Contractor

IBSS

In support of

National Marine Fisheries Service

Office of Protected Resources

301-427-8421



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

Ms. Margaret Townsend
Center for Biological Diversity
P. O. Box 11374
Portland, OR 97211-0374

JUL 10 2017

Re: FOIA Request # DOC-NOAA-2016-000603

Dear Ms. Townsend:

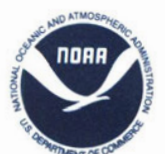
This letter is in response to your Freedom of Information Act (FOIA) request # 2016-000603 dated *February 9, 2016* and received by our office on *February 16, 2016*. You requested records relating to the "Critical Habitat Rulemaking and Policy":

1. All records related to: *Interagency Cooperation—Endangered Species Act of 1973, as Amended; Definition of Destruction or Adverse Modification of Critical Habitat*, Docket No. NOAA-NMFS-2014-0093-0001; and
2. All records related to: *Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act*, Docket No. FWS-R9-ES-2011-0104-0026.

As explained more fully in our prior communications, we are processing this request with the understanding that you seek documents that reflect development of the policy of the rule up through their signing. Further, we are now focusing our review and releases on those materials that post-date the proposal of these initiatives on May 12, 2014. We will make monthly releases and anticipate we should be able to complete processing of this post-May 2014 material by October. At that time, you will let us know if you want us to continue processing the earlier records.

This constitutes our **6th interim** response to this request. Our search within the National Marine Fisheries Service has identified an additional **147 documents** responsive to your request. A summary follows:

- **42 documents** are currently being released to you in their entirety.
- **105 documents** are currently being released in part, with redactions made pursuant to:
 - 5 U.S.C. § 552 (b)(5), which exempts from disclosure inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency. The records are partially exempt from disclosure by application of one or a combination of the Attorney



Client Privilege, Attorney Work Product protection, and/or Deliberative Process Privilege; or

- o 5 U.S.C. § 552 (b)(6), which protects personnel and similar files about individuals when the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy.

Interim Release Summary:

- The 1st release on March 30, 2016 consisted of 2 docs released in their entirety;
- The 2nd interim on July 21, 2016 consisted of 19 docs released in their entirety;
- The 3rd interim on January 18, 2017 consisted of 75 docs released in their entirety;
- The 4th interim on May 15, 2017 consisted of 563 docs released to you in part;
- The 5th interim on June 12, 2017 consisted of 260 docs released to you in part;
- To-date NMFS has released 1,066 docs to you, including the 147 released today.

As we have previously discussed, this complex request presents unusual circumstances, due to the need to collect voluminous records and to coordinate with the Department of the Interior (DOI), and other agencies, as required under 15 C.F.R. § 4.5(b). We are continuing to coordinate our search and privilege review with DOI and will keep you apprised of our progress.

Information on Appeals

We encourage you to speak with us if you have concerns as we continue to process this request. Although you have the ability to appeal at this time, we encourage you to focus the appeal/mediation/NOAA discussion, if needed, on documents provided as part of this interim release, but hold other challenges regarding the processing of your request until you have received and reviewed more of the voluminous records that the agency is still processing.

You have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must be received within 90 calendar days of the date of this response letter at the following address:

**Assistant General Counsel for Litigation, Employment, and Oversight
U.S. Department of Commerce
Office of General Counsel
Room 5875
14th and Constitution Avenue, N.W.
Washington, D.C. 20230**

An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to 202-482-2552, 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, and
- the notation "Freedom of Information Act Appeal" 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
8601 Adelphi Road, Room 2510
College Park, MD 20740-6001
Email: 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 Ms. Tawand Tonic, acting FOIA Coordinator, Office of Protected Resources, at nmfs.hq.pr.foia@noaa.gov or by phone at (301) 427-8482, or the NOAA FOIA Public Liaison, Robert Swisher, at (301) 628-5755.

Sincerely,



Samuel D. Rauch III,
Deputy Assistant Administrator
for Regulatory Programs

Scott Kathey

From: Scott Kathey
Sent: Monday, July 10, 2017 9:01 PM
To: Martha McCoy - NOAA Federal; Aida Pettegrue; Mark Graff - NOAA Federal
Cc: Michelle Mills; Jackie Rolleri - NOAA Federal; Nkolika Ndubisi
Subject: Re: Freedom of Information Request: NOAA Monterey Bay seals and drone harassment
Attachments: Email Search Parameters_SKathey_FOIA 001348.docx; Notes_Scott Kathey_FOIA 001348.docx

Martha,

(b)(5) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

■

[Redacted]

[Redacted]

[Redacted]

(b) (5)

I hope this is helpful.

Scott

Scott Kathey
Federal Regulatory Coordinator
Monterey Bay National Marine Sanctuary
National Oceanic & Atmospheric Administration
U.S. Department of Commerce
99 Pacific Street, Bldg 455A
Monterey, California 93940
Phone: 831-647-4251
FAX: 831-647-4250

On 7/10/17 12:44 PM, Martha McCoy - NOAA Federal wrote:

ATTORNEY-CLIENT CONFIDENTIAL

Hi Aida and Mark,

Aida, thank you for your email. (b)(5)

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b)(5)

[REDACTED]

On Mon, Jul 10, 2017 at 2:46 PM, Aida Pettegrue <aida.pettegrue@noaa.gov> wrote:

Hi Marty:

(b)(5)
[REDACTED]
[REDACTED]?

Thanks

aida

----- Forwarded Message -----

Subject: Fwd: RE: Freedom of Information Request: NOAA Monterey Bay seals and drone harassment
Date: Mon, 10 Jul 2017 14:43:30 -0400
From: Aida Pettegrue <aida.pettegrue@noaa.gov>
To: Martha McCoy - NOAA Federal <martha.mccoy@noaa.gov>

Hi Marty:

Please see the e-mail below from Ms. Emerson.

Please advise on how to respond to her.

Thanks

aida

----- Forwarded Message -----

Subject: RE: Freedom of Information Request: NOAA Monterey Bay seals and drone harassment
Date: Mon, 10 Jul 2017 18:41:05 +0000
From: 35730-28639645@requests.muckrock.com
To: aida.pettegrue@noaa.gov

July 10, 2017
National Oceanic and Atmospheric Administration
National Oceanic and Atmospheric Administration
ATTN: FOIA Officer
Room 10641, SSMC-3
1315 East West Highway
Silver Spring, MD 20910-3281

This is a follow up to a previous request:

Hi Aida,

Before agreeing to any fees, I would like to ask that you re-categorize my request as a "media use request," thus qualifying me for a fee waiver. I am a science journalist for VICE's technology website, Motherboard, and frequently report stories based on documents received through FOIA requests. Below are some examples that prove 1) I am a member of the media, and 2) that information obtained through this FOIA request will be made available to the public, and not for commercial reasons, as I have done in the past.

https://motherboard.vice.com/en_us/article/59mezb/hawaii-prepares-new-nuclear-contingency-plan-north-korea

https://motherboard.vice.com/en_us/article/vv54nd/trump-salary-donation-national-park-service-nps-foia

https://motherboard.vice.com/en_us/article/kbvbky/office-of-science-and-technology-policy-trump-jobs

https://motherboard.vice.com/en_us/article/jp3yab/epa-investigated-which-one-of-its-employees-called-donald-trump-a-fucking-fascist-documents-reveal

https://motherboard.vice.com/en_us/article/yp3kkg/hawaiis-cursed-lava-rocks-are-driving-national-park-staff-insane

https://motherboard.vice.com/en_us/article/qkjkqw/boston-is-covered-in-goose-poop-and-people-are-mad-as-hell

I would also argue that this information, if made available, would serve the public's best interests by informing them about the human/wildlife conflicts created through drone use. Drone disturbances near Monterey Bay and its wildlife have been extensively reported on, and these records would contribute significantly to public understanding of the operations and activities of the government to protect Monterey Bay's wildlife.

<http://www.kion546.com/news/monterey-county/drones-banned-in-four-monterey-bay-nationally-protected-areas-/66543075>

<https://ww2.kqed.org/science/2017/03/27/drones-on-monterey-beaches-frighten-seals-during-mating-season/>

<http://www.sfgate.com/science/article/Officials-Drones-are-illegal-over-Monterey-Bay-5573773.php>

Lastly, I am requesting an itemized cost breakdown of the \$8,314.04 fee estimate that I was provided. Can you please list, in more detailed terms, how these funds will be applied, beyond the hours of search time and salary rates of staff needed to

locate records.

Best,
Sarah

On July 10, 2017:

Dear Ms. Emerson:

This e-mail is in reference to your Freedom of Information (FOIA) request received by the National Ocean Service on June 15, 2017, in which you requested copies of the following:

Copies of all complaints (written, e-mailed, faxed, or called in) to the Monterey Bay National Marine Sanctuary about wildlife being harassed or disturbed by drones or unmanned aerial vehicles. This request is for January 1, 2016 until the time this request is processed.

Please find attached a copy of the fee estimate letter. The original letter was mailed to you today via USPS.

If you would like to discuss this matter in order to modify your request in an effort to lower the estimated fee, please contact me at (240) 533-0670.

Sincerely,

Aida Pettegrue
FOIA Liaison
Office of National Marine Sanctuaries

On June 15, 2017:

Thank you so much!

Best,
Sarah

On June 15, 2017:

06/15/2017 12:36 PM FOIA Request: DOC-NOAA-2017-001348

Ms. Emerson,

Please see the attached letter acknowledging the receipt of your FOIA request.

Sincerely,
Nkolika Ndubisi
NOS FOIA Officer

On June 12, 2017:
Good afternoon,

Thank you for inquiring about your FOIA request. Your request has been received and assigned to the National Ocean Service (NOS) for fulfillment. It will be processed as quickly as possible.

There will be no FOIA fees charged for the processing of your request.

Thank you very much for your patience. Please let me know if you have any questions.

Regards,

Lola Stith
NOAA FOIA Office

Mark H. Graff
FOIA Officer
National Oceanic and Atmospheric Administration
[\(301\)-628-5658](tel:3016285658)

On June 12, 2017:

This message is to confirm your request submission to the FOIAonline application: View Request. Request information is as follows: (<https://foiaonline.regulations.gov/443/foia/action/public/view/request?objectId=090004d281394c89>)

* Tracking Number: DOC-NOAA-2017-001348

* Requester Name: Sarah Emerson

* Date Submitted: 06/01/2017

* Request Status: Submitted

* Description: Copies of all complaints (written, emailed, faxed, or called in) to the Monterey Bay National Marine Sanctuary about wildlife being harassed or disturbed by drones or unmanned aerial vehicles. This request is for January 1, 2016 until the time this request is processed.

On June 12, 2017:
To Whom It May Concern:

I wanted to follow up on the following Freedom of Information request, copied below, and originally submitted on April 3, 2017. Please let me know when I can expect to receive a response, or if further clarification is needed.

Thanks for your help, and let me know if further clarification is needed.

On May 22, 2017:
To Whom It May Concern:

I wanted to follow up on the following Freedom of Information request, copied below, and originally submitted on April 3, 2017. Please let me know when I can expect to receive a response, or if further clarification is needed.

Thanks for your help, and let me know if further clarification is needed.

On May 1, 2017:

To Whom It May Concern:

I wanted to follow up on the following Freedom of Information request, copied below, and originally submitted on April 3, 2017. Please let me know when I can expect to receive a response, or if further clarification is needed.

Thanks for your help, and let me know if further clarification is needed.

On April 3, 2017:

To Whom It May Concern:

This is a request under the Freedom of Information Act. I hereby request the following records:

Copies of all complaints (written, emailed, faxed, or called in) to the Monterey Bay National Marine Sanctuary about wildlife being harassed or disturbed by drones or unmanned aerial vehicles. This request is for January 1, 2016 until the time this request is processed.

In order to help to determine my status to assess fees, you should know that I am a journalist writing for Motherboard, VICE's technology and science site, and that this request is being made as part of news gathering.

The requested documents will be made available to the general public, and this request is not being made for commercial purposes. They will be used in the course of my reporting for Motherboard (www.motherboard.vice.com).

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request, and I ask that this be processed in the "media" fee category. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 20 business days, as the statute requires.

Sincerely,

Sarah Emerson

Filed via MuckRock.com

E-mail (Preferred): 35730-28639645@requests.muckrock.com
Upload documents directly: https://www.muckrock.com/accounts/agency_login/national-oceanic-and-atmospheric-administration-121/noaa-monterey-bay-seals-and-drone-harassment-35730/?uuid-login=92638f9f-3424-4ec0-acfd-76d81f11e61c&email=aida.pettegrue%40noaa.gov#agency-reply

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For mailed responses, please address (see note):

MuckRock
DEPT MR 35730
411A Highland Ave
Somerville, MA 02144-2516

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--

Martha McCoy

Attorney-Advisor

NOAA Office of the General Counsel, Oceans and Coasts Section

SSMC-4 /Room 6128

1305 East-West Highway

Silver Spring, MD 20910

[301-713-7391](tel:301-713-7391)

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Email Search Parameters: Scott Kathey
FOIA DOC-NOAA-2017-001348
Requester: Sarah Emerson

Requested Information: Copies of all complaints (written, emailed, faxed, or called in) to the Monterey Bay National Marine Sanctuary about wildlife being harassed or disturbed by drones or unmanned aerial vehicles. This request is for January 1, 2016 until the time this request is processed.

(b) (5)

(b) (5)

Notes: Scott Kathey
FOIA DOC-NOAA-2017-001348
Requester: Sarah Emerson

(b) (5)

Martha McCoy - NOAA Federal

From: Martha McCoy - NOAA Federal
Sent: Tuesday, July 11, 2017 11:57 AM
To: Scott Kathey
Cc: Aida Pettegrue; Mark Graff - NOAA Federal; Michelle Mills; Jackie Rolleri - NOAA Federal; Nkolika Ndubisi
Subject: Re: Freedom of Information Request: NOAA Monterey Bay seals and drone harassment

Scott, this is very helpful. Thank you.

In a moment, I will update our meeting invitation to include a brief suggested agenda of topics for us to discuss. I look forward to discussing shortly.

Best,

Marty

On Mon, Jul 10, 2017 at 9:01 PM, Scott Kathey <scott.kathey@noaa.gov> wrote:

Martha,

(b) (5)

All,

NOAA HQ received a FOIA request for the following:

Copies of all complaints (written, emailed, faxed, or called in) to the Monterey Bay National Marine Sanctuary about wildlife being harassed or disturbed by drones or unmanned aerial vehicles. This request is for January 1, 2016 until the time this request is processed.

(b) (5)

I hope this is helpful.

Scott

Scott Kathey
Federal Regulatory Coordinator
Monterey Bay National Marine Sanctuary
National Oceanic & Atmospheric Administration
U.S. Department of Commerce
99 Pacific Street, Bldg 455A
Monterey, California 93940
Phone: [831-647-4251](tel:831-647-4251)
FAX: [831-647-4250](tel:831-647-4250)

On 7/10/17 12:44 PM, Martha McCoy - NOAA Federal wrote:

ATTORNEY-CLIENT CONFIDENTIAL

Hi Aida and Mark,

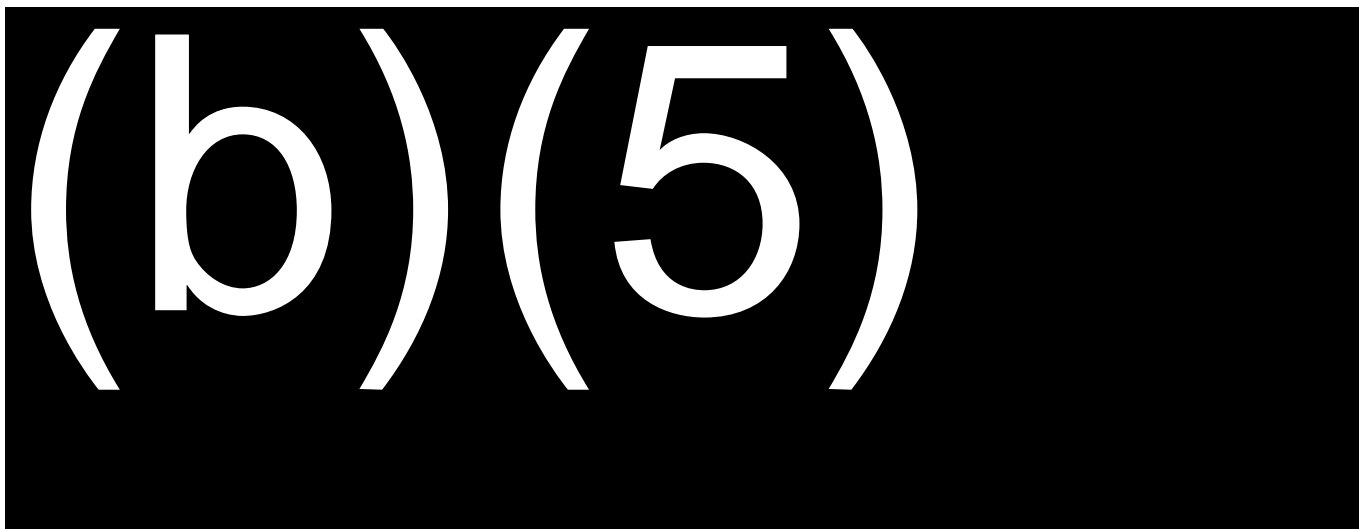
Aida, thank you for your email. (b)(5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
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[REDACTED]
[REDACTED]

Relevant notes from my last email:



On Mon, Jul 10, 2017 at 2:46 PM, Aida Pettegrue <aida.pettegrue@noaa.gov> wrote:

Hi Marty:

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

Thanks

aida

----- Forwarded Message -----

Subject: Fwd: RE: Freedom of Information Request: NOAA Monterey Bay seals and drone harassment

Date: Mon, 10 Jul 2017 14:43:30 -0400

From: Aida Pettegrue <aida.pettegrue@noaa.gov>

To: Martha McCoy - NOAA Federal <martha.mccoy@noaa.gov>

Hi Marty:

Please see the e-mail below from Ms. Emerson.

Please advise on how to respond to her.

Thanks

aida

----- Forwarded Message -----

Subject: RE: Freedom of Information Request: NOAA Monterey Bay seals and drone harassment

Date: Mon, 10 Jul 2017 18:41:05 +0000

From: 35730-28639645@requests.muckrock.com

To: aida.pettegrue@noaa.gov

July 10, 2017

National Oceanic and Atmospheric Administration

National Oceanic and Atmospheric Administration

ATTN: FOIA Officer

Room 10641, SSMC-3

1315 East West Highway

Silver Spring, MD 20910-3281

This is a follow up to a previous request:

Hi Aida,

Before agreeing to any fees, I would like to ask that you re-categorize my request as a "media use request," thus qualifying me for a fee waiver. I am a science journalist for VICE's technology website, Motherboard, and frequently report stories based on documents received through FOIA requests. Below are some examples that prove 1) I am a member of the media, and 2) that information obtained through this FOIA request will be made available to the public, and not for commercial reasons, as I have done in the past.

https://motherboard.vice.com/en_us/article/59mezb/hawaii-prepares-new-nuclear-contingency-plan-north-korea

https://motherboard.vice.com/en_us/article/vv54nd/trump-salary-donation-national-park-service-nps-foia

https://motherboard.vice.com/en_us/article/kbvbky/office-of-science-and-technology-policy-trump-jobs

https://motherboard.vice.com/en_us/article/jp3yab/epa-investigated-which-one-of-its-employees-called-donald-trump-a-fucking-fascist-documents-reveal

https://motherboard.vice.com/en_us/article/yp3kkg/hawaiis-cursed-lava-rocks-are-driving-national-park-staff-insane

https://motherboard.vice.com/en_us/article/qkjkqw/boston-is-covered-in-goose-poop-and-people-are-mad-as-hell

I would also argue that this information, if made available, would serve the public's best interests by informing them about the human/wildlife conflicts created through drone use. Drone disturbances near Monterey Bay and its wildlife have been extensively reported on, and these records would contribute significantly to public understanding of the operations and activities of the

government to protect Monterey Bay's wildlife.

<http://www.kion546.com/news/monterey-county/drones-banned-in-four-monterey-bay-nationally-protected-areas-/66543075>
<https://ww2.kqed.org/science/2017/03/27/drones-on-monterey-beaches-frighten-seals-during-mating-season/>
<http://www.sfgate.com/science/article/Officials-Drones-are-illegal-over-Monterey-Bay-5573773.php>

Lastly, I am requesting an itemized cost breakdown of the \$8,314.04 fee estimate that I was provided. Can you please list, in more detailed terms, how these funds will be applied, beyond the hours of search time and salary rates of staff needed to locate records.

Best,
Sarah

On July 10, 2017:
Dear Ms. Emerson:

This e-mail is in reference to your Freedom of Information (FOIA) request received by the National Ocean Service on June 15, 2017, in which you requested copies of the following:

Copies of all complaints (written, e-mailed, faxed, or called in) to the Monterey Bay National Marine Sanctuary about wildlife being harassed or disturbed by drones or unmanned aerial vehicles. This request is for January 1, 2016 until the time this request is processed.

Please find attached a copy of the fee estimate letter. The original letter was mailed to you today via USPS.

If you would like to discuss this matter in order to modify your request in an effort to lower the estimated fee, please contact me at (240) 533-0670.

Sincerely,

Aida Pettegrue
FOIA Liaison
Office of National Marine Sanctuaries

On June 15, 2017:
Thank you so much!

Best,
Sarah

On June 15, 2017:
06/15/2017 12:36 PM FOIA Request: DOC-NOAA-2017-001348

Ms. Emerson,

Please see the attached letter acknowledging the receipt of your FOIA request.

Sincerely,
Nkolika Ndubisi
NOS FOIA Officer

On June 12, 2017:
Good afternoon,

Thank you for inquiring about your FOIA request. Your request has been received and assigned to the National Ocean Service (NOS) for fulfillment. It will be processed as quickly as possible.

There will be no FOIA fees charged for the processing of your request.

Thank you very much for your patience. Please let me know if you have any questions.

Regards,

Lola Stith
NOAA FOIA Office

Mark H. Graff
FOIA Officer
National Oceanic and Atmospheric Administration
[\(301\)-628-5658](tel:(301)628-5658)

On June 12, 2017:
This message is to confirm your request submission to the FOIAonline application: View Request. Request information is as follows: (<https://foiaonline.regulation.gov:443/foia/action/public/view/request?objectId=090004d281394c89>)

- * Tracking Number: DOC-NOAA-2017-001348
- * Requester Name: Sarah Emerson
- * Date Submitted: 06/01/2017
- * Request Status: Submitted
- * Description: Copies of all complaints (written, emailed, faxed, or called in) to the Monterey Bay National Marine Sanctuary about wildlife being harassed or disturbed by drones or unmanned aerial vehicles. This request is for January 1, 2016 until the time this request is processed.

On June 12, 2017:

To Whom It May Concern:

I wanted to follow up on the following Freedom of Information request, copied below, and originally submitted on April 3, 2017. Please let me know when I can expect to receive a response, or if further clarification is needed.

Thanks for your help, and let me know if further clarification is needed.

On May 22, 2017:

To Whom It May Concern:

I wanted to follow up on the following Freedom of Information request, copied below, and originally submitted on April 3, 2017. Please let me know when I can expect to receive a response, or if further clarification is needed.

Thanks for your help, and let me know if further clarification is needed.

On May 1, 2017:

To Whom It May Concern:

I wanted to follow up on the following Freedom of Information request, copied below, and originally submitted on April 3, 2017. Please let me know when I can expect to receive a response, or if further clarification is needed.

Thanks for your help, and let me know if further clarification is needed.

On April 3, 2017:

To Whom It May Concern:

This is a request under the Freedom of Information Act. I hereby request the following records:

Copies of all complaints (written, emailed, faxed, or called in) to the Monterey Bay National Marine Sanctuary about wildlife being harassed or disturbed by drones or unmanned aerial vehicles. This request is for January 1, 2016 until the time this request is processed.

In order to help to determine my status to assess fees, you should know that I am a journalist writing for Motherboard, VICE's technology and science site, and that this request is being made as part of news gathering.

The requested documents will be made available to the general public, and this request is not being made for commercial purposes. They will be used in the course of my reporting for Motherboard (www.motherboard.vice.com).

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request, and I ask that this be processed

in the "media" fee category. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 20 business days, as the statute requires.

Sincerely,

Sarah Emerson

Filed via MuckRock.com

E-mail (Preferred): 35730-28639645@requests.muckrock.com

Upload documents directly: https://www.muckrock.com/accounts/agency_login/national-oceanic-and-atmospheric-administration-121/noaa-monterey-bay-seals-and-drone-harassment-35730/?uuid-login=92638f9f-3424-4ec0-acfd-76d81f11e61c&email=aida.pettegrue%40noaa.gov#agency-reply

Is this email coming to the wrong contact? Something else wrong? Use the above link to let us know.

For mailed responses, please address (see note):

MuckRock

DEPT MR 35730

411A Highland Ave

Somerville, MA 02144-2516

PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.

--

Martha McCoy

Attorney-Advisor

NOAA Office of the General Counsel, Oceans and Coasts Section

SSMC-4 /Room 6128

1305 East-West Highway

Silver Spring, MD 20910

[301-713-7391](tel:301-713-7391)

--

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--

Martha McCoy

Attorney-Advisor

NOAA Office of the General Counsel, Oceans and Coasts Section

SSMC-4 /Room 6128

1305 East-West Highway

Silver Spring, MD 20910

301-713-7391

--

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Bogomolny, Michael (Federal)

From: Bogomolny, Michael (Federal)
Sent: Tuesday, July 11, 2017 6:08 PM
To: Graff, Mark (Federal)
Subject: RE: June 2017 Monthly FOIA Report
Attachments: CoA-Bolinder DOC-OS-2017-001268 letter signed and dated.pdf; CoA-Bolinder DOC-OS-2017-001268 memo.docx

(b) (5)



UNITED STATES DEPARTMENT OF COMMERCE
Office of the General Counsel
Washington, DC 20230

Via FOIAOnline

JUN 20 2017

Mr. Eric Bolinder
Cause of Action Institute
1875 Eye St. NW, Suite 800
Washington, DC 20006

Re: FOIA Appeal # DOC-OS-2017-001268
FOIA Request # DOC-NOAA-2017-001194

Dear Mr. Bolinder:

This letter is in regards to your Freedom of Information Act (FOIA) appeal on behalf of Cause of Action (CoA) Institute, which you submitted on May 23, 2017. Your appeal relates to the May 1, 2017, request to NOAA seeking communications records of NOAA employees sent or received during the April 18-20 Northeast Fishery Management Council (NEFMC) meeting. You requested expedited processing, citing an urgency to inform the public. On May 18, 2017, NOAA denied your request. As detailed below, your appeal is denied.

Expedited Processing

FOIA requests and appeals should be taken out of order and given expedited treatment whenever it is determined that they meet any one of the factors set forth in 5 U.S.C. § 552(a)(6)(E), as implemented within the Department through its FOIA regulations at 15 C.F.R. § 4.6(e)(1). The regulations provide that:

a request or appeal should be taken out of order and given expedited treatment if it involves: (i) circumstances in which lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; (ii) the loss of substantial due process rights; (iii) a matter of widespread and exceptional media interest involving questions about the Government's integrity which affect public confidence; or (iv) an urgency to inform the public about an actual or alleged Federal Government activity, if made by a person primarily engaged in disseminating information.

Expedition of FOIA requests should be granted sparingly. "Given the finite resources generally available for fulfilling FOIA requests, unduly generous use of the expedited processing procedure would unfairly disadvantage other requestors who do not qualify for its treatment. ... Indeed, an unduly generous approach would also disadvantage those requestors who do qualify for expedition, because prioritizing all requests would effectively prioritize none." *Al-Fayed v. Central Intelligence Agency*, 254 F.3d 300, 310 (D.C. Cir. 2001). A request for expedited processing may be denied where the requestor fails to "adequately develop the arguments and

authority in support of such a request.” *Lawyers Comm. for Civil Rights of the San Francisco Bay Area v. Dep’t of the Treasury*, No. 07-2590, 2009 WL 2905963, at *2 (N.D. Cal. Sept. 8, 2009).

You have argued that expedited processing is warranted because of the “urgency to inform” provision, i.e. CoA Institute has “an urgency to inform the public about an actual or alleged Federal Government activity, if made by a person primarily engaged in disseminating information.” 15 C.F.R. § 4.6(e)(1)(iv). So, as a threshold matter, the provision is only available to requesters “primarily engaged in disseminating information.” *Id.* When considering whether requesters who meet that threshold have demonstrated an “urgency to inform”, at least three factors should be considered: “(1) whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would compromise a significant recognized interest; and (3) whether the request concerns federal government activity.” *Al-Fayed v. CIA*, 254 F.3d 300, 310 (D.C. Cir. 2001).

Threshold Consideration: Primarily Engaged in Disseminating Information

In your appeal, you argue that “CoA Institute is primarily engaged in disseminating information because it qualifies as a news media organization.” However, the courts have ruled narrowly on the issue of this status: generally a requestor must be *primarily* engaged in the dissemination of information to the exclusion of other main activities. See *Landmark Legal Found. v. E.P.A.*, 910 F. Supp. 2d 270, 276 (D.D.C. 2012). Although courts have routinely found that media organizations and newspapers are primarily engaged in disseminating information, other types of organizations have been found to not qualify unless information dissemination is their main activity, and not merely incidental to other activities that are their actual, core purpose. See *id.* at 276 (concluding that public interest law firm did not qualify as primarily engaged in information dissemination, and noting that a “contrary reading of the statutory requirement would allow nearly any organization with a website, newsletter, or other information distribution channel to qualify as primarily engaged in disseminating information”).

According to its webpage, “Cause of Action Institute creates positive social change with pivotal administrative and judicial victories. These achievements create new standards that change the playing field not only for its clients, but for free society, opportunity, and economic liberty as a whole.” (<https://causeofaction.org>, “What We Are About”, last visited on June 2, 2017). CoA Institute’s webpage does not support that dissemination of information is its primary activity. Although CoA Institute indicates that it “educate[s] the public on how government transparency and accountability protects economic opportunity for American taxpayers,” (<https://causeofaction.org>, “What We Do”, last visited on June 2, 2017), this is not sufficient to show that CoA Institute is *primarily*, and not just incidentally, engaged in information dissemination. CoA Institute thus does not meet the threshold for the “urgency to inform” provision.

Even if CoA Institute’s primary activity was the dissemination of information, you have not demonstrated that there is an urgency to inform. According to the legislative history for the “urgency to inform” provision:

The standard of “urgency to inform” requires that the information requested should pertain to a matter of a current exigency to the American public and that a reasonable person might conclude that the consequences of delaying a response to a FOIA request would compromise a significant recognized interest. The public’s right to know, although a significant and important value, would not by itself be sufficient to satisfy this standard.

H.R. Rep. No. 104-795 at 26 (1996).

You argued that there is an urgency and need to inform the public because the NEFMC has already passed the Omnibus Amendment and it will now go to the Secretary of Commerce for review. Even if one were to accept the implicit argument that the Secretary’s review of the Omnibus Amendment is a current exigency to the American public, you have not drawn any connection between the records requested, communication records of NOAA employees during the NEFMC meeting where the Omnibus Amendment was passed, and the Secretary’s review. You also have not identified any group’s interest in the Secretary’s review that would be harmed by a delay in receiving the communication records of the employees at the meeting. This situation is similar to *Al-Fayed*, where the court held:


Even if the information sought is properly characterized as “current,” it cannot fairly be said to concern a matter of “exigency to the American public.” There is no evidence in the record that there is substantial interest, either on the part of the American public or the media, in this particular aspect of plaintiffs’ allegations. ... Moreover, plaintiffs have not demonstrated any “significant adverse consequence” that would result if their request for expedited processing of these or any other documents were denied, and they therefore received the documents later rather than sooner. *See* H.R. REP. No. 104-795, at 26 (“By requiring a ‘compelling need,’ the expedited access procedure is intended to be limited to circumstances in which a delay in obtaining information can reasonably be foreseen to cause a significant adverse consequence to a recognized interest.”)

254 F.3d at 311. Here, though the communications sought may assist CoA Institute in achieving a greater awareness of the actions of federal employees, you have not made the argument that the records are needed in an exigent fashion to avoid compromising some significant interest implicated by the Secretary’s review of an Amendment passed at an open Fisheries Management Council meeting that CoA Institute attended. Neither a substantial interest nor a consequence has been identified in the request or appeal.

You have not demonstrated an urgency to inform the public, or even that CoA Institute would be eligible to benefit from that provision because it is primarily engaged in disseminating information. Therefore, NOAA correctly denied the request for expedited processing.

For the above-stated reasons, your appeal regarding NOAA's denial of your request for expedited processing is denied. This is the final decision of the Department of Commerce. You have the right to obtain judicial review of this decision as provided in 5 U.S.C. 552(a)(4)(B).

Sincerely,

A handwritten signature in black ink, appearing to read "Brian D. DiGiacomo". The signature is written in a cursive style with a large, stylized initial "B".

Brian D. DiGiacomo

Assistant General Counsel

for Employment, Litigation, and Information



UNITED STATES DEPARTMENT OF COMMERCE
Office of the Assistant General Counsel for
Employment, Litigation, and Information
Washington, DC 20230

Memorandum

To: Brian D. DiGiacomo
Assistant General Counsel
for Employment, Litigation, and Information

Through: Michael Bogomolny
Acting Chief, Information Law Division

From: Cathy McClure
Information Law Division

Date: June 16, 2017

Re: FOIA Appeal of Cause of Action Institute
Request No. DOC-NOAA-2017-001194
Appeal No. DOC-OS-2017-001268

(b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Wednesday, July 12, 2017 10:56 AM
To: Stacey Nathanson - NOAA Federal
Subject: Fwd: June 2017 Monthly FOIA Report
Attachments: CoA-Bolinder DOC-OS-2017-001268 letter signed and dated.pdf; CoA-Bolinder DOC-OS-2017-001268 memo.docx

Here is the Exp. Processing appeal affirmation

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: Bogomolny, Michael (Federal) <MBogomolny@doc.gov>
Date: Tue, Jul 11, 2017 at 6:07 PM
Subject: RE: June 2017 Monthly FOIA Report
To: "Graff, Mark (Federal)" <Mark.Graff@noaa.gov>

(b)(5)

-bogo

(b)(5)



UNITED STATES DEPARTMENT OF COMMERCE
Office of the General Counsel
Washington, DC 20230

Via FOIAOnline

JUN 20 2017

Mr. Eric Bolinder
Cause of Action Institute
1875 Eye St. NW, Suite 800
Washington, DC 20006

Re: FOIA Appeal # DOC-OS-2017-001268
FOIA Request # DOC-NOAA-2017-001194

Dear Mr. Bolinder:

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Even if the information sought is properly characterized as “current,” it cannot fairly be said to concern a matter of “exigency to the American public.” There is no evidence in the record that there is substantial interest, either on the part of the American public or the media, in this particular aspect of plaintiffs’ allegations. ... Moreover, plaintiffs have not demonstrated any “significant adverse consequence” that would result if their request for expedited processing of these or any other documents were denied, and they therefore received the documents later rather than sooner. *See* H.R. REP. No. 104-795, at 26 (“By requiring a ‘compelling need,’ the expedited access procedure is intended to be limited to circumstances in which a delay in obtaining information can reasonably be foreseen to cause a significant adverse consequence to a recognized interest.”)

254 F.3d at 311. Here, though the communications sought may assist CoA Institute in achieving a greater awareness of the actions of federal employees, you have not made the argument that the records are needed in an exigent fashion to avoid compromising some significant interest implicated by the Secretary’s review of an Amendment passed at an open Fisheries Management Council meeting that CoA Institute attended. Neither a substantial interest nor a consequence has been identified in the request or appeal.

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For the above-stated reasons, your appeal regarding NOAA's denial of your request for expedited processing is denied. This is the final decision of the Department of Commerce. You have the right to obtain judicial review of this decision as provided in 5 U.S.C. 552(a)(4)(B).

Sincerely,

A handwritten signature in black ink that reads "Brian D. DiGiacomo". The signature is written in a cursive style with a large, stylized initial "B".

Brian D. DiGiacomo

Assistant General Counsel

for Employment, Litigation, and Information



UNITED STATES DEPARTMENT OF COMMERCE
Office of the Assistant General Counsel for
Employment, Litigation, and Information
Washington, DC 20230

Memorandum

To: Brian D. DiGiacomo
Assistant General Counsel
for Employment, Litigation, and Information

Through: Michael Bogomolny
Acting Chief, Information Law Division

From: Cathy McClure
Information Law Division

Date: June 16, 2017

Re: FOIA Appeal of Cause of Action Institute
Request No. DOC-NOAA-2017-001194
Appeal No. DOC-OS-2017-001268

(b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)

Lola Stith - NOAA Affiliate

From: Lola Stith - NOAA Affiliate
Sent: Wednesday, July 12, 2017 3:23 PM
To: Mark Graff - NOAA Federal; Becky Lizama - NOAA Federal
Subject: Re: Follow-up: FOIA Request DOC-NOAA-2017-000843
Attachments: Scope of Request - DOC-NOAA-2017-000843.docx

Hi Mark,

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

A copy of the request detail is attached.

R/
Lola

On Mon, Jun 26, 2017 at 11:03 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:
Can you add Leg Affairs to the search? I don't see that they've been tasked.

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

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

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Date: Mon, Jun 26, 2017 at 11:02 AM
Subject: Re: Follow-up: FOIA Request DOC-NOAA-2017-000843
To: Melanie Calero <mcalero@edf.org>

Good Morning Ms. Calero,

As you and I discussed, no fees will be associated with this request. The two offices we had discussed on the phone beyond the Office of Communications were the Office of the Undersecretary, as well as the Office of Legislative Affairs. The request has already been tasked for a search, and I will let you know as the request progresses. Please feel free to reach out any time. Thank you again for your time, and best regards,

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

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On Fri, Jun 23, 2017 at 11:43 AM, Melanie Calero <mcalero@edf.org> wrote:

Dear Mr. Graff,

I am following up on the Environmental Defense Fund's FOIA request DOC-NOAA-2017-000843, concerning part three of our request. We last spoke on June 5th about narrowing our request in order to promptly initiate the search. You stated that if we agreed to narrow the search to the following individuals and records, you would grant the fee waiver and initiate the search:

- 1) all of Troy Wilds' communications
- 2) emails of 1-2 individuals managing FOIA communications in the Office of Communications and External Affairs
- 3) emails of 1-2 individuals managing FOIA communications in two unnamed offices you mentioned that also handle the bulk of NOAA's FOIA communications

I have reached out to you over the phone and email several times since then to finalize the scope of our request, and therefore would appreciate if you could follow up with me on this matter. Thank you!

Best regards,

Melanie Calero

Legal Intern

U.S. Climate Legal and Regulatory Program

Environmental Defense Fund

1875 Connecticut Ave., NW

Suite 600

Washington, DC 20009

T [202-572-3524](tel:202-572-3524)

mcalero@edf.org

edf.org

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--

Lola Stith

Contractor - The Ambit Group, LLC

NOAA Office of the Chief Information Officer (OCIO)

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

lola.m.stith@noaa.gov

1329

Environmental Defense Fund (“EDF”) respectfully requests records, as that term is defined at 5 U.S.C. § 552(f)(2) of the Freedom of Information Act (“FOIA”), of the National Oceanic and Atmospheric Administration (the “Agency”). Specifically, EDF requests:

1) all directives and guidance to Agency scientific staff that relate to public communication about scientific research or findings;

2) all questionnaires or other solicitations of information sent to Agency scientific staff that relate to (i) past, current, or prospective public communication of scientific research or findings, and (ii) attendance at or participation in past, current, or prospective public events; and

3) all correspondence relating to FOIA that was sent or received by anyone who, since November 8, 2016, has served as a political appointee or member of the beachhead team or transition team.

For all elements of this request, EDF respectfully seeks records produced, modified, or transmitted since November 8, 2016 that exist as of the date of this request and on a rolling basis going forward. “Correspondence” includes, but is not limited to, hard copy correspondence and electronic correspondence such as emails, text messages, and correspondence transmitted through any other electronic platform. “Communication” includes, but is not limited to, any means by which information is made available to the public, media, or other outside entities, and specifically includes journal publications and presentations at conferences.

June 5--requester further narrowed, seeking all of Troy Wilds' emails that are responsive to the items above, as well as emails to or from Scott Smullen, as well as searches in the offices at USEC and Legislative Affairs.

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Thursday, July 13, 2017 8:40 AM
To: Becky Lizama - NOAA Federal
Subject: Re: DOC-NOAA-2017-000843

Hi Becky--

I've got a call in about 10 minutes, but afterwards should be good to give you a call. I'm teleworking so you probably got my vm at the office, but my cell number in my signature block should work. What's the best number to reach you at?

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, Jul 13, 2017 at 8:13 AM, Becky Lizama - NOAA Federal <becky.lizama@noaa.gov> wrote:

Good morning, Mark.

I got your voice message and your email. I'm hoping I can call you this morning anytime before 10:30 a.m. I am at my desk now. Please let me know.

Below is the information that was sent to our office. This way you can see what I am was given.

Thank you,

Becky

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

From: **Velna Bullock - NOAA Federal** <velna.i.bullock@noaa.gov>
Date: Mon, Jul 3, 2017 at 8:50 AM
Subject: DOC-NOAA-2017-000843
To: _HDQ OLA NOAA <OLA.NOAA@noaa.gov>

Good Morning Staff,

Does anyone have anything on this FOIA

Environmental Defense Fund (“EDF”) respectfully requests records, as that term is defined at 5 U.S.C. § 552(f)(2) of the Freedom of Information Act (“FOIA”), of the National Oceanic and Atmospheric Administration (the “Agency”). Specifically, EDF requests: 1) all directives and guidance to Agency scientific staff that relate to public communication about scientific research or findings; 2) all questionnaires or other solicitations of information sent to Agency scientific staff that relate to (i) past, current, or prospective public communication of scientific research or findings, and (ii) attendance at or participation in past, current, or prospective public events; and 3) all correspondence relating to FOIA that was sent or received by anyone who, since November 8, 2016, has served as a political appointee or member of the beachhead team or transition team. For all elements of this request, EDF respectfully seeks records produced, modified, or transmitted since November 8, 2016 that exist as of the date of this request and on a rolling basis going forward. “Correspondence” includes, but is not limited to, hard copy correspondence and electronic correspondence such as emails, text messages, and correspondence transmitted through any other electronic platform. “Communication” includes, but is not limited to, any means by which information is made available to the public, media, or other outside entities, and specifically includes journal publications and presentations at conferences. June 5--requester further narrowed, seeking all of Troy Wilds' emails that are responsive to the items above, as well as emails to or from Scott Smullen, as well as searches in the offices at USEC and Legislative Affairs.

--

Becky Cruz Lizama

Congressional Affairs Specialist
Office of Legislative and Intergovernmental Affairs
U.S. Department of Commerce
National Oceanic and Atmospheric Administration
1401 Constitution Ave. NW
Herbert C. Hoover Building
Washington, DC 20230
Tel: [202-482-0809](tel:202-482-0809)
becky.lizama@noaa.gov

Becky Lizama - NOAA Federal

From: Becky Lizama - NOAA Federal
Sent: Thursday, July 13, 2017 8:42 AM
To: Mark Graff - NOAA Federal
Subject: Re: DOC-NOAA-2017-000843

Thanks, Mark.

My direct line is 202-482-0809.

Talk to you soon.

On Thu, Jul 13, 2017 at 8:40 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

Hi Becky--

I've got a call in about 10 minutes, but afterwards should be good to give you a call. I'm teleworking so you probably got my vm at the office, but my cell number in my signature block should work. What's the best number to reach you at?

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

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Thank you,

Becky

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From: Velna Bullock - NOAA Federal <velna.l.bullock@noaa.gov>
Date: Mon, Jul 3, 2017 at 8:50 AM
Subject: DOC-NOAA-2017-000843

To: _HDQ OLA NOAA <OLA.NOAA@noaa.gov>

Good Morning Staff,

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--

Becky Cruz Lizama

Congressional Affairs Specialist
Office of Legislative and Intergovernmental Affairs
U.S. Department of Commerce
National Oceanic and Atmospheric Administration
1401 Constitution Ave. NW
Herbert C. Hoover Building
Washington, DC 20230
Tel: [202-482-0809](tel:202-482-0809)
becky.lizama@noaa.gov

--

Becky Cruz Lizama

Congressional Affairs Specialist
Office of Legislative and Intergovernmental Affairs
U.S. Department of Commerce
National Oceanic and Atmospheric Administration

1401 Constitution Ave. NW
Herbert C. Hoover Building
Washington, DC 20230
Tel: 202-482-0809
becky.lizama@noaa.gov

Joy Baker - NOAA Federal

From: Joy Baker - NOAA Federal
Sent: Friday, July 14, 2017 3:04 PM
To: Sarah Brabson - NOAA Federal; Mark Graff - NOAA Federal
Subject: NOAA8873 PTA for Signature
Attachments: NOAA8873_PTA_July2017-AO.pdf

Sarah/Mark,

Attached is the NOAA8873 PTA for signature. Please let me know if you have any questions or require more information.

Respectfully,

Joy Baker

IT Specialist

National Data Buoy Center

Stennis Space Center, MS 39529

228-688-2801

U.S. Department of Commerce
NOAA



Privacy Threshold Analysis
for the
NOAA8873-National Data Buoy Center (NDBC)

U.S. Department of Commerce Privacy Threshold Analysis

NOAA/NDBC

Unique Project Identifier: NOAA8873

Introduction: This Privacy Threshold Analysis (PTA) is a questionnaire to assist with determining if a Privacy Impact Assessment (PIA) is necessary for this IT system. This PTA is primarily based from the Office of Management and Budget (OMB) privacy guidance and the Department of Commerce (DOC) IT security/privacy policy. If questions arise or further guidance is needed in order to complete this PTA, please contact your Bureau Chief Privacy Officer (BCPO).

Description of the information system and its purpose:

The National Data Buoy Center (NDBC), a part of the National Oceanic and Atmospheric Administration (NOAA), National Weather Service (NWS), provides comprehensive, reliable systems and marine observations to support the missions of the NWS and NOAA, promote public safety, and satisfy the future needs of our customers. NDBC operates three major buoy arrays as well as a network of coastal marine observing stations. These systems provide critical data on oceanic and atmospheric conditions that is used by weather and hurricane forecasters, researchers, climatologists, oceanographers, commercial fishers, and recreational boaters, among others.

The NDBC manages the development, operations, and maintenance of the national data buoy network. It serves as the NOAA focal point for data buoy and associated meteorological and environmental monitoring technology. It provides high quality meteorological/environmental data in real time from automated observing systems that include buoys and a Coastal-Marine Automated Network (C-MAN) in the coastal zone surrounding the United States and the open ocean. It provides engineering support, including applications development, and manages data buoy deployment and operations, and installation and operation of automated observing systems installed on fixed platforms. It hosts the Volunteer Observing Ship (VOS) program to acquire additional meteorological and oceanographic observations supporting NWS mission requirements.

NDBC is located at the Stennis Space Center in Bay St. Louis, Mississippi, and has operated a network of off-shore weather buoys and unmanned coastal observing stations (Coastal Marine Automated Network or C-MAN stations) since 1990. In 2001 and 2005 respectively, NDBC began to assume responsibility for operating moored buoys supporting NOAA's Deep-Ocean Assessment and Reporting of Tsunami (DART) program and the Tropical Atmosphere Ocean (TAO) program that were developed and formerly operated by NOAA's Pacific Marine Environmental Laboratory (PMEL).

NDBC currently operates and maintains 195 moored buoys and 46 C-MAN stations. The U.S. Coast Guard provides ship transit services for NDBC so that it can repair and maintain its weather buoys. The Coast Guard also maintains a small staff at NDBC. NOAA vessels provide support for the NDBC mission when their schedules allow. NDBC also leases privately-owned vessels when required to support the mission and maintenance schedules.

Surveys of meteorologists have shown about 40 percent of NWS marine warnings and advisories are based, at least in part, on NDBC's meteorological data. In addition to this critical purpose, the observations are used by meteorologists who need to adjust flight level wind speeds reported by hurricane reconnaissance aircraft to surface winds; by geophysicists who use our sea surface temperature, wind, and wave reports to help calibrate remotely sensed measurements from spacecraft; and by engineers who obtain directional wave measurements to study beach erosion and shore protection. Additionally, surfers, fishermen, and boaters acquire the reports via the Internet to help them determine if they want to venture offshore.

Questionnaire:

1. What is the status of this information system?

This is a new information system. *Continue to answer questions and complete certification.*

This is an existing information system with changes that create new privacy risks. *Complete chart below, continue to answer questions, and complete certification.*

Changes That Create New Privacy Risks (CTCNPR)					
a. Conversions		d. Significant Merging		g. New Interagency Uses	
b. Anonymous to Non-Anonymous		e. New Public Access		h. Internal Flow or Collection	
c. Significant System Management Changes		f. Commercial Sources		i. Alteration in Character of Data	
j. Other changes that create new privacy risks (specify): <i>Images collected from buoys outfitted with cameras</i>					

This is an existing information system in which changes do not create new privacy risks. *Skip questions and complete certification.*

2. Is the IT system or its information used to support any activity which may raise privacy concerns?

NIST Special Publication 800-53 Revision 4, Appendix J, states "Organizations may also engage in activities that do not involve the collection and use of PII, but may nevertheless raise privacy concerns and associated risk. The privacy controls are equally applicable to those activities and can be used to analyze the privacy risk and mitigate such risk when necessary." Examples include, but are not limited to, audio recordings, video surveillance, building entry readers, and electronic purchase transactions.

Yes. *Please describe the activities which may raise privacy concerns.*

The NDBC currently has a video surveillance system installed in the data center to monitor physical access to the restricted area. In addition, access to the information technology (IT) areas is physically controlled via room entry readers. Select buoys are outfitted with cameras to collect visual environmental data and images collected are stored on the information system.

_____ No

3. Does the IT system collect, maintain, or disseminate business identifiable information (BII)?

As per DOC Privacy Policy: "For the purpose of this policy, business identifiable information consists of (a) information that is defined in the Freedom of Information Act (FOIA) as "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." (5 U.S.C.552(b)(4)). This information is exempt from automatic release under the (b)(4) FOIA exemption. "Commercial" is not confined to records that reveal basic commercial operations" but includes any records [or information] in which the submitter has a commercial interest" and can include information submitted by a nonprofit entity, or (b) commercial or other information that, although it may not be exempt from release under FOIA, is exempt from disclosure by law (e.g., 13 U.S.C.)."

_____ Yes, the IT system collects, maintains, or disseminates BII about: *(Check all that apply.)*

_____ Companies

_____ Other business entities

X No, this IT system does not collect any BII.

4. Personally Identifiable Information

4a. Does the IT system collect, maintain, or disseminate personally identifiable information (PII)?

As per OMB 07-16, Footnote 1: "The term 'personally identifiable information' refers to information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc... alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc..."

X Yes, the IT system collects, maintains, or disseminates PII about: *(Check all that apply.)*

X DOC employees

X Contractors working on behalf of DOC

_____ Members of the public

_____ No, this IT system does not collect any PII.

If the answer is “yes” to question 4a, please respond to the following questions.

4b. Does the IT system collect, maintain, or disseminate PII other than user ID?

Yes, the IT system collects, maintains, or disseminates PII other than user ID.

No, the user ID is the only PII collected, maintained, or disseminated by the IT system.

4c. Will the purpose for which the PII is collected, stored, used, processed, disclosed, or disseminated (context of use) cause the assignment of a higher PII confidentiality impact level?

Examples of context of use include, but are not limited to, law enforcement investigations, administration of benefits, contagious disease treatments, etc.

Yes, the context of use will cause the assignment of a higher PII confidentiality impact level.

No, the context of use will not cause the assignment of a higher PII confidentiality impact level.

If any of the answers to questions 2, 3, 4b, and/or 4c are “Yes,” a Privacy Impact Assessment (PIA) must be completed for the IT system. This PTA and the approved PIA must be a part of the IT system’s Assessment and Authorization Package.

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Tuesday, July 18, 2017 8:47 AM
To: Lola Stith - NOAA Affiliate
Subject: Re: ACTION REQUIRED: Task for DOC-OS-2017-001080 (Review/Signature)
Attachments: NOAA Response_2017-0001080 Fee Estimate - All Other 5-10-2017 mhg.pdf

Looks good--

Thanks for churning this one out with Velna. Here it is

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, Jul 18, 2017 at 8:20 AM, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:
Good morning Mark - LA has processed the fee est task for the subject FOIA request.

Please review/sign the attached tasker and send it back to me so I can close the NOAA task.

Thx!

Lola

--

Lola Stith
Contractor - The Ambit Group, LLC
NOAA Office of the Chief Information Officer (OCIO)
(c (b)(6))
lola.m.stith@noaa.gov



UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

May 10, 2017

MEMORANDUM FOR: Bobbie Parson, IOS Vernon Curry, Census
 Dondi Staunton, BEA Steven Kong, EDA
 Pam Moulder, ESA Jennifer Kuo, BIS
 Victor Powers, ITA Josephine Arnold, MBDA
 Catherine Fletcher, NIST Wayne Strickland, NTIS
 Stacy Cheney, NTIA **Mark Graff, NOAA**
 Ricou Heaton, USPTO Jennifer Piel, OIG

FROM: Michael Toland, Ph.D.
 Departmental FOIA Officer
 Office of Privacy & Open Government

SUBJECT: Fee Estimate for FOIA Request for Austin Evers (American
 Oversight) – DOC-OS-2017-001080

(b) (5)

(b) (5)

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Tuesday, July 18, 2017 9:21 AM
To: Lola Stith - NOAA Affiliate
Subject: Re: ACTION REQUIRED: Task for DOC-OS-2017-000860 (Review/Signature)
Attachments: NOAA Response_2017-000860 Fee Est - All Other Requester mhg.pdf

Looks great--here it is 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, Jul 18, 2017 at 9:05 AM, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:

Hi Mark - This is a fee est for us (NOAA FOIA) to complete a FO search for records.

I have completed the fee est tasker and it's attached for your review/approval/signature.

R/

--

Lola Stith
Contractor - The Ambit Group, LLC
NOAA Office of the Chief Information Officer (OCIO)
(c (b)(6))
lola.m.stith@noaa.gov



UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

April 28, 2017

MEMORANDUM FOR: Bobbie Parsons, IOS
 Pamela Moulder, ESA
 Stephen Kong, EDA
 Victor Powers, ITA
 Catherine Fletcher, NIST
 Stacy Cheney, NTIA
 Jennifer Piel, OIG
 Laura Main, OIG

Wayne Curry, Cen
Dondi Staunton, BEA
Jennifer Kuo, BIS
Josephine Arnold, MBDA
Wayne Strickland, NTIS
Mark H. Graff, NOAA
Ricou Heaton, PTO

FROM: Michael, Toland, Ph.D.
 Deputy Chief FOIA Officer
 Office of Privacy and Open Government

SUBJECT: Fee Estimate for FOIA Tracking No. DOC-OS-2017-000860

(b) (5)

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Tuesday, July 18, 2017 1:07 PM
To: Nkolika Ndubisi - NOAA Federal; Jackie Rolleri - NOAA Federal
Subject: Existing Training Deck
Attachments: Consultations Referrals and (b)(5) Final.pptx

Here is the slide deck from the NMFS training we just discussed--

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

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Referrals, Consultations, and Exemption (b)(5) Deliberative Process

Prepared by Mark H. Graff
NOAA FOIA Officer/Bureau Chief Privacy
Officer
OCIO/GPD

mark.graff@noaa.gov; (301)-628-5658



Freedom of Information Act (5 USC 552)



Outline

1. Regulatory Structure for Referrals
2. The Risks of Other Agency Docs
3. OIP Guidance
4. (b)(5) Two Prong Test
5. The Extent of the Privilege
6. Questions



Regulatory Structure



MISDIRECTED WITHIN THE DEPARTMENT:

Where a component's FOIA office determines that a request was misdirected within the Department:

- The receiving component's FOIA office needs to route the request to the correct bureau(s).
- The search starts the time cutoff for records



Regulatory Structure (Cont'd)



OTHER BUREAUS MAY HAVE RECORDS:

How the proper Department component to respond to a FOIA Request is determined:

- The component that first receives the request and has responsive records.
 - When no records exist, the component that first receives the request and is likely to have responsive records should process the FOIA request.
- Or, the component to which the Departmental FOIA Officer or component FOIA Officer assigns lead responsibility for responding to the request.



Regulatory Structure (Cont'd)



CONSULTATIONS:

When a record is requested that originated with NOAA and another Federal agency has a *significant interest* in the record, NOAA must allow the other Federal agency to review the record before responding to a requester.





Consultations Continued...



Consultations can be done within FOIAonline by uploading the record requiring consultation and then selecting the “**Create Consultation**” button found in the left hand column in FO (if the agency also uses FO)

- If attempts to consult with outside agencies cause a delay in responding to the request, notify the requester that the request will be processed or completed after the consultation has been completed.
- Consultation with another agency constitutes *unusual circumstances* and allows you to invoke a 10 day extension.



Regulatory Structure (Cont'd)



REFERRALS:

When NOAA possesses requested records that originated with another Federal agency.

NOAA routes these records to that agency for direct response to the requester.





OIP Referral Guidance



OIP's Summary:

“The agency that is best able to determine a record's sensitivity, and in turn its exemption status, is the agency that should process that record under the Act.

While this may vary in particular cases, as a general rule the agency that originated a record is usually the most appropriate agency to make a FOIA-disclosure determination regarding it.”



The Risks of Other Agency Docs



There are at least **7** different types of referrals and consultations:

1. External Referrals for direct response to the requester including Exemptions asserted by the referring agency to include their appeal language.

Example: ACOE referrals where we respond to requester with their appeal contact.



The Risks of Other Agency Docs



2. External Referrals of the request in its entirety with no asserted Exemptions or responsive records being located by the referring agency.

Example: Recent DOI Refers us records that fall entirely under our purview.



The Risks of Other Agency Docs (Cont'd)



3. Records in which all or part of the record requires a declassification review by the original classifying authority.

Example: Navy necropsy records OCA is the Director of the office that generated those docs.



The Risks of Other Agency Docs (Cont'd)



4. External Consultations for providing withholding recommendations to another agency

Example: Fisheries Management Council Records found within our Control



The Risks of Other Agency Docs (Cont'd)



5. Intra-Departmental taskings requiring a tasking Memorandum

Example: DOC sends us a tasking to conduct a search in Presidential Transition cases through FOIAOnline, and we, in turn, issue taskings within Bureau.



The Risks of Other Agency Docs (Cont'd)



6. External Litigation consultations seeking NOAA's asserted exemptions

Example: FBI recently asked NOAA in the DB Cooper case to provide withholding recommendations on the weather docs from the plane flight.



The Risks of Other Agency Docs (Cont'd)



7. Referrals asking for non-attribution

Example: If we ever have intelligence agency records, they frequently don't want to be identified as the originator of the records.



NAO 205-14: NOAA FOIA Taskings



There are at least 6 types of taskings—it must be clear which type you are being asked to review:

1. Conduct a search for responsive records (fees waived or non-billable)
2. Prepare a fee estimate in a non-referral
3. Prepare a fee estimate for a case being coordinated by DOC, and the aggregate threshold is not determined by NOAA
4. Review referred records and provide release recommendations to the referring entity
5. Review referred records, and respond directly to the requester, incorporating the referring entities exemptions and appeal language.
6. Respond to an adjudication on appeal



OIP GUIDANCE



If they are Agency Records:

When an agency receives a FOIA request for agency records in its possession it must take responsibility for searching for the records and processing the request. It cannot simply refuse to act on the ground that the documents originated elsewhere.





OIP Guidance (Cont'd)



“When litigation (results), the government generally has not raised any issue over which agency is the “proper party defendant,” but instead has provided affidavits from the originating agencies to justify any contested nondisclosure.”

Plain English: DOJ won’t challenge who the Plaintiff names in Court. If you worked on the request, you can be the one sued, and other agencies will just provide affidavits for the records they created.



(b)(5) Two Prong Test



When (b)(5) Deliberative Process Applies:

- (b)(5) Statute generally protects: “Inter and intra-agency” (internal and external) communications that would not be available by law to a party other than an agency in litigation with the agency”.
- Courts define this as only documents that are typically privileged in civil discovery



(b)(5) Two Prong Test (cont'd)



- As to one of those privileges, Deliberative Process Privilege includes:
 - The Inter-agency (internal) and Intra-agency (external) communication requirement which encompasses the “consultant corollary”.
 - If the consultants, contractors, external advisors provided advice similar to what might have been received from an employee. Must ask—
 - Are they an interested party?
 - Seeking benefit at the expense of other applicants?
 - If yes, no (b)(5) protection.



(b)(5) Two Prong Test (cont'd)



Two Part Test:

- 1) Is the material pre-decisional?
 - a) i.e., antecedent to the adoption of the agency policy? (the making of the “policy sausage”)
- 2) Is it deliberative (not factual)—making recommendations, expressing opinions on legal or policy matters?



The Extent of the Privilege



- **Policy behind DPP:**
 - Encourage open and frank discussions among employees and protect the decision making processes of the government
 - Protect against premature disclosure of proposed policies before adopted
 - Protect against public confusion



The Extent of the Privilege



- Since the 2016 FOIA Improvement Act, a **Risk of Harm** must exist for the Privilege to apply.
- Previously, this was only advisory, although in practice, this should not change NOAA's approach, as NOAA routinely required a Risk of Harm Analysis for (b)(5) Deliberative Process.





Risk of Harm



Foreseeable Harm is now a requirement under the 2016 FOIA Improvement Act:

To Reach Foreseeable Harm, OIP summarizes the considerations:

- How sensitive is the decision?
- How sensitive is the decision-making process? (consider peer review)
- Is the decision final yet?
- Would disclosure affect the employees that contributed to the records?
- Would future decisions be jeopardized if the records were released?
- How significant would the "chilling" effect be?
- How old is the record?
- How sensitive are portions of the record?



The Extent of the Privilege



- There is also now a 25 year limit on the use of Deliberative Process.
- After that time—the privilege no longer applies.





Questions



QUESTIONS?

DiGiacomo, Brian (Federal)

From: DiGiacomo, Brian (Federal)
Sent: Tuesday, July 18, 2017 3:45 PM
To: Kara McKenna
Cc: Graff, Mark (Federal); Dixon, Samuel (Contractor); Bogomolny, Michael (Federal)
Subject: RE: Notice of Inadvertent Disclosure of Attorney-Client Privileged Materials in the 3rd Interim Response to FOIA Request No. DOC-NOAA-2017-000170

Thank you, Kara. I am copying my Information Law Division Chief, Michael Bogomolny, on this correspondence in case he needs to get in touch with you.

Brian D. DiGiacomo
Assistant General Counsel for Employment, Litigation, and Information
Office of the General Counsel
Room 5896
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, D.C. 20230
Office Phone: 202-482-5393
Cell Phone (b)(6)

From: Kara McKenna [mailto:Kara.McKenna@causeofaction.org]
Sent: Tuesday, July 18, 2017 3:42 PM
To: DiGiacomo, Brian (Federal) <bDiGiac@doc.gov>
Cc: Graff, Mark (Federal) <Mark.Graff@noaa.gov>; Dixon, Samuel (Contractor) <Samuel.Dixon@noaa.gov>
Subject: Notice of Inadvertent Disclosure of Attorney-Client Privileged Materials in the 3rd Interim Response to FOIA Request No. DOC-NOAA-2017-000170

Mr. DiGiacomo:

In reviewing the records received from the National Oceanic and Atmospheric Administration (“NOAA”) on July 17, 2017 as part of an interim response to Cause of Action Institute’s (“CoA Institute”) pending Freedom of Information Act Request (“FOIA”), FOIA Request No. DOC-NOAA-20107-000170, CoA Institute became aware that one of the released records, Doc ID. No. 0.7.1205.6122-000001.pdf included in the .zip file titled “170 Interim 3 part 2 Full Release -20170713T152058Z-001” uploaded to the FOIAonline website appears to include attorney-client privileged materials.

Pursuant to the D.C. Rules of Professional Conduct, Rule 4.4(b), I contacted NOAA FOIA staff, Samuel Dixon, on the morning of July 18, 2017 and verbally informed him of what appears to be an inadvertent disclosure. We await your instructions as to whether this is in fact an inadvertent disclosure, and whether we should return or destroy the document.

Please contact me by telephone at (202) 499-4232 or by e-mail at Kara.McKenna@causeofaction.org. Thank you for your attention to this matter.

Regards,

Kara McKenna

Kara E. McKenna | Counsel

Cause of Action Institute

1875 Eye Street NW, Suite 800

Washington, D.C. 20006

(o) 202-499-2417 / ((b)(6))

Admitted to the practice of law in the States of New York and New Jersey, and the District of Columbia.

-
The logo for Cause of Action Institute features the words "CAUSE of ACTION" in a serif font, with "of" in a smaller, lowercase font. Below this, the word "INSTITUTE" is written in a smaller, all-caps serif font, flanked by two horizontal lines.

Confidentiality: *The information contained in, and attached to, this communication may be confidential, and is intended only for the use of the recipient named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please re-send this communication to the sender and delete the original message and any copy of it from your computer system. Thank you.*

CAUSE *of* ACTION
— INSTITUTE —

Kara McKenna

From: Kara McKenna
Sent: Tuesday, July 18, 2017 3:42 PM
To: bdigiaco@doc.gov
Cc: Mark Graff - NOAA Federal; Samuel Dixon
Subject: Notice of Inadvertent Disclosure of Attorney-Client Privileged Materials in the 3rd Interim Response to FOIA Request No. DOC-NOAA-2017-000170

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Regards,

Kara McKenna

Kara E. McKenna | Counsel

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Washington, D.C. 20006
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CAUSE *of* ACTION
— INSTITUTE —

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Wednesday, July 19, 2017 7:12 AM
To: Ana Liza Malabanan - NOAA Federal
Cc: Samuel Dixon - NOAA Affiliate; Shawn Martin; Doug Chow; Caitlin Imaki - NOAA Federal; Sheila Lynch - NOAA Federal; Alison Agness - NOAA Federal; Rita Hawkins - NOAA Affiliate; Lola Stith - NOAA Affiliate; FOIA Office
Subject: Re: Your file: FOIA Request DOC-NOAA2016-001214 / Our file number: AC-2016-00912

Hi Ana Liza,



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, Jul 18, 2017 at 7:47 PM, Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov> wrote:

Hi Mark,

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

[Redacted] ? Please advise.

Thanks!

Ana Liza

On Wed, May 3, 2017 at 11:53 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:
Thanks--good response.

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 Wed, May 3, 2017 at 2:29 PM, Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov> wrote:

FYI.

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

From: **Ana Liza Malabanan - NOAA Federal** <ana.liza.malabanan@noaa.gov>
Date: Wed, May 3, 2017 at 11:12 AM
Subject: Re: Your file: FOIA Request DOC-NOAA2016-001214 / Our file number: AC-2016-00912
To: "Landry, Nathalie" <Nathalie.Landry@dfo-mpo.gc.ca>

Hi Nathalie,

NOAA will take Canada's input into account, but ultimately NOAA must make a decision based on our interpretation of US law. If you would like to provide recommendations, I will forward to our reviewers for consideration. When should we expect your agency's input?

Thank you.

Ana Liza

On Tue, May 2, 2017 at 12:13 PM, Landry, Nathalie <Nathalie.Landry@dfo-mpo.gc.ca> wrote:

Good afternoon Ms. Malabanan,

My name is Nathalie Landry and I am the analyst responsible of the processing of the file noted above.

I was told by my office of primary interest (Pacific regions) that they spoke with NOAA lawyers and that the consultation that you sent to us was only a courtesy notice of intension to release. Can you please confirm if this is correct? If this is the case, to avoid unnecessary work, I will tell my SME to not provide any recommendations as it will be released regardless of their recommendations.

Please let me know at your earliest convenience.

Kind regards,

Nathalie

Nathalie Landry

Access to Information & Privacy Analyst/

Analyste de l'Accès à l'information et protection des renseignements personnels
Access to Information & Privacy Secretariat /
Secretariat de l'Accès à l'information et protection des renseignements personnels
Fisheries & Oceans Canada / Pêches et Océans Canada
200 Kent Street, Station 4N161 / 200 rue Kent, poste 4N161
Ottawa ON K1A 0E6

Nathalie.Landry@dfp-mpo.gc.ca

Telephone/téléphone: [613-993-1403](tel:613-993-1403) Facsimile/télécopieur: [613-998-1173](tel:613-998-1173)

--
[Ana Liza S. Malabanan](#)
[Freedom of Information Act \(FOIA\) Coordinator](#)
[Information Services and Management Branch](#)
[Operations, Management & Information Division](#)
[NOAA Fisheries West Coast Region](#)
[U.S. Department of Commerce](#)
[Office: 562-980-4008](#)



Ana Liza Malabanan - NOAA Federal

From: Ana Liza Malabanan - NOAA Federal
Sent: Tuesday, July 18, 2017 7:47 PM
To: Mark Graff - NOAA Federal
Cc: Samuel Dixon - NOAA Affiliate; Shawn Martin; Doug Chow; Caitlin Imaki - NOAA Federal; Sheila Lynch - NOAA Federal; Alison Agness - NOAA Federal; Rita Hawkins - NOAA Affiliate; Lola Stith - NOAA Affiliate; FOIA Office
Subject: Re: Your file: FOIA Request DOC-NOAA2016-001214 / Our file number: AC-2016-00912
Attachments: DFO Input FOIA DOC-NOAA-2016-001214.pdf

Hi Mark,

(b)(5)

? Please advise.

Thanks!

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Please let me know at your earliest convenience.

Kind regards,

Nathalie

Nathalie Landry

Access to Information & Privacy Analyst/

Analyste de l'Accès à l'information et protection des renseignements personnels
Access to Information & Privacy Secretariat /
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--
Ana Liza S. Malabanan
Freedom of Information Act (FOIA) Coordinator
Information Services and Management Branch
Operations, Management & Information Division
NOAA Fisheries West Coast Region
U.S. Department of Commerce
Office: 562-980-4008





Fisheries and Oceans
Canada

200 Kent Street
Ottawa, Canada
K1A 0E6

Pêches et Océans
Canada

200, rue Kent
Ottawa, Canada
K1A 0E6

PROTECTED

Your file - Votre référence

FOIA Request DOC-NOAA
2016-001214

Our file - Notre référence

AC-2016-00912 / NL

JUN 19 2017

Ms. Ana Liza Malabanan
FOIA Coordinator, West Coast Region
National Marine Fisheries Service
501 West Ocean Blvd
Suite 4200
Long Beach, CA 90802
United States

Dear Ms. Malabanan,

This letter is in response to your consultation regarding:

“United States National Marine Fisheries Service consultation request for: - All communications and documents from January 1, 2015 to date that were sent to or received by any employee of NOAA/Department of Commerce and any representative of any of the Northwest United States Treaty Tribes that are subject to the US Canada Salmon Treaty. - All communications and documents from January 1, 2015 to date that were sent to or received by any employee of the US Department of Justice and any representative of the US Department of Justice related to the US Canada Salmon Treaty.”

You will find highlighted, directly on the pages, the exemptions we would like applied to this package. Please note that we are only returning the page where we have applied exemptions.

Please note our response applies only to those portions of the records that concern Fisheries and Oceans Canada. The exemption of personal information will be left to your discretion, consistent with your institutional policy; however, please note that our office protects employees' cell phone numbers as they are not publicly available.

If you have any questions, or if you do not agree with our recommendations, please contact Nathalie Landry at 613-993-1403 or Nathalie.Landry@dfo-mpo.gc.ca.

Yours sincerely,

Marlene Fournier
A/Director
Access to Information and Privacy Secretariat

Enclosures:

1. Access to Information Act: Applicable exemptions
2. 6 pages

Canada

Access to Information Act

15(1)(I.A.) INTERNATIONAL AFFAIRS

15 (1) The head of a government institution may refuse to disclose any record requested under this Act that contains information the disclosure of which could reasonably be expected to be injurious to the conduct of international affairs.

21(1)(b) CONSULTATIONS OR DELIBERATIONS

21. (1) The head of a government institution may refuse to disclose any record requested under this Act that contains an account of consultations or deliberations involving officers or employees of a government institution, a minister of the Crown or the staff of a minister of the Crown.

(b) (5)

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(b) (5)

(b) (5)

(b) (5)

Ana Liza Malabanan - NOAA Federal

From: Ana Liza Malabanan - NOAA Federal
Sent: Wednesday, July 19, 2017 10:25 AM
To: Mark Graff - NOAA Federal
Subject: Re: Your file: FOIA Request DOC-NOAA2016-001214 / Our file number: AC-2016-00912

Thanks for the clarification.

On Wed, Jul 19, 2017 at 4:11 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:
Hi Ana Liza,

(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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(b) (5)

(b)(5) ? Please advise.

Thanks!

Ana Liza

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Mark H. Graff
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FYI.

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

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Nathalie

Nathalie Landry

Access to Information & Privacy Analyst/

Analyste de l'Accès à l'information et protection des renseignements personnels
Access to Information & Privacy Secretariat /
Secretariat de l'Accès à l'information et protection des renseignements personnels
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Ottawa ON K1A 0E6

Nathalie.Landry@dfo-mpo.gc.ca

Telephone/téléphone: [613-993-1403](tel:613-993-1403) Facsimile/télécopieur: [613-998-1173](tel:613-998-1173)

--

Ana Liza S. Malabanan
Freedom of Information Act (FOIA) Coordinator
Information Services and Management Branch
Operations, Management & Information Division
NOAA Fisheries West Coast Region
U.S. Department of Commerce
Office: [562-980-4008](tel:562-980-4008)



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Ana Liza S. Malabanan
Freedom of Information Act (FOIA) Coordinator
Information Services and Management Branch
Operations, Management & Information Division
NOAA Fisheries West Coast Region
U.S. Department of Commerce
Office: 562-980-4008



Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Thursday, July 20, 2017 3:50 PM
To: FOIA, Electronic; Toland, Michael
Cc: Lola Stith - NOAA Affiliate; Robert Swisher - NOAA Federal; Dennis Morgan - NOAA Federal
Subject: BOU Weekly FOIA Report for DOC
Attachments: BOU Weekly FOIA Report 07.13.17 - 07.20.17.xls

Hi Mike,

Attached is this week's report for DOC. I apologize this report is a day late--we had an extremely high intake volume over the last week.

Please note several of the high visibility requests. Specifically, the Turtle Island Restoration Network submitted a total of 10 different requests in the last week seeking draft enforcement priority reports for various divisions. (See attached report for all 10 case numbers). VICE News also submitted a request seeking all incidents of marine mammal harassment involving drone use. (DOC-NOAA-2017-001569). Lastly, a request was made from the Government Accountability Project asking for all records regarding commitments of loyalty, allegiance, or agreements not to disclose documents made by NOAA employees to any individual working in the White House. (DOC-NOAA-2017-001538).

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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BOU Weekly FOIA Report

sday 7/13/17-Tuesday 7/19/17

Tracking Number	Received	Requester	Requester Organization
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DOC-NOAA-2017-001569	7/19/2017	Sarah N. Emerson	VICE
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DOC-NOAA-2017-001556	7/18/2017	Andrew Ogden	Turtle Island Restoration Network
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DOC-NOAA-2017-001555	7/18/2017	Andrew G. Ogden	Turtle Island Restoration Network
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DOC-NOAA-2017-001554 7/18/2017 Andrew Ogden Turtle Island Restoration Network

DOC-NOAA-2017-001553 7/18/2017 Andrew Ogden Turtle Island Restoration Network

DOC-NOAA-2017-001552 7/18/2017 Andrew G. Ogden Turtle Island Restoration Network

DOC-NOAA-2017-001550 7/18/2017 Andrew G. Ogden Turtle Island Restoration Network

DOC-NOAA-2017-001548 7/18/2017 Andrew G. Ogden Turtle Island Restoration Network

DOC-NOAA-2017-001547 7/18/2017 Andrew G. Ogden Turtle Island Restoration Network

DOC-NOAA-2017-001546 7/18/2017 Andrew G. Ogden Turtle Island Restoration Network

DOC-NOAA-2017-001545 7/18/2017 Andrew G. Ogden Turtle Island Restoration Network

DOC-NOAA-2017-001538 7/18/2017 Zachary Kopplin Government
Accountability Project

DOC-NOAA-2017-001523 7/14/2017 Brian L. Kahn Climate Central

DOC-NOAA-2017-001531 7/14/2017 Mara Shlackman Law Offices of Mara
Shlackman, P.L.
Murphy & Buchal
DOC-NOAA-2017-001528 7/13/2017 James L. Buchal LLP

DOC-NOAA-2017-001529 7/13/2017 Rafe Petersen Holland & Knight
LLP

DOC-NOAA-2017-001530 7/13/2017 Katherine Poole Natural Resources
Defense Council

Detail

Please provide all records generated in connection to complaints made to the Monterey Bay National Marine Sanctuary about wildlife being harassed or disturbed by drones or unmanned aerial vehicles. This request is limited to the time-frame between January 1, 2016 and the time this request is processed. For this request, the term “all records” refers to, but is not limited to, any and all complaints submitted to the Monterey Bay National Marine Sanctuary (via email, mail, fax, and phone) about wildlife being harassed or disturbed by drones or unmanned aerial vehicles, documents, correspondence (including, but not limited to, inter and/or intra-agency correspondence as well as correspondence with entities or individuals outside the federal government), emails, letters, notes, telephone records, telephone notes, minutes, memoranda, comments, files, presentations, consultations, biological opinions, assessments, evaluations, schedules, telephone logs, papers published and/or unpublished, reports, studies, photographs and other images, data (including raw data, GPS or GIS data, UTM, LiDAR, etc.), maps, and/or all other responsive records, in draft or final form. This request is not meant to exclude any other records that, although not specially requested, are reasonably related to the subject matter of this request. If you or your office have destroyed or determine to withhold any records that could be reasonably construed to be responsive to this request, I ask that you indicate this fact and the reasons therefore in your response. Under the FOIA Improvement Act of 2016, agencies are prohibited from denying requests for information under FOIA unless the agency reasonably believes release of the information will harm an interest that is protected by the exemption. FOIA Improvement Act of 2016 (Public Law No. 114-185), codified at 5 U.S.C. § 552(a)(8)(A).

TIRN requests from the National Oceanic & Atmospheric Administration (“NOAA”), National Marine Fisheries Services (“NMFS”) and any other divisions under NOAA; all “records” as defined in this Request, including without limitation all inter and intra agency communications, data and other information, used to prepare or otherwise responsive to the following:

1. Regarding the FY 2018-2022 Office of Law Enforcement Priorities (Draft) (“Report”)1 all records used, considered or referred to by NOAA to identify the “patrol, outreach, and investigation to deter and detect: illegal marine mammal and seabird takes, and incidental take reporting violations” in the West Coast Division as a priority for enforcement in the Report.

TIRN requests from the National Oceanic & Atmospheric Administration (“NOAA”), National Marine Fisheries Services (“NMFS”) and any other divisions under NOAA; all “records” as defined in this Request, including without limitation all inter and intra agency communications, data and other information, used to prepare or otherwise responsive to the following:

1. Regarding the FY 2018-2022 Office of Law Enforcement Priorities (Draft) (“Report”)1 all records used, considered or referred to by NOAA to identify the “patrol, outreach, and investigation to deter and detect: wasteful takes by authorized marine mammal harvesters” in the West Coast Division as a priority for enforcement in the Report.

("NOAA"), National Marine Fisheries Services ("NMFS") and any other divisions under NOAA; all "records" as defined in this Request, including without limitation all inter and intra agency communications, data and other information, used to prepare or otherwise responsive to the following:

(1) Regarding the FY 2018-2022 Office of Law Enforcement Priorities (Draft) ("Report")¹ all records used, considered or referred to by NOAA to identify the "patrol, outreach, and investigation to deter and detect: Illegal takes (e.g. Level A harassment, feeding, injuring, shooting, etc.) of ESA and MMPA listed species" in the West Coast Division as a priority for enforcement in the Report.

TIRN requests from the National Oceanic & Atmospheric Administration ("NOAA"), National Marine Fisheries Services ("NMFS") and any other divisions under NOAA; all "records" as defined in this Request, including without limitation all inter and intra agency communications, data and other information, used to prepare or otherwise responsive to the following:

Regarding the FY 2018-2022 Office of Law Enforcement Priorities (Draft) ("Report")¹, all records used, considered or referred to by NOAA to identify the "patrol, outreach, and investigation to deter and detect: violations involving commercial vessel incursions into closed areas or other Marine Protected Areas" in the West Coast Division as a priority for enforcement in the Report.

TIRN requests from the National Oceanic & Atmospheric Administration ("NOAA"), National Marine Fisheries Services ("NMFS") and any other divisions under NOAA; all "records" as defined in this Request, including without limitation all inter and intra agency communications, data and other information, used to prepare or otherwise responsive to the following:

1. Regarding the FY 2018-2022 Office of Law Enforcement Priorities (Draft) ("Report")¹ all records used, considered or referred to by NOAA to identify the "patrol, outreach, and investigation to deter and detect: Lethal takes, Level A harassment, with the potential to injure marine mammals or ESA listed sea turtles" in the Pacific Islands Division as a priority for enforcement in the Report.

TIRN requests from the National Oceanic & Atmospheric Administration ("NOAA"), National Marine Fisheries Services ("NMFS") and any other divisions under NOAA; all "records" as defined in this Request, including without limitation all inter and intra agency communications, data and other information, used to prepare or otherwise responsive to the following:

Regarding the FY 2018-2022 Office of Law Enforcement Priorities (Draft) ("Report")¹, all records used, considered or referred to by NOAA to identify the "patrol, outreach, and investigation to deter and detect: observer sexual assault, assault, harassment, observer safety, interference, and significant sample bias violations" in the Alaska, Northeast, Pacific Island, Southeast and West Coast Divisions as a priority for enforcement in the Report.

TIRN requests from the National Oceanic & Atmospheric Administration (“NOAA”), National Marine Fisheries Services (“NMFS”) and any other divisions under NOAA; all “records” as defined in this Request, including without limitation all inter and intra agency communications, data and other information, used to prepare or otherwise responsive to the following:

Regarding the FY 2018-2022 Office of Law Enforcement Priorities (Draft) (“Report”)¹, all records used, considered or referred to by NOAA to identify the “patrol, outreach, and investigation to deter and detect: destruction of listed salmon and steelhead critical habitat” in the West Coast Division as a priority for enforcement in the Report.

TIRN requests from the National Oceanic & Atmospheric Administration (“NOAA”), National Marine Fisheries Services (“NMFS”) and any other divisions under NOAA; all “records” as defined in this Request, including without limitation all inter and intra agency communications, data and other information, used to prepare or otherwise responsive to the following:

Regarding the FY 2018-2022 Office of Law Enforcement Priorities (Draft) (“Report”),¹ all records used, considered or referred to by NOAA to identify the “patrol, outreach, and investigation to deter and detect: reported violations by U.S. and/or International Observers on the high seas regarding U.S. vessels” in the Pacific Islands Division as a priority for enforcement in the Report.

TIRN requests from the National Oceanic & Atmospheric Administration (“NOAA”), National Marine Fisheries Services (“NMFS”) and any other divisions under NOAA; all “records” as defined in this Request, including without limitation all inter and intra agency communications, data and other information, used to prepare or otherwise responsive to the following:

Regarding the FY 2018-2022 Office of Law Enforcement Priorities (Draft) (“Report”),¹ all records used, considered or referred to by NOAA to identify the “patrol, outreach, and investigation to deter and detect: vessel on whale collisions” in the West Coast Division as a priority for enforcement in the Report.

TIRN requests from the National Oceanic & Atmospheric Administration (“NOAA”), National Marine Fisheries Services (“NMFS”) and any other divisions under NOAA; all “records” as defined in this Request, including without limitation all inter and intra agency communications, data and other information, used to prepare or otherwise responsive to the following:

Regarding the FY 2018-2022 Office of Law Enforcement Priorities (Draft) (“Report”),¹ all records used, considered or referred to by NOAA to identify the “patrol, outreach, and investigation to deter and detect: observer reported fishery management plan violations” in the Pacific Islands Division as a priority for enforcement in the Report.

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, I am requesting any and all documents, including, but not limited to, notes, e-mails, memos, or any other materials concerning pledges, oaths, requests or agreements, oral or written, not to disclose information or documents, or pledges, oaths, requests or agreements, oral or written, having to do with loyalty, allegiance, or similar concepts, made to the President, the Vice President, the Office of the President or the Office of the Vice President, or any individual working in the White House or the White House Compound by any and all current and former members of the NOAA's leadership team according to the NOAA's website, including, but not limited to, the Director, Acting Director, Deputy Directors, and Inspector General, along with the leadership team's senior staff, since Nov. 9, 2016. (If you need clarity about this request, I'm looking for analogs in your agency to the memos that former FBI Director James Comey wrote about a personal loyalty pledge that the President asked him to give.) Thank you very much for your assistance. If any of the material covered by this request has been destroyed or removed, please provide all surrounding documentation including, but not limited to, a description of the action taken regarding the materials and justification for those actions taken. For any documents or portions you deny due to a specific FOIA exemption, please provide a detailed justification of your grounds for claiming such exemption, explaining why the exemption is relevant to the document or portion of the document withheld.

I request any records and email communications relating to drafting the press release on the 2017 edition of NOAA's Annual Greenhouse Gas Index found here: <http://www.noaa.gov/news/noaa-s-greenhouse-gas-index-up-40-percent-since-1990> I would prefer to receive these in electronic format if possible. All documents relating to the mass stranding of nearly 100 false killer whales (*Pseudorca crassidens*) near Hog Key in southwest Florida in January 2017. This request includes documents generated and received by NMFS. In addition to documents which pertain to the incident itself, we are also seeking subsequent documents which relate to the cause of the mass beaching – including those which speculate as to cause. For reference, this incident has been the subject of a Miami Herald article, in which you were quoted, at the following URL: <http://www.miamiherald.com/news/local/environment/article127095479.html> I would prefer that these documents be transmitted to me as e-mail attachment(s) in PDF, Word, or WordPerfect format if the documents are maintained in any of these formats. We are therefore requesting that the Center provide COMPASS modeling of increases in spill to gas cap levels at the Snake River collector dams.

I request access to and copies of any and all documents in the possession of the National Oceanic and Atmospheric Administration concerning the 19.43-acre parcel located on the south side of SW 72nd Street (Sunset Drive) at SW 73rd Court (the "Property" sometimes also described as the "Christ Journey Church" property or parcel) as addressed in the May 25, 2017 letter from Roxanna Hinzman to Juan Mayol (attached). This request includes but is not limited to: 1. Any and all communications by and between Tom Jackson, Research Fisheries Biologist, Protected Resources Division (NOAA) and the U.S. Fish and Wildlife Service concerning the Property; 2. Any and all communications by and between Joan Browder, Research Ecologist (NOAA) and staff at the U.S. Fish and Wildlife Service concerning the Property; 3. Any and all surveys, Geographic Information System data or other documents pertaining to the presence of Miami tiger beetle, (*Cicindela floridana*) on the Property or in the immediate vicinity of the Property; 4. Any and all documents related to a site visit to the Property conducted by Tom Jackson and other NOAA staff on or around May 15, 2016 including any surveys, data, photos, notes on site visits, or other information related to the Property; 5. Any and all documents related to prior site visits to the Property by Mr. Jackson on or around April 2013 including any surveys, data, photos, notes on site visits, or other information related to the presence of Miami tiger beetle; 6. Any and all communications between NOAA and the Miami Dade Department of Environmental Resources Management (DERM) or other state or local government entities concerning the Property; 7. Any and all documents in the possession of Mr. Jackson evidencing permission to enter the Property prior to any site visits in 2017, 2013 or other time periods.

1. All records related to the effect on endangered winter-run chinook salmon, threatened spring-run chinook salmon, and their habitat, of water diversions by any or all Sacramento River Settlement Contractors from 2013 to the present. 2. All records related to the effect on endangered winter-run chinook salmon, threatened spring-run chinook salmon, and their habitat, of water operations and deliveries by the U.S. Bureau of Reclamation to meet the demands of the Sacramento River Settlement Contracts from 2013 to the present.

Comments

This request is a re-submission of a request that was previously submitted by the same individual through MuckRock

Each of these TIRN requests may be amenable to consolidation considering the overlap of the subject of the subject matter of the request.

This request is submitted on behalf of the South
Florida Wildlands Association

Lola Stith - NOAA Affiliate

From: Lola Stith - NOAA Affiliate
Sent: Monday, July 24, 2017 3:35 PM
To: Mark Graff - NOAA Federal
Subject: ACTION REQUIRED: Fee Estimate for FOIA Request – DOC-OS-2017-001209 (Review/Sign)
Attachments: NOAA RESPONSE_Touchton_DOC-OS-2017-001209 Dept Fee Estimate Tasker.docx

Clean tasker is attached for signature.

Lola

On Wed, Jul 19, 2017 at 4:09 PM, Mark Graff - NOAA Federal <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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----- Forwarded message -----

From: Velna Bullock - NOAA Federal <velna.l.bullock@noaa.gov>
Date: Wed, Jul 19, 2017 at 2:33 PM
Subject: Fwd: Scanned from a Xerox Multifunction Printer
To: Mark Graff - NOAA Federal <mark.graff@noaa.gov>, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>

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

From: <DOCScanner@docgov.onmicrosoft.com>
Date: Wed, Jul 19, 2017 at 2:34 PM
Subject: Scanned from a Xerox Multifunction Printer
To: "velna.l.bullock@noaa.gov" <velna.l.bullock@noaa.gov>

Please open the attached document. It was scanned and sent to you using a Xerox Multifunction Printer.

Attachment File Type: pdf, Multi-Page

Multifunction Printer Location: Room 60015 East
Device Name: XRX9C934E85BD77

For more information on Xerox products and solutions, please visit <http://www.xerox.com>

--

Lola Stith

Contractor - The Ambit Group, LLC

NOAA Office of the Chief Information Officer (OCIO)

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

lola.m.stith@noaa.gov



UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

May 22, 2017

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

FROM: Michael Toland, Ph.D.
 Departmental FOIA Officer
 Office of Privacy & Open Government

SUBJECT: Fee Estimate for FOIA Request – DOC-OS-2017-001209
 Margaret Touchton, Democratic Senatorial Campaign Committee

The Department has received a Freedom of Information Act (FOIA) request from Margaret Touchton. The short description of the FOIA request is, “Pursuant to the Freedom of Information Act, 5 U.S.C. §552 et seq. (“FOIA”), I request copies of all documents outlined in detail below: • Any correspondence, including electronic, to your agency from or on behalf of Ohio Treasurer of State Josh Mandel (2011-present).” The FOIA requester is in the “**Other**” category. Per the statutory guidelines of 15 C.F.R.§4.11:

- The chargeable services for “Commercial” are search, review and duplication.
- The chargeable services for “Media, Educational, and/or Non-commercial Scientific Institution” are duplication, excluding the first 100 pages.
- The chargeable services for “Other” are search and duplication, excluding the first two hours of search and the first 100 pages.

Please determine the fee estimate with respect to responsive documents located within your office. **DO NOT SEARCH YET.** Rather, we need an **ESTIMATE** from you as to how many hours/pages you may locate for this request. **This is only a good faith estimate, you should not search in order to come up with the estimate.** Also, a search need not actually find documents in order to be chargeable, so long as, at the outset, there is a reasonable likelihood that there may be responsive documents, and the search is conducted with due diligence.

Please fill in the applicable information and return this sheet by C.O.B. May 25, 2017 to: Ayana Crawford, Freedom of Information Act Specialist, Office of Privacy and Open Government, Room 52010FB, Washington, D.C. 20230, Telephone – 202-482-9109, e-mail – acrawford@doc.gov.

For documents responsive under the Freedom of Information Act:

Computer Search (Complete applicable sections.)

Total estimated cost for duplication in electronic version (cost of disc or CD). 0

Total estimated hours of time for electronic search. 2

Total estimated dollar amount for electronic search. 100.00

Total estimated hours for review. 2

Total estimated dollar amount for review. 100.00

Manual Search (Complete applicable sections.)

Total estimated number of pages of documents. 0

Total estimated dollar amount for duplication. 0

Total estimated hours for search. 0

Total estimated dollar amount for search. 0

Total estimated hours for review. 0

Total estimated dollar amount for review.

This information is needed to compute a total “OS” fee estimate for the requester.

Signature (Senior Official)

Bureau

Date

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Monday, July 24, 2017 3:39 PM
To: Lola Stith - NOAA Affiliate
Subject: Re: ACTION REQUIRED: Fee Estimate for FOIA Request – DOC-OS-2017-001209 (Review/Sign)
Attachments: NOAA RESPONSE_Touchton_DOC-OS-2017-001209 Dept Fee Estimate Tasker mhg.pdf

Here you go--

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, Jul 24, 2017 at 3:35 PM, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:
Clean tasker is attached for signature.

Lola

On Wed, Jul 19, 2017 at 4:09 PM, Mark Graff - NOAA Federal <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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----- Forwarded message -----

From: **Velna Bullock - NOAA Federal** <velna.l.bullock@noaa.gov>
Date: Wed, Jul 19, 2017 at 2:33 PM
Subject: Fwd: Scanned from a Xerox Multifunction Printer
To: Mark Graff - NOAA Federal <mark.graff@noaa.gov>, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>

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

From: <DOCScanner@docgov.onmicrosoft.com>
Date: Wed, Jul 19, 2017 at 2:34 PM
Subject: Scanned from a Xerox Multifunction Printer
To: "velna.l.bullock@noaa.gov" <velna.l.bullock@noaa.gov>

Please open the attached document. It was scanned and sent to you using a Xerox Multifunction Printer.

Attachment File Type: pdf, Multi-Page

Multifunction Printer Location: Room 60015 East
Device Name: XRX9C934E85BD77

For more information on Xerox products and solutions, please visit <http://www.xerox.com>

--
Lola Stith
Contractor - The Ambit Group, LLC
NOAA Office of the Chief Information Officer (OCIO)
(c (b)(6) [REDACTED])
lola.m.stith@noaa.gov



UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

May 22, 2017


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

FROM: Michael Toland, Ph.D.
 Departmental FOIA Officer
 Office of Privacy & Open Government

SUBJECT: Fee Estimate for FOIA Request – DOC-OS-2017-001209
 Margaret Touchton, Democratic Senatorial Campaign Committee

(b) (5)

(b) (5)



Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Monday, July 24, 2017 5:06 PM
To: Lola Stith - NOAA Affiliate
Subject: Re: ACTION REQUIRED: Task for DOC-OS-2017-001103 (Review/Signature Needed)
Attachments: NOAA NO RECORDS_2017-0001103 Fee Estimate - All Other 5-10-2017 mhg.pdf

Perfect--here it is signed.

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, Jul 24, 2017 at 4:52 PM, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:

Hi Mark - I polled the NOAA liaisons and they have confirmed that NOAA does not have any records in response to this DOC FOIA request.

I've attached the tasker for review/signature.

Lola

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

From: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>
Date: Wed, Jul 19, 2017 at 9:47 AM
Subject: DOC FOIA Request - DOC-OS-2017-001103 (NOAA tasked for fee estimate)
To: Shem Yusuf <shem.s.yusuf@noaa.gov>, Lawanda Fisher - NOAA Federal <lawanda.fisher@noaa.gov>, Karla Burch-White - NOAA Affiliate <karla.burch-white@noaa.gov>

Good morning - (b)(5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Thank you very much.

Copies of all investigative records, any annual reporting records or other communications concerning True

Ultimate Standards Everywhere, Inc., aka TRUSTe, located at 835 Market Street, Suite 800, San Francisco, CA 94103, in the years 2015-2017.

--

Lola Stith

Contractor - The Ambit Group, LLC

NOAA Office of the Chief Information Officer (OCIO)

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

lola.m.stith@noaa.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



UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

May 10, 2017

MEMORANDUM FOR: Bobbie Parson, IOS Vernon Curry, Census
 Dondi Staunton, BEA Steven Kong, EDA
 Pam Moulder, ESA Jennifer Kuo, BIS
 Victor Powers, ITA Josephine Arnold, MBDA
 Catherine Fletcher, NIST Wayne Strickland, NTIS
 Stacy Cheney, NTIA **Mark Graff, NOAA**
 Ricou Heaton, USPTO Jennifer Piel, OIG

FROM: Michael Toland, Ph.D.
 Departmental FOIA Officer
 Office of Privacy & Open Government

SUBJECT: Fee Estimate for FOIA Request for Te'Reisha N. Graves (Law
 Offices of Mayor Joseph L. Alioto) – DOC-OS-2017-001103

(b) (5)

(b) (5)

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Tuesday, July 25, 2017 10:58 AM
To: Lola Stith - NOAA Affiliate
Subject: Re: ACTION REQUIRED: Fee Estimate for FOIA Request – DOC-OS-2017-001451 (Review/Sign)
Attachments: NOAA RESPONSE_Ebbini_DOC-OS-2017-001451 Fee Estimate Tasker mhg.pdf

Looks good--

Here you go.

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, Jul 25, 2017 at 10:42 AM, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:

Hi Mark (b)(5) I have attached a NOAA copy of the completed tasker for your review/approval/signature.

R/

--

Lola Stith
Contractor - The Ambit Group, LLC
NOAA Office of the Chief Information Officer (OCIO)
(c (b)(6))
lola.m.stith@noaa.gov



UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

June 29, 2017

MEMORANDUM FOR:

Bobbie Parsons, IOS
Pam Moulder, ESA
Jennifer Kuo, BIS
Josephine Arnold, MBDA
Wayne Strickland, NTIS
Mark Graff, NOAA
Ricou Heaton, PTO
Joselyn Bingham, OCIO

Vernon E. Curry, CEN
Stephen Kong, EDA
Victor Powers, ITA
Catherine Fletcher, NIST
Stacy Cheney, NTIA
Jennifer Piel, OIG
Dondi Staunton, BEA

FROM:

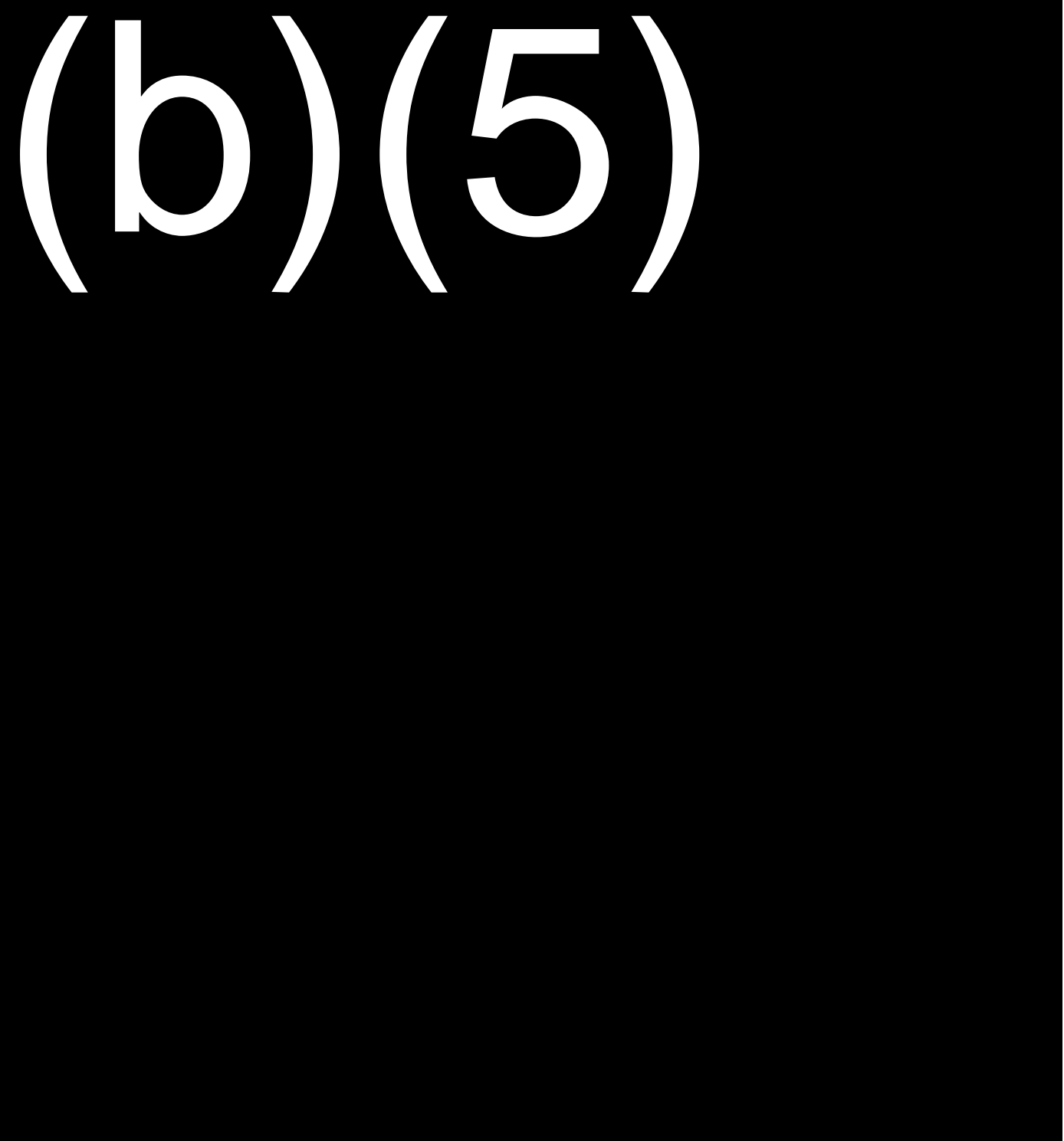
Michael Toland, Ph.D.
Deputy Chief FOIA Officer
Office of Privacy & Open Government

SUBJECT:

Fee Estimate for FOIA Request – DOC-OS-2017-001451
Ramzi Ebbini, Democratic Senatorial Campaign Committee

(b) (5)

(b) (5)



Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Tuesday, July 25, 2017 11:01 AM
To: Lola Stith - NOAA Affiliate
Subject: Re: ACTION REQUIRED: Fee Estimate for FOIA Request – DOC-OS-2017-001127 (Review/Sign)
Attachments: NOAA RESPONSE_2017-0001127 Fee Estimate - All Other 5-11-2017 mhg.pdf

Reviewed and approved.

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, Jul 25, 2017 at 10:46 AM, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:

Hi Mark (b)(5) I have attached a NOAA copy of the completed tasker for your review/approval/signature.

R/

--

[Lola Stith](#)
Contractor - The Ambit Group, LLC
NOAA Office of the Chief Information Officer (OCIO)
(c (b)(6)
lola.m.stith@noaa.gov



UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

May 11, 2017

MEMORANDUM FOR: Bobbie Parson, IOS Vernon Curry, Census
 Dondi Staunton, BEA Steven Kong, EDA
 Pam Moulder, ESA Jennifer Kuo, BIS
 Victor Powers, ITA Josephine Arnold, MBDA
 Catherine Fletcher, NIST Wayne Strickland, NTIS
 Stacy Cheney, NTIA **Mark Graff, NOAA**
 Ricou Heaton, USPTO Jennifer Piel, OIG

FROM: Michael Toland, Ph.D.
 Departmental FOIA Officer
 Office of Privacy & Open Government

SUBJECT: Fee Estimate for FOIA Request for Ramzi Ebbini, Democratic
 Senatorial Campaign Committee– DOC-OS-2017-001127

(b) (5)

(b) (5)

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Tuesday, July 25, 2017 11:54 AM
To: Lola Stith - NOAA Affiliate
Subject: Re: ACTION REQUIRED: Fee Estimate for FOIA Request – DOC-OS-2017-001132 (Review/Sign)
Attachments: NOAA RESPONSE_2017-0001132 Fee Estimate - All Other 5-11-2017 mhg.pdf

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, Jul 25, 2017 at 10:50 AM, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:

Hi Mark (b)(5) I have attached a NOAA copy of the completed tasker for your review/approval/signature.

R/

--

Lola Stith
Contractor - The Ambit Group, LLC
NOAA Office of the Chief Information Officer (OCIO)
(c (b)(6))
lola.m.stith@noaa.gov



UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

May 11, 2017

MEMORANDUM FOR: Bobbie Parsons, IOS Vernon Curry, Census
 Dondi Staunton, BEA Steven Kong, EDA
 Pam Moulder, ESA Jennifer Kuo, BIS
 Victor Powers, ITA Josephine Arnold, MBDA
 Catherine Fletcher, NIST Wayne Strickland, NTIS
 Stacy Cheney, NTIA **Mark Graff, NOAA**
 Ricou Heaton, USPTO Jennifer Piel, OIG

FROM: Michael Toland, Ph.D.
 Departmental FOIA Officer
 Office of Privacy & Open Government

SUBJECT: Fee Estimate for FOIA Request for Ramzi Ebbini, Democratic
 Senatorial Campaign Committee– DOC-OS-2017-001132

(b) (5)

(b) (5)

Lola Stith - NOAA Affiliate

From: Lola Stith - NOAA Affiliate
Sent: Tuesday, July 25, 2017 12:28 PM
To: Mark Graff - NOAA Affiliate
Subject: ACTION REQUIRED (SIGN PLS) : Smith_DOC-OS-2017-001150 Fee Estimate Follow Up
Attachments: NOAA RESPONSE_Smith_DOC-OS-2017-001150 Dept Fee Estimate Tasker.docx

Mark - A clean tasker is attached for signature.

Lola

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

From: Devin Brakob - NOAA Federal <devin.r.brakob@noaa.gov>
Date: Tue, Jul 25, 2017 at 12:18 PM
Subject: RE: Smith_DOC-OS-2017-001150 Fee Estimate Follow Up
To: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>
Cc: Mark Graff - NOAA Federal <mark.graff@noaa.gov>, James LeDuc - NOAA Federal <james.leduc@noaa.gov>

Lola,

Attached is the Fee Tasker. FOIA online will not let me upload to this case. Can you upload for us as Jim is on leave right now.

Thanks in advance.

CAPT Devin Brakob, NOAA

Executive Director to the

Deputy Under Secretary for Operations

National Oceanic and Atmospheric Administration

1401 Constitution Ave., NW

Washington, D.C. 20230

Offices: [202-482-3565](tel:202-482-3565) (DC) [301-628-1984](tel:301-628-1984) (Silver Spring)

Cell (b)(6)

From: Lola Stith - NOAA Affiliate [mailto:lola.m.stith@noaa.gov]
Sent: Monday, July 24, 2017 4:18 PM
To: Devin Brakob - NOAA Federal
Cc: Mark Graff - NOAA Federal; James LeDuc - NOAA Federal; Robert Swisher - NOAA Federal
Subject: Re: Smith_DOC-OS-2017-001150 Fee Estimate Follow Up

This task was assigned to USEC on Jul 19th.

Lola

On Monday, July 24, 2017, Devin Brakob - NOAA Federal <devin.r.brakob@noaa.gov> wrote:

I don't see anything in my FOIA email folder with this number and it's not on Jim's tracking sheet he updated on 14 July .

CAPT Devin Brakob, NOAA

Executive Director to the

Deputy Under Secretary for Operations

National Oceanic and Atmospheric Administration

1401 Constitution Ave., NW

Washington, D.C. 20230

Offices: [202-482-3565](tel:202-482-3565) (DC) [301-628-1984](tel:301-628-1984) (Silver Spring)

Cell (b)(6)

From: Mark Graff - NOAA Federal [mailto:mark.graff@noaa.gov]
Sent: Monday, July 24, 2017 3:45 PM
To: Devin Brakob - NOAA Federal
Cc: Lola Stith - NOAA Affiliate; James LeDuc - NOAA Federal; Robert Swisher - NOAA Federal
Subject: Fwd: Smith_DOC-OS-2017-001150 Fee Estimate Follow Up

Captain Brakob,

This request also appears to be pending a fee estimate tasker, which DOC is following up on below.

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: **Crawford, Ayana (Contractor)** <ACrawford@doc.gov>

Date: Mon, Jul 24, 2017 at 3:39 PM

Subject: Smith_DOC-OS-2017-001150 Fee Estimate Follow Up

To: "Stith, Lola (Contractor)" <Lola.M.Stith@noaa.gov>, "Graff, Mark (Federal)" <Mark.Graff@noaa.gov>

Cc: "Toland, Michael (Federal)" <MToland@doc.gov>

Good Morning:

Your bureau or operating unit is past due on responding to the subject FOIA request.

I am requesting that you complete your task today, July 24, or respond to me with the following information:

- The reason(s) why your task is still open;
- Reasonable estimated time for completing your task; and/or
- Steps for completing your task.

Ayana Crawford

FOIA Specialist

US Department of Commerce

Office of Privacy and Open Government

Email: ACrawford@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

--

Lola Stith

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

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

lola.m.stith@noaa.gov



UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

May 12, 2017

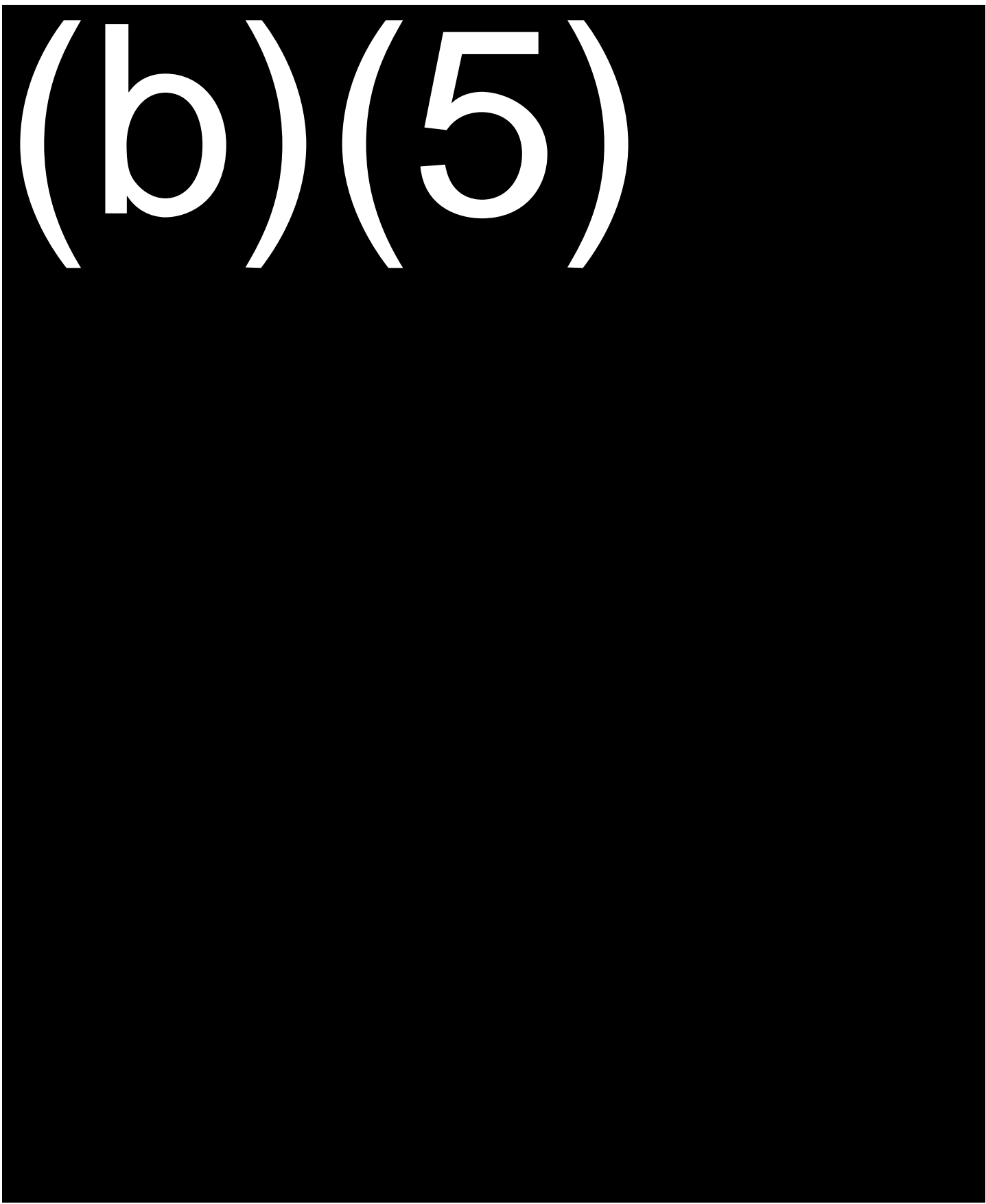
MEMORANDUM FOR: Pam Moulder, ESA **Mark Graff, NOAA**

FROM: Michael Toland, Ph.D.
Departmental FOIA Officer
Office of Privacy & Open Government

SUBJECT: Fee Estimate for FOIA Request – DOC-OS-2017-001150
Sean Smith,

(b) (5)

(b) (5)



Sarah Brabson - NOAA Federal

From: Sarah Brabson - NOAA Federal
Sent: Wednesday, July 26, 2017 9:27 AM
To: Mark Graff - NOAA Federal
Subject: Fwd: NOAA8202 Signed PTA
Attachments: NOAA8202_PTA_20170519_signedISSO-tmg.pdf; ATT00002.html

For your signature. I'll send him the risk doc and I answered his questions.

Sent from my iPhone

Begin forwarded message:

From: Joseph Fiscus - NOAA Affiliate <joseph.fiscus@noaa.gov>
Date: July 26, 2017 at 9:21:52 AM EDT
To: Sarah Brabson - NOAA Federal <sarah.brabson@noaa.gov>, Blanche Marshall - NOAA Federal <blanche.marshall@noaa.gov>
Subject: NOAA8202 Signed PTA

Sarah,

Attached is the PTA with ISSO, AO, and ITSO signatures. Could you please forward to Mark for final signature so that we're all set for tomorrow's CRB?

Also, is there anything else we need to prepare for the CRB tomorrow?

Thanks,

--

"Don't trust the horse, you people of Troy... Some trick is concealed here."
- Virgil, *The Aeneid*, Book II

Joe Fiscus - Security+
Information System Security Officer
The National Water Center
Office of Water Prediction (OWP)
NOAA's National Weather Service
Phone: 205-347-1338
Email: joseph.fiscus@noaa.gov

**U.S. Department of Commerce
NOAA**



**Privacy Threshold Analysis
for the
National Water Center**

U.S. Department of Commerce Privacy Threshold Analysis

NOAA/National Water Center

Unique Project Identifier: 006-48-01-12-02-3115-00

Introduction: This Privacy Threshold Analysis (PTA) is a questionnaire to assist with determining if a Privacy Impact Assessment (PIA) is necessary for this IT system. This PTA is primarily based from the Office of Management and Budget (OMB) privacy guidance and the Department of Commerce (DOC) IT security/privacy policy. If questions arise or further guidance is needed in order to complete this PTA, please contact your Bureau Chief Privacy Officer (BCPO).

Description of the information system and its purpose: The *National Water Center*, NOAA8202, is a suite of hydrologic capabilities including a production and operations capability, a research and development capability, and a capability that houses general administrative functions. The system is physically located in five distinct locations; National Weather Service (NWS) Headquarters, Silver Spring, MD; NWS National Water Center, Tuscaloosa, AL; National Operational Hydrologic Remote Sensing Center (NOHRSC), Chanhassen, MN and Cold Regions Research and Engineering Laboratory (CRREL), an Army Corps of Engineers facility in Hanover, NH. The facility at Hanover is designated as the backup facility to Chanhassen.

The production and operations capability consists of products and services from modeling programs and data acquisition, processing, and dissemination programs. There will be logical separation between the production and operations capability and other non-production capabilities.

The research and development capability consists of applications for field offices that involve applied research and software engineering in support of applications within the NWS.

The business administration capability includes office functions such as procurement, property, time and attendance, and other functions needed to carry on the daily business of an office.

Questionnaire:

1. What is the status of this information system?

This is a new information system. *Continue to answer questions and complete certification.*

This is an existing information system with changes that create new privacy risks.
Complete chart below, continue to answer questions, and complete certification.

Changes That Create New Privacy Risks (CTCNPR)					
a. Conversions		d. Significant Merging		g. New Interagency Uses	
b. Anonymous to Non-Anonymous		e. New Public Access		h. Internal Flow or Collection	
c. Significant System Management Changes		f. Commercial Sources		i. Alteration in Character of Data	
j. Other changes that create new privacy risks (specify):					

This is an existing information system in which changes do not create new privacy risks. *Skip questions and complete certification.*

2. Is the IT system or its information used to support any activity which may raise privacy concerns?

NIST Special Publication 800-53 Revision 4, Appendix J, states “Organizations may also engage in activities that do not involve the collection and use of PII, but may nevertheless raise privacy concerns and associated risk. The privacy controls are equally applicable to those activities and can be used to analyze the privacy risk and mitigate such risk when necessary.” Examples include, but are not limited to, audio recordings, video surveillance, building entry readers, and electronic purchase transactions.

Yes *Please describe the activities which may raise privacy concerns.*

No

3. Does the IT system collect, maintain, or disseminate business identifiable information (BII)?

As per DOC Privacy Policy: “For the purpose of this policy, business identifiable information consists of (a) information that is defined in the Freedom of Information Act (FOIA) as “trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.” (5 U.S.C.552(b)(4)). This information is exempt from automatic release under the (b)(4) FOIA exemption. “Commercial” is not confined to records that reveal basic commercial operations” but includes any records [or information] in which the submitter has a commercial interest” and can include information submitted by a nonprofit entity, or (b) commercial or other information that, although it may not be exempt from release under FOIA, is exempt from disclosure by law (e.g., 13 U.S.C.).”

Yes, the IT system collects, maintains, or disseminates BII about: *(Check all that apply.)*

- Companies
- Other business entities

No, this IT system does not collect any BII.

4. Personally Identifiable Information

4a. Does the IT system collect, maintain, or disseminate personally identifiable information (PII)?

As per OMB 07-16, Footnote 1: “The term ‘personally identifiable information’ refers to information which can be used to distinguish or trace an individual’s identity, such as their name, social security number, biometric records, etc... alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc...”

Yes, the IT system collects, maintains, or disseminates PII about: *(Check all that apply.)*

- DOC employees
- Contractors working on behalf of DOC
- Members of the public

No, this IT system does not collect any PII.

If the answer is “yes” to question 4a, please respond to the following questions.

4b. Does the IT system collect, maintain, or disseminate PII other than user ID?

Yes, the IT system collects, maintains, or disseminates PII other than user ID.

No, the user ID is the only PII collected, maintained, or disseminated by the IT system.

4c. Will the purpose for which the PII is collected, stored, used, processed, disclosed, or disseminated (context of use) cause the assignment of a higher PII confidentiality impact level?

Examples of context of use include, but are not limited to, law enforcement investigations, administration of benefits, contagious disease treatments, etc.

Yes, the context of use will cause the assignment of a higher PII confidentiality impact level.

No, the context of use will not cause the assignment of a higher PII confidentiality impact level.

If any of the answers to questions 2, 3, 4b, and/or 4c are “Yes,” a Privacy Impact Assessment (PIA) must be completed for the IT system. This PIA and the approved PIA must be a part of the IT system’s Assessment and Authorization Package.

CERTIFICATION

I certify the criteria implied by one or more of the questions above **apply** to the [IT SYSTEM NAME] and as a consequence of this applicability, I will perform and document a PIA for this IT system.

I certify the criteria implied by the questions above **do not apply** to the NATIONAL WATER CENTER and as a consequence of this non-applicability, a PIA for this IT system is not necessary.

Name of Information System Security Officer (ISSO) or System Owner (SO):

Blanche M. Marshall

Signature of ISSO or SO: MARSHALL.BLANCHE.M.1244685923 Digitally signed by MARSHALL.BLANCHE.M.1244685923
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI, ou=OTHER, cn=MARSHALL.BLANCHE.M.1244685923
Date: 2017.05.19 14:23:13 -05'00' Date: _____

Name of Information Technology Security Officer (ITSO): Andrew Browne

Signature of ITSO: BROWNE.ANDREW.PATRICK.1472149349 Digitally signed by BROWNE.ANDREW.PATRICK.1472149349
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI, ou=OTHER, cn=BROWNE.ANDREW.PATRICK.1472149349
Date: 2017.07.26 09:13:36 -04'00' Date: _____

Name of Authorizing Official (AO): Thomas Graziano

Signature of AO: GRAZIANO.THOMAS.M.DR.1365859252 Digitally signed by GRAZIANO.THOMAS.M.DR.1365859252
Date: 2017.07.25 15:16:22 -05'00' Date: _____

Name of Bureau Chief Privacy Officer (BCPO): Mark Graff

Signature of BCPO: _____ Date: _____

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Wednesday, July 26, 2017 11:40 AM
To: Sarah Brabson - NOAA Federal
Subject: Re: NOAA8202 Signed PTA
Attachments: NOAA8202_PTA_20170519_signedISSO-tmg mhg.pdf

Here it is--it just needs to have the additional boxes marked that are omitted from items 2-4. I assume they are "no" since no PIA is required, but please double check.

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, Jul 26, 2017 at 9:27 AM, Sarah Brabson - NOAA Federal <sarah.brabson@noaa.gov> wrote:
For your signature. I'll send him the risk doc and I answered his questions.

Sent from my iPhone

Begin forwarded message:

From: Joseph Fiscus - NOAA Affiliate <joseph.fiscus@noaa.gov>
Date: July 26, 2017 at 9:21:52 AM EDT
To: Sarah Brabson - NOAA Federal <sarah.brabson@noaa.gov>, Blanche Marshall - NOAA Federal <blanche.marshall@noaa.gov>
Subject: NOAA8202 Signed PTA

Sarah,

Attached is the PTA with ISSO, AO, and ITSO signatures. Could you please forward to Mark for final signature so that we're all set for tomorrow's CRB?

Also, is there anything else we need to prepare for the CRB tomorrow?

Thanks,

--

"Don't trust the horse, you people of Troy... Some trick is concealed here."
- Virgil, *The Aeneid*, Book II

Joe Fiscus - Security+
Information System Security Officer
The National Water Center
Office of Water Prediction (OWP)
NOAA's National Weather Service
Phone: [205-347-1338](tel:205-347-1338)
Email: joseph.fiscus@noaa.gov

**U.S. Department of Commerce
NOAA**



**Privacy Threshold Analysis
for the
National Water Center**

U.S. Department of Commerce Privacy Threshold Analysis

NOAA/National Water Center

Unique Project Identifier: 006-48-01-12-02-3115-00

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Yes *Please describe the activities which may raise privacy concerns.*

No

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- ___ Companies
- ___ Other business entities

___ No, this IT system does not collect any BII.

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- ___ Contractors working on behalf of DOC
- ___ Members of the public

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I certify the criteria implied by the questions above **do not apply** to the NATIONAL WATER CENTER and as a consequence of this non-applicability, a PIA for this IT system is not necessary.

Name of Information System Security Officer (ISSO) or System Owner (SO):

Blanche M. Marshall

Signature of ISSO or SO: MARSHALL.BLANCHE.M.1244685923 Digitally signed by MARSHALL.BLANCHE.M.1244685923
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI, ou=OTHER, cn=MARSHALL.BLANCHE.M.1244685923
Date: 2017.05.19 14:23:13 -05'00' Date: _____

Name of Information Technology Security Officer (ITSO): Andrew Browne

Signature of ITSO: BROWNE.ANDREW.PATRICK.1472149349 Digitally signed by BROWNE.ANDREW.PATRICK.1472149349
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI, ou=OTHER, cn=BROWNE.ANDREW.PATRICK.1472149349
Date: 2017.07.26 09:13:36 -04'00' Date: _____

Name of Authorizing Official (AO): Thomas Graziano

Signature of AO: GRAZIANO.THOMAS.M.DR.1365859252 Digitally signed by GRAZIANO.THOMAS.M.DR.1365859252
Date: 2017.07.25 15:16:22 -05'00' Date: _____

Name of Bureau Chief Privacy Officer (BCPO): Mark Graff

Signature of BCPO: GRAFF.MARK.HYRUM.1514447892 Digitally signed by GRAFF.MARK.HYRUM.1514447892
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI, ou=OTHER, cn=GRAFF.MARK.HYRUM.1514447892
Date: 2017.07.26 11:35:46 -04'00' Date: _____

Ruth Ann Lowery - NOAA Federal

From: Ruth Ann Lowery - NOAA Federal
Sent: Wednesday, July 26, 2017 12:21 PM
To: Roxie Allison-Holman - NOAA Federal; Mark Graff - NOAA Federal
Cc: Kristen Gustafson - NOAA Federal; Rodney Vieira - NOAA Federal; Davidson, Hillary (Federal); Myers, Jordan (Federal)
Subject: FW: Comments on DOC GC's draft BuzzFeed Determination
Attachments: BuzzFeed25July.ral final.docx

FYI (b)(5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Thanks,

Ruth Ann

Ruth Ann Lowery, Attorney-Advisor
NOAA Office of General Counsel
Fisheries & Protected Resources Section
1315 East-West Highway, SSMC III, Room 15114
Silver Spring, MD 20910
(301)713-9671
Fax: (301) 713-0658

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<<(((°>'.,.,.~^~.,.,.>(((°>.,.,.~^~.,.,.>(((°>

From: Ruth Ann Lowery - NOAA Federal [<mailto:ruthann.lowery@noaa.gov>]
Sent: Tuesday, July 25, 2017 2:07 PM
To: 'Cathy.McClure (Federal)' <Cathy.McClure@DOCGOV.onmicrosoft.com>
Cc: 'Bogomolny, Michael (Federal)' <MBogomolny@doc.gov>; Rodney Vieira - NOAA Federal <rod.vieira@noaa.gov>
Subject: RE: buzzfeed

Thanks, Cathy, for the opportunity to comment. (b)(5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b)(5) [Redacted]

[Redacted]

[Redacted]

Let me know if you would like to discuss further.

Thanks!
Ruth Ann

Ruth Ann Lowery, Attorney-Advisor
NOAA Office of General Counsel
Fisheries & Protected Resources Section
1315 East-West Highway, SSMC III, Room 15114
Silver Spring, MD 20910
(301)713-9671
Fax: (301) 713-0658

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<<(((o>`.,.,.~.,.>(((o>.,.,.~.,.>(((o>

From: Cathy.McClure (Federal) [<mailto:Cathy.McClure@DOCGOV.onmicrosoft.com>]
Sent: Tuesday, July 25, 2017 10:37 AM

To: Lowery, Ruth Ann (Federal) <RuthAnn.Lowery@noaa.gov>
Cc: Bogomolny, Michael (Federal) <MBogomolny@doc.gov>
Subject: FW: buzzfeed

Ruth Ann—thank you for looking this over.

From: Bogomolny, Michael (Federal)
Sent: Tuesday, July 25, 2017 8:50 AM
To: Cathy.McClure (Federal) <Cathy.McClure@DOCGOV.onmicrosoft.com>
Subject: buzzfeed

I think this is final draft. Please review changes and make sure I didn't introduce any factual errors. Let's run this one by Ruth Ann to make sure she agrees with some of the factual assertions regarding Dr. Bates' attempts to engage on policy.

-bogo

(b)(5)

(b)(5)

(b)(5)

(b)(5)

(b)(5)

Lola Stith - NOAA Affiliate

From: Lola Stith - NOAA Affiliate
Sent: Wednesday, July 26, 2017 2:37 PM
To: Mark Graff - NOAA Affiliate
Subject: Fwd: ACTION REQUIRED (SIGN PLS) : Smith_DOC-OS-2017-001150 Fee Estimate Follow Up
Attachments: NOAA RESPONSE_Smith_DOC-OS-2017-001150 Dept Fee Estimate Tasker.docx

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

From: **Lola Stith - NOAA Affiliate** <lola.m.stith@noaa.gov>
Date: Tue, Jul 25, 2017 at 12:27 PM
Subject: ACTION REQUIRED (SIGN PLS) : Smith_DOC-OS-2017-001150 Fee Estimate Follow Up
To: Mark Graff - NOAA Affiliate <mark.graff@noaa.gov>

Mark - A clean tasker is attached for signature.

Lola

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

From: **Devin Brakob - NOAA Federal** <devin.r.brakob@noaa.gov>
Date: Tue, Jul 25, 2017 at 12:18 PM
Subject: RE: Smith_DOC-OS-2017-001150 Fee Estimate Follow Up
To: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>
Cc: Mark Graff - NOAA Federal <mark.graff@noaa.gov>, James LeDuc - NOAA Federal <james.leduc@noaa.gov>

Lola,

Attached is the Fee Tasker. FOIA online will not let me upload to this case. Can you upload for us as Jim is on leave right now.

Thanks in advance.

CAPT Devin Brakob, NOAA

Executive Director to the

Deputy Under Secretary for Operations

National Oceanic and Atmospheric Administration

1401 Constitution Ave., NW

Washington, D.C. 20230

Offices: [202-482-3565](tel:202-482-3565) (DC) [301-628-1984](tel:301-628-1984) (Silver Spring)

Cell (b)(6)

From: Lola Stith - NOAA Affiliate [mailto:lola.m.stith@noaa.gov]

Sent: Monday, July 24, 2017 4:18 PM

To: Devin Brakob - NOAA Federal

Cc: Mark Graff - NOAA Federal; James LeDuc - NOAA Federal; Robert Swisher - NOAA Federal

Subject: Re: Smith_DOC-OS-2017-001150 Fee Estimate Follow Up

This task was assigned to USEC on Jul 19th.

Lola

On Monday, July 24, 2017, Devin Brakob - NOAA Federal <devin.r.brakob@noaa.gov> wrote:

I don't see anything in my FOIA email folder with this number and it's not on Jim's tracking sheet he updated on 14 July .

CAPT Devin Brakob, NOAA

Executive Director to the

Deputy Under Secretary for Operations

National Oceanic and Atmospheric Administration

1401 Constitution Ave., NW

Washington, D.C. 20230

Offices: [202-482-3565](tel:202-482-3565) (DC) [301-628-1984](tel:301-628-1984) (Silver Spring)

Cell (b)(6)

From: Mark Graff - NOAA Federal [mailto:mark.graff@noaa.gov]

Sent: Monday, July 24, 2017 3:45 PM

To: Devin Brakob - NOAA Federal

Cc: Lola Stith - NOAA Affiliate; James LeDuc - NOAA Federal; Robert Swisher - NOAA Federal

Subject: Fwd: Smith_DOC-OS-2017-001150 Fee Estimate Follow Up

Captain Brakob,

This request also appears to be pending a fee estimate tasker, which DOC is following up on below.

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: **Crawford, Ayana (Contractor)** <ACrawford@doc.gov>

Date: Mon, Jul 24, 2017 at 3:39 PM

Subject: Smith_DOC-OS-2017-001150 Fee Estimate Follow Up

To: "Stith, Lola (Contractor)" <Lola.M.Stith@noaa.gov>, "Graff, Mark (Federal)" <Mark.Graff@noaa.gov>

Cc: "Toland, Michael (Federal)" <MToland@doc.gov>

Good Morning:

Your bureau or operating unit is past due on responding to the subject FOIA request.

I am requesting that you complete your task today, July 24, or respond to me with the following information:

- The reason(s) why your task is still open;
- Reasonable estimated time for completing your task; and/or
- Steps for completing your task.

Ayana Crawford

FOIA Specialist

US Department of Commerce

Office of Privacy and Open Government

Email: ACrawford@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

--

Lola Stith

Contractor - The Ambit Group, LLC
NOAA Office of the Chief Information Officer (OCIO)
(c (b)(6) [REDACTED])

lola.m.stith@noaa.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



UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

May 12, 2017

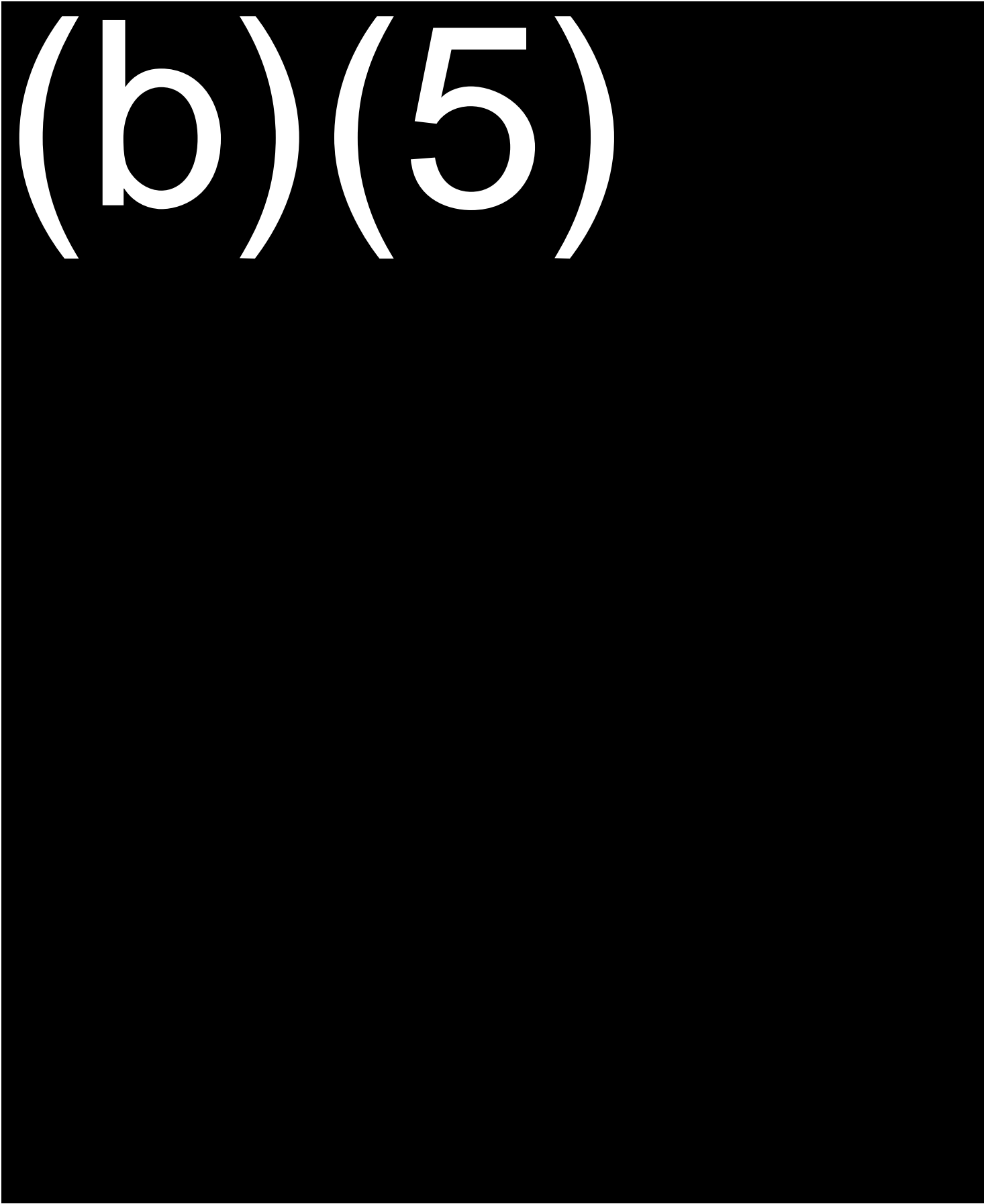
MEMORANDUM FOR: Pam Moulder, ESA **Mark Graff, NOAA**

FROM: Michael Toland, Ph.D.
Departmental FOIA Officer
Office of Privacy & Open Government

SUBJECT: Fee Estimate for FOIA Request – DOC-OS-2017-001150
Sean Smith,

(b) (5)

(b) (5)



Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Wednesday, July 26, 2017 2:45 PM
To: Lola Stith - NOAA Affiliate
Subject: Re: ACTION REQUIRED (SIGN PLS) : Smith_DOC-OS-2017-001150 Fee Estimate Follow Up
Attachments: NOAA RESPONSE_Smith_DOC-OS-2017-001150 Dept Fee Estimate Tasker mhg.pdf

Here you go--

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, Jul 26, 2017 at 2:36 PM, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:

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

From: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>
Date: Tue, Jul 25, 2017 at 12:27 PM
Subject: ACTION REQUIRED (SIGN PLS) : Smith_DOC-OS-2017-001150 Fee Estimate Follow Up
To: Mark Graff - NOAA Affiliate <mark.graff@noaa.gov>

Mark - A clean tasker is attached for signature.

Lola

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

From: Devin Brakob - NOAA Federal <devin.r.brakob@noaa.gov>
Date: Tue, Jul 25, 2017 at 12:18 PM
Subject: RE: Smith_DOC-OS-2017-001150 Fee Estimate Follow Up
To: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>
Cc: Mark Graff - NOAA Federal <mark.graff@noaa.gov>, James LeDuc - NOAA Federal <james.leduc@noaa.gov>

Lola,

Attached is the Fee Tasker. FOIA online will not let me upload to this case. Can you upload for us as Jim is on leave right now.

Thanks in advance.

CAPT Devin Brakob, NOAA

Executive Director to the

Deputy Under Secretary for Operations

National Oceanic and Atmospheric Administration

1401 Constitution Ave., NW

Washington, D.C. 20230

Offices: [202-482-3565](tel:202-482-3565) (DC) [301-628-1984](tel:301-628-1984) (Silver Spring)

Cell (b)(6)

From: Lola Stith - NOAA Affiliate [mailto:lola.m.stith@noaa.gov]

Sent: Monday, July 24, 2017 4:18 PM

To: Devin Brakob - NOAA Federal

Cc: Mark Graff - NOAA Federal; James LeDuc - NOAA Federal; Robert Swisher - NOAA Federal

Subject: Re: Smith_DOC-OS-2017-001150 Fee Estimate Follow Up

This task was assigned to USEC on Jul 19th.

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On Monday, July 24, 2017, Devin Brakob - NOAA Federal <devin.r.brakob@noaa.gov> wrote:

I don't see anything in my FOIA email folder with this number and it's not on Jim's tracking sheet he updated on 14 July .

CAPT Devin Brakob, NOAA

Executive Director to the

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Sent: Monday, July 24, 2017 3:45 PM
To: Devin Brakob - NOAA Federal
Cc: Lola Stith - NOAA Affiliate; James LeDuc - NOAA Federal; Robert Swisher - NOAA Federal
Subject: Fwd: Smith_DOC-OS-2017-001150 Fee Estimate Follow Up

Captain Brakob,

This request also appears to be pending a fee estimate tasker, which DOC is following up on below.

Mark H. Graff

FOIA Officer/Bureau Chief Privacy Officer (BCPO)

National Oceanic and Atmospheric Administration

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

(b)(6) (C)

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

From: Crawford, Ayana (Contractor) <ACrawford@doc.gov>
Date: Mon, Jul 24, 2017 at 3:39 PM
Subject: Smith_DOC-OS-2017-001150 Fee Estimate Follow Up
To: "Stith, Lola (Contractor)" <Lola.M.Stith@noaa.gov>, "Graff, Mark (Federal)" <Mark.Graff@noaa.gov>
Cc: "Toland, Michael (Federal)" <MToland@doc.gov>

Good Morning:

Your bureau or operating unit is past due on responding to the subject FOIA request.

I am requesting that you complete your task today, July 24, or respond to me with the following information:

- The reason(s) why your task is still open;
- Reasonable estimated time for completing your task; and/or
- Steps for completing your task.

Ayana Crawford

FOIA Specialist

US Department of Commerce

Office of Privacy and Open Government

Email: ACrawford@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

--

Lola Stith
Contractor - The Ambit Group, LLC
NOAA Office of the Chief Information Officer (OCIO)
(c (b)(6) [REDACTED])

lola.m.stith@noaa.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



UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

May 12, 2017

MEMORANDUM FOR: Pam Moulder, ESA **Mark Graff, NOAA**

FROM: Michael Toland, Ph.D.
Departmental FOIA Officer
Office of Privacy & Open Government

SUBJECT: Fee Estimate for FOIA Request – DOC-OS-2017-001150
Sean Smith,

(b) (5)

(b) (5)

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Thursday, July 27, 2017 9:42 AM
To: Jackie Rolleri - NOAA Federal
Cc: Nkolika Ndubisi - NOAA Federal; Lola Stith - NOAA Affiliate; Robert Swisher - NOAA Federal
Subject: Revised Slides for NOS Training
Attachments: NOS FOIA Processing.pptx

Hi Guys,

In addition to the Quick Reference guide for SME's I sent earlier, here is the slide deck with the changes we discussed together. Does this look about right to you guys? I tried to go into a good amount of nuts and bolts for the "birth to death" processing portion like we talked about. Hopefully this will be instructive for those new to FOIA, but not too high-altitude for the experienced folks.

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

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Referrals, Consultations, and Exemption (b)(5) Deliberative Process

Prepared by Mark H. Graff
NOAA FOIA Officer/Bureau Chief Privacy
Officer
OCIO/GPD

mark.graff@noaa.gov; (301)-628-5658



Freedom of Information Act (5 USC 552)



Outline

1. Birth to Death Processing Flow
2. Regulatory Structure for Referrals
3. The Risks of Other Agency Docs
4. OIP Guidance
5. (b)(5) Two Prong Test
6. The Extent of the Privilege
7. Questions



Birth to Death Processing Flow



Receipt and Perfection

1. A request can be submitted in almost any fashion, to any employee. If it has been misdirected, that employee has 10 days to properly route the request.
2. A request is perfected when it reasonably describes the records being sought so a search can commence, and is not unduly burdensome.



Birth to Death Processing Flow



Fees and Expedited Processing

1. If a requester wants a waiver of fees, they have to satisfy 6 factors, outlined in 15 CFR 4.11(l).
2. If a requester wants Expedited Processing, they must satisfy 15 CFR 4.6(d)(2).
3. When either of these are requested, they will be reviewed prior to tasking the LO with a search.



Birth to Death Processing Flow



Fees and Expedited Processing (cont'd)

1. If a fee waiver is not granted, the LO will be tasked with estimating the fees.
2. If the estimated fee is greater than \$20, the liaison should send a fee estimate to the requester and toll the processing of the request.*

*This is the suggested time under the regulations to discuss narrowing the scope with the requester.



Birth to Death Processing Flow



Search and Processing

1. Once the fees are resolved—either through a fee waiver, payment of fees, or unassessed fees becoming non-billable by the request becoming backlogged, a search is required.
2. The search should be in all locations where responsive records are reasonably likely to be found.



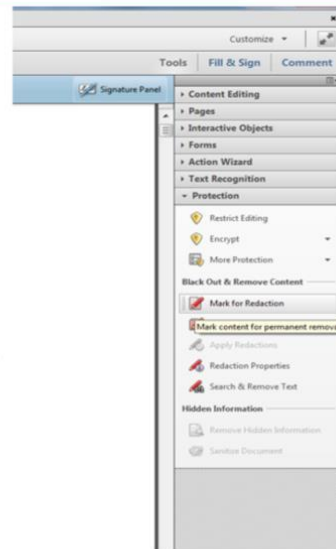
Birth to Death Processing Flow



Search and Processing

1. Once all responsive records are located, and de-duplicated*, the records need to be processed and have all exempt information redacted. This is also called “reasonable segregation”.
2. This can be done through Adobe or Clearwell.

*This can be either by hand, or through Clearwell for voluminous record searches.





Birth to Death Processing Flow



Search and Processing

1. After the records are redacted, provide the redacted copy to the FOIA Liaison.
2. Please make sure to note whether there is any particularly sensitive information, whether your search and processing is complete, or whether this is only an interim release. A completed search tasker needs to accompany the redacted records.



Birth to Death Processing Flow



Approving Release of Records

1. After the processed records are provided to the liaison, they will upload the records into FOIAOnline, and seek GC review (if necessary).
2. A review tasking will then be generated by the liaison for release of the records.



Birth to Death Processing Flow



Releasing Records

1. After the final review is complete, a tasking is generated from NOAA FOIA for the LO to release the records through FOIAOnline.

The screenshot shows a web browser window with the URL `www.regulations.gov/foia/action/agencyTask/selected/RFNTaskId=1b6e2a0c3d330c5029e45141b6cc&requestId=vevqj0f9f0XWV3Cqy0G11Hq2V0VqA038X...`. The page title is "Attach Records or Past Correspondence". It displays a table of 58 items found, with 51 to 58 shown. The table has columns for "Item #", "Title", "Type", and "Request Reference Type".

Item #	Title	Type	Request Reference Type
Release	<i>SWD_Tasker_DOC-NOAA-2015-001860.pdf</i>	Correspondence	
Release	<i>ScopeClarification_RE_DOC-NOAA-2015-001860.pdf</i>	Correspondence	
Release	<i>Search Log_DOC-NOAA-2015-001860.pdf</i>	Correspondence	
Release	<i>Tasker_PDF</i>	Correspondence	
Release	<i>Tasker-2015-001860_Signed.pdf</i>	Correspondence	
Release	<i>ThirdInterimRelease_DOC-NOAA-2015-001860-1g.pdf</i>	Correspondence	
Release	<i>ThirdInterimRelease_DOC-NOAA-2015-001860-1g.pdf</i>	Correspondence	
Release	<i>Updated_Combined102 Responsive RecordsPart1_Redacted</i>	Record	RR

58 items found, displaying 51 to 58.

58 items found, displaying 51 to 58.

Selected Items To Be Sent To Requester
No records or correspondence have been selected.

[SEND](#) [CANCEL](#)



Regulatory Structure



MISDIRECTED WITHIN THE DEPARTMENT:

Where a component's FOIA office determines that a request was misdirected within the Department:

- The receiving component's FOIA office needs to route the request to the correct bureau(s).
- The search starts the time cutoff for records



Regulatory Structure (Cont'd)



OTHER BUREAUS MAY HAVE RECORDS:

How the proper Department component to respond to a FOIA Request is determined:

- The component that first receives the request and has responsive records.
 - When no records exist, the component that first receives the request and is likely to have responsive records should process the FOIA request.
- Or, the component to which the Departmental FOIA Officer or component FOIA Officer assigns lead responsibility for responding to the request.



Regulatory Structure (Cont'd)



CONSULTATIONS:

When a record is requested that originated with NOAA and another Federal agency has a *significant interest* in the record, NOAA must allow the other Federal agency to review the record before responding to a requester.





Consultations Continued...



Consultations can be done within FOIAonline by uploading the record requiring consultation and then selecting the “**Create Consultation**” button found in the left hand column in FO (if the agency also uses FO)

- If attempts to consult with outside agencies cause a delay in responding to the request, notify the requester that the request will be processed or completed after the consultation has been completed.
- Consultation with another agency constitutes *unusual circumstances* and allows you to invoke a 10 day extension.



Regulatory Structure (Cont'd)



REFERRALS:

When NOAA possesses requested records that originated with another Federal agency.

NOAA routes these records to that agency for direct response to the requester.





OIP Referral Guidance



OIP's Summary:

“The agency that is best able to determine a record's sensitivity, and in turn its exemption status, is the agency that should process that record under the Act.

While this may vary in particular cases, as a general rule the agency that originated a record is usually the most appropriate agency to make a FOIA-disclosure determination regarding it.”



The Risks of Other Agency Docs



There are at least **7** different types of referrals and consultations:

1. External Referrals for direct response to the requester including Exemptions asserted by the referring agency to include their appeal language.

Example: ACOE referrals where we respond to requester with their appeal contact.



The Risks of Other Agency Docs



2. External Referrals of the request in its entirety with no asserted Exemptions or responsive records being located by the referring agency.

Example: Recent DOI Refers us records that fall entirely under our purview.



The Risks of Other Agency Docs (Cont'd)



3. Records in which all or part of the record requires a declassification review by the original classifying authority.

Example: Navy necropsy records OCA is the Director of the office that generated those docs.



The Risks of Other Agency Docs (Cont'd)



4. External Consultations for providing withholding recommendations to another agency

Example: Fisheries Management Council Records found within our Control



The Risks of Other Agency Docs (Cont'd)



5. Intra-Departmental taskings requiring a tasking Memorandum

Example: DOC sends us a tasking to conduct a search in Presidential Transition cases through FOIAOnline, and we, in turn, issue taskings within Bureau.



The Risks of Other Agency Docs (Cont'd)



6. External Litigation consultations seeking NOAA's asserted exemptions

Example: FBI recently asked NOAA in the DB Cooper case to provide withholding recommendations on the weather docs from the plane flight.



The Risks of Other Agency Docs (Cont'd)



7. Referrals asking for non-attribution

Example: If we ever have intelligence agency records, they frequently don't want to be identified as the originator of the records.



NAO 205-14: NOAA FOIA Taskings



There are at least 6 types of taskings—it must be clear which type you are being asked to review:

1. Conduct a search for responsive records (fees waived or non-billable)
2. Prepare a fee estimate in a non-referral
3. Prepare a fee estimate for a case being coordinated by DOC, and the aggregate threshold is not determined by NOAA
4. Review referred records and provide release recommendations to the referring entity
5. Review referred records, and respond directly to the requester, incorporating the referring entities exemptions and appeal language.
6. Respond to an adjudication on appeal



OIP GUIDANCE



If they are Agency Records:

When an agency receives a FOIA request for agency records in its possession it must take responsibility for searching for the records and processing the request. It cannot simply refuse to act on the ground that the documents originated elsewhere.





OIP Guidance (Cont'd)



“When litigation (results), the government generally has not raised any issue over which agency is the “proper party defendant,” but instead has provided affidavits from the originating agencies to justify any contested nondisclosure.”

Plain English: DOJ won’t challenge who the Plaintiff names in Court. If you worked on the request, you can be the one sued, and other agencies will just provide affidavits for the records they created.



(b)(5) Two Prong Test



When (b)(5) Deliberative Process Applies:

- (b)(5) Statute generally protects: “Inter and intra-agency” (internal and external) communications that would not be available by law to a party other than an agency in litigation with the agency”.
- Courts define this as only documents that are typically privileged in civil discovery



(b)(5) Two Prong Test (cont'd)



- As to one of those privileges, Deliberative Process Privilege includes:
 - The Inter-agency (internal) and Intra-agency (external) communication requirement which encompasses the “consultant corollary”.
 - If the consultants, contractors, external advisors provided advice similar to what might have been received from an employee. Must ask—
 - Are they an interested party?
 - Seeking benefit at the expense of other applicants?
 - If yes, no (b)(5) protection.



(b)(5) Two Prong Test (cont'd)



Two Part Test:

- 1) Is the material pre-decisional?
 - a) i.e., antecedent to the adoption of the agency policy? (the making of the “policy sausage”)
- 2) Is it deliberative (not factual)—making recommendations, expressing opinions on legal or policy matters?



The Extent of the Privilege



- **Policy behind DPP:**
 - Encourage open and frank discussions among employees and protect the decision making processes of the government
 - Protect against premature disclosure of proposed policies before adopted
 - Protect against public confusion



The Extent of the Privilege



- Since the 2016 FOIA Improvement Act, a **Risk of Harm** must exist for the Privilege to apply.
- Previously, this was only advisory, although in practice, this should not change NOAA's approach, as NOAA routinely required a Risk of Harm Analysis for (b)(5) Deliberative Process.





Risk of Harm



Foreseeable Harm is now a requirement under the 2016 FOIA Improvement Act:

To Reach Foreseeable Harm, OIP summarizes the considerations:

- How sensitive is the decision?
- How sensitive is the decision-making process? (consider peer review)
- Is the decision final yet?
- Would disclosure affect the employees that contributed to the records?
- Would future decisions be jeopardized if the records were released?
- How significant would the "chilling" effect be?
- How old is the record?
- How sensitive are portions of the record?



The Extent of the Privilege



- There is also now a 25 year limit on the use of Deliberative Process.
- After that time—the privilege no longer applies.





Questions



QUESTIONS?

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Thursday, July 27, 2017 2:54 PM
To: Samuel Dixon - NOAA Affiliate
Cc: Ellen Sebastian - NOAA Federal; Pua Kamaka - NOAA Federal
Subject: NOS Training Slides and SME Quick Reference Guide
Attachments: NOS FOIA Processing.pptx; NOAA-foia-quick-and-easy-for-smes.docx

Hey Sam,

Here is the material we discussed on the call. Any thoughts or input would be great--

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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FOIA QUICK REFERENCE GUIDE FOR SUBJECT MATTER EXPERTS

The information provided below is a list of quick and easy steps that subject matter experts should take when they receive a FOIA request. NOAA Administrative Order NAO 205-14 provides detailed information to follow in responding to FOIA requests along with 15 CFR Part 4 and 5 U.S.C. § 552.

When you receive a FOIA Request:

1. Review the FOIA Request and discuss any issues of scope, clarity of request, or the description of records sought with the FOIA Coordinator or Liaison assigned to the request.

2. Follow the steps listed:
 - ____ Step 1: Make sure you clearly understand what records the requester is seeking.

 - ____ Step 2: Determine if you are likely to have records subject to the request.

 - ____ Step 3: Provide an estimate of search and review time and an estimate of pages if required to the FOIA Coordinator or Liaison.

 - ____ Step 4: Search for records responsive to the request if fees have been resolved (usually through payment or a fee waiver).

 - ____ Step 5: Determine if records are to be released or withheld from the requester. Exemption 6 (7(C) for OLE docs) should be used to protect sensitive PII, Exemption 5 should be used to protect privileged information, and Exemption 4 protects confidential/proprietary information, including copyrighted material. If you think another exemption may apply, consult with your FOIA Coordinator or FOIA Liaison on applicability.

 - ____ Step 6: Redact the information (but do not “Apply” the redactions) that should be withheld. Complete the Search Log indicating how you conducted the search.

 - ____ Step 7: Organize the records responsive to the request and submit them to the FOIA Coordinator or Liaison assigned to the request.

3. Process the request within the allotted time specified for your response.

If you have any questions, please contact the FOIA Coordinator or FOIA Liaison assigned to the request, or the FOIA Officer at 301-628-5658.

THANK YOU FOR YOUR SUPPORT FOR TRANSPARENCY!



Referrals, Consultations, and Exemption (b)(5) Deliberative Process

Prepared by Mark H. Graff
NOAA FOIA Officer/Bureau Chief Privacy
Officer
OCIO/GPD

mark.graff@noaa.gov; (301)-628-5658



Freedom of Information Act (5 USC 552)



Outline

1. Birth to Death Processing Flow
2. Regulatory Structure for Referrals
3. The Risks of Other Agency Docs
4. OIP Guidance
5. (b)(5) Two Prong Test
6. The Extent of the Privilege
7. Questions



Birth to Death Processing Flow



Receipt and Perfection

1. A request can be submitted in almost any fashion, to any employee. If it has been misdirected, that employee has 10 days to properly route the request.
2. A request is perfected when it reasonably describes the records being sought so a search can commence, and is not unduly burdensome.



Birth to Death Processing Flow



Fees and Expedited Processing

1. If a requester wants a waiver of fees, they have to satisfy 6 factors, outlined in 15 CFR 4.11(l).
2. If a requester wants Expedited Processing, they must satisfy 15 CFR 4.6(d)(2).
3. When either of these are requested, they will be reviewed prior to tasking the LO with a search.



Birth to Death Processing Flow



Fees and Expedited Processing (cont'd)

1. If a fee waiver is not granted, the LO will be tasked with estimating the fees.
2. If the estimated fee is greater than \$20, the liaison should send a fee estimate to the requester and toll the processing of the request.*

*This is the suggested time under the regulations to discuss narrowing the scope with the requester.



Birth to Death Processing Flow



Search and Processing

1. Once the fees are resolved—either through a fee waiver, payment of fees, or unassessed fees becoming non-billable by the request becoming backlogged, a search is required.
2. The search should be in all locations where responsive records are reasonably likely to be found.



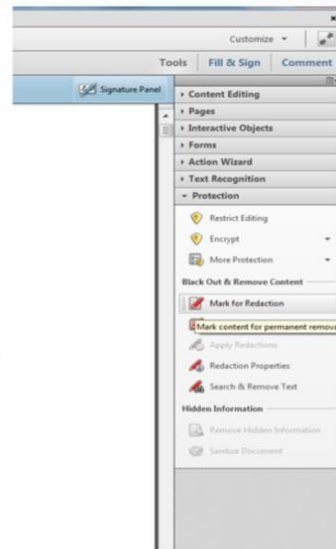
Birth to Death Processing Flow



Search and Processing

1. Once all responsive records are located, and de-duplicated*, the records need to be processed and have all exempt information redacted. This is also called “reasonable segregation”.
2. This can be done through Adobe or Clearwell.

*This can be either by hand, or through Clearwell for voluminous record searches.





Birth to Death Processing Flow



Search and Processing

1. After the records are redacted, provide the redacted copy to the FOIA Liaison.
2. Please make sure to note whether there is any particularly sensitive information, whether your search and processing is complete, or whether this is only an interim release. A completed search tasker needs to accompany the redacted records.



Birth to Death Processing Flow



Approving Release of Records

1. After the processed records are provided to the liaison, they will upload the records into FOIAOnline, and seek GC review (if necessary).
2. A review tasking will then be generated by the liaison for release of the records.



Birth to Death Processing Flow



Releasing Records

1. After the final review is complete, a tasking is generated from NOAA FOIA for the LO to release the records through FOIAOnline.

The screenshot shows a web browser window with the URL `www.regulations.gov/foia/action/agencyTask/selected/RFNTaskId=1b6e2a0c3d330c5029e4f5413b66c&requestId=vevqj0f9f0XWV3Cqy0G11Hq2V0VqA28KX...`. The page title is "Attach Records or Past Correspondence". It displays a table with 58 items found, showing columns for "Item #", "Title", "Type", and "Request Reference Type". The table lists several PDF files related to NOAA-2015-001860, including "SWD_Tasker_DOC-NOAA-2015-001860.pdf", "ScopeClarification_RE_DOC-NOAA-2015-001860.pdf", "Search Log_DOC-NOAA-2015-001860.pdf", "Tasker_PDF", "Tasker-2015-001860_Signed.pdf", "ThirdInterimRelease_DOC-NOAA-2015-001860-1g.pdf", and "ThirdInterimRelease_DOC-NOAA-2015-001860-1g.pdf". The last item is "Updated_Combined102 Responsive RecordsPart1_Redacted", which is a "Record" with a reference type of "RR". Below the table, there is a section titled "Selected Items To Be Sent To Requester" which currently contains the message "No records or correspondence have been selected." and buttons for "SEND" and "CANCEL".

Item #	Title	Type	Request Reference Type
Release	<i>SWD_Tasker_DOC-NOAA-2015-001860.pdf</i>	Correspondence	
Release	<i>ScopeClarification_RE_DOC-NOAA-2015-001860.pdf</i>	Correspondence	
Release	<i>Search Log_DOC-NOAA-2015-001860.pdf</i>	Correspondence	
Release	<i>Tasker_PDF</i>	Correspondence	
Release	<i>Tasker-2015-001860_Signed.pdf</i>	Correspondence	
Release	<i>ThirdInterimRelease_DOC-NOAA-2015-001860-1g.pdf</i>	Correspondence	
Release	<i>ThirdInterimRelease_DOC-NOAA-2015-001860-1g.pdf</i>	Correspondence	
Release	<i>Updated_Combined102 Responsive RecordsPart1_Redacted</i>	Record	RR



Regulatory Structure



MISDIRECTED WITHIN THE DEPARTMENT:

Where a component's FOIA office determines that a request was misdirected within the Department:

- The receiving component's FOIA office needs to route the request to the correct bureau(s).
- The search starts the time cutoff for records



Regulatory Structure (Cont'd)



OTHER BUREAUS MAY HAVE RECORDS:

How the proper Department component to respond to a FOIA Request is determined:

- The component that first receives the request and has responsive records.
 - When no records exist, the component that first receives the request and is likely to have responsive records should process the FOIA request.
- Or, the component to which the Departmental FOIA Officer or component FOIA Officer assigns lead responsibility for responding to the request.



Regulatory Structure (Cont'd)



CONSULTATIONS:

When a record is requested that originated with NOAA and another Federal agency has a *significant interest* in the record, NOAA must allow the other Federal agency to review the record before responding to a requester.





Consultations Continued...



Consultations can be done within FOIAonline by uploading the record requiring consultation and then selecting the “**Create Consultation**” button found in the left hand column in FO (if the agency also uses FO)

- If attempts to consult with outside agencies cause a delay in responding to the request, notify the requester that the request will be processed or completed after the consultation has been completed.
- Consultation with another agency constitutes *unusual circumstances* and allows you to invoke a 10 day extension.



Regulatory Structure (Cont'd)



REFERRALS:

When NOAA possesses requested records that originated with another Federal agency.

NOAA routes these records to that agency for direct response to the requester.





OIP Referral Guidance



OIP's Summary:

“The agency that is best able to determine a record's sensitivity, and in turn its exemption status, is the agency that should process that record under the Act.

While this may vary in particular cases, as a general rule the agency that originated a record is usually the most appropriate agency to make a FOIA-disclosure determination regarding it.”



The Risks of Other Agency Docs



There are at least **7** different types of referrals and consultations:

1. External Referrals for direct response to the requester including Exemptions asserted by the referring agency to include their appeal language.

Example: ACOE referrals where we respond to requester with their appeal contact.



The Risks of Other Agency Docs



2. External Referrals of the request in its entirety with no asserted Exemptions or responsive records being located by the referring agency.

Example: Recent DOI Refers us records that fall entirely under our purview.



The Risks of Other Agency Docs (Cont'd)



3. Records in which all or part of the record requires a declassification review by the original classifying authority.

Example: Navy necropsy records OCA is the Director of the office that generated those docs.



The Risks of Other Agency Docs (Cont'd)



4. External Consultations for providing withholding recommendations to another agency

Example: Fisheries Management Council Records found within our Control



The Risks of Other Agency Docs (Cont'd)



5. Intra-Departmental taskings requiring a tasking Memorandum

Example: DOC sends us a tasking to conduct a search in Presidential Transition cases through FOIAOnline, and we, in turn, issue taskings within Bureau.



The Risks of Other Agency Docs (Cont'd)



6. External Litigation consultations seeking NOAA's asserted exemptions

Example: FBI recently asked NOAA in the DB Cooper case to provide withholding recommendations on the weather docs from the plane flight.



The Risks of Other Agency Docs (Cont'd)



7. Referrals asking for non-attribution

Example: If we ever have intelligence agency records, they frequently don't want to be identified as the originator of the records.



NAO 205-14: NOAA FOIA Taskings



There are at least 6 types of taskings—it must be clear which type you are being asked to review:

1. Conduct a search for responsive records (fees waived or non-billable)
2. Prepare a fee estimate in a non-referral
3. Prepare a fee estimate for a case being coordinated by DOC, and the aggregate threshold is not determined by NOAA
4. Review referred records and provide release recommendations to the referring entity
5. Review referred records, and respond directly to the requester, incorporating the referring entities exemptions and appeal language.
6. Respond to an adjudication on appeal



OIP GUIDANCE



If they are Agency Records:

When an agency receives a FOIA request for agency records in its possession it must take responsibility for searching for the records and processing the request. It cannot simply refuse to act on the ground that the documents originated elsewhere.





OIP Guidance (Cont'd)



“When litigation (results), the government generally has not raised any issue over which agency is the “proper party defendant,” but instead has provided affidavits from the originating agencies to justify any contested nondisclosure.”

Plain English: DOJ won’t challenge who the Plaintiff names in Court. If you worked on the request, you can be the one sued, and other agencies will just provide affidavits for the records they created.



(b)(5) Two Prong Test



When (b)(5) Deliberative Process Applies:

- (b)(5) Statute generally protects: “Inter and intra-agency” (internal and external) communications that would not be available by law to a party other than an agency in litigation with the agency”.
- Courts define this as only documents that are typically privileged in civil discovery



(b)(5) Two Prong Test (cont'd)



- As to one of those privileges, Deliberative Process Privilege includes:
 - The Inter-agency (internal) and Intra-agency (external) communication requirement which encompasses the “consultant corollary”.
 - If the consultants, contractors, external advisors provided advice similar to what might have been received from an employee. Must ask—
 - Are they an interested party?
 - Seeking benefit at the expense of other applicants?
 - If yes, no (b)(5) protection.



(b)(5) Two Prong Test (cont'd)



Two Part Test:

- 1) Is the material pre-decisional?
 - a) i.e., antecedent to the adoption of the agency policy? (the making of the “policy sausage”)
- 2) Is it deliberative (not factual)—making recommendations, expressing opinions on legal or policy matters?



The Extent of the Privilege



- **Policy behind DPP:**
 - Encourage open and frank discussions among employees and protect the decision making processes of the government
 - Protect against premature disclosure of proposed policies before adopted
 - Protect against public confusion



The Extent of the Privilege



- Since the 2016 FOIA Improvement Act, a **Risk of Harm** must exist for the Privilege to apply.
- Previously, this was only advisory, although in practice, this should not change NOAA's approach, as NOAA routinely required a Risk of Harm Analysis for (b)(5) Deliberative Process.





Risk of Harm



Foreseeable Harm is now a requirement under the 2016 FOIA Improvement Act:

To Reach Foreseeable Harm, OIP summarizes the considerations:

- How sensitive is the decision?
- How sensitive is the decision-making process? (consider peer review)
- Is the decision final yet?
- Would disclosure affect the employees that contributed to the records?
- Would future decisions be jeopardized if the records were released?
- How significant would the "chilling" effect be?
- How old is the record?
- How sensitive are portions of the record?



The Extent of the Privilege



- There is also now a 25 year limit on the use of Deliberative Process.
- After that time—the privilege no longer applies.





Questions



QUESTIONS?

Samuel Dixon

From: Samuel Dixon
Sent: Thursday, July 27, 2017 3:16 PM
To: Mark Graff - NOAA Federal
Cc: Ellen Sebastian - NOAA Federal; Pua Kamaka - NOAA Federal
Subject: Re: NOS Training Slides and SME Quick Reference Guide
Attachments: NMFS SME FOIA Presentation (2).pdf; NMFS SME FOIA Intro (5) (1).pdf

I'll take a look at these for you tomorrow, in the meantime here are two SME specific resources I have created for NMFS.

Sam

Samuel Dixon
Contractor - IBSS Corp
NMFS Assistant FOIA Liaison
(301) 427-8739
samuel.dixon@noaa.gov

On Thu, Jul 27, 2017 at 2:53 PM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

Hey Sam,

Here is the material we discussed on the call. Any thoughts or input would be great--

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

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NOAA
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— Subject Matter Expert —
(SME) FOIA Introduction

Important Links

- Our Internal NMFS FOIA Site: <https://sites.google.com/a/noaa.gov/nmfs-foia-clearwell/>
- [SME Quick Reference](#) (1 page)
- [NMFS SME FOIA Outline](#) (7 pages)
- [Clearwell Login](#)
- [Clearwell Reviewer Guide](#): In depth Clearwell instructions
- [NMFS FOIA Handbook](#): NMFS FOIA procedures
- DOJ OIP: <https://www.justice.gov/oip/oip-foia>

General FOIA Timing

Action	Time Given
Respond to FOIA Request	NOAA has 20 Business Days to respond*
Unusual Circumstances Extension	NOAA can add 10 Business Days to the original 20 business days
Scope Clarification	Requester has 30 Calendar Days to respond to NOAA's request
Fee Estimate	Requester has 30 Calendar Days to respond. SME's should complete fee estimates ASAP (unless fees are waived or are otherwise not billable.) <i>If Fee Estimate is not sent within 20 business days you lose the ability to charge fees!</i>
Send Acknowledgement Letter	Coordinator sends within 5 Business Days of receipt of request if fees are waived. If no fee waiver, send as soon as fee estimate is created (Fee Estimate is often attached to Acknowledgement Letter)



*It is *essential* to calculate into these 20/30 days the time it will take for various levels of review.

Three Primary SME Duties

1. Fee Estimate input
 2. Searching for responsive records
 3. First line review of records
- A subject matter expert will have a better understanding of the issue at hand than the FOIA coordinator.
 - Familiarity with the subject helps develop quality search terms
 - Will know who else worked on the project or subject of the FOIA and will also need to search for responsive records.
 - [UMS search](#) can be done for former employees.
 - Better able to identify b(5) deliberative process exemption

I was contacted about a FOIA request, now what?

- [SME Search Tasker](#) usually sent which provides a quick rundown of the FOIA Process and the SME's responsibilities
- Carefully read over the FOIA request and determine:
 - If you are likely to hold responsive records (and who else may have responsive records)
 - where those records can be found (email, shared drive, physical media, etc)
- If fees are being charged, give the coordinator a rough estimate of how much time it will take you to search for and review the responsive records (keeping in mind the fee category).

FOIA SME Duties: Fee Estimate Input

- Provide Lead Coordinator with search and review time estimates when a Fee Estimate is being created (only when fees have not been waived)
- Fees are not charged to non-profits and media representatives
- If fees can be charged to the requester, get fee estimates to the FOIA coordinator ASAP so that they can create a fee estimate and “stop the clock”
 - The clock is stopped (no processing occurs) until the requester pays or agrees to pay
 - If they do not pay the fee within 30 calendar days of receipt of the estimate the request is closed and no search or review is done.

Fee Categories/Waivers

Type of Requester (Fee Categories)	Search	Review	Duplication
Commercial Use	Y	Y	Y
Favored (<i>educational/scientific institutions, news media</i>)	N	N	*Y
All Others	**Y	N	*Y

Red font denotes charges that are eliminated when the agency fails to make a determination within **20/30 working days**.

* 100 pages free
** Two hours free

- Duplication includes time spent uploading records to FOIAonline or Clearwell
- The 2 free hours of search time afforded to “All Other” requesters should be taken from the highest paid employee.

Scope Clarification

- We are also able to stop the clock once for “scope clarification” if the request is overly broad or the language is unclear.
 - When fees are waived there is little incentive for the requester to narrow the scope other than expediency. A narrower request should be produced in less time.
- The FOIA Coordinator will work with the requester to narrow the scope, but often input from SMEs is very useful.
 - Requester also has 30 calendar days to respond to a scope clarification request.

FOIA SME Duties: Conducting the Search

- Conduct searches reasonably calculated to produce records responsive to the FOIA request
- **Legal Standard:** A reasonably calculated search does not require an agency to search every file where a document could possibly exist, but rather, *requires that the search be reasonable in light of the totality of the circumstances.*
 - Record search terms and places searched on the [FOIA Search Log](#)
 - The search log helps protect against search adequacy legal challenges

What counts as an “Agency Record”?

Definition of Agency Records:

FOIA defines an agency record as any information maintained by an agency in any format, including electronic format, if it:

(1) Was either created or obtained by an agency in the legitimate conduct of its official duties, and

(2) is under agency control at the time the FOIA request is made.

Agency records include records not physically within the possession of the agency, if maintained for an agency by an *entity under Government contract for the purposes of records management*.*

*Typically a database

- We do not create new records to fulfill FOIA requests. The record must already exist.

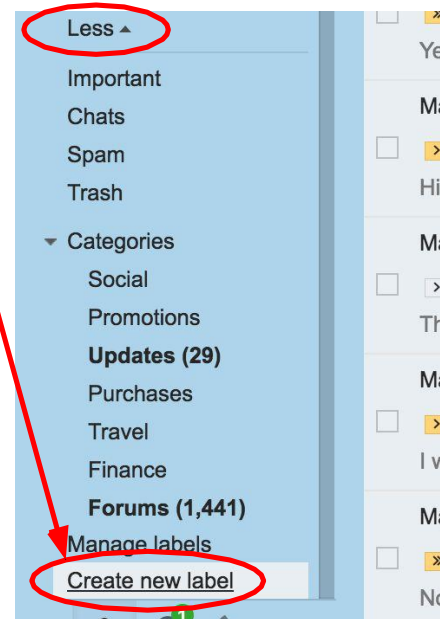
Do not include:

- **Records that are not responsive to the FOIA request.**
 - Please review records for responsiveness prior to submission, this will save you time when reviewing.
- Emails and their attachments that are **Zip, PDF portfolio, or raw data files.**
 - These attachments must be unzipped/expanded/removed and assessed for applicability before submission;
- Documents that are **publicly available**, including from a NOAA website;
- Correspondence requesting **comp time or vacation time**, unless it is the subject of the request;
- **Calendar invitations/acceptances/rejections** – unless the invitation contains information pertinent to the request or calendar invitations are the specific subject of the request.

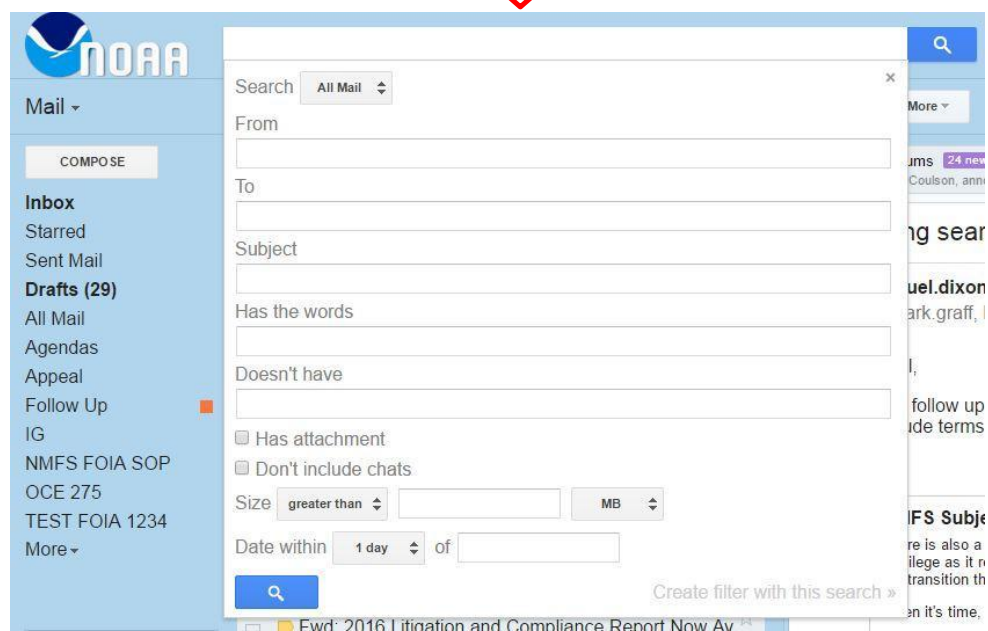
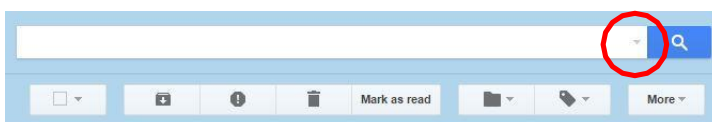
Conducting The Search

For Email:

- In Google, create a new “label” (name it something clearly identifiable like “FOIA 1234”) once your search is conducted you can simply drag and drop responsive emails to this newly created label/folder.
- Make your best effort to only include emails you believe to be responsive to the request. This will save everyone time when reviewing.
 - Make sure to pay attention to the **date range** for responsive records.
- Documentation of the search you conduct is required. Please use the [FOIA Search Log](#).



Searching Gmail



Searching in Gmail

- [Google Search Operators](#)

What you can search by	Search operator & example	What you can search by	Search operator & example
Specify the sender:	From: Example: from:amy	Find messages with words near each other. Use the number to say how many words apart the words can be:	AROUND Example: dinner AROUND 5 friday
Specify a recipient:	To: Example: to:david	Group multiple search terms together:	() Example: subject:(dinner movie)
Words in the subject line:	Subject: Example: subject:dinner	Search for messages sent during a certain time period:	after: before: older: Newer:
Search for an exact word or phrase:	" _ " Example: "dinner and movie tonight"		Example: after:2004/04/16 Example: before:2004/04/18

Cascade Searches

- Cascade searches help eliminate duplicative emails.
- The SME (often 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

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;
- Use the “-” (minus) symbol to exclude terms or individuals in the gmail search field.

Exporting from Gmail - Importing into Clearwell

- UMS will now be performing the export instead of IT
 - When you are ready to have emails exported contact your FOIA coordinator who will put in a request to have the files exported with UMS
 - Emails should be submitted in **.pst, or .mbox**, format for uploading into Clearwell (will be done by UMS)
 - **Do not create or print Adobe PDFs or a PDF portfolio of your emails.**
 - **Do NOT forward your emails as a way of submitting them.**
- Typically the coordinator will have a google drive folder set up for the exported emails to keep them in a central location

FOIA SME Duties: First Line Review

- Each potentially responsive record must be reviewed by the office that maintains the record and is most knowledgeable about it to determine if any of the exemptions or exclusions established under FOIA are applicable.
 - Review and redact records for:
 - Responsiveness
 - Attorney Client Privilege
 - Deliberative Process Privilege
 - PII (personally identifiable information)
 - SME is often in the best position to know what is deliberative and who the attorneys are.
 - There are targeted searches you can do in Clearwell to find attorney names.

Clearwell

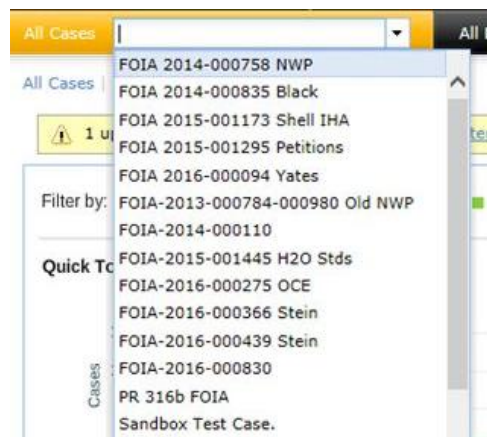
- Used to organize and redact FOIA productions
- Intranet web based platform: use Internet Explorer only
 - Login using your gmail login username and password
 - Will need IT to install Active X plugin on your computer
 - Also need redaction reasons .ini file installed by IT
- Tag documents as responsive or non-responsive, draw redactions, perform targeted searches...
- [Clearwell Users Guide](#)
- Corinne Brown is the Clearwell guru.
 - She leads bi-weekly Clearwell Users Group calls
 - corinne.brown@noaa.gov

Reviewing Records in Clearwell

- A successful login (sometimes you have to try twice) to Clearwell brings you to a screen that includes the example window shown below (exact location depends on the access level you have):



- Select the drop down arrow. If you have access to more than one case, highlight the name of the case you want.



- After you select your case, select the “Analysis and Review Tab.”



- You should now see the following screen:



- Leave the search field blank and select “Search.” You will now see the list of all documents in the case.

The screenshot shows a web interface for document management. At the top, there are navigation tabs: "All Cases", "FOIA 2016-000423", "Case Home", "Processing", and "Analysis & Review". Below this is a search bar with "Keywords" selected and a search button. The search results show "Searched: 1,200" and "Found: 1,200 Documents (1,995 Items)".

On the left, there is a "Filters" panel with two tabs: "Docs" and "Items". The "Docs" tab is active. The filters are organized into several sections:

- Folder:** any
- Tag:** any | none
 - <Not Tagged> (809) only
 - By NMFS FOIA Tags any
 - By Image Status Tags any
 - By RedactionTagSet any
- Prediction Rank:** any
- Sender Domain:** any
- Sender Group:** any
- Sender Name:** any
- Recipient Domain:** any
- Recipient Name:** any
- Custodian:** any | none | [BR] | [A]
 - EML-Sousa (630) only
 - EML-Risenho... (360) only
 - EML-Bullard (228) only
 - EML-Rauch (10) only
- Document Type:** any

On the right, there is a table of documents. The table has columns: "Subject/Filename", "Sender", "Recipients", and "Date". The first few rows show documents related to "Fwd: REVIEW: Response to Sen Markey RE Lobster Observer Assignment Changes". A red circle highlights a button in the "Actions" column of the first row, which is a document icon.

Helpful if you only want to see unreviewed records

Helpful if you only want to view records collected from a particular person

This button sends you to the review screen.

- This next screen allows you to filter the records by tag and custodian and enter the review screen.

Allows you to view the records in different ways and draw redactions.

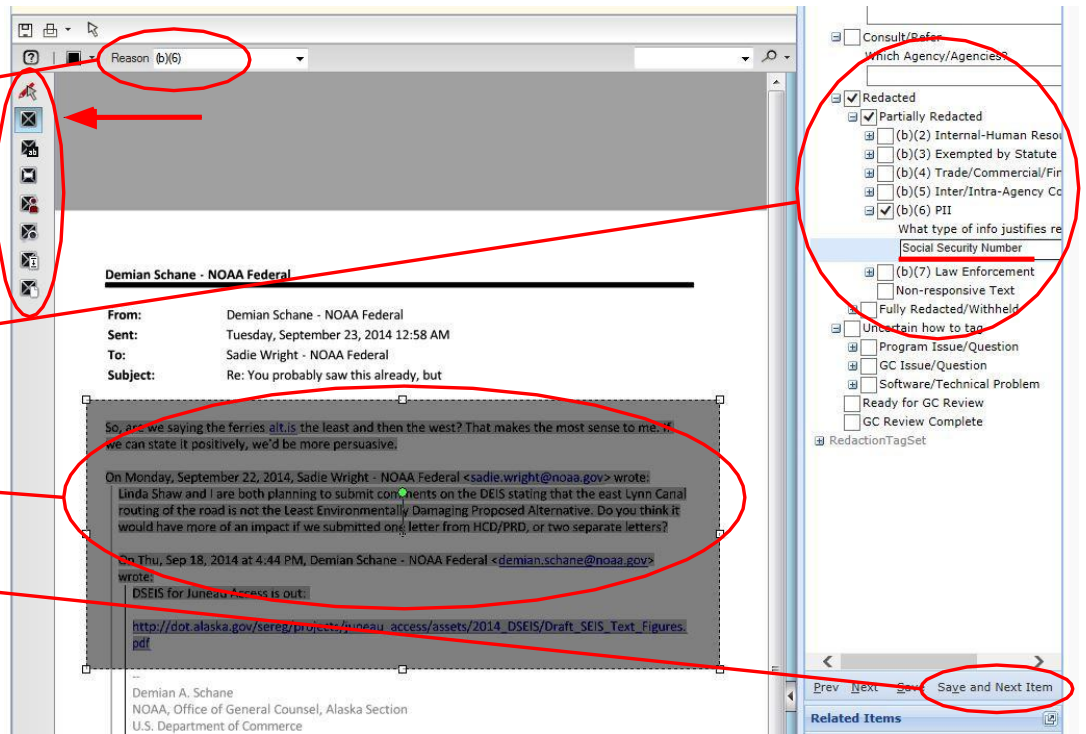
The screenshot displays a document review interface. At the top, it shows search results: 'Searched: 116 Found: 116 Documents (161 Items) | 19 Discussions | 50 Files | 40 Participants | Report'. Below this, it indicates 'Showing: Document List > Re: You probably saw this already, but [9]'. The main area shows document details for a document with ID '0.7.1170.5003', created by 'ML_P/D Wright' in 'English (100%)'. The sender is 'Demian Schane - NOAA Federal <demian.schane@noaa.gov>' and the recipient is 'Sadie Wright - NOAA Federal <sadie.wright@noaa.gov>'. The subject is 'Re: You probably saw this already, but'. The document content includes a discussion about ferry routes and a link to a DSEIS for Juneau Access. On the right, a 'Tagging' sidebar is visible, containing an 'Item Note' field and a list of 'NMFS FOIA Tags 10-14-16'. The tags include: 'Non-Responsive', 'Full Release', 'Near Duplicate or Part of an Email', 'Consult/Refer' (with a sub-field for 'Which Agency/Agencies?'), 'Redacted' (with sub-options for 'Partially Redacted' and 'Fully Redacted/Withheld'), 'Uncertain how to tag', 'Program Issue/Question', 'GC Issue/Question', 'Software/Technical Problem', 'Ready for GC Review', 'GC Review Complete', and 'RedactionTagSet'. A red circle highlights the 'View' dropdown menu on the left and the 'Tagging' sidebar on the right.

Allows you to "tag" the record.

- This is where you will do the reviewing and redacting.
- Tag each record for responsiveness, look for potential privilege, or tag for GC review.

Drawing Redactions in Clearwell

- Redaction reasons!
- Different types of redactions
- Tag for the type of redaction being drawn
- What a greyed out redaction looks like
- Save and Next



Redactions

General Redaction Tips:

- No nonresponsive redactions. We no longer redact nonresponsive information from responsive documents.
- Fully withheld documents should be a rare occurrence. There will almost always be some nonprivileged information in a document.

Reasonably Segregable Information:

- It is very important to to reasonably segregate and release any non-exempt information whenever you are processing a FOIA request.
 - The requirement to provide FOIA requesters with any reasonably segregable, non-exempt portions of the records that are responsive to FOIA requests is a fundamental tenant of the Act upon which the Courts have often focused.
- **When in doubt, let it out.** Transparency should win out in any close calls.

Commonly used FOIA exemptions

- **(b)(5): Deliberative Process**

- Two Part Test:

- Is the material *pre-decisional*: i.e., did it lead towards the adoption of an agency policy? ; and
- Is it *deliberative* (not factual): is it making recommendations, expressing opinions on legal or policy matters?

- **(b)(5): Attorney Client Privilege**

- Generally, communications where an attorney is giving legal advice or legal advice from an attorney is being relayed.

- **(b)(6): Personally Privacy (PII)**
 - Look for personal phone numbers, social security numbers, doctors appointments etc.
 - Conference call numbers and passwords are treated as (b)(6)

Is this Information Protected or Not?	Protected	Not Protected
Personnel records	○	●
Financial records	○	●
Age	●	○
Travel authorization/voucher data that pertains to undercover operations	○	●
Information collected anonymously	●	○
Information about NOAA investigations and enforcement actions	○	●
Social Security Numbers	●	●
Demographic information not connected to an identified person	●	○
Passport numbers	○	●
Information marked Export Administration Regulations (EAR)	○	●
Names and contact information for NOAA staff	●	○
Name of school the person attends or workplace of person	●	○
Information about a person's health status	○	●
Country, state, or city of residence	●	○
Credit card numbers	○	●
Information about a person's health care payments	○	●
Gender	●	○
Names of individual defendants in court cases	●	○
Pre-award grant data	○	●
Grades, salary, or job position	●	○
Proprietary research	○	●
Mother's maiden name	○	●
Biometric records	○	●
Race	●	○
Information marked International Traffic in Arms Regulations (ITAR)	○	●

Questions?

samuel.dixon@noaa.gov (NMFS FOIA)

corinne.brown@noaa.gov (Clearwell)

mark.graff@noaa.gov (NOAA FOIA)



**NOAA
FISHERIES**

SME FOIA Process Overview

NMFS FOIA LEAD COORDINATOR/COORDINATOR STAFF DUTIES:

1. Primary point of contact for the Requester
2. Responsible for creating:
 - a. Acknowledgement Letter
 - b. Scope Clarifications
 - c. Fee Estimate
 - d. Interim and/or Final Response letters
3. Coordinator identifies potential Subject Matter Experts within their office and other NMFS components who would be likely to possess records responsive to the FOIA request.
4. if appropriate, the Lead Coordinator creates tasks in FO for fellow Coordinators who, in turn, task SME's within their own component
5. Collecting each SME's records and search documentation
6. Preparing collected records and working with the regional Clearwell manager to load records into the Clearwell software
7. Reviewing records and applying exemptions (redactions) and/or ensuring that SME's appropriately applied initial exemptions
8. Engaging GC and requesting review of exemption privileges if appropriate
9. Determining which records require consultation or referral, and managing them as appropriate
10. Uploading reviewed responsive records into FO
11. Uploading search documentation, tasker, and the draft Final Action Letter (FAL) into FO
12. Closing out the request in FO

SUBJECT MATTER EXPERT DUTIES:

1. Provide Lead Coordinator with search and review time estimates when a Fee Estimate is being created.
2. Conduct searches reasonably calculated to produce potentially responsive records responsive to the FOIA request¹
 - a. a reasonably calculated search does not require an agency to search every file where a document could possibly exist, but rather requires that the search be reasonable in light of the totality of the circumstances.
3. Record search terms and places searched on the FOIA Search Log
4. Review and redact records for responsiveness, Attorney Client Privilege, Attorney Work Product, Deliberative Process Privilege, and Presidential Communications
 - a. Each potentially responsive record must be reviewed by the office that maintains the record and is most knowledgeable about it to determine if any of the exemptions or exclusions established under FOIA are applicable.²
5. Transmit responsive records to Coordinator for secondary review or alert Coordinator when documents have been fully reviewed in Clearwell

NOAA GENERAL COUNSEL DUTIES:

1. Advises the Lead Office and NMFS FOIA Office on the review of documents for FOIA exemptions and privileges
2. Provides legal advice and makes recommendations on the application of exemptions (which includes guidance on how to determine foreseeable harm), and regulatory, statutory, or case law issues concerning responses to FOIA requests
3. Provides legal review and clearance as follows:
 - a. GC does not conduct a full review of the records or exemptions, only specific documents where assistance/advice is requested
 - b. GC signs the tasker with “no legal objection” (NLO) assuming the information contained in the tasker form is correct
 - c. A full release of records does not require legal review unless it involves special circumstances, such as litigation or the threat of litigation
 - d. Full GC review is required for FOIAs in litigation or related to a litigation matter

¹ Hidalgo v. FBI, No. 10-5219, 2010 WL 5110399 (D.C. Cir. Dec. 15, 2010)

² DOJ Procedural Requirements:

<https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/procedural-requirements.pdf>

Definition of Agency Records:

FOIA defines an agency record as any information maintained by an agency in any format, including electronic format, if it:

- (1) Was either created or obtained by an agency in the legitimate conduct of its official duties, and
- (2) is under agency control at the time the FOIA request is made.

Agency records include records not physically within the possession of the agency, if maintained for an agency by an entity under Government contract for the purposes of records management.

All responsive agency records must be submitted regardless of potentially sensitive information.

FOIA PROCESSING NUTS & BOLTS

1. **Scope Clarification:** If the request does not contain sufficient information to identify the documents being requested, the Lead Coordinator sends a [Scope Clarification](#) letter to the requester via FO ([Correspondence to Requester](#) tab). The coordinator may also request a scope clarification meeting or phone call with the requester.
 - a. The [20 day clock](#) can be tolled **one time only** for scope clarification (it may also be tolled while awaiting agreement to pay fees). The initial dialogue with the requester may continue until the agency and the requester agree on the scope of the request.
 - i. This stops the clock on the request until scope clarification is received from the requester at which point the clock is started again
 - ii. If a response is not received within **30 calendar days** use the [Failure to Clarify Scope Letter Template](#) as a Final Action Letter and close out the request
 1. Note: If the requester's response is communicated outside of FO, upload the response to FO
2. **Fee Estimate**³: If a Fee Waiver is not granted or applied for, the Lead Coordinator consults with SMEs to estimate search and review charges and records estimated charges on the [FOIA Fee Worksheet](#) and sends [Fee Notification Letter](#) to requester via FO (Unless this was already done in the Acknowledgement Letter)

³ Note: Fee breakdown and applicable charges are available at <http://www.rdc.noaa.gov/~foia/foia-fees.html>

- a. **Contractors:** In creating a fee estimate you should not ask contractors what their salary is and should instead use the hourly rate the contract company bills NOAA for the contractor performing the work.
 - i. The contractor's federal manager should contact the COR for the relevant contract to obtain the loaded hourly rate, and the contractor should be identified in the fee estimate by their initials or as a "FOIA Analyst Contractor", not by their full name.
 - b. FTE annual salaries can be found at <http://www.fedsdatacenter.com/federal-pay-rates/>
 - i. Divide by [2087 for hourly rate](#)
 - c. Keep in mind that Fee Estimates are just that, estimates. They do not need to be exact numbers and can change if new record custodians are discovered or the volume of records greatly differs than what was anticipated.
3. If the fees are less than \$20, no fees will be charged. Continue processing the request
- a. If fees are between \$20 and \$250, the requester must agree in writing to pay for the request. Stop the clock and once agreement from the requester accepting the charges and agreeing to pay is received, restart the clock and continue processing the request
 - b. If fees are more than \$250, payment must be received before continuing to process the request. Send the requester a Fee Notification Letter and stop the clock. If payment is not received within 30 business days from the date of the Fee Notification Letter, the request will be closed for failure to pay
 - i. NOTE: The FOIA Liaison will notify the Lead Coordinator when agreement to pay communication and payment is received at which point the clock should be restarted
 - ii. If the requester fails to pay fees after 30 calendar days use the [Failure to Pay Fee Template](#) as a final action letter. Proceed to Closing the Request Section
4. **Search Tasking:** After notification from the FOIA Officer that all fees have either been paid or agreed to be paid by the requester, the Lead Coordinator searches for responsive records or creates tasks in FO for appropriate SMEs to conduct searches for responsive records
- a. Send SME a copy of the request, a [Search Log](#), and the [SME Quick Reference Guide](#) or [SME Tasker](#) for larger requests.

5. Conducting the Search

- a. In searching for responsive records, the agency shall apply the "[reasonableness test.](#)" Generally, the agency must conduct a search "reasonably calculated to uncover all relevant documents."

- i. Agencies are required to make a “reasonable effort” to search for records that are the subject of the request through electronic means without significantly interfering with the operation of the agency’s information systems.
- b. The SME, or person conducting search, documents search terms used, locations searched and dates searched on the [FOIA Search Log](#)
- c. Search Date Range
 - i. Start Date is provided by the requester
 - ii. Cut off date (if not provided by requester) is the day the SME was tasked to search for records. SME provides all records responsive to the FOIA request to the Coordinator regardless of potential privilege or exemption

6. [Clearwell](#)

- a. Clearwell can be used to review, redact, mark, tag and export potentially responsive documents and email
- b. The assignment of Clearwell Operator (known to Clearwell as the System Manager) is up to the FMC. Sometimes it is the FOIA Coordinator, sometimes it is an Information Technology (IT) person and sometimes it is someone else
- c. The System Manager will work closely with the SMEs and GC throughout the processing of each FOIA
- d. Although Clearwell can export responsive documents in batches by FO categories (UU/UR/REQ/RR), there is no direct link between Clearwell and FO. The person assigned to upload final documents into FO is up to the FMC. This is not a Clearwell-specific function
- e. To coordinate Clearwell training or receive answers to Clearwell questions, contact the NOAA Fisheries Clearwell Program Manager, Corinne Brown, corinne.brown@noaa.gov

7. Reviewing the Records

- a. Each potentially responsive record must be reviewed and redacted **by the office that maintains the record and is most knowledgeable about it** to determine if any of the exemptions or exclusions established under FOIA are applicable.
- b. After initial review and redaction by the SME the Lead Coordinator verifies that the [appropriate exemptions/redactions](#) were applied properly (in Clearwell or with Adobe) and screens for any missed b(6) PII.
 - i. Coordinator should consult with GC and SMEs when clarification is needed on particular withholdings e.g., DPP discussion for Foreseeable Harm analysis

- c. After the Coordinator has fully reviewed the records, GC should review and provide legal advice and guidance on documents subject to a foreseeable harm analysis when appropriate
- d. The Lead Coordinator uploads the responsive records to FO and notes any exemptions applied as well as whether the record is releasable or not.

Helpful Links:

- [The Freedom of Information Act Statute](#)
- [NMFS FOIA/Clearwell Site](#): Primary resource for templates, contacts, and FOIA and Clearwell information
- [Department of Commerce FOIA Regs](#): Code of Federal Regulations relating to Department of Commerce FOIA Processing
- [NOAA FOIA NAO 205-14](#): This National Oceanic and Atmospheric Administration (NOAA) Administrative Order (NAO) provides guidance to all elements for processing requests under the Freedom of Information Act
- [Department of Justice Guide to the Freedom of Information Act](#)
- [DOJ FOIA Procedural Requirements](#)
- [FOIAonline](#)
- [List of authorized Denial Officials](#)
- [Federal Employee Salaries for Fee Estimates](#)
- [NOAA FOIA Reading Room](#)
- [OIP Redaction Guidance](#)

Pua Kamaka - NOAA Federal

From: Pua Kamaka - NOAA Federal
Sent: Sunday, July 30, 2017 9:29 PM
To: Ellen Sebastian - NOAA Federal
Cc: Samuel Dixon; Mark Graff - NOAA Federal
Subject: Re: NOS Training Slides and SME Quick Reference Guide
Attachments: NOS FOIA Processing_pk.pptx

Hi Mark,

Please find attached my input on your presentation. Everything looks good. However, one of the suggestions I have that definitely help me as a coordinator is to incorporate the tables for "FOIA timing" and "requester categories" from Sam's presentation. Those are tools that folks can print or have readily available on their desktop. The last thing is, I'm not sure how detailed you need to go into the exemptions for this presentation. For PIRO, the SME are ONLY to review the documents for b(5) deliberative process and attorney client. If they identify something, they need to be able to justify the harm if it is released. Then I do a second review looking for the other exemptions, and GC does a final review before documents are released. I think each region does something slightly different but we have found that this is a happy medium for SME and the FOIA coordinator.

Thanks!
Pua

On Fri, Jul 28, 2017 at 4:56 AM, Ellen Sebastian - NOAA Federal <ellen.sebastian@noaa.gov> wrote:
I second Pua's thoughts. Thank you very much for your time and discussions.

On Friday, July 28, 2017, Pua Kamaka - NOAA Federal <pua.kamaka@noaa.gov> wrote:
Hi All-

I will review and provide feedback some time before Monday. Thanks for taking the time out of your busy schedules to meet yesterday.

Pua

On Thu, Jul 27, 2017 at 9:16 AM, Samuel Dixon <samuel.dixon@noaa.gov> wrote:
I'll take a look at these for you tomorrow, in the meantime here are two SME specific resources I have created for NMFS.

Sam

Samuel Dixon
Contractor - IBSS Corp
NMFS Assistant FOIA Liaison
[\(301\) 427-8739](tel:(301)427-8739)
samuel.dixon@noaa.gov

On Thu, Jul 27, 2017 at 2:53 PM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

Hey Sam,

Here is the material we discussed on the call. Any thoughts or input would be great--

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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--

Ellen Sebastian

FOIA & Records Coordinator

Information Services Division

NOAA Fisheries, Alaska Region

[\(907\) 586-7152](tel:9075867152)

Nourish and sustain your sense of joy.



Referrals, Consultations, and Exemption (b)(5) Deliberative Process

Prepared by Mark H. Graff
NOAA FOIA Officer/Bureau Chief Privacy
Officer
OCIO/GPD

mark.graff@noaa.gov; (301)-628-5658



Freedom of Information Act (5 USC 552)



Outline

1. Birth to Death Processing Flow
2. Regulatory Structure for Referrals
3. The Risks of Other Agency Docs
4. OIP Guidance
5. (b)(5) Two Prong Test
6. The Extent of the Privilege
7. Questions



Birth to Death Processing Flow



Receipt and Perfection

1. A request can be submitted in almost any fashion, to any employee. If it has been misdirected, that employee has 10 days to properly route the request.
2. A request is perfected when it reasonably describes the records being sought so a search can commence, and is not unduly burdensome.



Birth to Death Processing Flow



Fees and Expedited Processing

1. If a requester wants a waiver of fees, they have to satisfy 6 factors, outlined in 15 CFR 4.11(l).
2. If a requester wants Expedited Processing, they must satisfy 15 CFR 4.6(d)(2).
3. When either of these are requested, they will be reviewed prior to tasking the LO with a search.



Birth to Death Processing Flow



Fees and Expedited Processing (cont'd)

1. If a fee waiver is not granted, the LO will be tasked with estimating the fees.
2. If the estimated fee is greater than \$20, the liaison should send a fee estimate to the requester and toll the processing of the request.*

*This is the suggested time under the regulations to discuss narrowing the scope with the requester.



Birth to Death Processing Flow



Search and Processing

1. Once the fees are resolved—either through a fee waiver, payment of fees, or unassessed fees becoming non-billable by the request becoming backlogged, a search is required.
2. The search should be in all locations where responsive records are reasonably likely to be found.



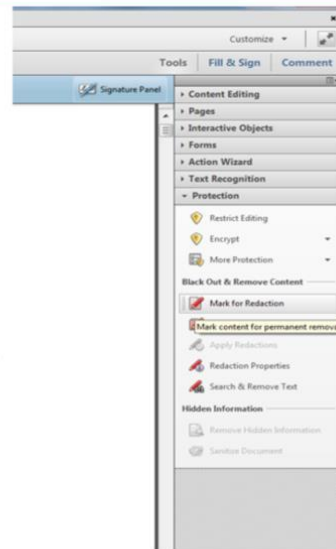
Birth to Death Processing Flow



Search and Processing

1. Once all responsive records are located, and de-duplicated*, the records need to be processed and have all exempt information redacted. This is also called “reasonable segregation”.
2. This can be done through Adobe or Clearwell.

*This can be either by hand, or through Clearwell for voluminous record searches.





Birth to Death Processing Flow



Search and Processing

1. After the records are redacted, provide the redacted copy to the FOIA Liaison.
2. Please make sure to note whether there is any particularly sensitive information, whether your search and processing is complete, or whether this is only an interim release. A completed search tasker needs to accompany the redacted records.



Birth to Death Processing Flow



Approving Release of Records

1. After the processed records are provided to the liaison, they will upload the records into FOIAOnline, and seek GC review (if necessary).
2. A review tasking will then be generated by the liaison for release of the records.



Birth to Death Processing Flow



Releasing Records

1. After the final review is complete, a tasking is generated from NOAA FOIA for the LO to release the records through FOIAOnline.

The screenshot shows a web browser window with the URL `www.regulations.gov/foia/action/agencyTask/selected/RFNTaskId=1b6e2a0c3d330c5029e4f5413b66c&requestId=vevqj0f9f0XWV3Cqy0G11Hq2V0VqA38KX...`. The page title is "Attach Records or Past Correspondence". It displays a table of 58 items found, with 51 to 58 shown. The table has columns for "Item #", "Title", "Type", and "Request Reference Type".

Item #	Title	Type	Request Reference Type
Release	<i>SWD_Tasker_DOC-NOAA-2015-001860.pdf</i>	Correspondence	
Release	<i>ScopeClarification_RE_DOC-NOAA-2015-001860.pdf</i>	Correspondence	
Release	<i>Search Log_DOC-NOAA-2015-001860.pdf</i>	Correspondence	
Release	<i>Tasker_PDF</i>	Correspondence	
Release	<i>Tasker-2015-001860_Signed.pdf</i>	Correspondence	
Release	<i>ThirdInterimRelease_DOC-NOAA-2015-001860-1g.pdf</i>	Correspondence	
Release	<i>ThirdInterimRelease_DOC-NOAA-2015-001860-1g.pdf</i>	Correspondence	
Release	<i>Updated_Combined102 Responsive RecordsPart1_Redacted</i>	Record	RR

58 items found, displaying 51 to 58.

Filter All Results 50

Selected Items To Be Sent To Requester

No records or correspondence have been selected.

[SEND](#) [CANCEL](#)



Regulatory Structure



MISDIRECTED WITHIN THE DEPARTMENT:

Where a component's FOIA office determines that a request was misdirected within the Department:

- The receiving component's FOIA office needs to route the request to the correct bureau(s).
- The search starts the time cutoff for records



Regulatory Structure (Cont'd)



OTHER BUREAUS MAY HAVE RECORDS:

How the proper Department component to respond to a FOIA Request is determined:

- The component that first receives the request and has responsive records.
 - When no records exist, the component that first receives the request and is likely to have responsive records should process the FOIA request.
- Or, the component to which the Departmental FOIA Officer or component FOIA Officer assigns lead responsibility for responding to the request.



Regulatory Structure (Cont'd)



CONSULTATIONS:

When a record is requested that originated with NOAA and another Federal agency has a *significant interest* in the record, NOAA must allow the other Federal agency to review the record before responding to a requester.





Consultations Continued...



Consultations can be done within FOIAonline by uploading the record requiring consultation and then selecting the “**Create Consultation**” button found in the left hand column in FO (if the agency also uses FO)

- If attempts to consult with outside agencies cause a delay in responding to the request, notify the requester that the request will be processed or completed after the consultation has been completed.
- Consultation with another agency constitutes *unusual circumstances* and allows you to invoke a 10 day extension.



Regulatory Structure (Cont'd)



REFERRALS:

When NOAA possesses requested records that originated with another Federal agency.

NOAA routes these records to that agency for direct response to the requester.





OIP Referral Guidance



OIP's Summary:

“The agency that is best able to determine a record's sensitivity, and in turn its exemption status, is the agency that should process that record under the Act.

While this may vary in particular cases, as a general rule the agency that originated a record is usually the most appropriate agency to make a FOIA-disclosure determination regarding it.”



The Risks of Other Agency Docs



There are at least **7** different types of referrals and consultations:

1. External Referrals for direct response to the requester including Exemptions asserted by the referring agency to include their appeal language.

Example: ACOE referrals where we respond to requester with their appeal contact.



The Risks of Other Agency Docs



2. External Referrals of the request in its entirety with no asserted Exemptions or responsive records being located by the referring agency.

Example: Recent DOI Refers us records that fall entirely under our purview.



The Risks of Other Agency Docs (Cont'd)



3. Records in which all or part of the record requires a declassification review by the original classifying authority.

Example: Navy necropsy records OCA is the Director of the office that generated those docs.



The Risks of Other Agency Docs (Cont'd)



4. External Consultations for providing withholding recommendations to another agency

Example: Fisheries Management Council Records found within our Control



The Risks of Other Agency Docs (Cont'd)



5. Intra-Departmental taskings requiring a tasking Memorandum

Example: DOC sends us a tasking to conduct a search in Presidential Transition cases through FOIAOnline, and we, in turn, issue taskings within Bureau.



The Risks of Other Agency Docs (Cont'd)



6. External Litigation consultations seeking NOAA's asserted exemptions

Example: FBI recently asked NOAA in the DB Cooper case to provide withholding recommendations on the weather docs from the plane flight.



The Risks of Other Agency Docs (Cont'd)



7. Referrals asking for non-attribution

Example: If we ever have intelligence agency records, they frequently don't want to be identified as the originator of the records.



NAO 205-14: NOAA FOIA Taskings



There are at least 6 types of taskings—it must be clear which type you are being asked to review:

1. Conduct a search for responsive records (fees waived or non-billable)
2. Prepare a fee estimate in a non-referral
3. Prepare a fee estimate for a case being coordinated by DOC, and the aggregate threshold is not determined by NOAA
4. Review referred records and provide release recommendations to the referring entity
5. Review referred records, and respond directly to the requester, incorporating the referring entities exemptions and appeal language.
6. Respond to an adjudication on appeal



OIP GUIDANCE



If they are Agency Records:

When an agency receives a FOIA request for agency records in its possession it must take responsibility for searching for the records and processing the request. It cannot simply refuse to act on the ground that the documents originated elsewhere.





OIP Guidance (Cont'd)



“When litigation (results), the government generally has not raised any issue over which agency is the “proper party defendant,” but instead has provided affidavits from the originating agencies to justify any contested nondisclosure.”

Plain English: DOJ won’t challenge who the Plaintiff names in Court. If you worked on the request, you can be the one sued, and other agencies will just provide affidavits for the records they created.



(b)(5) Two Prong Test



When (b)(5) Deliberative Process Applies:

- (b)(5) Statute generally protects: “Inter and intra-agency” (internal and external) communications that would not be available by law to a party other than an agency in litigation with the agency”.
- Courts define this as only documents that are typically privileged in civil discovery



(b)(5) Two Prong Test (cont'd)



- As to one of those privileges, Deliberative Process Privilege includes:
 - The Inter-agency (internal) and Intra-agency (external) communication requirement which encompasses the “consultant corollary”.
 - If the consultants, contractors, external advisors provided advice similar to what might have been received from an employee. Must ask—
 - Are they an interested party?
 - Seeking benefit at the expense of other applicants?
 - If yes, no (b)(5) protection.



(b)(5) Two Prong Test (cont'd)



Two Part Test:

- 1) Is the material pre-decisional?
 - a) i.e., antecedent to the adoption of the agency policy? (the making of the “policy sausage”)
- 2) Is it deliberative (not factual)—making recommendations, expressing opinions on legal or policy matters?



The Extent of the Privilege



- **Policy behind DPP:**
 - Encourage open and frank discussions among employees and protect the decision making processes of the government
 - Protect against premature disclosure of proposed policies before adopted
 - Protect against public confusion



The Extent of the Privilege



- Since the 2016 FOIA Improvement Act, a **Risk of Harm** must exist for the Privilege to apply.
- Previously, this was only advisory, although in practice, this should not change NOAA's approach, as NOAA routinely required a Risk of Harm Analysis for (b)(5) Deliberative Process.





Risk of Harm



Foreseeable Harm is now a requirement under the 2016 FOIA Improvement Act:

To Reach Foreseeable Harm, OIP summarizes the considerations:

- How sensitive is the decision?
- How sensitive is the decision-making process? (consider peer review)
- Is the decision final yet?
- Would disclosure affect the employees that contributed to the records?
- Would future decisions be jeopardized if the records were released?
- How significant would the “chilling” effect be?
- How old is the record?
- How sensitive are portions of the record?



The Extent of the Privilege



- There is also now a 25 year limit on the use of Deliberative Process.
- After that time—the privilege no longer applies.





Questions



QUESTIONS?

Arlyn Penaranda - NOAA Federal

From: Arlyn Penaranda - NOAA Federal
Sent: Monday, July 31, 2017 9:51 AM
To: Charles Green - NOAA Federal; Mark Graff - NOAA Federal
Cc: Lorna Martin-Gross - NOAA Federal
Subject: FW: FOIA Appeal for DOC-NOAA-2017-000596 (PEER)
Attachments: DOC-NOAA-2017-000596 FOIA Appeal (1) (1).pdf; Fwd: Observer Harassment 2016 report, Request DOC-NOAA-2017-000596

Chaz/Mark,

Good morning. Attached is the appeal letter from PEER sent by DOC GC. (b)(5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Please advise on what approach we can take to resolve this issue.

Thank you!

Arlyn

From: Torczon, Andrea (Federal) [mailto:aTorczon@doc.gov]
Sent: Friday, July 28, 2017 11:41 AM
To: Penaranda, Arlyn (Federal) <Arlyn.Penaranda@noaa.gov>
Cc: Graff, Mark (Federal) <Mark.Graff@noaa.gov>
Subject: FOIA Appeal for DOC-NOAA-2017-000596 (PEER)

Arlyn,

I am reviewing an appeal (attached) from NOAA's partial denial of a FOIA submitted on behalf of Public Employees for Environmental Responsibility, Request # DOC-NOAA-2017-000596.

Looking at the case file in FOIAOnline, you seem to be a contact for this request. If that is correct, please let me know your availability for a phone call o discuss this request.

Thank you.

Andrea

Andrea Torczon
Senior Attorney
Information Law Division
Office of the General Counsel
U.S. Department of Commerce
202-482-8028

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Public Employees for Environmental Responsibility

2000 P Street, NW, Suite 240 • Washington, DC 20036
Phone: (202) 265-PEER • Fax: (202) 265-4192
Email: info@peer.org • Web: <http://www.peer.org>

Assistant General Counsel for Litigation, Employment and Oversight
U.S. Department of Commerce
Office of General Counsel, Room 5875
14th and Constitution Avenue, N.W.
Washington, DC 20230

June 30, 2017

RE: Freedom of Information Act Appeal for Request No: DOC-NOAA-2017-00596:

VIA EMAIL

Dear FOIA Appeals Officer:

On February 2, 2017 Public Employees for Environmental Responsibility (PEER) submitted a Freedom of Information Act (“FOIA”) Request to National Oceanic and Atmospheric Administration. This request specifically sought:

- 1) A summary of all incidents of violence, threats, or harassment against NOAA employees that occurred in calendar year 2016. The summary should include the date, location, and nature of the incident or threat together with a summary of what, if any, outcome stemmed from the incident or threat (*e.g.*, arrest, conviction, ongoing investigation).
- 2) A summary of all incidents of violence, threats, or harassment against professional observers, including government contractors, that occurred in calendar year 2016. The summary should include incidents against observers aboard NOAA vessels or while otherwise carrying out their duties as NOAA contractors, and include the date, location, and nature of the incident or threat together with a summary of what, if any, outcome stemmed from the incident or threat (*e.g.*, arrest, conviction, ongoing investigation).

On March 28, NOAA provided a document pertaining to Part One of PEER’s February 2, FOIA. PEER is not appealing any decision/release related to NOAA’s production on March 28.

On June 12, 2017, the Office of Law Enforcement at NOAA’s National Marine Fisheries Service (“NMFS”) provided a document pertaining to Part Two of PEER’s February 2nd request that identified forty-six (46) alleged offenses against professional observers, including government contractors, for calendar year 2016. In this document, NMFS redacted in its entirety all and any details relating to thirty-three out of forty-six (33 out of 46) of the alleged incidents of violence, threats, or harassment against professional observers including government contractors.

The stated basis for withholding these details was as follows:

“Thirty-three... occur[ing] in the calendar year [2016] are currently open and are still undergoing

investigation. Information regarding these open incidents are exempted and are partially redacted under exemption 5 U.S.C. 552(b)(7)(A)...”

By this letter, PEER is appealing this partial denial for the following reasons:

I. NMFS redacted information not within the scope of FOIA’s (7)(A) exemption.

It is well settled that the mere pendency of an enforcement proceeding is alone insufficient reason for withholding information related to the investigation. Yet the stated reason that the agency withheld all information related to 33 out of 46 reported incidents is that the investigations were open or pending.

The agency must provide more than mere conclusory statements regarding how the investigatory records sought would interfere with a pending enforcement proceeding. *Grasso v IRS*, 785 F.2d 70, 77(3d Cir. 1986). For instance, the agency must show that revealing such information would result in an articulable harm, namely that releasing the information could reasonably be expected to interfere with a pending enforcement proceeding. No such showing is made in NMFS’s June 12th response. Instead NMFS has simply redacted any information, including information that could not reasonably indicate the individuals involved; information such as the division, the date, and the type of offense.

II. Requested Records are Segregable

The FOIA requires that any “reasonably segregable portion” of a record must be disclosed to a requester after the redaction of information that falls within an exception. 5 U.S.C. § 552(b). NMFS mischaracterizes its redactions as partial. The redaction of 33 out of 46 records are total redactions. Not a single detail of those records have been released. However those records very likely contain information that could be reasonably disclosed. Stated another way, agencies must release as much information as possible without thwarting the claimed exemption’s purpose. *King v Department of Justice*, 830 F.2d 210, 224 (D.C. Cir. 1987). The redactions within this records are beyond the purpose of exemption (7)(A).

The recognized purpose of exemption 7(A) is to prevent harm to the government’s case in court by preventing litigants “earlier or greater access” to investigatory files than they would otherwise have. *NLRB v. Robbins Tire Co.*, 437 U.S. 214, 241 (1978). The release of the date, type, or the NMFS regions in which the investigation is ongoing would in no way disclose the direction of potential investigation to follow. *Alyeska Pipeline Service Co. v. U.S. EPA*, 856 F.2d 309, 314. The information which PEER requested would help indicate whether professional observers face a higher risk of incidents in particular regions, and the kinds of risks they face.

If NMFS claims that the information requested is not segregable, it will be required to make this claim with the same level of specificity and detail with which it claims exemptions. *Vaughn v Rosen (I)*, 484 F.2d 820 (D.C. Cir. 1973) cert denied, 415 U.S. 977 (1974). In other words, NMFS will have to provide reasons in support of non-segregability that are not merely conclusory in nature. After redacting all information of the investigative records that fall under exemption (7)(A), NMFS must justify the remaining redactions, if any, with sufficient specificity.

For the above stated reasons, PEER appeals the withholding of 33 out of 46 records produced in the June 12th release.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Carlesco", enclosed within a thin black rectangular border.

Adam Carlesco, Staff Counsel
Public Employees for Environmental Responsibility
962 Wayne Ave, Suite 610
Silver Spring, MD 20910
Office: 202.265.7337 / Direct: 240.247.0298
Email: acarlesco@peer.org

From: "Lorna Martin-Gross - NOAA Federal" <lorna.martin-gross@noaa.gov>
To: "Elizabeth Mitchell" <emitch@efn.org>
Cc: "Arlyn Penaranda - NOAA Federal" <arlyn.penaranda@noaa.gov>, "FOIA Office - NOAA Service Account" <foia@noaa.gov>, <acarlesco@peer.org>
Subject: Fwd: Observer Harassment 2016 report, Request DOC-NOAA-2017-000596
Sent: Thu, 29 Jun 2017 15:17:16 -0400

[OLE Input PEERFOIA DOC-NOAA-2017-000596 RR.PDF](#)
[DOC-NOAA-2017-000596 Signed Partial Grant FAL.pdf](#)
[2. PEER Observer Reported Violations NOAA Records 1994-2004.pdf](#)
[7. PEER FOIA Observer Harassment Statistics 2007-2011.pdf](#)
[8. PEER FOIA Observer Harassment Statistics 2012.xls](#)
[9. PEER FOIA Observer Harassment Statistics 2013.pdf](#)
[10. PEER FOIA Observer Harassment Cases 2014.pdf](#)
[11. PEER FOIA Observer Harassment Cases 2015.pdf](#)
[1. PEER FOIA Observer Harassment Statistics 2004.pdf](#)

Dear Ms. Mitchell,

In response to your inquiry dated June 15, 2017, regarding the subject FOIA request, thank you for contacting us with your questions. The NOAA Fisheries Office of Law Enforcement (OLE) continues to place a high priority on investigations related to observer safety and actions that affect the integrity of observer data, such as assaults, interference or harassment of observers. OLE, as one of our overarching priorities, will play an integral role in the development and implementation of the agency action plan in response to the Observer Program Safety Review.

OLE derived the summary of observer harassment cases from 2016 incidents in OLE's Case Electronic Management System (ECMS). We apologize for the typographical error in our final action letter that caused confusion. With respect to our redaction of open incidents, all open incidents are completely redacted because the alleged offenses fall under 5 U.S.C. 552 exemption (b)(7)(A). Protecting unresolved investigations protects the integrity of the judicial process and the rights of witnesses, victims, and subjects. We apply this exception to all FOIA requests received by OLE. Any past release of open incident information was completed in error.

In September 2016, the Office of Law Enforcement implemented a new Electronic Case Management System (ECMS) that allows OLE to query incident data in more categories than we were able to in our previous system. The previous system consolidated observer related incidents into an inclusive single code. OLE staff went through each observer related alleged offense/incident reported for 2016 and diligently researched and reviewed each case file and followed up with investigating enforcement personnel to ensure accurate and thorough information on each of the incidents that alleged threats or harassment. This helped OLE eliminate incidents that were not responsive to the FOIA request as they did not involve harassment or an alleged threat. The type of incident information reported previously was generated through looking at each individual incident reported and manually applying a "type" to that particular incident based on the information contained in the investigative file and the ECMS.

OLE's new ECMS no longer has separate designations of "incidents" and "cases". The data that OLE extracts for its responses to PEER FOIA requests come from OLE's ECMS. OLE divisions report document incidents in the system according to national protocols. Observer programs report to OLE based on the protocols of each individual observer program.

Regarding the North Pacific Observer Program Annual Report: In general, the North Pacific Observer Program requires observers to write statements for all incidents of potentially bothersome behavior, corrected behavior, and/or behavior that impacts observers or observer data. These statements are entered into the North Pacific Observer Program database. Please note that not all of the statements, as reported by observers to the observer program, rise to the level, or definition, of harassment or threatening behavior.

OLE's Alaska Division has a Special Agent dedicated specifically to the observer program. This Special Agent coordinates training with the observer program and works with the program on a regular basis with respect to observer safety issues. OLE makes inquiry on all complaints alleged to have impacted an observer's safety or integrity of the data they collect. All such complaints are entered into OLE's Case Management System as incidents. OLE Special Agents and/or Enforcement Officers contact all potential victims and witnesses to provide support to alleged victims, and to gather facts and evidence victims and witnesses to determine the severity of the incident. OLE agents and officers also determine whether or not the affected observer and other potential witnesses are willing to cooperate with an investigation.

The observer program's annual report lists the number of observer statements whereas OLE reports on incidents documented in our ECMS. Not all statements made by the observer program are considered complaints of an alleged violation and are, therefore, not documented as incidents in OLE's ECMS. This is one reason why OLE may report less incidents than are reported by the observer program in their annual report. Additionally, not all documented observer related incidents in OLE's ECMS involve harassment, threats, assault or other violent or harassing acts. Another factor that accounts for fewer incidents being reported by enforcement is that multiple complaints are often combined into a single investigation (single incident) if they involve the same vessel, skipper, or alleged violator (referred to as a "subject" in OLE's ECMS). It is not uncommon for multiple observers to write separate statements for the same incident. This creates a "many to one" relationship where many complaints, as reported by the observer program, are handled under a single investigation which is documented as a single incident in OLE's ECMS.

We would be happy to further discuss our documentation procedures and any questions you may have related to our efforts to ensure the safety and well-being of observers and the integrity of the data they collect.

Kind regards,

Ms. Lorna Martin Gross

on behalf of Ms. Arlyn Penaranda

Ms. Lorna Martin-Gross
Records Manager
Office of Law Enforcement
NOAA Fisheries
U.S. Department of Commerce
Office: 301-427-8244
lorna.martin-gross@noaa.gov

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

From: **Arlyn Penaranda - NOAA Federal** <arlyn.penaranda@noaa.gov>
Date: Thu, Jun 29, 2017 at 2:01 PM
Subject: Fwd: Observer Harassment 2016 report, Request DOC-NOAA-2017-000596
To: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>

Original email

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

From: **Elizabeth Mitchell** <emitch@efn.org>
Date: Thursday, June 15, 2017
Subject: Observer Harassment 2016 report, Request DOC-NOAA-2017-000596
To: Arlyn.Penaranda@noaa.gov
Cc: foia@noaa.gov, acarlesco@peer.org

Dear Arlyn,
I'm from the Association for Professional Observers (APO) and PEER has generously shared NOAA's response to their annual FOIA request for a summary of observer harassment since 2006. We are attempting to track observer harassment by region and the outcomes of observer complaints. I was wondering if you could clarify this year's NOAA response to PEER's FOIA request, No. DOC-NOAA-2017-000596 pertaining to observers. I assume you can speak about it since it's now available on the internet. If there are specific NOAA OLE personnel I could contact to help me analyze this and prior years summaries, can you please provide their contact information?

1. Your letter states that PEER requested a summary of 2017 observer harassment incidents, the on-line request says PEER requested a summary of 2015 observer harassment incidents. However, PEER requests

this annually and I'm guessing this particular PEER request is for 2016's summary. Is the document below 2015, 2016, or 2017's summary of observer harassment cases.

2. In the past, these response have showed the region, date, type of incident (i.e. harassment, interference, violence, etc.) and outcome but this year that information is redacted for open cases. I would like to know why this protocol for reporting to PEER has changed (i.e. open case summaries completely redacted). Surely the date, region, harassment type, and it's open status are not compromising.
3. PEER has been the only organization in the country that has been tracking observer harassment. They asked for "summary of incidents". In the document, "OLE Input_PEERFOIA_DOC-NOAA-2017-000596_RR.PDF", there are 46 incidents listed (33 of which are not redacted). Yet in the North Pacific Observer Program alone, the 2016 Annual Report states that there were 203 observer program complaints made in 2016 concerning interference, harassment, etc. Can you possibly explain this discrepancy? Of these 203 observer program complaints in Alaska alone (a complaint isn't necessarily investigated to even become a case), how many became "incidents" and of these incidents, how many became "cases", and of these cases, what were each of their outcomes? In other words, complain A on xx date, and complaint B on yy date, were elevated to an incident status warranting investigation. These were added with other incidents to become a "case". But complaints B-P weren't investigated. Complaint A was resulted in a written warning and complaint B received prosecution or is still open. So we need to figure out how NOAA OLE is reporting these observer complaints of harassment and how you are providing them to PEER...are those incidents or are they cases? Do all regions report the same way? I want to clarify these important distinctions because it makes it almost impossible to analyze. Perhaps it will take an additional FOIA, which I am happy to submit. Attached are the prior years' released records. Feel free to call me if that's easier: 541-515-3716

Thanks very much.

Elizabeth Mitchell
Association for Professional Observers
PO Box 933
Eugene, OR 97440
Tel: 541-344-5503
Cell: 541-515-3716
E-mail: emitch@efn.org
2017

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Arlyn Penaranda
Records Management Specialist
Office of Law Enforcement
NOAA, National Marine Fisheries Service
Office: [301-427-8256](tel:301-427-8256)
arlyn.penaranda@noaa.gov <arlyn.penaranda@noaa.gov>

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Ms. Lorna Martin-Gross
Records Manager
Office of Law Enforcement
NOAA Fisheries
U.S. Department of Commerce
Office: 301-427-8244
lorna.martin-gross@noaa.gov

Incident Number	Division	Date Reported	Status	Disposition/Outcome	Alleged Offense/Incident Reported
1600262	West Coast	1/20/2016	Closed	Verbal Warning	Harassment
(b)(7)(A)					
(b)(7)(A)					
(b)(7)(A)					
(b)(7)(A)					
(b)(7)(A)					
(b)(7)(A)					
(b)(7)(A)					
(b)(7)(A)					
(b)(7)(A)					
1606224	Pacific Island	11/9/2016	Closed	Closed Lack of Evidence of actionable violation after consultation with NOAA General Counsel	Threaten/Verbal Harassment (Abusive comments made over the radio from another vessel)
I1601651	Northeast	3/18/2016	Closed	Closed Lack of Evidence of actionable violation	Harassment – (crew waking observer with excessive noise/lights while trying to sleep)
1601666	Northeast	3/30/2016	Closed	Closed Lack of Evidence of actionable violation	Harassment (initial phone conversations with vessel captain logged as “gruff” and reported to OLE as potential harassment by staff; observer stated no incidents on deployment and stated no harassment/problems occurred)
I1602316	Northeast	5/17/2016	Closed	Closed – no evidence of actionable violation based on interview of observer	Harassment – verbal comments and failure to provide reasonable assistance
(b)(7)(A)					
I1604003	Northeast	4/25/2016	Closed	Closed Lack of Evidence of actionable violation (observer no longer observing and not located for interview)	Harassment – verbally abusive comments noted in observer logbook
1604097	Northeast	8/6/2016	Closed	Closed Lack of Evidence of actionable violations after consultation with NOAA General Counsel	Harassment – verbal intimidation/profanity and tampering/theft of equipment (property later found)
(b)(7)(A)					
(b)(7)(A)					
1605714	Northeast	8/16/2016	Closed	Closed Lack of Evidence of actionable violation	Intimidation (verbal comment perceived as threatening prior to deployment – no incidents or problems on deployment)

1606742	Northeast	12/16/2016	Closed	OLE-Compliance Assistance Provided and education to vessel captain on observer assistance/sampling regulations	Harassment and Impeding/Interference (vessel crew failed to allow observer to sample bycatch on three occasions and used profanity on trip comment card)
1606750	Northeast	12/16/2016	Closed	Closed No Further Action Required (OLE contacted individual texting observer and situation was resolved)	Harassment (observer received multiple texts from vessel captain's spouse)

(b)(7)(A)

(b)(7)(A)

(b)(7)(A)

(b)(7)(A)

1603161	Alaska	6/29/2016	CLOSED	OLE-education to involved crewmember on inappropriate comments to observers.	Harassment (verbal)
1603550	Alaska	8/31/2016	CLOSED	Written Warning Issued	Hostile Work Environment (Crewmember used profanity and hostile comments toward observer)

(b)(7)(A)

(b)(7)(A)

(b)(7)(A)

(b)(7)(A)

(b)(7)(A)

(b)(7)(A)

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(b)(7)(A)

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(b)(7)(A)

(b)(7)(A)

(b)(7)(A)

(b)(7)(A)

(b)(7)(A)

(b)(7)(A)

1602562	Alaska	5/31/2016	CLOSED	Vessel captain fired crew member in response to incident reported by observer. Closed with no further OLE action	Sexual Harassment and Hostile Work Environment (crew member urinated in observer sampling area, verbal insults)
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(b)(7)(A)



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

Mr. Adam Carlesco
962 Wayne Ave
Suite 610
Silver Spring, MD 20910

JUN 12 2017

Re: FOIA Request No. DOC-NOAA-2017-000596

Dear Mr. Carlesco,

This letter is in response to your Freedom of Information Act (FOIA) request entered into FOIAonline on February 2, 2017 and was received by our office on February 14, 2017, in which you requested:

- (1) A summary of all incidents of violence, threats, or harassment against NOAA employees that occurred in calendar year 2016. The summary should include the date, location, and nature of the incident or threat together with a summary of what, if any, outcomes stemmed from the incident or threat (e.g., arrest, conviction, ongoing investigation).
- (2) A summary of all incidents of violence, threats, or harassment against professional observers, including government contractors, that occurred in calendar year 2017. The summary should include incidents against observers aboard NOAA vessels or while otherwise carrying out their duties as NOAA contractors, and include the date, location, and nature of the incident or threat together with a summary of what, if any, outcomes stemmed from the incident or threat (e.g., arrest, conviction, ongoing investigation).

On March 28, 2017, we have provided you one document from the Department of Commerce, Office of Security in response to Request One of your FOIA request, "summary of all incidents of violence, threats, or harassment against NOAA employees that occurred in calendar year 2016."

For this final release, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Office of Law Enforcement is providing you a response to Request Two of your FOIA request, "summary of all incidents of violence, threats, or harassment against professional observers, including government contractors, which occurred in calendar year 2017."

For the calendar year 2017, the Office of Law Enforcement identified forty-six (46) alleged offenses/reported incidents of violence, threats, or harassment against professional observers, including government contractors.



Thirty-three of the forty-six (33 out of 46) alleged offenses/reported incidents of violence, threats, or harassment against professional observers, including government contractors, that occurred in the calendar year 2017 are currently open and are still undergoing investigation. Information regarding these open incidents are exempted and are partially redacted under exemption 5 U.S.C. 552(b)(7)(A), which authorizes the withholding of "records or information compiled for law enforcement purposes, but only to the extent that production of such law enforcement records or information ... could reasonably be expected to interfere with enforcement proceedings."

You have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must be received within 90 calendar days of the date of this response letter at the following address:

Assistant General Counsel for Litigation, Employment, and Oversight
U.S. Department of Commerce
Office of General Counsel
Room 5875
14th and Constitution Avenue, N.W.
Washington, D.C. 20230

An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to [202-482-2552](tel:202-482-2552), 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

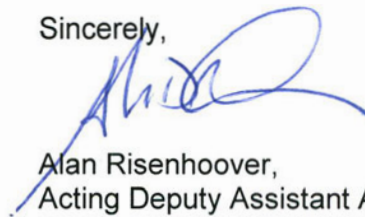
Phone: 301-837-1996

Fax: 301-837-0348

Toll-free: 1-877-684-6448

If you have questions regarding this correspondence, please contact please contact Arlyn Penaranda at (301) 427-8256 or Arlyn.Penaranda@noaa.gov, or the NOAA FOIA Public Liaison Robert Swisher at (301) 628-5755.

Sincerely,



Alan Risenhoover,
Acting Deputy Assistant Administrator
for Regulatory Programs

AK Observer Cases

CCN	CNT	DATE OF VIOLATION	FISH PLAN	INVESTIGATION TYPE	REG	CURRENT STATUS	CURRENT STATUS DATE	FINAL PENALTY	FINAL PENALT Y DATE	DATE CLOSED
AK001132A	1	8/10/00	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Written warning issued by F/EN	3/13/01			3/13/01
AK004015A	1	7/17/00	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)	* Summary Settlement paid	11/27/00	2,500.00	11/27/00	11/27/00
AK004022A	1	8/23/00	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* All Settlement Agreement conditions satisfied	4/6/06			4/6/06
AK004050A	1	11/13/00		Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	Issues addressed by Program Staff during cruise. Corrective actions taken. Case closed due to lack of resources.	8/5/02			8/5/02
	2	11/13/00		Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(7)		8/5/02			8/5/02
	3	11/13/00		Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(4)		8/5/02			8/5/02
	4	11/13/00		Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)		8/5/02			8/5/02
	5	11/13/00		Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.27(e)		8/5/02			8/5/02
AK004051A	1	9/1/00	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Prosecution declined by GCEL. Based on records retention schedule, this case file no longer exists.	6/17/03			6/17/03
	2	9/1/00		Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)		6/17/03			6/17/03
AK004089A	1	3/30/00	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Case/count merged with on-going investigation.	9/13/02			9/13/02
	2	3/14/00	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)		9/13/02			9/13/02
AK004090A	1	2/12/00	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Closed by F/EN due to lack of evidence	11/29/00			11/29/00
AK004091A	1	2/9/00	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Closed by F/EN due to lack of evidence	11/29/00			11/29/00

AK014026A	1	4/27/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)	* Closed by F/EN due to lack of evidence	5/21/01			5/21/01
AK014040A	1	3/9/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Case reviewed by Special Agent. Case closed for lack of resources.	5/22/01			5/22/01
	2	3/9/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(vi)		5/22/01			5/22/01
AK014047A	1	8/12/99	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	Settlement Agreement signed by GC	9/15/03	12,500.00	9/15/03	
	2	8/12/99	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(13)		9/15/03	2,500.00	9/15/03	
	3	1/29/00	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)		9/15/03	500.00	9/15/03	
	4	1/29/00	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)		9/15/03	6,500.00	9/15/03	
	5	3/12/00	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)		9/15/03	100.00	9/15/03	
	6	3/13/00	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(13)		9/15/03	3,000.00	9/15/03	
	7	3/30/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)		9/15/03	25.00	9/15/03	
	8	8/19/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)		9/15/03	2,000.00	9/15/03	
	9	8/19/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)		9/15/03	15,100.00	9/15/03	
	10	9/3/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	MSFCMA; NPHA		9/15/03	275.00	9/15/03	
AK014053A	1	3/7/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(f)(1)	* Closed by F/EN due to lack of evidence	5/22/01			5/22/01
	2	3/5/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(f)(3)		5/22/01			5/22/01
AK014057A	1	4/29/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Written warning issued by F/EN	5/6/02			5/6/02
	2	4/29/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.21(b)(2)(ii)		5/6/02			5/6/02
AK014061A	1	2/3/01		Non-fisheries federal regulations	OTHER FEDERAL REGS - USCG	* Transferred to the US Coast Guard.	5/30/01			5/30/01

AK014071A	1	5/1/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Written warning issued by F/EN	5/13/02			5/13/02
	2	5/7/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(13)(iv)		5/13/02			5/13/02
AK014074A	1	7/30/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Closed by F/EN due to lack of evidence	8/20/01			8/20/01
AK014075A	1	8/9/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	Settlement Agreement signed by GC	1/9/04	40,000.00	2/1/07	
AK014079A	1	4/8/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Dismissed by F/EN (no violation)	5/13/02			5/13/02
AK014095A	1	9/30/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Declined by F/EN. Company contacted by Special Agent.	4/9/02			4/9/02
	2	8/16/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(vi)		4/9/02			4/9/02
	3	10/9/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)		4/9/02			4/9/02
AK014096A	1	11/12/91	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Written warning issued by F/EN	5/13/02			5/13/02
	2	10/3/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(vi)		5/13/02			5/13/02
	3	11/2/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(13)(iv)		5/13/02			5/13/02
AK014097A	1	11/11/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.21(b)(2)(ii)	* Summary Settlement paid	7/3/02	2,500.00	7/3/02	7/3/02
	2	7/1/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(vi)		6/17/02			
	3	7/1/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)		6/17/02			6/17/02
AK014098A	1	10/1/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Written warning issued by F/EN	4/17/02			4/17/02
	2	9/14/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(vi)		4/17/02			4/17/02
AK014110A	1	10/29/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(iii)(A)	* Closed by F/EN due to lack of evidence	11/1/02			11/1/02
AK014124A	1	8/25/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Closed by F/EN due to lack of evidence	12/19/01			12/19/01

AK014128A	1	6/27/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Closed by F/EN due to lack of evidence	12/19/01			12/19/01
AK014130A	1	8/1/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Closed by F/EN due to lack of evidence	12/19/01			12/19/01
AK024004A	1	10/25/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(vi)	* Written warning issued by F/EN	7/1/02			7/1/02
AK024005A	1	1/30/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(13)(iv)	* Closed by F/EN due to lack of evidence	6/6/02			6/6/02
	2	1/30/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(iii)		6/6/02			6/6/02
AK024008A	1	1/17/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(vi)	Suspended. Case remains open pending further action	11/10/05			
	2	1/17/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.21(b)(2)(ii)		11/10/05			
AK024010A	1	1/20/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(3)	Sent to GC for prosecution. Final Settlement. Merged with another case.	11/7/02	12,500.00	9/15/03	
AK024017A	1	2/4/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.27(c)(2)(i)(A)	* Written warning issued by F/EN	8/5/02			8/5/02
	2	3/12/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)		8/5/02			8/5/02
	3	2/26/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.21(b)(2)(ii)		8/5/02			8/5/02
	4	2/26/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.750(f)(1)(c)(vi)		8/5/02			8/5/02
	5	2/26/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(c)(viii)(A)		8/5/02			8/5/02
	6	2/26/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	216.11(b)		8/5/02			8/5/02
AK024020A	1	1/17/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(i)	* Closed by F/EN due to lack of evidence	2/4/03			2/4/03
	2	1/17/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(7)		2/4/03			2/4/03
AK024022A	1	3/20/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(i)	* Dismissed by F/EN (no violation)	4/26/02			4/26/02

	2	3/16/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)		4/26/02			4/26/02
AK024034A	1	2/3/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Closed by F/EN due to lack of evidence	5/28/02			5/28/02
	2	2/13/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(2)(ii)		5/28/02			5/28/02
AK024044A	1	3/25/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Summary Settlement paid	11/14/02	2,500.00	11/14/02	11/14/02
	2	3/17/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(3)		11/14/02	2,500.00	11/14/02	11/14/02
	3	4/9/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)		11/14/02	2,500.00	11/14/02	11/14/02
AK024055A	1	4/12/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Not sustained.	6/6/03			6/6/03
	2	5/3/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	67937(g)(2)		6/6/03			6/6/03
AK024060A	1	6/3/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7 (g)(1)	* Case/count merged with on-going investigation.	7/16/02			7/16/02
AK024075A	1	8/13/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(3)	* Transferred to the NW Division.	5/10/05			5/10/05
AK024083A	1	8/15/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(4)	* Summary Settlement paid	12/5/02	5,000.00	11/19/02	12/5/02
AK024094A	1	8/5/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.32(c)(4)(iv)	* Verbal Warning issued by F/EN	11/4/02			11/4/02
	2	8/20/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)		11/4/02			11/4/02
	3	8/30/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)		11/4/02			11/4/02
AK024095A	1	9/15/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(o)	* Dismissed by F/EN (no violation)	6/6/03			6/6/03
AK024096A	1	10/3/02		Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Case reviewed by Special Agent. Case closed.	11/4/02			11/4/02
	2	10/3/02		Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(e)(3)		11/4/02			11/4/02
AK024103A	1	10/15/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Closed by F/EN due to lack of evidence	12/9/03			12/9/03

	2	10/7/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(vi)		12/9/03			12/9/03
	3	10/13/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.21(b)(2)(ii)		12/9/03			12/9/03
	4	10/6/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.24(e)(3)		12/9/03			12/9/03
AK024104A	1	8/12/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Written warning affirmed after review	8/20/03			8/20/03
	2	10/15/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(13)		5/7/03	2,500.00	5/7/03	5/7/03
AK024133A	1	10/10/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Closed by F/EN due to lack of evidence	7/11/03			7/11/03
	2	10/8/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.25(q)		7/11/03			7/11/03
AK024141A	1	9/17/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(o)	* Dismissed by F/EN (no violation)	1/7/03			1/7/03
AK024146A	1	11/18/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Dismissed by F/EN (no violation)	1/7/02			1/7/02
AK024161A	1	8/6/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Preliminary inquiry made by Special Agent. Case closed.	4/21/04			4/21/04
	2	8/6/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(vii)		4/21/04			4/21/04
	3	8/6/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(vi)		4/21/04			4/21/04
	4	11/3/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(13)(iv)		4/21/04			4/21/04
AK025008A	1	2/18/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Settlement Agreement conditions not met; case closed	12/1/05	7,500.00	10/12/02	12/1/05
AK034001A	1	12/29/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)	* Preliminary review made by Special Agent. Case closed.	3/12/03			3/12/03
	2	1/1/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)		3/12/03			3/12/03
	3	1/2/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(13)(iv)		3/12/03			3/12/03
	4	1/13/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)		3/12/03			3/12/03

AK034007A	1	2/3/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(vi)	* Transferred to the NW Division.	4/21/04			4/21/04
	2	2/3/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(viii)		4/21/04			4/21/04
AK034031A	1	1/1/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* All Settlement Agreement conditions satisfied	10/10/05	1,500.00	10/10/05	10/10/05
	2	1/16/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(13)(iv)		9/12/05			9/12/05
	3	2/1/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(4)		9/12/05			9/12/05
AK034032A	1	2/9/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(4)	* Verbal Warning issued by F/EN	8/1/03			8/1/03
	2	3/8/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(vi)		8/1/03			8/1/03
AK034033A	1	1/23/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Dismissed by F/EN (no violation)	6/25/03			6/25/03
	2	3/8/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)		6/25/03			6/25/03
	3	1/20/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.27(e)		6/25/03			6/25/03
	4	1/18/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(d)(19)		6/25/03			6/25/03
AK034034A	1	1/13/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(3)	* Dismissed by F/EN (no violation)	5/22/03			5/22/03
	2	1/13/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(i)		5/22/03			5/22/03
AK034037A	1	1/17/0203	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Dismissed by F/EN (no violation)	5/12/03			
AK034047A	1	4/14/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Dismissed by F/EN (no violation)	6/4/03			6/4/03
	2	3/16/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(18)		6/4/03			6/4/03
AK034050A	1	4/2/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	Settlement Agreement signed by GC	2/22/05			
AK034051A	1	4/3/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.21(b)(2)(ii)	* Case/count merged with another investigation.	5/19/03			5/19/03

	2	1/17/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(vi)		5/19/03			5/19/03
	3	1/17/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(12)		5/19/03			5/19/03
	4	1/22/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(2)		5/19/03			5/19/03
	5	4/11/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)		5/19/03			5/19/03
	6	3/27/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)		5/13/03			5/13/03
	7	3/27/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(i)		5/13/03			
AK034054A	1	2/27/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Closed by F/EN due to lack of evidence	8/29/03			8/29/03
AK034075A	1	1/24/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Case reviewed by Special Agent and closed.	5/21/03			5/21/03
AK034082A	1	5/6/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.27(b)(5)	* Written warning issued by F/EN	9/10/03			9/10/03
	2	5/6/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)		9/10/03			9/10/03
	3	9/5/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(10)(i)		9/10/03			9/10/03
	4	9/5/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(10)(i)		11/25/03	3,750.00	11/25/03	11/25/03
	5	9/5/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(10)(iii)		9/10/03			9/10/03
AK034083A	1	4/30/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Closed by F/EN due to lack of evidence	7/28/03			7/28/03
AK034086A	1	5/11/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Dismissed by F/EN (no violation)	6/2/03			6/2/03
AK034114A	1	6/19/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(3)	* Written warning issued by F/EN	10/1/03			10/1/03
AK034124A	1	6/11/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Closed by F/EN due to lack of evidence	9/8/03			9/8/03
AK034132A	1	7/4/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Case reviewed by Special Agent. Case closed.	10/8/03			10/8/03

	2	7/17/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(13)(ii)		10/8/03		10/8/03
AK034143A	1	8/20/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* For Intel Only	10/8/03		10/8/03
AK034149A	1	7/17/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	Returned by GC to F/EN for further investigation	4/6/05		
	2	7/21/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(14)(iv)(B)(1)		4/6/05		
	3	7/21/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(10)(iii)		4/6/05		
AK034164A	1	8/31/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Verbal Warning issued by F/EN	11/5/03		11/5/03
AK034168A	1	9/22/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Written warning issued by F/EN	1/9/04		1/9/04
	2	9/22/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(3)		1/9/04		1/9/04
AK034189A	1	10/1/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Closed by F/EN due to lack of evidence	11/18/03		11/18/03
	2	9/20/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(i)		11/18/03		11/18/03
AK034192A	1	11/6/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Closed by F/EN due to lack of evidence	1/21/04		1/21/04
AK044003A	1	2/1/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(k)(1)(vi)(a)	Preliminary case received; investigation on-going	11/14/05		
AK044004A	1	1/26/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	Sent to GCEL for prosecution.	3/11/05		
	2	1/26/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)		3/11/05		
	3	1/26/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(v)		3/11/05		
	4	1/26/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)		3/11/05		
AK044009A	1	1/20/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(ii)(A)	* Case merged into another on-going investigation.	11/8/05		11/8/05
	2	1/20/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.59(g)(1)(vi)		11/8/05		11/8/05

	3	1/20/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)		11/8/05		11/8/05
	4	1/20/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(4)		11/8/05		11/8/05
	5	1/20/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.79(a)(2)		11/8/05		11/8/05
	6	1/20/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.5(a)(14)(iv)(B)(1)		11/8/05		11/8/05
AK044010A	1	1/20/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Case merged with another on-going investigation.	11/8/05		11/8/05
	2	1/20/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(vi)		11/8/05		11/8/05
AK044012A	1	2/16/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Verbal Warning issued by F/EN	7/9/04		7/9/04
AK044013A	1	2/24/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	Sent to GCEL for prosecution.	3/4/05		
AK044019A	1	2/20/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Settlement Agreement with a companion case.	4/6/05		4/6/05
	2	2/20/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(vi)		4/6/05		4/6/05
AK044021A	1	1/17/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Case merged into on-going investigation.	11/9/05		11/9/05
	2	1/17/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)(l)		11/9/05		11/9/05
AK044030A	1	1/1/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(3)	Preliminary case received; investigation on-going	3/28/06		
	2	2/9/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679321(b)(2)(ii)		3/28/06		
	3	1/8/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)		3/28/06		
AK044034A	1	3/13/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Dismissed by F/EN (no violation)	12/6/04		12/6/04
AK044042A	1	1/30/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7 (g)(5)	* Closed by F/EN due to lack of evidence.	4/28/04		4/28/04
AK044062A	1	3/27/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Verbal Warning issued by F/EN	10/13/04		10/13/04

	2	3/27/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(r)		10/13/04		10/13/04
AK044065A	1	2/1/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	Case reviewed by Special Agent. Case closed.	2/2/05		
	2	2/24/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(2)(ii)		2/2/05		
	3	2/1/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a0(10)(iii)		2/2/05		
AK044066A	1	1/30/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(vi)	* Closed by F/EN due to lack of evidence.	6/8/04		6/8/04
	2	2/11/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(14)(iv)(B)		6/8/04		6/8/04
AK044069A	1	1/3/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(3)	* Case reviewed by Special Agent. Case closed.	10/26/04		10/26/04
	2	1/30/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(12)		10/26/04		10/26/04
	3	2/21/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(2)(ii)		10/26/04		10/26/04
AK044081A	1	1/25/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Closed by F/EN due to lack of evidence	10/12/04		10/12/04
AK044109A	1	7/31/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Closed by F/EN due to lack of evidence	10/18/05		10/18/05
AK044114A	1	5/5/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)	* Case reviewed by Special Agent. Case closed.	10/26/04		10/26/04
AK044120A	1	9/17/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Closed by F/EN due to lack of evidence	5/31/05		5/31/05
AK044124A	1	9/17/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Closed by F/EN due to lack of evidence	11/25/05		11/25/05
	2	9/17/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(k)(vi)(a)		11/25/05		11/25/05
AK044127A	1	9/2/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Verbal Warning issued by F/EN	12/9/04		12/9/04
AK044147A	1	9/21/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Verbal Warning issued by F/EN	5/21/05		5/21/05
	2	9/21/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(viii)		5/21/05		5/21/05

AK044148A	1	10/18/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Closed by F/EN due to lack of evidence	1/14/05		1/14/05
AK044163A	1	9/14/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Dismissed by F/EN (no violation)	12/9/04		12/9/04
AK044165A	1	8/20/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Verbal Warning issued by F/EN	7/12/05		7/12/05
	2	8/19/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(vi)		7/12/05		7/12/05
AK044172A	1	9/12/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Verbal Warning issued by F/EN	7/12/05		7/12/05
	2	9/12/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)		7/12/05		7/12/05
AK044190A	1	11/14/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(t)	Case investigated by Special Agent; company notified. Case closed.	1/13/05		
AK054007A	1	1/26/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Written warning issued by F/EN	8/8/05		8/8/05
	2	1/26/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(1)(iii)		8/8/05		8/8/05
	3	2/2/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(vi)		8/8/05		8/8/05
	4	1/26/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.5(a)(14)(iv)(B)(1)		8/8/05		8/8/05
AK054008A	1	2/4/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Written warning issued by F/EN	8/11/05		8/11/05
	2	2/3/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)		8/11/05		8/11/05
	3	2/3/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(4)		8/11/05		8/11/05
	4	2/3/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(iii)(A)		8/11/05		8/11/05
AK054014A	1	1/20/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(viii)	* Case merged with another on-going investigation.	11/9/05		11/9/05
	2	1/20/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(vi)		11/9/05		11/9/05

	3	1/20/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.5(a)(14)(iv)(B)(1)		11/9/05			11/9/05
AK054019A	1	1/5/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(vi)	* Summary Settlement paid	1/23/06	2,500.00	1/23/06	1/23/06
	2	1/6/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(viii)		1/23/06	2,500.00	1/23/06	1/23/06
AK054026A	1	2/6/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(3)	Settlement Agreement signed by GC	5/17/06			
	2	2/6/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)		4/18/06			4/18/06
AK054033A	1	2/23/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Case reviewed by Special Agent. Case closed for lack of resources.	4/27/05			4/27/05
	2	1/19/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(2)(i)		4/27/05			4/27/05
	3	1/3/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(2)(ii)		4/27/05			4/27/05
AK054042A	1	2/6/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Verbal Warning issued by F/EN	5/16/06			5/16/06
	2	3/8/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(iii)		5/16/06			5/16/06
	3	2/8/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(vi)		5/16/06			5/16/06
	4	2/11/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)		5/16/06			5/16/06
AK054055A	1	3/16/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Case merged into ongoing investigation.	4/30/05			4/30/05
	2	3/8/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(3)		4/30/05			
	3	3/25/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(vi)		4/30/05			
AK054059A	1	2/1/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Verbal Warning issued by F/EN	12/6/05			
	2	2/10/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(3)		12/6/05			

AK054081A	1	7/5/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Closed by F/EN due to lack of evidence	12/5/05			12/5/05
	2	7/6/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)		12/5/05			12/5/05
	3	7/8/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(iii)(B)		12/5/05			12/5/05
AK054084A	1	7/12/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Case reviewed by Special Agent. Action taken by company. Case closed.	12/5/05			12/5/05
AK054093A	1	7/22/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Closed by F/EN due to lack of evidence.	12/5/05			12/5/05
AK054099A	1	9/4/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Dismissed by F/EN (no violation)	1/25/06			1/25/06
AK054109A	1	8/18/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Dismissed by F/EN (no violation).	12/5/05			12/5/05
AK054119A	1	10/1/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	Closed by F/EN due to lack of evidence.	12/5/05			
AK054129A	1	9/25/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	Case merged. Forwarded to GCEL for prosecution.	12/5/05			
	2	10/1/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)		12/15/05			
AK054146A	1	10/31/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	Case merged. Forwarded to GCEL for prosecution.	1/17/06			
	2	10/27/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(13)(iv)		1/17/06			
	3	10/31/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.24(e)(2)(vi)		1/17/06			
	4	9/29/06		Magnuson Fishery Conservation and Mgt Act (MFCMA)	50 CFR 679.21(b)(2)(ii) □		1/17/06			
AK054148A	1	10/10/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Case reviewed by Special Agent. Case closed.	1/25/06			1/25/06
AK054153A	1	8/28/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	On-going investigation.	1/20/06			
	2	9/27/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.21(B)(2)(II)		1/20/06			

AK054157A	1	8/29/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	Case reviewed by Special Agent. Case closed.	1/23/06		
AK054161A	1	10/22/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Verbal Warning issued by F/EN	1/25/06		1/25/06
	2	10/24/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.27(c)(2)		1/25/06		1/25/06
AK054163A	1	10/13/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	Verbal and written warning issued.	1/31/06		
	2	10/25/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(10)(iii)		1/31/06		
AK054164A	1	10/2/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(i)	On-going investigation.	5/11/06		
	2	12/6/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)		5/11/06		
	3	11/26/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(vi)		5/11/06		
AK054170A	1	9/6/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	Reviewed by Special Agent. Case closed for lack of resources.	4/6/06		
AK054172A	1	9/25/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	Reviewed by Special Agent. Case closed for lack of resources.	4/7/06		
	2	9/25/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(viii)(D)		4/7/06		
	3	10/18/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(13)(iv)		4/7/06		
	4	10/20/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(viii)(F)		4/7/06		
	5	9/26/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)		4/7/06		
	6	7/3/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(4)		4/18/06		
AK950036A	1	3/9/94	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	1857(1)(L)	* Prosecution declined by GC. Based on records retention, this case file no longer exists.	3/1/99		3/1/99
	2	3/9/94	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	672.7(b)		3/1/99		3/1/99

AK950467A	1	7/15/95	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	672.7(b)	* Summary Settlement paid	11/19/99	120.00	8/1/95	11/19/99
AK991242A	1	11/28/99	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Suspended, case closed	10/18/05			10/18/05
	2	11/28/99	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(7)(vi)		10/18/05			10/18/05
	3	11/28/99	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.21(a)(ii)		10/18/05			10/18/05
AK994047A	1	3/24/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)	* Case reviewed by Special Agent. Case closed for lack of resources.	6/1/01			6/1/01
	2	3/24/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)		6/1/01			6/1/01
	3	3/24/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.27		6/1/01			6/1/01
	4	3/24/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(4)		6/1/01			6/1/01
AK994053A	1	5/20/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)	* Summary Settlement paid	8/28/00	2,500.00	8/28/00	8/28/00
	2	6/16/99	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)		10/4/00			10/4/00
AK994054A	1	4/4/99	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(4)	* Case reviewed by Special Agent. Closed for lack of resources.	6/1/01			6/1/01
	2	4/28/99	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)		6/1/01			6/1/01
AK994056A	1	1/18/99	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Case reviewed by Special Agent. Case closed for lack of resources.	6/1/01			6/1/01
	2	1/18/99	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.27		6/1/01			6/1/01
AK994076A	1	2/17/99	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(3)	* Case reviewed by Special Agent. Case closed for lack of resources.	3/30/00			3/30/00
AK994079A	1	5/19/99	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Case reviewed by Special Agent. Case closed for lack of resources.	6/1/01			6/1/01

AK994091A	1	4/1/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Case reviewed by Special Agent. Case closed for lack of resources.	3/22/01			3/22/01
	2	4/1/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)		3/22/01			3/22/01
	3	4/1/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(4)		3/22/01			3/22/01
	4	4/1/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)		3/22/01			3/22/01
	5	4/1/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)		3/22/01			3/22/01
	6	4/1/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.24(e)		3/22/01			3/22/01
AK994108A	1	1/1/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)	* Summary Settlement paid	1/24/00	2,500.00	1/24/00	1/24/00
	2	1/1/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)		1/24/00			1/24/00
AK994114A	1	6/9/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Case reviewed by Special Agent. Closed for lack of resources.	6/1/01			6/1/01
AK994117A	1	2/1/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(2)	* All Settlement Agreement conditions satisfied	4/17/02	18,305.56	4/17/02	3/10/03
	2	2/1/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(13)		12/28/01			12/28/01
AK994124A	1	2/1/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Case reviewed by Special Agent. Closed for lack of resources.	6/5/01			6/5/01
	2	3/1/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(13)		6/5/01			6/5/01
	3	11/12/98	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.27		6/5/01			6/5/01
	4	3/1/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(iii)		6/5/01			6/5/01
	5	3/1/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(viii)(C)		6/5/01			6/5/01
	6	3/1/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(i)		6/5/01			6/5/01

	7	3/1/99		Marine Mammal Protection Act (MMPA)	1372			6/5/01		6/5/01
AK994126A	1	3/1/99		Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(7)	* Summary Settlement paid		7/12/00	2,500.00	7/12/00 7/12/00
AK994129A	1	2/3/99		Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Case reviewed by Special Agent. Closed for lack of resources.		11/28/00		11/28/00
AK994139A	1	10/1/99	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Closed by F/EN due to lack of F/EN resources		1/8/02		1/8/02
AK994145A	1	7/1/99		Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Case reviewed by Special Agent. Case closed for lack of resources.		6/1/01		6/1/01
	2	7/1/99		Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.21(b)(2)			6/1/01		6/1/01
	3	7/1/99		Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)			6/1/01		6/1/01
AK994146A	1	5/11/99		Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Case reviewed by Special Agent. Case closed for lack of resources.		6/1/01		6/1/01
AK994169A	1	7/1/99	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)	* Written warning issued by F/EN		10/4/00		10/4/00
	2	7/1/99	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.21(b)(2)			10/4/00		10/4/00
	3	7/1/99	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)			10/4/00		10/4/00

NE Observer Cases

CCN	CNT	DATE OF VIOLATION	FISH PLAN	INVESTIGATION TYPE	REG	CURRENT STATUS	CURRENT STATUS DATE	FINAL PENALTY	FINAL PENALTY DATE	DATE CLOSED
NE021811A	1	11/8/02	Sea scallops	Other fisheries investigation	600.725(o)	* All Settlement Agreement conditions satisfied	4/23/04	6,000.00	4/23/04	4/23/04
NE000113A	1	4/30/00	Northeast multi-species(to replace GF)	Magnuson Fishery Conservation and Mgt Act (MFCMA)	648.14(a)(8)	* Dismissed by F/EN (no violation)	10/19/00			10/19/00

NW Observer Cases

CCN	CNT	DATE OF VIOLATION	FISH PLAN	INVESTIGATION TYPE	REG	CURRENT STATUS	CURRENT STATUS DATE	FINAL PENALTY	FINAL PENALTY DATE	DATE CLOSED
NW042070A	1	8/17/04	WA, OR, and CA trawl fishery	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(4)	* Written warning issued by F/EN	1/13/05			1/13/05
	2	8/17/04	WA, OR, and CA trawl fishery	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(vii)		1/13/05			1/13/05
	3	8/17/04	WA, OR, and CA trawl fishery	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)		1/13/05			1/13/05
	4	8/17/04	WA, OR, and CA trawl fishery	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.306(y)(2)		1/13/05			1/13/05
	5	8/17/04	WA, OR, and CA trawl fishery	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.360(3)(1)(i)		1/13/05			1/13/05
NW030087A	1	1/9/03	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)	* Closed by F/EN due to lack of evidence	6/4/03			6/4/03
NW030086A	1	1/21/03	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(10)(i)	* Written warning issued by F/EN	6/30/03			6/30/03
NW030085A	1	2/22/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(i)	* Verbal Warning issued by F/EN	6/30/03			6/30/03
NW030082A	1	3/7/03	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)(i)	* Closed by F/EN due to lack of evidence	6/30/03			6/30/03
NW030081A	1	2/3/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(vi)	* Closed by F/EN due to lack of F/EN resources	2/18/04			2/18/04
	2	2/3/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(viii)		2/18/04			2/18/04

NW030080A	1	10/16/02		Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)	* Case reviewed by Special Agent. Case closed.	2/9/04			2/9/04
	2	10/16/02		Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(13)(iv)		2/9/04			2/9/04
NW030078A	1	10/14/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(4)	* Verbal Warning issued by F/EN	6/30/03			6/30/03
NW030077A	1	4/21/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)	* Closed by F/EN due to lack of evidence	6/30/03			7/14/03
NW030030A	1	8/13/02	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)((3)	* Closed by F/EN due to lack of evidence	4/2/03			4/2/03
PI Observer Cases										
CCN	CNT	DATE OF VIOLATION	FISH PLAN	INVESTIGATION TYPE	REG	CURRENT STATUS	CURRENT STATUS DATE	FINAL PENALTY	FINAL PENALT Y DATE	DATE CLOSED
PI050233A	1	12/13/05		Magnuson Fishery Conservation and Mgt Act (MFCMA)	50CFR660.35(a)(6)	Case reviewed by Special Agent. Closed for lack of resources.	12/13/05			
PI050225A	1	10/24/05		Magnuson Fishery Conservation and Mgt Act (MFCMA)	50CFR660.28(f)(7)	* Written warning issued by F/EN	10/24/05			
PI050103A	1	4/4/05		Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.28(g)	* Written warning issued by F/EN	4/5/05			4/5/05
PI050006A	1	1/6/05	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.28(f)(7)	* Verbal Warning issued by F/EN	1/11/05			1/11/05
PI050004A	1	12/8/04	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.28(g)	Case reviewed by Special Agent. Case closed.	1/11/05			
PI050230A	1	12/13/05		Magnuson Fishery Conservation and Mgt Act (MFCMA)	50CFR600.725(t)	Sent to GC by F/EN	2/18/06			
PI050209A	1	10/6/05		Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(t)	* Verbal Warning issued by F/EN	10/6/05			
PI050206A	1	9/20/05		Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(o)	* Dismissed by F/EN (no violation)	9/20/05			
PI050148A	1	6/20/05		Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.35(a)(6), 600.725(t)	* Verbal Warning issued by F/EN	6/20/05			
PI050145A	1	7/5/05		Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(t)	* Written warning dismissed after review	1/20/06			1/20/06

PI050144A	1	6/20/05	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.35(a)(6), 600.725(t)	* Verbal Warning issued by F/EN	7/5/05			
PI050138A	1	6/14/05		Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(t)	* Dismissed by F/EN (no violation)	6/14/05			
PI050135A	1	5/13/05	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(t)	* Written warning issued by F/EN	6/13/05			6/13/05
PI050093A	1	1/14/05		Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(t)	* Written warning issued by F/EN	3/28/05			3/28/05
PI040216A	1	10/22/04	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.28(f)(6)	Closed. Duplicate investigation.	11/22/04			
PI040214A	1	11/3/04	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.28(f)(6)	* Dismissed by F/EN (no violation)	11/16/04			11/16/04
PI040190A	1	9/3/04	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.28(g)	Unfounded.	9/15/04			
PI040184A	1	9/13/04	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.28(6)	Case reviewed by Special Agent. Closed for lack of resources.	9/15/04			
PI040176A	1	8/23/04	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.33(a)(6)	* Verbal Warning issued by F/EN	5/3/05			
PI040175A	1	8/23/04	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.33(a)(6)	* Closed by F/EN due to lack of evidence	5/3/05			5/3/05
PI040174A	1	8/23/04	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.33(a)(6)	* Dismissed by F/EN (no violation)	5/3/05			5/3/05
PI040172A	1	8/25/04	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.35(a)(6)/660.28(g)	Unfounded.	8/31/04			
PI040136A	1	6/23/04	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.28(g)	* Dismissed by F/EN (no violation)	5/4/05			5/4/05
PI040097A	1	4/28/04	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.28(f)	Written warning issued.	4/29/04			
PI040198A	1	10/6/04	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(g)(i)	Case reviewed by Special Agent. Closed for lack of resources.	10/13/04			
PI040167A	1	8/12/04	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725	* Unfounded	2/15/06			2/15/06
PI040132A	1	5/24/04	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(0)	Reviewed by Special Agent. Closed for lack of resources.	6/18/04			

PI040115A	1	5/17/04	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725	Reviewed by Special Agent. Closed for lack of resources.	5/17/04			
SW Observer Cases										
CGN	CNT	DATE OF VIOLATION	FISH PLAN	INVESTIGATION TYPE	REG	CURRENT STATUS	CURRENT STATUS DATE	FINAL PENALTY	FINAL PENALTY DATE	DATE CLOSED
SW020380A	1	9/25/02	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(f)	* Prosecution declined by GCEL. Observer terminated.	7/7/03			7/7/03
SW020368A	1	9/25/02	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(o)	* Closed by F/EN due to lack of evidence	12/19/02			12/19/02
	2	8/9/02	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	1857(1)(l)		12/19/02			12/19/02
SW020367A	1	9/25/02	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725	* Closed by F/EN due to lack of evidence	12/19/02			12/19/02
SW020098A	1	3/14/02	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(f)	* Closed by F/EN due to lack of evidence	3/19/02			3/19/02
SW020090A	1	1/17/02		Marine Mammal Protection Act (MMPA)	600.725(t)	* Dismissed by GCEL.	5/5/06			5/5/06
	2	1/22/02		Marine Mammal Protection Act (MMPA)	600.725(u)		5/5/06			5/5/06
SW010287A	1	10/22/01	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(u)	* Closed by F/EN due to lack of evidence	5/27/03			5/27/03
SW010258A	1	7/23/01	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(t)	* All Settlement Agreement conditions satisfied	9/28/06	800.00	9/28/04	9/28/06
SW010257A	1	8/17/01	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(u)	* Dismissed by F/EN (no violation)	10/16/02			10/16/02
SW010162A	1	4/30/01	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(a)	* Closed by F/EN due to lack of evidence	8/3/04			8/3/04
SW010091A	1	3/6/01	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(t)	* Closed by F/EN due to lack of evidence	8/15/01			8/15/01
SW050140A	1	12/10/04		Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(s)	* Dismissed by F/EN (no violation)	5/15/06			5/15/06
SW050078A	1	2/28/05	WA, OR, and CA trawl fishery	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(t)	Settlement Agreement signed by GC	10/5/05	3,750.00	10/5/05	
SW050069A	1	2/24/05	WA, OR, and CA trawl fishery	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.306(i)(1)(2)	* Written warning issued by F/EN	4/25/05			4/25/05

SW040136A	1	5/12/04	WA, OR, and CA trawl fishery	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.306(y)	* Closed by F/EN due to lack of evidence	6/29/04			6/29/04
SW040106A	1	4/22/04	WA, OR, and CA trawl fishery	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(t)	* Dismissed by F/EN (no violation)	5/17/05			5/17/05
	2	3/23/03		Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(j)		1/13/04	570.00	1/13/04	
SW030140A	1	3/23/03		Marine Mammal Protection Act (MMPA)	216.11(b)	Settlement Agreement signed by GC	1/13/04	380.00	1/13/04	
SW020048A	1	9/14/01	WA, OR, and CA trawl fishery	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.306(f)	* Settlement Agreement conditions not met; case closed	10/4/05	2,986.00	9/4/02	12/20/05
	2	9/15/01	WA, OR, and CA trawl fishery	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.306(f)		10/4/05	1,913.00	9/4/02	12/20/05
	3	2/8/02	WA, OR, and CA trawl fishery	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(i)		10/4/05	2,500.00	9/4/02	12/20/05
	4	9/14/01	WA, OR, and CA trawl fishery	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.306(g)		10/4/05	2,500.00	9/4/02	12/20/05
SW020047A	1	9/14/01	WA, OR, and CA trawl fishery	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(a)	* Settlement Agreement conditions not met; case closed	10/4/05	2,500.00	10/23/02	12/20/05
	2	9/14/01	WA, OR, and CA trawl fishery	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.306(g)		10/4/05	2,500.00	10/23/02	12/20/05
	3	2/18/02	WA, OR, and CA trawl fishery	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(i)		10/4/05	2,500.00	10/23/02	12/20/05
SW020046A	1	9/14/01	WA, OR, and CA trawl fishery	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(a)	* Settlement Agreement conditions not met; case closed	10/4/05	2,500.00	10/23/02	12/20/05
	2	9/14/01	WA, OR, and CA trawl fishery	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.306(g)		10/4/05	2,500.00	10/23/02	12/20/05
	3	9/14/01	WA, OR, and CA trawl fishery	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(i)		10/4/05	2,500.00	10/23/02	12/20/05

Appendix 5: All complaints of observer mistreatment, nationwide, reported to NMFS since January 1, 2008, to present, and any associated reports presenting findings and resultant actions.

OBSERVER HARASSMENT/INTIMIDATION/ASSAULT CASES 1/1/2007 TO 12/31/2007

Incident	Location	Date	Regulation	Violation Description	Status
I0700840	AK	3/13/2007	50 CFR 679.7(g)(5)	HARASS AN OBSERVER	Closed - Lack of Evidence
I0701012	AK	3/20/2007	50 CFR 679.7(g)(5)	HARASS AN OBSERVER	Closed - EMIS
I0701723	AK	4/17/2007	50 CFR 679.7(g)(5)	HARASS AN OBSERVER	Closed - Lack of Evidence
I0701356	AK	4/27/2007	18 USC 1857(1)(L)	SEXUALLY HARASS AN OBSERVER	Criminally Prosecuted
I0701561	PI	5/7/2007	50 CFR 600.725(o)	SEXUALLY HARASS AN OBSERVER	Closed - Lack of Evidence
I0701762	PI	5/31/2007	50 CFR 600.725(o)	HARASS AN OBSERVER	Case Adjudicated
I0702929	NE	8/7/2007	50 CFR 648.14(a)(8)	OBSERVER ASSAULT	Closed - EMIS
I0703739	NE	9/12/2007	50 CFR 600.725(o)	HARASS AN OBSERVER	Closed - Information Only
I0704448	SE	10/23/2007	50 CFR 600.725(o)	HARASS AN OBSERVER	Closed - EMIS
I0704024	AK	10/8/2007	50 CFR 679.7(g)(5)	SEXUALLY HARASS AN OBSERVER	Case Open
I0704176	AK	10/11/2007	50 CFR 679.7(g)(5)	HARASS AN OBSERVER	Closed - Information Only
I0704527	NE	11/16/2007	50 CFR 648.14(a)(8)	HARASS AN OBSERVER	Case Adjudicated
I0704656	AK	11/29/2007	50 CFR 679.7(g)(5)	HARASS AN OBSERVER	Closed - Information Only
I0704645	AK	12/5/2007	50 CFR 679.7(g)(5)	HARASS AN OBSERVER	Case Open
I0704665	AK	12/11/2007	50 CFR 679.7(g)(5)	HARASS AN OBSERVER	Case Open

OBSERVER HARASSMENT/INTIMIDATION/ASSAULT CASES 1/1/2008 TO 12/31/2008

Incident	Date	Regulation	Violation Description	Status
I0800243	01/23/2008	50CFR600.725(w)	OBSERVER SAFETY	Closed - Unfounded
I0800954	03/14/2008	50CFR600.725(w)	OBSERVER SAFETY	Closed (EMIS)
I0800954	03/14/2008	50CFR600.725(t)	OBSERVER INTIMIDATION	Closed (EMIS)
I0801387	04/14/2008	50CFR648.14(a)(8)	OBSERVER INTIMIDATION	Case Initiated
I0801387	04/14/2008	50CFR648.14(a)(8)	OBSERVER INTIMIDATION	Case Initiated

I0801422	04/15/2008	50CFR648.14(a)(8)	OBSERVER INTERFERENCE	Case Initiated
I0801422	04/15/2008	50CFR648.14(a)(8)	OBSERVER HARASSMENT	Case Initiated
I0801422	04/15/2008	50CFR648.14(a)(79)	OBSERVER ACCOMODATION	Case Initiated
I0801488	04/20/2008	50CFR600.725(w)	OBSERVER SAFETY ISSUE	Case Initiated
I0801804	05/07/2008	50CFR600.725(w)	OBSERVER SAFETY	Case Initiated
I0801804	05/07/2008	50CFR600.725(w)	OBSERVER SAFETY	Case Initiated
I0802912	07/17/2008	50CFR648.14(a)(8)	OBSERVER INTIMIDATION	Case Initiated
I0803122	08/05/2008	50CFR648.14(a)(8)	HARASS AN OBSERVER	Closed (EMIS)
I0803188	08/06/2008	50CFR648.14(a)(8)	OBSERVER INTERFERENCE	Closed - Unfounded
I0803188	08/06/2008	50CFR648.14(a)(8)	OBSERVER INTERFERENCE	Closed - Unfounded
I0803188	08/06/2008	50CFR648.14(a)(8)	OBSERVER HARASSMENT	Closed - Unfounded
I0803764	09/09/2008	50CFR648.14(a)(8)	OBSERVER INTIMIDATION	Case Initiated
I0803955	09/24/2008	50CFR648.14(a)(8)	OBSERVER INTIMIDATION	Case Initiated
I0804830	09/19/2008	50CFR648.14(a)(8)	OBSERVER INTERFERENCE	Closed - Unfounded
I0804868	11/10/2008	50CFR648.14(a)(8)	OBSERVER HARASSMENT HOSTILE ENVIRONMENT	Case Initiated
I0804969	12/04/2008	50CFR600.725(o)	SEXUALLY HARRASS AN OBSERVER	Case Initiated

OBSERVER HARASSMENT/INTIMIDATION/ASSAULT CASES 1/1/2009 TO 12/31/2009

Incident	Location	Date	Regulation	Violation Description	Status
I0901245	AK	N/A	50 CFR 679.7(g)(1)	INTIMIDATE, SEXUALLY HARASS AN OBSERVER	Closed--Lack of Evidence
I0901534	AK	1/20/2009	50 CFR 679.7(g)(5)	HARASS AN OBSERVER TAMPER WITH OBSERVER EQUIPMENT	Open Investigation
I0901714	AK	2/2/2009	50 CFR 679.7(g)(3)	HARASS AN OBSERVER	Open Investigation
I0909121	AK	1/28/2009	50 CFR 679.7(g)(5)	HARASS AN OBSERVER CREATE AN OFFENSIVE WORK ENVIRONMENT	Open Investigation
I0901984	AK	2/23/2009	50 CFR 679.7(g)(1)	HARASS AN OBSERVER	Open Investigation
I0902151	AK	2/17/2009	50 CFR 679.7(g)(5)	HARASS AN OBSERVER	Closed--Verbal Warning
I0901434	AK	4/8/2009	50 CFR 679.7(g)(5)	OBSERVER THREAT INTIMIDATING, HOSTILE, WORK ENVIRONMENT	Open Investigation
I0902415	AK	6/4/2009	50 CFR 679.7(g)(5)	HARASS AN OBSERVER	Closed--Verbal Warning
I0903126	AK	5/23/2009	50 CFR 679.7(g)(5)	HARASS AN OBSERVER	Open Investigation
I0903356	AK	8/1/2009	50 CFR 600.725(o)	OBSERVER HARASSMENT observer v observer	Open Investigation
I0903516	AK	N/A	50 CFR 679.7(g)(1)	INTIMIDATE AN OBSERVER	Closed--Lack of Evidence

I0904367	AK	10/15/2009	50 CFR 679.7(g)(4)	TAMPER/DESTROY OBSERVER'S EQUIPMENT	Open Investigation
I1000251	AK	11/17/2009	50 CFR 679.7(g)(5)	OBSERVER HARASSMENT observer v observer	Open Investigation
I1000820	AK	11/6/2009	50 CFR 679.7(g)(5)	OBSERVER HARASSMENT	Open Investigation
I0900875	NE	3/11/2009	50 CFR 600.725(o)	UNWANTED ATTENTION FROM CREWMEMBER	Closed--Verbal Warning
I0901122	NE	3/5/2009	50 CFR 648.14(e)(8)	UNWELCOME SEXUAL SOUNDS TO OBSERVER	Closed--Verbal Warning
I0902123	NE	6/2/2009	50 CFR 600.725(o)	UNWANTED ATTENTION FROM CREWMEMBER	Closed--Lack of Evidence
I0902537	NE	3/14/2009	50 CFR 600.725(o)	CREWMEMBER MADE RACIST COMMENTS	Closed--Lack of Evidence
I0902601	NE	7/14/2009	50 CFR 648.14(e)(1)	OPERATOR YELLED AT & THREATENED OBSERVER	Open--Forwarded to GCEL
I0902681	NE	7/3/2009	50 CFR 648.14(e)(1)	HOSTILE ENVIRONMENT & INSULTED OBSERVER	Closed--Lack of Evidence
I0902682	NE	7/5/2009	50 CFR 648.14(e)(1)	OPERATOR YELLED AT & INSULTED OBSERVER	Closed--Verbal Warning
I0903576	NE	9/1/2009	50 CFR 648.14(e)(1)	OPERATOR YELLED AT & INSULTED OBSERVER	Closed--Lack of Evidence
I0904013	NE	10/20/2009	50 CFR 648.14(e)(1)	HOSTILE ENVIRONMENT & INSULTED OBSERVER	Open--Forwarded to GCEL
I0901170	PI	3/6/2009	16 USC 1857(L)	HARASS AN OBSERVER	Open Investigation
I0901370	PI	4/20/2009	50 CFR 600.725(o)	HARASS AN OBSERVER	Open--Forwarded to GCEL
I0902200	PI	6/2/2009	16 USC 1857(L)	HARASS AN OBSERVER	Hearing requested
I0902568	PI	6/13/2009	50 CFR 666.22	THREATEN OBSERVER WITH KNIFE	Hearing requested
I1000128	PI	12/16/2009	16 USC 1857(L)	HARASS & INTIMIDATE AN OBSERVER	Open Investigation

OBSERVER HARASSMENT/INTIMIDATION/ASSAULT CASES 1/1/2010 TO 12/31/2010

INCIDENT	Date	Regulation	Violation Description	Status
I1001010	4/19/2010	16USC1857(L)	HARASS AN OBSERVER	Open
I1001296	5/13/2010	16USC1857(1)(L)	HARASS AN OBSERVER	Closed-Adjudicated
I1002602	8/11/2010	16USC1857(L)	INTIMIDATE AN OBSERVER	Sent to GCEL
I1002013	6/28/2010	50 CFR 600.725	SEXUAL HARASSMENT OF OBSERVER	Closed-Declined by GC

I1000271	2/5/2010	50CFR648.14(e)(1)	INTIMIDATE AN OBSERVER	Closed - COPPS Closed - Verbal Warning
I1001959	6/23/2010	50CFR648.14(e)(1)	HARASS AN OBSERVER	Closed - Verbal Warning
I1001615	6/2/2010	50CFR648.14(e)(1)	INTIMIDATE AN OBSERVER	Closed - Verbal Warning
I1001836	6/17/2010	50CFR648.14(e)(1)	HARASS AN OBSERVER	Closed - Verbal Warning
I1002085	7/1/2010	50CFR648.14(e)(1)	INTIMIDATE AN OBSERVER	Closed - Verbal Warning
I1002213	7/13/2010	16USC1857(1)(L)	ASSAULT/HARASSMENT OF AN OBSERVER	Criminal Prosecution
I1002347	7/23/2010	16USC1857(1)(L)	HARASS AN OBSERVER	Criminal Prosecution Closed - Written Warning
I1002344	7/23/2010	50CFR648.14(e)(1)	INTIMIDATE AN OBSERVER	Closed - Verbal Warning
I1002428	7/28/2010	50CFR648.14(e)(1)	HARASS AN OBSERVER	Warning
I1002213	7/13/2010	16USC1857(1)(L)	ASSAULT OF AN OBSERVER	Criminal Prosecution
I1002347	7/23/2010	16USC1857(1)(L)	SEXUAL ASSAULT OF AN OBSERVER	Criminal Prosecution Closed - Verbal Warning
I1000921	4/2/2010	50CFR679.7(g)(1)	INTIMIDATE AN OBSERVER	Closed - Written Warning
I1001013	4/19/2010	50 CFR679.7(g)(5)	SEXUAL HARASSMENT OF OBSERVER	Closed - Written Warning
I1001013	4/19/2010	50CFR679.7(g)(5)	SEXUAL HARASSMENT OF OBSERVER	Closed - Written Warning
I1001177	5/7/2010	50CFR679.7(g)(5)	CREATE HOSTILE WORK ENVIRONMENT	Closed - Summary Settlement
I1003090	8/19/2010	50CFR679.7(g)(5)	SEXUAL HARASSMENT OF OBSERVER	Closed - Verbal Warning
I1004005	10/19/2010	50 CFR 679.7(g)(5)	HOSTILE WORK ENVIRONMENT	Open Closed - Written Warning
I1003993	10/27/2010	50 CFR 679.7(g)(1)	INTERFERE WITH OBSERVER	Warning

OBSERVER HARASSMENT/INTIMIDATION/ASSAULT CASES 1/1/2011 TO 12/31/2011

Incident	Location	Date	Regulation	Violation Description	Status
I1100557	NE	2/9/2011	50CFR648.14(e)(1)	OBSERVER HARASSMENT (Verbal)	Closed - Information Only (Observer)

					Declined to Pursue)
I1100861	NE	3/3/2011	50CFR614.14(e)(1)	OBSERVER INTIMIDATION OBSERVER HARRASSMENT -	Closed - Lack of Evidence
I1101497	NE	3/21/2011	50CFR648.14(e)(1)	PASSIVE	Closed - COPPS
I1101558	AK	1/20/2011	50CFR679.7(g)(5)	INTIMIDATE AN OBSERVER	OPEN
I1101579	NE	3/4/2011	50CFR614.14(e)(1)	ASSAULT, INTIMIDATE, INTERFERE	Closed - Unfounded
I1101592	AK	3/29/2011	50CFR679.7(g)(5)	INTIMIDATE AN OBSERVER	Closed - Lack of ENF Resources
I1101618	NE	4/7/2011	50CFR648.14(e)(1)	OBSERVER HARASSMENT & INTIMIDATION	Open
I1101773	AK	2/22/2011	50CFR679.7(g)(5)	INTIMIDATE, HARASS, CREATE A HOSTILE WORK ENVIRONMENT	Open
I1101816	AK	1/22/2011	50CFR679.7(g)(5)	INTIMIDATE AND COERCE AN OBSERVER RE DATA AND RESULTS	Closed - Information Only
I1101828	AKD	2/8/2011	50CFR679.7(g)(5)	SEXUALLY HARASS AND INTIMIDATE AN OBSERVER	Closed-Verbal Warning Closed - Information Only
I1102043	AK	3/9/2010	50CFR679.7(g)(5)	INTERFERE WITH OBSERVER PERFORMANCE	Only
I1102634	AK	6/13/2011	16 USC 1857(L)	SEXUALLY ASSAULT AN OBSERVER	Open
I1102634	AK	6/13/2011	16 USC 1857(L)	SEXUALLY HARASS AN OBSERVER	Open
I1102931	AK	6/29/2011	50CFR679.7(g)(1)	ASSAULT/IMPEDE/HARASS	Open
I1103062	NE	6/24/2011	50CFR648.14(e)(1)	INTIMIDATE/HARASS	Open
I1103074	NE	6/5/2011	50CFR648.14(e)(1)	HARASS AN OBSERVER	Closed - Lack of Evidence
I1103284	NE	6/21/2011	50CFR600.725(u)(1)	HARASS AN OBSERVER	Open
I1103504	NE	7/4/2011	50CFR600.725(o)	HARASS AN OBSERVER	Closed - COPPS
I1103538	AK	8/1/2011	50CFR679.7(g)(5)	HOSTILE WORK ENVIRONMENT	Closed - COPPS
I1103999	AK	3/9/2011	50CFR679.7(g)(5)	SEXUALLY HARASS OBSERVER	Closed - COPPS
I1104469	AK	6/19/2011	50CFR679.7(g)(5)	FORCIBLY ASSAULT, INTERFERE, INTIMIDATE	Open
I1104474	AK	8/1/2011	50CFR679.7(g)(5)	INTIMIDATE AN OBSERVER	Open

I1104579	NE	9/25/2011	50CFR648.14(e)(1)	HARASS AN OBSERVER INTIMIDATE OR INTERFERE	Closed - COPPS
I1104896	NED	10/6/2011	50CFR648.14(e)(1)	WITH OBSERVER	Closed - COPPS
I1105058	AKD	5/3/2011	50CFR679.7(g)(1)	SEXUALLY HARASS OBSERVER	Open
I1105058	AKD	5/3/2011	50CFR679.7(g)(5)	HARASS AN OBSERVER CREATE AN INTIMIDATING, HOSTILE, OFFENSIVE WORK ENVIRONMENT.	Open
I1105108	AKD	8/13/2011	50CFR679.7(g)(5)		Open Closed-Verbal
I1105320	NED	12/8/2011	50CFR648.14(e)(1)	HARASS AN OBSERVER	Warning Closed-Verbal
I1105320	NED	12/8/2011	50CFR648.14(e)(1)	HARASS AN OBSERVER	Warning Closed - Information
I1105337	NED	12/27/2011	50CFR648.14(e)(1)	HARASS AN OBSERVER CREATE AN INTIMIDATING/OFFENSIVE OR HOSTILE WORK ENVIRONMENT	Only Closed - Information Only
I1105340	AKD	9/26/2011	50CFR679.7(g)(5)	CREATE AN INTIMIDATING, HOSTILE OR OFFENSIVE WORK ENVIRONMENT	Only Closed - Information Only
I1105343	AKD	2/9/2011	50CFR679.7(g)(5)	INTERFERE OR INTIMIDATE AN OBSERVER	Only Closed - Information Only CLOSED- DUPLICATE CASE
I1105347	AKD	4/14/2011	50CFR679.7(g)(5)		(I1105320) Closed - Lack of Evidence
I1200030	NED	12/19/2011	50CFR648.14(e)(1)	HARASS AN OBSERVER	Closed - Information Only
I1200113	NED	10/20/2011	50CFR648.14(e)(1)	INTIMIDATION	Closed - Information Only Closed - Unfounded
I1200120	NED	9/27/2011	50CFR648.14(e)(1)	HARASS AN OBSERVER	Open
I1200858	NED	4/8/2011	50CFR648.14(e)(1)	HARASS AN OBSERVER	Open
I1200884	NED	8/25/2011	50CFR648.14(e)(1)	OBSERVER INTIMIDATION	
I1200885	NED	7/21/2011	50CFR648.14(e)(1)	HARASS AN OBSERVER	

Division	Incident #	GC #	Date Opened	CNT	Law/Program/Reg	Case Status	Date Closed	Case Disposition	Regulator
Alaska	I1201004	AK1201004	3/14/2012	01	MSFCMA	Closed	2/28/2013	Written Warning	50CFR679.7(g)(5)
Alaska	I1201852	AK1201852	4/3/2012	01	MSFCMA	Open		Ongoing investigation	50CFR679.7(g)(1)
Alaska	I1201501	AK1201501	4/20/2012	01	MSFCMA	Open		Ongoing investigation	50CFR679.7(g)(5)
Alaska	I1201553	AK1201553	4/20/2012	02	MSFCMA	Closed	5/14/2012	Alleged violation unfounded	50CFR679.7(g)(1)
Alaska	I1201506	AK1201506	5/1/2012	01	MSFCMA	Closed	5/15/2013	Written Warning	50CFR679.7(g)(5)
Alaska	I1202343	AK1202343	7/17/2012	01	MSFCMA	Closed	5/31/2013	Lack of Evidence	16USC1857(1)(L)
Alaska	I1203775	AK1203775	9/26/2012	01	MSFCMA	Open		Ongoing investigation	50CFR679.7(g)(4)
Alaska	I1203987	AK1203987	11/27/2012	01	MSFCMA	Closed	4/11/2013	Verbal Warning	18USC1857(1)(L)
Northeast	I1203268	NE1203268	8/1/2012	03	MSFCMA	Closed	9/25/2012	Verbal Warning	50CFR648.14(e)(1)
Northeast	I1202596	NE1202596	8/6/2012	01	MSFCMA	Closed	8/7/2012	Information Only	50CFR648.14(e)(1)
Northeast	I1203240	NE1203240	8/14/2012	02	MSFCMA	Closed	9/24/2012	Information Only	50CFR648.14(e)(1)
Northeast	I1200466	NE1200466	2/28/2012	01	MSFCMA	Closed	8/1/2012	Lack of Evidence	50CFR648.14(e)(1)
Northeast	I1202295	NE1202295	5/7/2012	01	MSFCMA	Closed	5/7/2012	Education/COPPS	50CFR600.725(o)
Northeast	I1202845	NE1202845	8/23/2012	01	MSFCMA	Closed	6/24/2013	Intel Only	50CFR648.14(e)(1)
Northeast	I1200377	NE1200377	4/4/2012	01	MSFCMA	Closed	4/4/2012	Verbal Warning	50CFR648.14(e)(1)
Northwest	I1200376	NW1200376	2/9/2012	01	MSFCMA	open		Ongoing investigation	16USC1857(1)(L)
Northwest	I1201085	NW1201085	3/8/2012	01	MSFCMA	Closed	3/15/2012	Information Only	50CFR660.12(e)(1)
Northwest	I1201399	NW1201399	10/3/2012	03	MSFCMA	open		Ongoing investigation	50CFR660.12(e)(4)
Northwest	I1201687	NW1201687	5/24/2012	01	MSFCMA	open		Submitted for prosecution	50CFR600.725(w)
Northwest	I1201720	NW1201720	5/22/2012	01	MSFCMA	open		Submitted for prosecution	50CFR660.12(e)(4)(iii)
Northwest	I1203400	NW1203400	10/3/2012	02	MSFCMA	open		Ongoing investigation	50CFR660.12(e)(4)(iii)
Northwest	I1300284	NW1300284	1/28/2013	01	MSFCMA	open		Ongoing investigation	16USC1857(1)(L)
Northwest	I1302760	NW1302760	9/26/2012	01	MSFCMA	Closed	5/31/2013	Lack of Evidence	50CFR660.12(e)(4)(iii)
Northwest	I1300271	NW1300271	1/23/2013	01	MSFCMA	Closed	6/4/2013	Information Only/Unfounded	50CFR660.12(e)(4)(i)
Pacific Islands	I1204062	PI1204062	12/6/2012	01	MSFCMA	Open		Submitted for prosecution	16USC1857(1)(L)
Southwest	I1201771	SW1201771	5/31/2012	04	MSFCMA	Open		Submitted for prosecution	50 CFR 600.725(t)

PI = Pacific Islands

Violation Description

INTIMIDATE AN OBSERVER (VERBAL)
INTIMIDATE AN OBSERVER
HARASS OR INTIMIDATE WITH THE PURPOSE OR EFFECT OF INTERFERING
INTIMIDATE/IMPEDE/INTERFERE BY FAILURE TO MAINTAIN SAFE CONDITIONS
CREATE AN INTIMIDATING OR HOSTILE WORK ENVIRONMENT
SEXUALLY ASSAULT NMFS OBSERVER
COERCE OR BAR BY COMMAND AN OBSERVER FROM COMPLETION OF SAMPLING DUTIES
SEXUALLY HARASS AN OBSERVER
INTIMIDATE AN OBSERVER (VERBAL)
INTIMIDATE AN OBSERVER (VERBAL)
INTIMIDATE AN OBSERVER (VERBAL)
OBSERVER HARASSMENT
OBSERVER HARASSMENT
OBSERVER INTIMIDATION AND OBSERVER GEAR TAMPERING
OBSERVER INTIMIDATION
SEXUAL ASSAULT/HARASSMENT OF AN OBSERVER
OBSERVER SAFETY - HARASSMENT
HARASS AN OBSERVER
INTIMIDATE AN OBSERVER
HARASS AN OBSERVER
HARASSMENT AND INTERFERENCE WITH OBSERVER
ASSAULT OBSERVER
INTIMIDATE AN OBSERVER
SEXUALLY HARASS AN OBSERVER
OBSERVER HARASSMENT
ASSAULT OBSERVER

Case Type	Incident Disp	Incident Status	Port	Offense Date	Violation Description	Offense Type
Civil-Domestic	Closed - Lack of Evidence	Completed	DUTCH HARBOR	Feb 15, 2013 12:00:00 AM	INTIMIDATE/INTERFERE/COERCE AN OBSERVER	Lack of Evidence
Civil-Domestic	Closed - Lack of Evidence	Completed	DUTCH HARBOR	Feb 15, 2013 12:00:00 AM	INTIMIDATE/INTERFERE/COERCE AN OBSERVER	Lack of Evidence
Criminal-Domestic	Case Initiated	Pending	DUTCH HARBOR	Feb 13, 2013 12:00:00 AM	SEXUALLY HARASS AN OBSERVER	Violation
Criminal-Domestic	Case Initiated	Pending	DUTCH HARBOR	Feb 13, 2013 12:00:00 AM	SEXUALLY HARASS AN OBSERVER	Violation
	Open	Pending	DUTCH HARBOR	Apr 25, 2013 12:00:00 AM	INTIMIDATE AND THREATEN AN OBSERVER	Violation
Civil-Domestic	Closed - Info Only	Completed	DUTCH HARBOR, AK	Sep 14, 2013 12:00:00 AM	SEXUALLY HARASS AN OBSERVER	Verbal Warning
Civil-Domestic	Closed - Info Only	Completed	DUTCH HARBOR, AK	Oct 15, 2013 12:00:00 AM	THREATEN OR INTIMIDATE AN OBSERVER	Verbal Warning
Criminal-Domestic	Case Initiated	Completed	DUTCH HARBOR	Nov 4, 2013 12:00:00 AM	RESULT OBSERVER	
Criminal-Domestic	Case Initiated	Pending	DUTCH HARBOR, AK	Mar 7, 2014 12:00:00 AM	INTIMIDATE WITH THE PURPOSE OF INTERFERING OR BIASING OBSERVER SAMPLING	
Civil-Domestic	Closed - Case Adjudicated	Completed	MONTAUK, NY	2013-04-26 00:00:00	OBSERVER HARASSMENT	Written Warning
Civil-Domestic	Closed - Lack of Resources	Completed	MONTAUK, NY	2013-04-26 00:00:00	OBSERVER INTIMIDATION	
	Closed - COPPS	Completed	MONTAUK, NY	2013-04-26 00:00:00	OBSERVER INTIMIDATION	Other
	Closed - COPPS	Completed	PORTSMOUTH, NH	2013-08-21 00:00:00	OBSERVER INTIMIDATION	Unknown
	Closed - COPPS	Completed	PORTLAND, ME	2013-07-11 00:00:00	OBSERVER INTERFERENCE	Other
	Closed - COPPS	Completed	PORTLAND, ME	2013-09-02 00:00:00	OBSERVER INTERFERENCE	Other
Civil-Domestic	Case Initiated	Completed	OCEAN CITY, MD	2013-10-31 00:00:00	OBSERVER HARASSMENT, INTIMIDATION, IMPEDE OR INTERFERE	Violation
	Closed - Lack of Evidence	Completed	OCEAN CITY, MD	2013-10-31 00:00:00	OBSERVER INTERFERENCE	Lack of Evidence
Criminal-Domestic	Closed - Info Only	Completed	ASTORIA	Dec 21, 2013 12:00:00 AM	SEXUALLY HARASS AN OBSERVER	Lack of Evidence
Civil-Domestic	Case Initiated	Completed		Dec 31, 2012 12:00:00 AM	TO FORCIBLY ASSAULT ANY OBSERVER ON A VESSEL	Unfounded
	Closed - Lack of Evidence	Completed	COOS BAY, OR	Jul 16, 2013 12:00:00 AM	INTERFERE WITH OBSERVER	Lack of Evidence
	Closed - Unfounded	Completed	COOS BAY, OR	Oct 14, 2013 12:00:00 AM	HARASS AN OBSERVER	Unfounded
	Closed - Lack of Resources	Completed	COOS BAY, OR	Aug 27, 2013 12:00:00 AM	HARASS AN OBSERVER	Unknown
Civil-Domestic	Closed - Case Adjudicated	Completed		2013-04-22 00:00:00	OBSERVER HARASSMENT/INTERFERENCE/INTIMIDATION	
Civil-International	Case Initiated	Pending		2012-07-14 00:00:00	INTIMIDATING OF AN FFA OBSERVER	Violation
Civil-International	Case Initiated	Pending		2012-07-25 00:00:00	INTIMIDATING OF AN FFA OBSERVER	Violation
Criminal-Domestic	Closed - Unfounded	Completed		2013-06-13 00:00:00	OBSERVER INTERFERENCE/HARASSMENT	
Civil-Domestic	Closed - Case Adjudicated	Completed			OBSERVER INTERFERENCE	Verbal Warning
	Closed - COPPS	Completed			OBSERVER INTERFERENCE	Other

Non-responsive								
	Civil-Domestic	Open	Completed					VIOLATION OF FEDERAL LAWS, REGULATIONS, AND ORDINANCES, INCLUDING BUT NOT LIMITED TO: (1) ASSAULT, OPPOSE, IMPEDE, INTIMIDATE, OR INTERFERE WITH A NMFS-APPROVED OBSERVER ABOARD A VESSEL.
Non-responsive	Civil-Domestic	Case Initiated	Ongoing		Jan 12, 2013 12:00:00 AM			ASSAULT, INTERFERE, INTIMIDATE NOAA OBSERVER Violation
	Civil-Domestic	Case Initiated	Ongoing		Jan 12, 2013 12:00:00 AM			HARASS AN OBSERVER Violation
	Civil-Domestic	Closed - Case Adjudicated	Completed					HARASSMENT OF NOAA GOM RF OBSERVER
	Civil-Domestic	Closed - Case Adjudicated	Completed					OBSERVER HARASSMENT Written Warning
	Civil-Domestic	Case Initiated	Ongoing		Jun 5, 2013 12:00:00 AM			OBSERVER REFUSAL/HARRASMENT Verbal Warning
	Civil-Domestic	Case Initiated	Ongoing		Jun 26, 2013 12:00:00 AM			OBSERVER REFUSAL/HARRASMENT Violation
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Case Type	Incident Disp	Disp. Date	Incident Status	Port	Offense Date	Violation Description	Offense Type
Criminal-Domestic	Closed - Case Adjudicated	Dec 9, 2014 12:00:00 AM	Ongoing	DUTCH HARBOR	Mar 4, 2014 12:00:00 AM	HARASS A NMFS OBSERVER	Written Warning
Civil-Domestic	Case Initiated	Mar 14, 2014 12:00:00 AM	Completed	ST. PAUL	Jan 4, 2014 12:00:00 AM	SEXUALLY HARASS AN OBSERVER	Violation
Civil-Domestic	Case Initiated	Mar 14, 2014 12:00:00 AM	Completed	ST. PAUL	Jan 4, 2014 12:00:00 AM	HARASS AN OBSERVER; INTERFERE WITH WORK PERFORMANCE	Violation
Civil-Domestic	Case Initiated	Apr 14, 2014 12:00:00 AM	Ongoing	DUTCH HARBOR, AK	Jul 3, 2013 12:00:00 AM	CREATE AN INTIMIDATING OR HOSTILE WORK ENVIRONMENT FOR OBSERVER	
Civil-Domestic	Closed - Case Adjudicated	Sep 24, 2014 12:00:00 AM	Completed	SEWARD, AK	Jan 12, 2014 12:00:00 AM	CREATE AN INTIMIDATING OR HOSTILE WORK ENVIRONMENT	Unfounded
	Closed - Info Only	Apr 17, 2014 12:00:00 AM	Ongoing	DUTCH HARBOR, AK	Jan 19, 2014 12:00:00 AM	CREATE AN OFFENSIVE OR HOSTILE WORK ENVIRONMENT	Lack of Evidence
Civil-Domestic	Transferred to Another Agency	Oct 18, 2014 12:00:00 AM	Completed	SEATTLE, WA	Apr 13, 2014 12:00:00 AM	ASSAULT AN OBSERVER	Other
Civil-Domestic	Case Initiated	Jun 6, 2014 12:00:00 AM	Completed		Apr 29, 2014 12:00:00 AM	HARASS OR EMPEDE OBSERVER	Verbal Warning
Criminal-Domestic	Case Initiated	Sep 15, 2014 12:00:00 AM	Ongoing	DUTCH HARBOR, AK	Feb 5, 2014 12:00:00 AM	INTIMIDATE AND CREATE A HOSTILE WORK ENVIRONMENT FOR AN OBSERVER	
Criminal-Domestic	Case Initiated	Sep 29, 2014 12:00:00 AM	Ongoing	DUTCH HARBOR, AK	Jan 20, 2014 12:00:00 AM	CREATE AN INTIMIDATING AND HOSTILE WORK ENVIRONMENT	
Civil-Domestic	Case Initiated	Aug 27, 2014 12:00:00 AM	Ongoing	DUTCH HARBOR, AK	Feb 21, 2014 12:00:00 AM	CREATE AN INTIMIDATING AND HOSTILE WORK ENVIRONMENT	
Civil-Domestic	Case Initiated	Jun 30, 2014 12:00:00 AM	Ongoing		Jun 24, 2014 12:00:00 AM	SEXUALLY HARASS OBSERVER	Violation
	Closed - Case Adjudicated	Aug 4, 2014 12:00:00 AM	Completed	DUTCH HARBOR, AK	Apr 19, 2014 12:00:00 AM	CREATE HOSTILE WORK ENVIRONMENT FOR OBSERVER-REHABILIT	Verbal Warning
Civil-Domestic	Closed - Case Adjudicated	Jul 11, 2014 12:00:00 AM	Completed	SEWARD, AK	Apr 15, 2014 12:00:00 AM	ASSAULT AN OBSERVER WITH SEAL BOMB	Lack of Evidence
Civil-Domestic	Closed - Case Adjudicated	Dec 6, 2014 12:00:00 AM	Completed	HOMER, AK	Jun 3, 2014 12:00:00 AM	CREATE AN OFFENSIVE WORK ENVIRONMENT	Verbal Warning
Civil-Domestic	Closed - Info Only	Mar 1, 2015 12:00:00 AM	Completed	DUTCH HARBOR, AK	Apr 10, 2014 12:00:00 AM	CREATE A HOSTILE WORK ENVIRONMENT FOR OBSERVER	Count Merged
Civil-Domestic	Case Initiated	Apr 21, 2015 12:00:00 AM	Ongoing	KODIAK, AK	May 27, 2014 12:00:00 AM	CREATE A SEXUALLY OFFENSIVE WORK ENVIRONMENT FOR OBSERVER	
	Open	Jul 3, 2014 12:00:00 AM	Ongoing	SAND POINT, AK	May 27, 2014 12:00:00 AM	CREATE A HOSTILE WORK ENVIRONMENT FOR OBSERVER	
	Closed - Case Adjudicated	Jul 17, 2014 12:00:00 AM	Completed	KODIAK, AK	Apr 23, 2014 12:00:00 AM	CREATE AN INTIMIDATING AND HOSTILE WORK ENVIRONMENT	Verbal Warning
	Closed - Unfounded	Oct 17, 2014 12:00:00 AM	Completed	ATKA	Jul 20, 2014 12:00:00 AM	INTIMIDATE AN OBSERVER	Unfounded
Civil-Domestic	Case Initiated	Apr 7, 2015 12:00:00 AM	Ongoing	DUTCH HARBOR, AK	Apr 11, 2014 12:00:00 AM	CREATE A HOSTILE OR INTIMIDATING OR OFFENSIVE WORK ENVIRONMENT	
Civil-Domestic	Case Initiated	Sep 11, 2014 12:00:00 AM	Ongoing	DUTCH HARBOR, AK	Jul 28, 2014 12:00:00 AM	CREATE AN INTIMIDATING, HOSTILE OR OFFENSIVE WORK ENVIRONMENT	
	Open	Sep 5, 2014 12:00:00 AM	Ongoing	ATKA, AK	Jul 18, 2014 12:00:00 AM	INTIMIDATE AN OBSERVER	
Criminal-Domestic	Transferred to Another Agency	Oct 22, 2014 12:00:00 AM	Completed	KODIAK, AK	Apr 1, 2013 12:00:00 AM	HARASS AN OBSERVER, CREATE HOSTILE WORK ENVIRONMENT	Other
	Open	Sep 30, 2014 12:00:00 AM	Ongoing	DUTCH HARBOR, AK	Jul 30, 2014 12:00:00 AM	HARASS, INTIMIDATE, CREATE HOSTILE WORK ENVIRONMENT	
	Open	Oct 3, 2014 12:00:00 AM	Ongoing	DUTCH HARBOR, AK	Jun 26, 2014 12:00:00 AM	INTIMIDATE OR CREATE HOSTILE WORK ENVIRONMENT	Unfounded
Civil-Domestic	Closed - Info Only	Feb 19, 2015 12:00:00 AM	Completed	AKUTAN, AK	Sep 18, 2014 12:00:00 AM	CREATE AN INTIMIDATING, HOSTILE AND HARASSING WORK ENVIRONMENT	Verbal Warning
Civil-Domestic	Case Initiated	Feb 19, 2015 12:00:00 AM	Ongoing	DUTCH HARBOR, AK	Aug 17, 2014 12:00:00 AM	HARASS OR CREATE A HOSTILE OR OFFENSIVE WORK ENVIRONMENT	Verbal Warning
Civil-Domestic	Case Initiated	Apr 20, 2015 12:00:00 AM	Ongoing	SEWARD, AK	Oct 19, 2014 12:00:00 AM	CREATE AN INTIMIDATING AND HOSTILE WORK ENVIRONMENT	
Civil-Domestic	Closed - Info Only	Feb 19, 2015 12:00:00 AM	Completed	HOMER, AK	Nov 2, 2014 12:00:00 AM	CREATE AN INTIMIDATING, OR HOSTILE WORK ENVIRONMENT, OBSERVER INTIMIDATION	Verbal Warning
	Closed - COPPS	Feb 21, 2014 12:00:00 AM	Completed	MONTAUK	2014-02-13 00:00:00		Verbal Warning
	Closed - COPPS	May 14, 2014 12:00:00 AM	Completed	NEW BEDFORD, MA	2014-03-25 00:00:00	OBSERVER HARASSMENT	Verbal Warning
	Closed - COPPS	May 20, 2014 12:00:00 AM	Completed	NEW BEDFORD, MA	2014-05-19 00:00:00	OBSERVER INTIMIDATION COMPLAINT	Verbal Warning

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Non-responsive

Non-responsive

Closed - COPPS	Completed	WANCHESI, NC	2014-02-20 00:00:00	OBSERVER HARASSMENT	Unknown
Closed - COPPS	Completed	POINT JUDITH	2014-07-23 00:00:00	OBSERVER HARASSMENT	Verbal Warning
Case Initiated	Ongoing	GLOUCESTER, MA	2014-10-10 00:00:00	OBSERVER HARASSMENT	Unknown
Closed - Lack of Evidence	Completed	NEW BEDFORD	2014-11-24 00:00:00	OBSERVER HARASSMENT	Lack of Evidence
Case Initiated	Completed	NEAH BAY, WA	Apr 15, 2014 12:00:00 AM	OBSERVER HARASSMENT	Lack of Evidence
Open	Ongoing		May 18, 2014 12:00:00 AM	OBSERVER ASSAULT	
Case Initiated	Ongoing		May 18, 2014 12:00:00 AM	ASSAULT, RESIST, OPPOSE, IMPED, INTIMIDATE & INTERFERE WITH FEDERAL OBSERVER	Violation
Case Initiated	Ongoing		May 18, 2014 12:00:00 AM	ASSAULTING, RESISTING OR IMPEDING CERTAIN OFFICERS OF EMPLOYEES	Violation
Case Initiated	Ongoing	GOLD BEACH	Sep 13, 2014 12:00:00 AM	OBSERVER HARASSMENT	
Case Initiated	Ongoing		Sep 17, 2014 12:00:00 AM	SEXUAL HARASSMENT OF AN OBSERVER	Violation
Case Initiated	Ongoing		Sep 18, 2014 12:00:00 AM	SEXUAL HARASSMENT OF AN OBSERVER	Violation
Case Initiated	Ongoing	SEATTLE, WA	Sep 2, 2014 12:00:00 AM	OBSERVER HARASSMENT	Violation
Case Initiated	Ongoing		2013-11-15 00:00:00	ASSAULT ON AN OBSERVER UNDER THE SPT	Violation
Open	Ongoing		2014-04-12 00:00:00	HARASS AND INTIMIDATE A NOAA OBSERVER ABOARD A VESSEL	
Closed - Case Adjudicated	Completed		2014-06-15 00:00:00	SEXUAL HARASSMENT OF AN OBSERVER	
Case Initiated	Completed	HONOLULU HARBOR	2014-09-11 00:00:00	SEXUALLY HARASS OBSERVER	Violation
Case Initiated	Ongoing		2014-08-01 00:00:00	INTERFERENCE OR INTIMIDATING A NMFS- APPROVED OBSERVER	Violation
Open	Completed		2014-10-29 00:00:00	THREAT MADE TO CONTRACTED DATA COLLECTOR	
Case Initiated	Ongoing		Jun 5, 2013 12:00:00 AM	OBSERVER REFUSAL/HARRASMENT	Verbal Warning
Case Initiated	Ongoing		Jun 26, 2013 12:00:00 AM	OBSERVER REFUSAL/HARRASMENT	Violation





UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Office of Law Enforcement (OLE)
1315 East West Hwy
SSMC 3 RM 3301
Silver Spring, Maryland 20910

March 30, 2016

Ms. Laura Dumais
2000 P Street NW
Suite 240
Washington, DC 20036

Re: FOIA Request No. DOC-NOAA-2016-000706

Dear Ms. Dumais,

This is the first interim response to your Freedom of Information Act request in which you asked for the following:

- (1) A summary of all incidents of violence, threats, or harassment against NOAA employees that occurred in calendar year 2015. The summary should include the date, location, and nature of the incident or threat together with a summary of what, if any, outcomes stemmed from the incident or threat (e.g., arrest, conviction, ongoing investigation).
- (2) A summary of all incidents of violence, threats, or harassment against professional observers, including government contractors, that occurred in calendar year 2015. The summary should include incidents against observers aboard NOAA vessels or while otherwise carrying out their duties as NOAA contractors, and include the date, location, and nature of the incident or threat together with a summary of what, if any, outcomes stemmed from the incident or threat (e.g., arrest, conviction, ongoing investigation).



We are now providing summary response, in a table format, to Request Two, with the understanding that you reserve the right to request additional records or information based on the content of the initial responses.

Vessel Name	Date Reported	Nature of Incident	Port of Delivery	Case Disposition	Status
Alaska Warrior	11/24/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Info Only	
Alaska Victory	7/1/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Ongoing	Open

Royal Atlantic	5/7/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Lack of Resources	
Laura	12/30/2014	Harassment - Intimidate/Interfere/Hostile Work Environment	Unknown	Verbal Warning	
Deep Pacific	5/22/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Ongoing	Open
Defender (Am80)	10/29/2014	Harassment - Intimidate/Interfere/Hostile Work Environment	Unknown	Ongoing	Open
Pacific Glacier	10/21/2014	Harassment - Other	Unknown	Info Only	
American No 1	1/7/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Unknown	Ongoing	Open
Blue Attu	1/22/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Unknown	Verbal Warning	
US Intrepid	12/7/2014	Harassment - Intimidate/Interfere/Hostile Work Environment	Unknown	Ongoing	Open
Gulf Prowler	2/25/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Unknown	Ongoing	Open
Alaskan Leader	5/11/2015	Harassment - Sexual	Unknown	Ongoing	Open
Alaskan Leader	8/5/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Unknown	Ongoing	Open
Chellissa	3/17/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Unknown	COPPS	
St Dominick	4/28/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Unknown	Ongoing	Open
Cynosure	4/28/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Unknown	COPPS	
Gulf Prowler	4/30/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Unknown	Ongoing	Open

Enterprise	4/30/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Unknown	Ongoing	Open
Margaret Lyn	5/8/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Unknown	Ongoing	Open
Katie Ann	3/20/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Unknown	Ongoing	Open
Pacific Storm	4/6/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Unknown	Ongoing	Open
Ocean Hope 3	4/28/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Mothership	Info Only	
Arctic Prowler	6/4/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Ongoing	Open
Walter N	6/12/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	King Cove	Info Only	
Gold Rush	8/17/2015	Harassment - Sexual	Akutan	Ongoing	Open
Gold Rush	8/17/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Akutan	Ongoing	Open
Alaska Juris	9/17/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Ongoing	Open
Alaska Juris via Alaska Spirit	10/8/2015	Harassment - Sexual	Dutch Harbor/Unalaska	Ongoing	Open
Ocean Phoenix	10/1/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Ongoing	Open
Excalibur II	8/13/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Kodiak	Ongoing	Open
Alaskan Leader	8/5/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Written Warning	

Starlite	8/6/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Info Only	
Constellation	8/12/2015	Harassment - Sexual	Dutch Harbor/Unalaska	Verbal Warning	
Viking	8/5/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Ongoing	Open
Pacific Storm	6/30/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Kodiak	Ongoing	Open
Kodiak Enterprise	9/4/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Ongoing	Open
Katie Jean	9/8/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Adak	Verbal Warning	
Golden Fleece	8/4/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Kodiak	Info Only	
Rebecca Irene	8/25/2015	Harassment - Other	Dutch Harbor/Unalaska	Ongoing	Open
New Life	5/5/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Kodiak	Ongoing	Open
Columbia	9/30/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Akutan	Ongoing	Open
Alaska Warrior	9/18/2015	Harassment - Other	Dutch Harbor/Unalaska	Summary Settlement	
Alaska Ocean	10/6/2015	Harassment - Sexual	Dutch Harbor/Unalaska	Info Only	
Alaska Ocean	10/29/2015	Harassment - Sexual	Dutch Harbor/Unalaska	Info Only	
Frontier Explorer	9/16/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Info Only	
Nordic Star	9/29/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Verbal Warning	
Star Fish	9/17/2015	Harassment - Other	Dutch	Ongoing	Open

			Harbor/Unalaska		
Elizabeth F	10/13/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Kodiak	Unfounded	
Frontier Mariner	11/16/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Ongoing	Open
Island Enterprise	10/20/2015	Harassment - Other	Dutch Harbor/Unalaska	Ongoing	Open
Defender (Am80)	10/20/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Info Only	
Kristina	10/29/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Sitka	Info Only	
Bay Islander	10/29/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Kodiak	Ongoing	Open
Pacific Glacier	10/6/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Info Only	
Arica	5/11/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Ongoing	Open
Peggy JO	10/12/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Ongoing	Open
Northern Glacier	11/6/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Info Only	
Alaskan Star	11/4/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Kodiak	Ongoing	Open
Alaskan Star	11/4/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Kodiak	Ongoing	Open
Karen Evich	11/6/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Sand Point	Ongoing	Open

Golden Fleece	11/12/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Kodiak	Ongoing	Open
Rebecca Irene	10/21/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Info Only	
Vaerdal	12/7/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Ongoing	Open
Northern Endurance	11/16/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Sand Point	Ongoing	Open
Alaska Juris	11/2/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Ongoing	Open
Bering Leader	12/7/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Ongoing	Open
Frontier Mariner	12/9/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Ongoing	Open
American No I	12/22/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Ongoing	Open
Anthem	12/7/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Kodiak	Ongoing	Open
Enterprise	11/10/2015	Harassment - Other	Dutch Harbor/Unalaska	Ongoing	Open
American Eagle	10/6/2014	Harassment - Intimidate/Interfere/Hostile Work Environment	Mothership	Info Only	
Gulf Prowler	11/5/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Ongoing	Open
Gulf Prowler	11/19/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Ongoing	Open
Deep Pacific	12/17/2015	Harassment - Other	Dutch	Ongoing	Open



Karoline Marie	07/29/2015	Observer Harassment	Gloucester, MA	Verbal Warning	[REDACTED]
Provider	9/29/2015	Observer Harassment	New London, CT	Verbal Warning	[REDACTED]
Jordan Taylor	9/22/2015	Observer Harassment	Marshfield	Verbal Warning	[REDACTED]
Kenneth J. Duncan	9/21/2015	Observer Harassment	Gloucester, MA	Lack of Evidence	[REDACTED]
Dawn T	7/20/2015	Observer Intimidation	Chatham, MA	Lack of Evidence	[REDACTED]
Sea Dancer	8/1/2015	Observer Interference	Chatham, MA	Verbal	[REDACTED]
Alex	1/16/2015	Require/Pressure observer to perform duties normally performed by crew members.	Eureka, CA	Verbal Warning	[REDACTED]
Ashlyne	4/2/2015	Verbal Harassment	Warrenton, OR	Referred to USCG	[REDACTED]
Jaka B	6/8/2015	Observer Interference, harassment	Astoria, OR	NOVA issued by GCES	Open
Kodiak Enterprise	12/1/2015	Observer Harassment, sample bias	Seattle, WA	COPPS	[REDACTED]

We are currently waiting for another office to provide input that is responsive to your Request One, "summary of all incidents of violence, threats, or harassment against NOAA employees that occurred in calendar year 2015."

If additional records are found, we will forward them to you as soon as possible.

Although we do not consider this to be a denial of your request, you are granted appeal rights for this determination. Your appeal must be received within 30 calendar days of the date of the denial letter. Please address your appeal to:

**Assistant General Counsel for Administration
Freedom of Information Act Appeal
Room 5898-C
U.S. Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, DC 20230**

Your appeal may be sent by the following methods:

- by email to FOIAAppeals@doc.gov
- by facsimile (fax) to (202) 482-2552

- by FOIAonline, if you have an account at <https://foiaonline.regulations.gov>.

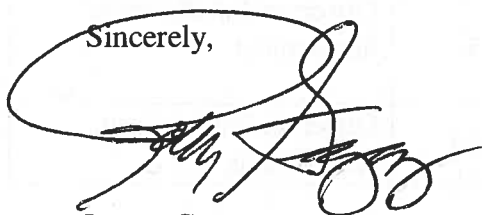
For your appeal to be complete, it must include the following items:

- a copy of the original request,
- our response to your request,
- your 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.

We receive correspondence only on business days from 8:30 a.m. to 5:00 p.m., Eastern Time. FOIA appeals received outside of our normal business hours will be deemed received on the next business day.

If you have any questions regarding this request or would like to request additional records or information based on the content of the initial responses, please contact Arlyn Penaranda at (301) 427-8256 or via email at Arlyn.Penaranda@noaa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Logan Gregory', written over a large, loopy flourish that extends to the left and loops back under the signature.

Logan Gregory
Deputy Director
Office of Law Enforcement

OLE's 2004 Observer Harassment Cases

No.:	Date:	Division:	Nature of Threat:	Outcome:	Reason:
1	01/16/04	SE	Create Hostile Work Environment for observer and Interfere with an observer	On-Going	Open Investigation
2	01/17/04	AK	Intimidate an observer	On-Going	Open Investigation
3	01/20/04	AK	Intimidate an observer	On-Going	Open Investigation
4	01/25/04	AK	Intimidate an observer	Closed	Lack of Evidence
5	01/26/04	AK	Intimidate and Interfere with an observer	On-Going	Open Investigation
6	02/01/04	AK	Intimidate and Interfere with an observer	On-Going	Open Investigation
7	02/01/04	AK	Create Hostile Work Environment for observer	On-Going	Open Investigation
8	02/16/04	AK	Intimidate an observer	Closed	Adjudicated
9	02/20/04	AK	Intimidate an observer	Closed	Adjudicated
10	02/24/04	AK	Sexually Harass an observer	On-Going	Open Investigation
11	03/13/04	AK	Intimidate an observer	On-Going	Open Investigation
12	04/17/04	PI	Sexually Harass an observer	On-Going	Open Investigation
13	05/24/04	PI	Assault on observer	On-Going	Open Investigation
14	06/14/04	SW	Create Hostile Work Environment for observer	Closed	Lack of Evidence
15	07/07/04	NE	Observer Harassment and Intimidate an Observer	On-Going	Open Investigation
16	07/31/04	AK	Sexually Harass an observer	Closed	Lack of Evidence
17	08/06/04	PI	Interfere with an observer	On-Going	Open Investigation
18	08/20/04	AK	Intimidate an observer	On-Going	Open Investigation
19	09/02/04	AK	Intimidate and Interfere with an observer	Closed	Adjudicated
20	09/12/04	AK	Interfere with an observer	On-Going	Open Investigation
21	09/14/04	AK	Intimidate an observer	Closed	No Violation

OLE's 2004 Observer Harassment Cases

22	09/17/04	AK	Create Hostile Work Environment for observer	On-Going	Open Investigation
23	09/17/04	AK	Intimidate an observer	On-Going	Open Investigation
24	09/21/04	AK	Intimidate an observer	On-Going	Open Investigation
25	10/18/04	AK	Create Hostile Work Environment for observer	Closed	Lack of Evidence
26	11/14/04	AK	Assault an observer	On-Going	Open Investigation

Ellen Sebastian - NOAA Federal

From: Ellen Sebastian - NOAA Federal
Sent: Monday, July 31, 2017 11:29 AM
To: Mark Graff - NOAA Federal
Cc: Pua Kamaka - NOAA Federal; Samuel Dixon
Subject: Re: NOS Training Slides and SME Quick Reference Guide
Attachments: NOS FOIA Processing_pk-es.pptx

Here's my offering for what its worth. Thanks for the opportunity to share and learn how other line offices process FOIA.

Best~ Ellen

On Mon, Jul 31, 2017 at 4:32 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

This is great feedback--thanks Pua. I probably won't be able to plug in the table directly into the slides at this point, but maybe a link? And I'll definitely only really do a deep dive on exemptions on the (b)(5)/risk of harm analysis. Good call. Talk to you guys soon--

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

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On Sun, Jul 30, 2017 at 9:29 PM, Pua Kamaka - NOAA Federal <pua.kamaka@noaa.gov> wrote:

Hi Mark,

Please find attached my input on your presentation. Everything looks good. However, one of the suggestions I have that definitely help me as a coordinator is to incorporate the tables for "FOIA timing" and "requester categories" from Sam's presentation. Those are tools that folks can print or have readily available on their desktop. The last thing is, I'm not sure how detailed you need to go into the exemptions for this presentation. For PIRO, the SME are ONLY to review the documents for b(5) deliberative process and attorney client. If they identify something, they need to be able to justify the harm if it is released. Then I do a second review looking for the other exemptions, and GC does a final review before documents are released. I think each region does something slightly different but we have found that this is a happy medium for SME and the FOIA coordinator.

Thanks!
Pua

On Fri, Jul 28, 2017 at 4:56 AM, Ellen Sebastian - NOAA Federal <ellen.sebastian@noaa.gov> wrote:
I second Pua's thoughts. Thank you very much for your time and discussions.

On Friday, July 28, 2017, Pua Kamaka - NOAA Federal <pua.kamaka@noaa.gov> wrote:
Hi All-

I will review and provide feedback some time before Monday. Thanks for taking the time out of your busy schedules to meet yesterday.

Pua

On Thu, Jul 27, 2017 at 9:16 AM, Samuel Dixon <samuel.dixon@noaa.gov> wrote:
I'll take a look at these for you tomorrow, in the meantime here are two SME specific resources I have created for NMFS.

Sam

Samuel Dixon
Contractor - IBSS Corp
NMFS Assistant FOIA Liaison
[\(301\) 427-8739](tel:(301)427-8739)
samuel.dixon@noaa.gov

On Thu, Jul 27, 2017 at 2:53 PM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:
Hey Sam,

Here is the material we discussed on the call. Any thoughts or input would be great--

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

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--
Ellen Sebastian
FOIA & Records Coordinator
Information Services Division
NOAA Fisheries, Alaska Region
[\(907\) 586-7152](tel:(907)586-7152)

Nourish and sustain your sense of joy.

--

Ellen Sebastian
FOIA & Records Coordinator
Information Services Division
NOAA Fisheries, Alaska Region
(907) 586-7152

Nourish and sustain your sense of joy.



Referrals, Consultations, and Exemption (b)(5) Deliberative Process

Prepared by Mark H. Graff
NOAA FOIA Officer/Bureau Chief Privacy
Officer
OCIO/GPD

mark.graff@noaa.gov; (301)-628-5658



Freedom of Information Act (5 USC 552)



Outline

1. Birth to Death Processing Flow
2. Regulatory Structure for Referrals
3. The Risks of Other Agency Docs
4. OIP Guidance
5. (b)(5) Two Prong Test
6. The Extent of the Privilege
7. Questions



Birth to Death Processing Flow



Receipt and Perfection

1. A request can be submitted in almost any fashion, to any employee. If it has been misdirected, that employee has 10 days to properly route the request.
2. A request is perfected when it reasonably describes the records being sought so a search can commence, and is not unduly burdensome.



Birth to Death Processing Flow



Fees and Expedited Processing

1. If a requester wants a waiver of fees, they have to satisfy 6 factors, outlined in 15 CFR 4.11(l).
2. If a requester wants Expedited Processing, they must satisfy 15 CFR 4.6(d)(2).
3. When either of these are requested, they will be reviewed prior to tasking the LO with a search.



Birth to Death Processing Flow



Fees and Expedited Processing (cont'd)

1. If a fee waiver is not granted, the LO will be tasked with estimating the fees.
2. If the estimated fee is greater than \$20, the liaison should send a fee estimate to the requester and toll the processing of the request.*

*This is the suggested time under the regulations to discuss narrowing the scope with the requester.



Birth to Death Processing Flow



Search and Processing

1. Once the fees are resolved—either through a fee waiver, payment of fees, or unassessed fees becoming non-billable by the request becoming backlogged, a search is required.
2. The search should be in all locations where responsive records are reasonably likely to be found.



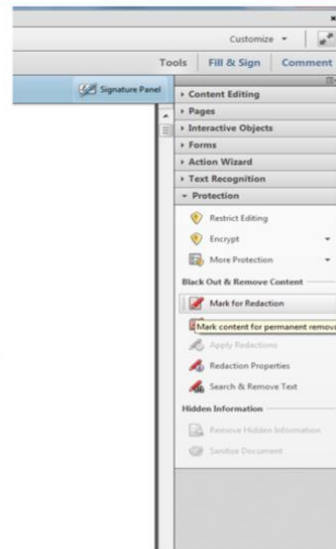
Birth to Death Processing Flow



Search and Processing

1. Once all responsive records are located, and de-duplicated*, the records need to be processed and have all exempt information redacted. This is also called “reasonable segregation”.
2. This can be done through Adobe or Clearwell.

*This can be either by hand, or through Clearwell for voluminous record searches.





Birth to Death Processing Flow



Search and Processing

1. After the records are redacted, provide the redacted copy to the FOIA Liaison.
2. Please make sure to note whether there is any particularly sensitive information, whether your search and processing is complete, or whether this is only an interim release. A completed search tasker needs to accompany the redacted records.



Birth to Death Processing Flow



Approving Release of Records

1. After the processed records are provided to the liaison, they will upload the records into FOIAOnline, and seek GC review (if necessary).
2. A review tasking will then be generated by the liaison for release of the records.



Birth to Death Processing Flow



Releasing Records

1. After the final review is complete, a tasking is generated from NOAA FOIA for the LO to release the records through FOIAOnline.

The screenshot shows a web browser window displaying the FOIAOnline interface. The page title is "Attach Records or Past Correspondence". It shows a list of 58 items found, displaying 51 to 58. The list includes several PDF files related to NOAA-2015-001860, such as "SWD_Tasker_DOC-NOAA-2015-001860.pdf", "Scope Clarification_RE_DOC-NOAA-2015-001860.pdf", "Search Log_DOC-NOAA-2015-001860.pdf", "Tasker_PDF", "Tasker-2015-001860_Signed.pdf", "ThirdInterimRelease_DOC-NOAA-2015-001860-1g.pdf", and "ThirdInterimRelease_DOC-NOAA-2015-001860-1g.pdf". The last item is "Updated_Combined102 Responsive RecordsPart1_Redacted", which is a Record type. Below the list, there is a section for "Selected Items To Be Sent To Requester" which currently shows "No records or correspondence have been selected." and buttons for "SEND" and "CANCEL".

Item #	Title	Type	Request Reference Type
51	SWD_Tasker_DOC-NOAA-2015-001860.pdf	Correspondence	
52	Scope Clarification_RE_DOC-NOAA-2015-001860.pdf	Correspondence	
53	Search Log_DOC-NOAA-2015-001860.pdf	Correspondence	
54	Tasker_PDF	Correspondence	
55	Tasker-2015-001860_Signed.pdf	Correspondence	
56	ThirdInterimRelease_DOC-NOAA-2015-001860-1g.pdf	Correspondence	
57	ThirdInterimRelease_DOC-NOAA-2015-001860-1g.pdf	Correspondence	
58	Updated_Combined102 Responsive RecordsPart1_Redacted	Record	RR



Regulatory Structure



MISDIRECTED WITHIN THE DEPARTMENT:

Where a component's FOIA office determines that a request was misdirected within the Department:

- The receiving component's FOIA office needs to route the request to the correct bureau(s).
- The search starts the time cutoff for records



Regulatory Structure (Cont'd)



OTHER BUREAUS MAY HAVE RECORDS:

How the proper Department component to respond to a FOIA Request is determined:

- The component that first receives the request and has responsive records.
 - When no records exist, the component that first receives the request and is likely to have responsive records should process the FOIA request.
- Or, the component to which the Departmental FOIA Officer or component FOIA Officer assigns lead responsibility for responding to the request.



Regulatory Structure (Cont'd)



CONSULTATIONS:

When a record is requested that originated with NOAA and another Federal agency has a *significant interest* in the record, NOAA must allow the other Federal agency to review the record before responding to a requester.





Consultations Continued...



Consultations can be done within FOIAonline by uploading the record requiring consultation and then selecting the “**Create Consultation**” button found in the left hand column in FO (if the agency also uses FO)

- If attempts to consult with outside agencies cause a delay in responding to the request, notify the requester that the request will be processed or completed after the consultation has been completed.
- Consultation with another agency constitutes *unusual circumstances* and allows you to invoke a 10 day extension.



Regulatory Structure (Cont'd)



REFERRALS:

When NOAA possesses requested records that originated with another Federal agency.

NOAA routes these records to that agency for direct response to the requester.





OIP Referral Guidance



OIP's Summary:

“The agency that is best able to determine a record's sensitivity, and in turn its exemption status, is the agency that should process that record under the Act.

While this may vary in particular cases, as a general rule the agency that originated a record is usually the most appropriate agency to make a FOIA-disclosure determination regarding it.”



The Risks of Other Agency Docs



There are at least **7** different types of referrals and consultations:

1. External Referrals for direct response to the requester including Exemptions asserted by the referring agency to include their appeal language.

Example: ACOE referrals where we respond to requester with their appeal contact.



The Risks of Other Agency Docs



2. External Referrals of the request in its entirety with no asserted Exemptions or responsive records being located by the referring agency.

Example: Recent DOI Refers us records that fall entirely under our purview.



The Risks of Other Agency Docs (Cont'd)



3. Records in which all or part of the record requires a declassification review by the original classifying authority.

Example: Navy necropsy records OCA is the Director of the office that generated those docs.



The Risks of Other Agency Docs (Cont'd)



4. External Consultations for providing withholding recommendations to another agency

Example: Fisheries Management Council Records found within our Control



The Risks of Other Agency Docs (Cont'd)



5. Intra-Departmental taskings requiring a tasking Memorandum

Example: DOC sends us a tasking to conduct a search in Presidential Transition cases through FOIAOnline, and we, in turn, issue taskings within Bureau.



The Risks of Other Agency Docs (Cont'd)



6. External Litigation consultations seeking NOAA's asserted exemptions

Example: FBI recently asked NOAA in the DB Cooper case to provide withholding recommendations on the weather docs from the plane flight.



The Risks of Other Agency Docs (Cont'd)



7. Referrals asking for non-attribution

Example: If we ever have intelligence agency records, they frequently don't want to be identified as the originator of the records.



NAO 205-14: NOAA FOIA Taskings



There are at least 6 types of taskings—it must be clear which type you are being asked to review:

1. Conduct a search for responsive records (fees waived or non-billable)
2. Prepare a fee estimate in a non-referral
3. Prepare a fee estimate for a case being coordinated by DOC, and the aggregate threshold is not determined by NOAA
4. Review referred records and provide release recommendations to the referring entity
5. Review referred records, and respond directly to the requester, incorporating the referring entities exemptions and appeal language.
6. Respond to an adjudication on appeal



OIP GUIDANCE



If they are Agency Records:

When an agency receives a FOIA request for agency records in its possession it must take responsibility for searching for the records and processing the request. It cannot simply refuse to act on the ground that the documents originated elsewhere.





OIP Guidance (Cont'd)



“When litigation (results), the government generally has not raised any issue over which agency is the “proper party defendant,” but instead has provided affidavits from the originating agencies to justify any contested nondisclosure.”

Plain English: DOJ won’t challenge who the Plaintiff names in Court. If you worked on the request, you can be the one sued, and other agencies will just provide affidavits for the records they created.



(b)(5) Two Prong Test



When (b)(5) Deliberative Process Applies:

- (b)(5) Statute generally protects: “Inter and intra-agency” (internal and external) communications that would not be available by law to a party other than an agency in litigation with the agency”.
- Courts define this as only documents that are typically privileged in civil discovery



(b)(5) Two Prong Test (cont'd)



- As to one of those privileges, Deliberative Process Privilege includes:
 - The Inter-agency (internal) and Intra-agency (external) communication requirement which encompasses the “consultant corollary”.
 - If the consultants, contractors, external advisors provided advice similar to what might have been received from an employee. Must ask—
 - Are they an interested party?
 - Seeking benefit at the expense of other applicants?
 - If yes, no (b)(5) protection.



(b)(5) Two Prong Test (cont'd)



Two Part Test:

- 1) Is the material pre-decisional?
 - a) i.e., antecedent to the adoption of the agency policy? (the making of the “policy sausage”)
- 2) Is it deliberative (not factual)—making recommendations, expressing opinions on legal or policy matters?



The Extent of the Privilege



- **Policy behind DPP:**
 - Encourage open and frank discussions among employees and protect the decision making processes of the government
 - Protect against premature disclosure of proposed policies before adopted
 - Protect against public confusion



The Extent of the Privilege



- Since the 2016 FOIA Improvement Act, a **Risk of Harm** must exist for the Privilege to apply.
- Previously, this was only advisory, although in practice, this should not change NOAA's approach, as NOAA routinely required a Risk of Harm Analysis for (b)(5) Deliberative Process.





Risk of Harm



Foreseeable Harm is now a requirement under the 2016 FOIA Improvement Act:

To Reach Foreseeable Harm, OIP summarizes the considerations:

- How sensitive is the decision?
- How sensitive is the decision-making process? (consider peer review)
- Is the decision final yet?
- Would disclosure affect the employees that contributed to the records?
- Would future decisions be jeopardized if the records were released?
- How significant would the "chilling" effect be?
- How old is the record?
- How sensitive are portions of the record?



The Extent of the Privilege



- There is also now a 25 year limit on the use of Deliberative Process.
- After that time—the privilege no longer applies.





Questions



QUESTIONS?

Jackie Rolleri - NOAA Federal

From: Jackie Rolleri - NOAA Federal
Sent: Tuesday, August 1, 2017 9:36 AM
To: Mark Graff - NOAA Federal
Cc: Nkolika Ndubisi - NOAA Federal; Stephanie Altman - NOAA Federal
Subject: Re: FOIA training materials - talk at 11am?
Attachments: NOS FOIA Processing_jr.pptx

Great!

I reviewed the powerpoint (attached) and suggested a few edits and asked a few questions In the "notes" section of the slides. I'm thinking we can go over these when we talk at 11am. My schedule is pretty open today so I can talk later as well if we need to.

Thanks,
Jackie

On Tue, Aug 1, 2017 at 8:55 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

That'd be perfect--I'll join the discussion and try to go through the processing flowchart before then.
Thanks--

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, Aug 1, 2017 at 8:14 AM, Jackie Rolleri - NOAA Federal <jackie.rolleri@noaa.gov> wrote:

Good morning, Mark and Nikki-

Are you free to talk at 11am today? Here is the [flowchart](#) I made in Google. Please let me know if I have incorrectly represented the process at all or should make any changes (feel free to call me if it's easier to go over on the phone). Attached are my edits to Mark's quick reference guides you made.

Mark, I made some edits to your quick reference guides. I also (b)(5)

[REDACTED]

(b)(5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

I'll schedule a call for us at 11am but let me know if you have a conflict. Once we finalize the documents, my preference would be to share them with folks this afternoon so they have time to print them off and/or review before tomorrow morning.

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)
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--

Jackie Rolleri, Attorney-Advisor
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Image not available for this document, ID: 0.7.3707.7299-000001

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Tuesday, August 1, 2017 12:43 PM
To: Jackie Rolleri - NOAA Federal; Lola Stith - NOAA Affiliate
Cc: Nkolika Ndubisi - NOAA Federal; Robert Swisher - NOAA Federal
Subject: Revised slide deck and quick reference guides for tomorrow
Attachments: NOAA-foia-quick-and-easy-for-POCs_jr.docx; NOAA-foia-quick-and-easy-for-smes_jr_final.docx; NOAA-foia-quick-and-easy-for-gc_jr_final.docx; NOS FOIA Processing_jr.pptx

Hi Jackie--

Here you go, as discussed with your improvements. I think these--along with your processing flow tweaks--get us there. We should be ready to go for tomorrow--

Hey Lola--I think all of these are good to upload to the new NOAA FOIA Webpage, and would supersede the last "quick reference guides". Thanks again!

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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FOIA QUICK REFERENCE GUIDE FOR GC REVIEW

The information provided below is a list of quick and easy steps for GC to keep in mind from NOAA Administrative Order (NAO) 205-14 in reviewing a FOIA request. NAO 205-14, 15 CFR Part 4, and 5 U.S.C. § 552 provide detailed information to follow in responding to FOIA requests.

When you review a FOIA Request:

1. Under NAO 205-14 (Sec. 5(6)(b)), GC has discretion to determine whether review is “appropriate” and, if so, what that review entails.
2. Common issues to look for:
 - ____ Step 1: Review the nature of the request to ensure the response is to the appropriate entity and in the right form. Frequent areas of confusion include: fee estimates and waivers, when to produce records, applicable privileges and exemptions, external agency consultations, external agency referrals and how to process appeals.
 - ____ Step 2: Ensure that similar records receive similar treatment. Exemptions and responsiveness are subjective, and consistency is difficult to achieve in voluminous requests—especially with regard to responsiveness, (b)(5) Deliberative Process, and with the (b)(6)/(b)(7)(C) balancing inquiry.
 - ____ Step 3: Ensure that FOIA Exemption (b)(5) Deliberative Process is applied only after determining if the 2-prong Vaughn inquiry is satisfied and would likely survive a challenge on administrative appeal.
 - ____ Step 4: Check the adequacy of the search. Unless the records sought are specifically identified documents, adequacy of the search is more difficult to prove. Subject Matter Experts should search all locations where responsive records are reasonably likely to be found.
 - ____ Step 5: Identify equity ownership or “interest” in a response. 15 CFR 4.5(b)-(e) require consultation or referral (depending on record origination) to other agencies or Bureaus that might have equities in the records. This is frequently missed, particularly in interagency email strings.
3. Notification: If the request has been identified as a high-interest request, notification to the proper entities before release will usually be required. This often includes notice to GC leadership, NOAA’s Office of Communications, USEC/Leg. Affairs, and/or DOC’s Office of Privacy and Open Government.
4. Please notify the NOAA FOIA Officer of any increased litigation risks and advance interim releases as soon as possible.

If you have any questions, please contact the NOS FOIA POC and NOS FOIA Liaison, or the NOAA FOIA Officer at 301-628-5658.

THANK YOU FOR YOUR SUPPORT FOR TRANSPARENCY!



FOIA QUICK REFERENCE GUIDE FOR NOS POINTS OF CONTACT

The information provided below is a list of quick and easy steps that NOS FOIA Points of Contact (POCs) should take when they receive a FOIA request. NOAA Administrative Order NAO 205-14, 15 CFR Part 4, and 5 U.S.C. § 552 provide detailed information to follow in responding to FOIA requests.

When you receive a FOIA Request:

1. Review the FOIA Request and discuss any issues of scope, clarity of request, or the description of records sought with the NOS FOIA Liaison.
2. You are responsible for:
 - ____ Step 1: Sending the subject matter experts (SMEs) a copy of the request and Search Log to complete.
 - ____ Step 2: Consulting with the SMEs to estimate search and review time, and estimated charges in the Fee Worksheet.
 - ____ Step 3: Sending an Acknowledgement Letter to the requester (this can include a fee estimate if known at the time). Sending a Fee Estimate Letter to the requester (after consulting with the NOS Liaison) if not included in the Acknowledgement Letter.
 - ____ Step 4: Ensuring the SMEs understand the request, search for responsive documents, and appropriately identify exemptions and Personally Identifiable Information. . Exemption 4 protects confidential/proprietary information, including copyrighted material. Exemption 5 protects privileged information. Exemption 6 protects Personally Identifiable Information (PII) (note: use Exemption 7(C) to protect PII in Office of Law Enforcement docs).. If you think another exemption may apply, consult with your FOIA Coordinator or FOIA Liaison on applicability.
 - ____ Step 5: Prepare Interim Release Letters and/or Final Action Letter after receiving clearance from GC. Note: Clearance from the NOS Assistant Administrator is needed for denials or partial denials.
 - ____ Step 6: Coordinate with NOS Liaison to ensure responsive records are correctly uploaded to FOIA Online.
3. Process the request within the allotted time specified for your response. Send Final Action Letter once all required steps have been completed.

If you have any questions, please contact the NOS FOIA Liaison or the FOIA Officer at 301-628-5658.

THANK YOU FOR YOUR SUPPORT FOR TRANSPARENCY!



FOIA QUICK REFERENCE GUIDE FOR SUBJECT MATTER EXPERTS

The information provided below is a list of quick and easy steps that subject matter experts should take when they receive a FOIA request. NOAA Administrative Order NAO 205-14, 15 CFR Part 4, and 5 U.S.C. § 552 provide detailed information to follow in responding to FOIA requests.

When you receive a FOIA Request:

1. Review the FOIA Request and discuss any issues of scope, clarity of request, or the description of records sought with your FOIA Point of Contact (POC) or the NOS FOIA Liaison.

2. Follow the steps listed:
 - ____ Step 1: Make sure you clearly understand what records the requester is seeking.

 - ____ Step 2: Determine if you are likely to have records responsive to the request.

 - ____ Step 3: Provide an estimate of search and review time. You may also need to estimate the number of pages of responsive documents to your POC and the FOIA Liaison.

 - ____ Step 4: Search for records responsive to the request once fees are resolved (usually through payment or a fee waiver).

 - ____ Step 5: Determine if records are to be released or withheld from the requester. Exemption 4 protects confidential/proprietary information, including copyrighted material. Exemption 5 protects privileged information. Exemption 6 protects Personally Identifiable Information (PII) (note: use Exemption 7(C) to protect PII in Office of Law Enforcement docs).. If you think another exemption may apply, consult with your FOIA Coordinator or FOIA Liaison on applicability.

 - ____ Step 6: Redact the information (but do not "Apply" the redactions) that should be withheld. Complete the Search Log indicating how you conducted the search (e.g., search terms, where you searched).

 - ____ Step 7: Organize the records responsive to the request and submit them to your POC or the NOS FOIA Liaison.

3. Process the request within the allotted time specified for your response.

If you have any questions, please contact the NOS FOIA Liaison or the FOIA Officer at 301-628-5658.

THANK YOU FOR YOUR SUPPORT FOR TRANSPARENCY!



NOS FOIA Processing

Prepared by Mark H. Graff
NOAA FOIA Officer/Bureau Chief Privacy
Officer
Office of the Chief Information Officer
Governance and Portfolio Division
mark.graff@noaa.gov; (301)-628-5658



Freedom of Information Act (5 USC 552)



Outline

1. Birth to Death Processing Flow
2. Regulatory Structure for Referrals
3. The Risks of Other Agency Docs
4. DOJ Office of Information Policy Guidance
5. Deliberative Process Privilege
 - a) (b)(5) Two-Prong Test
 - b) Extent of the Privilege
6. Questions



Birth to Death Processing Flow



Receipt and Perfection

1. A request can be submitted in almost any fashion, to any employee. If it has been misdirected, that employee has 10 working days to properly route the request before the 20-day clock begins.
2. A request is perfected when it reasonably describes the records being sought so a search can commence, and is not unduly burdensome.



Birth to Death Processing Flow



Fees and Expedited Processing

1. If a requester wants a waiver of fees, they have to satisfy 6 factors, outlined in 15 CFR 4.11(l).
2. If a requester wants Expedited Processing, they must satisfy 15 CFR 4.6(d)(2).
3. When either of these are requested, they will be adjudicated by the FOIA Officer prior to tasking the LO with a search. If this adjudication occurs after tasking to the LO, the LO should coordinate with the FOIA Officer, as this usually indicates a high-risk request.



Birth to Death Processing Flow



Fees and Expedited Processing (cont'd)

1. If a fee waiver is not granted, the LO will be tasked with estimating the fees.
2. If the estimated fee is greater than \$20, the liaison should send a fee estimate to the requester and toll the processing of the request.*

*This is the suggested time under the regulations to discuss narrowing the scope with the requester.

JACKIE: Question – in NOS, does Nikki or the POCs send the fee estimate—will be addressed in discussion during training.



Birth to Death Processing Flow



Search and Processing

1. Once the fees are resolved—either through a fee waiver, payment of fees, or unassessed fees becoming non-billable by the request becoming backlogged, a search is required.
2. The search should be in all locations where responsive records are reasonably likely to be found.



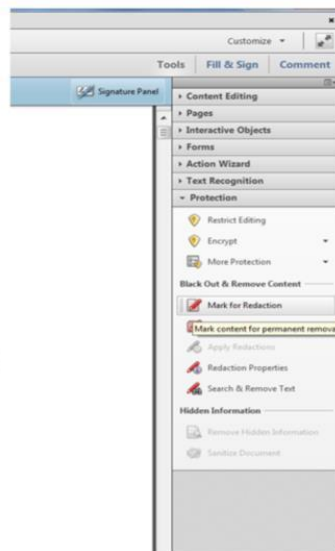
Birth to Death Processing Flow



Search and Processing

1. Once all responsive records are located, and de-duplicated*, the records need to be processed and have all exempt information redacted. This is also called “reasonable segregation”.
2. This can be done through Adobe or Clearwell.

*This can be either by hand, or through Clearwell for voluminous record searches.



JACKIE: Who should SMEs and POCs go to for help if they don't know how to redact in Adobe and/or Clearwell. Will address in training.



Birth to Death Processing Flow



Search and Processing

1. After the records are redacted, provide the redacted copy to the FOIA Liaison.
2. Please make sure to note whether there is any particularly sensitive information, whether your search and processing is complete, or whether this is only an interim release. A completed search tasker needs to accompany the redacted records.

Jackie: explain who does what in NOS (eg, SME first reviews and redacts, then POC checks work, then send to Liaison who uploads into FOIA Online)—will address in discussion during training.



Birth to Death Processing Flow



Approving Release of Records

1. After the processed records are provided to the liaison, they will upload the records into FOIAOnline, and seek GC review (if necessary).
2. A review tasking will then be generated by the liaison for release of the records.



Birth to Death Processing Flow



Releasing Records

1. After the final review is complete, a tasking is generated from NOAA FOIA for the LO to release the records through FOIAOnline.

The screenshot shows the FOIAOnline interface with a table of records. The table has columns for 'Send?', 'Title', 'Type', and 'Request Reference Type'. There are 8 rows of records, all of which are 'Correspondence' except for the last one which is a 'Record'. The 'Send?' column contains green buttons with the word 'Release' on them. Below the table, there is a section for 'Selected Items To Be Sent To Requester' which currently shows 'No records or correspondence have been selected.' and 'SEND' and 'CANCEL' buttons.

Send?	Title	Type	Request Reference Type
Release	SWD_Ticker_DOC-NOAA-2015-001860.pdf	Correspondence	
Release	ScopeClarification_RE_DOC-NOAA-2015-001860.pdf	Correspondence	
Release	Search Log_DOC-NOAA-2015-001860.pdf	Correspondence	
Release	Ticker.PDF	Correspondence	
Release	Ticker 2015-001860_Signed.pdf	Correspondence	
Release	ThirdInterimRelease_DOC-NOAA-2015-001860-1g.pdf	Correspondence	
Release	ThirdInterimRelease_DOC-NOAA-2015-001860-1g.pdf	Correspondence	
Release	Updated_Combined102_Responsive RecordsPart1_Redacted	Record	RJK

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JACKIE: It seems like the POCs often transmit the final action letters to the requester outside of FOIA Online. Will explain when offline closures are appropriate.



Regulatory Structure



MISDIRECTED WITHIN THE DEPARTMENT:

Where a component's FOIA office determines that a request was misdirected within the Department:

- The receiving component's FOIA office needs to route the request to the correct bureau(s).
- The search starts the time cutoff for records



Regulatory Structure (Cont'd)



OTHER BUREAUS MAY HAVE RECORDS:

How the proper Department component to respond to a FOIA Request is determined:

- The component that first receives the request and has responsive records.
 - When no records exist, the component that first receives the request and is likely to have responsive records should process the FOIA request.
- Or, the component to which the Departmental FOIA Officer or component FOIA Officer assigns lead responsibility for responding to the request.

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15 CFR 4.5(a)



Regulatory Structure (Cont'd)



CONSULTATIONS:

When a record is requested that originated with NOAA and another Federal agency has a *significant interest* in the record, NOAA must allow the other Federal agency to review the record before responding to a requester.



13

15 CFR 4.5(b)

DISTINGUISH “Agency Record” (NDLON v. DHS) from record for purposes of segregability (AILA). Read the transcript of the JW v. DOS case. Reference Competitive Enterprise Institute v. OST. Reversed District Court. DC Cir. Court (15-1258) (Jul. 5,)2016 said private email used to conduct business can be accessed in FOIA.



Consultations Continued...



Consultations can be done within FOIAOnline by uploading the record requiring consultation and then selecting the **“Create Consultation”** button found in the left hand column in FO (if the agency also uses FO)

- If attempts to consult with outside agencies cause a delay in responding to the request, notify the requester that the request will be processed or completed after the consultation has been completed.
- Consultation with another agency constitutes ***unusual circumstances*** and allows you to invoke a 10 day extension.



Regulatory Structure (Cont'd)



REFERRALS:

When NOAA possesses requested records that originated with another Federal agency.

NOAA routes these records to that agency for direct response to the requester.



15 CFR 4.5(b)—Sec. 4.8 for classified info.



OIP Referral Guidance



OIP's Summary:

“The agency that is best able to determine a record's sensitivity, and in turn its exemption status, is the agency that should process that record under the Act.

While this may vary in particular cases, as a general rule the agency that originated a record is usually the most appropriate agency to make a FOIA-disclosure determination regarding it.”

16

<https://www.justice.gov/oip/blog/foia-update-oip-guidance-referral-and-consultation-procedures>: “The agency that is best able to determine a record's sensitivity, and in turn its exemption status, is the agency that should process that record under the Act. While this may vary in particular cases, as a general rule the agency that originated a record is usually the most appropriate agency to make a FOIA-disclosure determination regarding it.”



The Risks of Other Agency Docs



There are at least **7** different types of referrals and consultations:

1. External Referrals for direct response to the requester including Exemptions asserted by the referring agency to include their appeal language.

Example: ACOE referrals where we respond to requester with their appeal contact.

17

Of these causes of action, many can be rendered moot prior to the filing of the answer in the case. In particular, an inadequate search can be rendered moot by quickly conducting a search before jurisdiction is established and the Defendant's answer is filed. Similarly, Exemptions can be re-examined, even those previously affirmed on appeal, and some discretionary releases, closing an investigation, or other actions can render exemption application a moot issue. In one litigation we had a 7(A) assertion that was re-examined because during the pendency of the FOIA litigation, the accused were tried and convicted.

Attorneys fees can be avoided through avoiding the Plaintiff "substantially prevailing" on a cause of action—so avoiding the Court exercising jurisdiction over issues such as constructive denial, or inadequate search, is a big deal for attorneys fees.

Oglesby and Exhaustion



The Risks of Other Agency Docs



2. External Referrals of the request in its entirety with no asserted Exemptions or responsive records being located by the referring agency.

Example: Recent DOI Refers us records that fall entirely under our purview.

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Oglesby and Exhaustion



The Risks of Other Agency Docs (Cont'd)



3. Records in which all or part of the record requires a declassification review by the original classifying authority.

Example: Navy necropsy records OCA is the Director of the office that generated those docs.

19

Had an argument in *NDLON v. DHS* as to “metadata” being a record, and most Courts agree that if it is created or controlled by the agency, and the format sought can be “readily reproduced” it must be processed in the FOIA.

Proper FOIA Requesters—many opportunities to deny fugitives, including several that were administratively appealed.

DISTINGUISH “Agency Record” (*NDLON v. DHS*) from record for purposes of segregability (*AILA*). Read the transcript of the *JW v. DOS* case. Reference *Competitive Enterprise Institute v. OST*. Reversed District Court. DC Cir. Court (15-1258) (Jul. 5,)2016 said private email used to conduct business can be accessed in FOIA.



The Risks of Other Agency Docs (Cont'd)



4. External Consultations for providing withholding recommendations to another agency

Example: Fisheries Management Council Records found within our Control

20

Had an argument in *NDLON v. DHS* as to “metadata” being a record, and most Courts agree that if it is created or controlled by the agency, and the format sought can be “readily reproduced” it must be processed in the FOIA.

Proper FOIA Requesters—many opportunities to deny fugitives, including several that were administratively appealed.

DISTINGUISH “Agency Record” (*NDLON v. DHS*) from record for purposes of segregability (*AILA*). Read the transcript of the *JW v. DOS* case. Reference *Competitive Enterprise Institute v. OST*. Reversed District Court. DC Cir. Court (15-1258) (Jul. 5,)2016 said private email used to conduct business can be accessed in FOIA.



The Risks of Other Agency Docs (Cont'd)



5. Intra-Departmental taskings requiring a tasking Memorandum

Example: DOC sends us a tasking to conduct a search in Presidential Transition cases through FOIAOnline, and we, in turn, issue taskings within Bureau.

Outline the different response expected from an LO for this intra-departmental tasking where the underlying tasking will be closed at the Department level.



The Risks of Other Agency Docs (Cont'd)



6. External Litigation consultations seeking NOAA's asserted exemptions

Example: FBI recently asked NOAA in the DB Cooper case to provide withholding recommendations on the weather docs from the plane flight.

22

JACKIE: What's the "DB Cooper case"—will be addressed in the training itself.

Had an argument in *NDLON v. DHS* as to "metadata" being a record, and most Courts agree that if it is created or controlled by the agency, and the format sought can be "readily reproduced" it must be processed in the FOIA.

Proper FOIA Requesters—many opportunities to deny fugitives, including several that were administratively appealed.



The Risks of Other Agency Docs (Cont'd)



7. Referrals asking for non-attribution

Example: If we ever have intelligence agency records, they frequently don't want to be identified as the originator of the records.

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DOJ OIP Guidance:

"Similarly, if an agency locates within its files material originating with an Intelligence Community agency, and the involvement of that agency in the matter, is classified and not publicly acknowledged, then to disclose or give attribution to the involvement of that Intelligence Community agency potentially could cause national security harms. See Exec. Order No. 13,526, § 3.6(b), 3 C.F.R. 298 (2009). In both these situations, where the involvement of the originating agency is not publicly acknowledged, the standard referral procedures are not appropriate, and the agency in receipt of the request should instead coordinate with the agency which originated the documents and then make the response itself. In these instances, both agencies will need to take extra steps in order to ensure that requests receive the most efficient and transparent handling possible, consistent with the privacy and national security interests involved."



NAO 205-14: NOAA FOIA Taskings



There are at least 6 types of taskings—it must be clear which type you are being asked to review:

1. Conduct a search for responsive records (fees waived or non-billable)
2. Prepare a fee estimate in a non-referral
3. Prepare a fee estimate for a case being coordinated by DOC, and the aggregate threshold is not determined by NOAA
4. Review referred records and provide release recommendations to the referring entity
5. Review referred records, and respond directly to the requester, incorporating the referring entities exemptions and appeal language.
6. Respond to an adjudication on appeal

24

There is a larger push for GC to take a processing role in requests—particularly within NOS. However, this is inconsistent with the NAO Sec. 5(6).



OIP GUIDANCE



If they are Agency Records:

When an agency receives a FOIA request for agency records in its possession it must take responsibility for searching for the records and processing the request. It cannot simply refuse to act on the ground that the documents originated elsewhere.



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McGehee v. CIA, 697 F.2d 1095, 1108 (D.C. Cir.) (dictum), vacated in part on other grounds upon panel reh'g, 711 F.2d 1076 (D.C. Cir. 1983).



OIP Guidance (Cont'd)



“When litigation (results), the government generally has not raised any issue over which agency is the "proper party defendant," but instead has provided affidavits from the originating agencies to justify any contested nondisclosure.”

Plain English: DOJ won't challenge who the Plaintiff names in Court. If you worked on the request, you can be the one sued, and other agencies will just provide affidavits for the records they created.

Oglesby v. Department of the Army, 920 F.2d 57, 69 & n.15 (D.C. Cir. 1990); Fitzgibbon v. CIA, 911 F.2d 755, 757 (D.C. Cir. 1990); Zang v. FBI, 756 F. Supp. 705, 706-07 & n.1 (W.D.N.Y. 1991).



(b)(5) Two Prong Test



When (b)(5) Deliberative Process Applies:

- (b)(5) Statute generally protects: “Inter and intra-agency” (internal and external) communications that would not be available by law to a party other than an agency in litigation with the agency”.
- Courts define this as only documents that are typically privileged in civil discovery

(*NLRB v. Sears*, 421 U.S. 132, 149 (1975)). But there is no difference between qualified and absolute privilege (so there is no showing of “need”). *Id.* At 149.



(b)(5) Two Prong Test (cont'd)



- Deliberative Process Privilege includes:
 - The Inter-agency (internal) and Intra-agency (external) communication requirement which encompasses the “consultant corollary”.
 - If the consultants, contractors, external advisors provided advice similar to what might have been received from an employee. Must ask—
 - Are they an interested party?
 - Seeking benefit at the expense of other applicants?
 - If yes, no (b)(5) protection.

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JACKIE: Suggest deleting “As to one of those privileges,”

Dep’t of the Interior v. Klamath Water Users Protective Ass’n, 532 U.S. 1, 11 (2001)



(b)(5) Two Prong Test (cont'd)



Two Part Test:

- 1) Is the material pre-decisional?
 - a) i.e., antecedent to the adoption of the agency policy? (the making of the “policy sausage”)
- 2) Is it deliberative (not factual)—making recommendations, expressing opinions on legal or policy matters?

Pre-Decisional: (*Jordan v. DOJ*, 591 F.2d at 774 (U.S. App. D.C. 1992);

Deliberative: *Vaughn v. Rosen*, 523 F.2d 1136, 1143-44 (D.C. Cir. 1975).



The Extent of the Privilege



- **Policy behind DPP:**
 - Encourage open and frank discussions among employees and protect the decision making processes of the government
 - Protect against premature disclosure of proposed policies before adopted
 - Protect against public confusion

(Russell v. Dep't of the Air Force, 682 F.2d 1045, 1048 (D.C. Cir. 1982).



The Extent of the Privilege



- Since the 2016 FOIA Improvement Act, a **Risk of Harm** must exist for the Privilege to apply.
- Previously, this was only advisory, although in practice, this should not change NOAA's approach, as NOAA routinely required a Risk of Harm Analysis for (b)(5) Deliberative Process.



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Policy behind (*Russell v. Dep't of the Air Force*, 682 F.2d 1045, 1048 (D.C. Cir. 1982)).



Risk of Harm



Foreseeable Harm is now a requirement under the 2016 FOIA Improvement Act:

To Reach Foreseeable Harm, OIP summarizes the considerations:

- How sensitive is the decision?
- How sensitive is the decision-making process? (consider peer review)
- Is the decision final yet?
- Would disclosure affect the employees that contributed to the records?
- Would future decisions be jeopardized if the records were released?
- How significant would the “chilling” effect be?
- How old is the record?
- How sensitive are portions of the record?

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The Extent of the Privilege



- There is also now a 25 year limit on the use of Deliberative Process.
- After that time—the privilege no longer applies.





Questions



QUESTIONS?

Jackie Rolleri - NOAA Federal

From: Jackie Rolleri - NOAA Federal
Sent: Tuesday, August 1, 2017 4:19 PM
To: _NOS GCOS Attorneys; Ginger Bennett; Nkolika Ndubisi - NOAA Federal; Jeri Dockett - NOAA Affiliate; Patmarie Nedelka - NOAA Federal; Aida Pettegrue - NOAA Federal; Michelle Mills; Kate Anderson - NOAA Federal; Colin Becker - NOAA Federal; Deana Mastin - NOAA Federal; Carmen Solis; Lisa Livramento - NOAA Federal; Todd Ehret - NOAA Federal; Virginia Dentler - NOAA Federal; Tim Goodspeed; Carrie Hall - NOAA Federal
Cc: Mark Graff - NOAA Federal; Lola Stith - NOAA Affiliate
Subject: Re: Save the Date: NOS/GC FOIA Training - August 2nd
Attachments: NOS FOIA Processing PowerPoint.pdf; NOAA FOIA Processing Flow Chart (8-1-17).pdf; NOAA FOIA Quick Reference_GC (8-1-17).pdf; NOAA FOIA Quick Reference_POCs (8-1-17).pdf; NOAA FOIA Quick Reference_SMEs (8-1-17).pdf

Hi All,

We are looking forward to the NOS FOIA training tomorrow morning. As a reminder, the training will be in SSMC4, room 13153. For those who can't attend in person, please use the following call-in/WebEx information:

Conf. Lin
Passcode
Leader co

(b)(6)

WebEx Lin (b)(6)

Attached is the NOS FOIA Training PowerPoint we'll be using, a NOAA FOIA Processing Flow Chart, and some Quick Reference Guides. Below are links to some other useful materials you may also wish to bring with you:

- [FOIA Timing](#)
- [Exemptions 1-pager](#)
- [FOIA Fee Matrix](#)

Please let me or Mark know if you have any questions.

Thanks,
Jackie

On Wed, Jul 12, 2017 at 2:17 PM, Jackie Rolleri - NOAA Federal <jackie.rolleri@noaa.gov> wrote:

Good afternoon,

Over the past year, I have had the opportunity to work with many of you on FOIA requests submitted to

NOAA/NOS. I have noticed that within NOS and General Counsel, Oceans & Coasts Section, there are varying degrees of knowledge regarding how to process FOIAs, what templates to use, how to apply exemptions, etc.

As such, Mark Graff and I are planning to hold a FOIA training for the NOS FOIA Points of Contact (and alternates) and attorneys in the Oceans & Coasts Section. **The training will be on Wednesday, August 2, from 9am to noon.**

I will send out a calendar invitation with the conference room information. I encourage everyone to participate in person. However, if needed, we can try to set up a webex as well.

Mark and I will send out a training agenda and slides closer to August 2nd. If you have particular questions you would like us to address, please email me in advance. We tentatively plan to cover: 1) NOS FOIA processing and procedures; 2) an overview/refresher of FOIA Online and who is responsible for what; and 3) an overview of the FOIA regulations, exemptions, and other useful information.

Please let me or Mark know if you have any questions. Also, please let me know if there is anyone else I should add to this email. We look forward to the training and hope you will find it useful!

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
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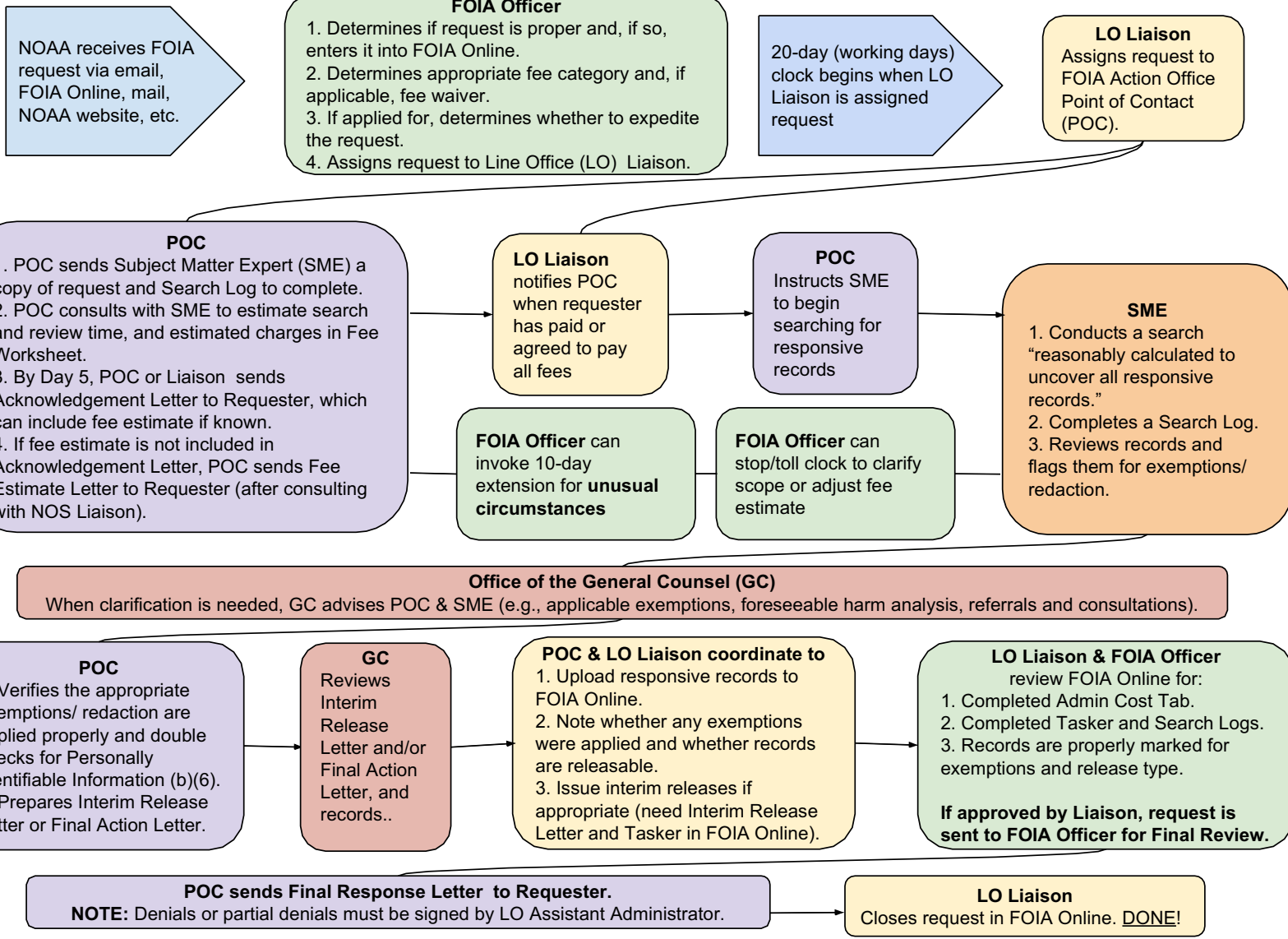
Jackie Rolleri, Attorney-Advisor
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NOAA FOIA Processing



NOAA receives FOIA request via email, FOIA Online, mail, NOAA website, etc.

FOIA Officer

1. Determines if request is proper and, if so, enters it into FOIA Online.
2. Determines appropriate fee category and, if applicable, fee waiver.
3. If applied for, determines whether to expedite the request.
4. Assigns request to Line Office (LO) Liaison.

20-day (working days) clock begins when LO Liaison is assigned request

LO Liaison
Assigns request to FOIA Action Office Point of Contact (POC).

POC

1. POC sends Subject Matter Expert (SME) a copy of request and Search Log to complete.
2. POC consults with SME to estimate search and review time, and estimated charges in Fee Worksheet.
3. By Day 5, POC or Liaison sends Acknowledgement Letter to Requester, which can include fee estimate if known.
4. If fee estimate is not included in Acknowledgement Letter, POC sends Fee Estimate Letter to Requester (after consulting with NOS Liaison).

LO Liaison notifies POC when requester has paid or agreed to pay all fees

POC Instructs SME to begin searching for responsive records

SME

1. Conducts a search "reasonably calculated to uncover all responsive records."
2. Completes a Search Log.
3. Reviews records and flags them for exemptions/redaction.

FOIA Officer can invoke 10-day extension for **unusual circumstances**

FOIA Officer can stop/toll clock to clarify scope or adjust fee estimate

Office of the General Counsel (GC)
When clarification is needed, GC advises POC & SME (e.g., applicable exemptions, foreseeable harm analysis, referrals and consultations).

POC

1. Verifies the appropriate exemptions/redaction are applied properly and double checks for Personally Identifiable Information (b)(6).
2. Prepares Interim Release Letter or Final Action Letter.

GC
Reviews Interim Release Letter and/or Final Action Letter, and records..

POC & LO Liaison coordinate to

1. Upload responsive records to FOIA Online.
2. Note whether any exemptions were applied and whether records are releasable.
3. Issue interim releases if appropriate (need Interim Release Letter and Tasker in FOIA Online).

LO Liaison & FOIA Officer review FOIA Online for:

1. Completed Admin Cost Tab.
2. Completed Tasker and Search Logs.
3. Records are properly marked for exemptions and release type.

If approved by Liaison, request is sent to FOIA Officer for Final Review.

POC sends Final Response Letter to Requester.
NOTE: Denials or partial denials must be signed by LO Assistant Administrator.

LO Liaison
Closes request in FOIA Online. DONE!



FOIA QUICK REFERENCE GUIDE FOR GENERAL COUNSEL REVIEW

The information provided below is a list of quick and easy steps for General Counsel (GC) to keep in mind from NOAA Administrative Order (NAO) 205-14 in reviewing a FOIA request. NAO 205-14, 15 CFR Part 4, and 5 U.S.C. § 552 provide detailed information to follow in responding to FOIA requests.

When you review a FOIA Request:

1. Under NAO 205-14 (Sec. 5(6)(b)), GC has discretion to determine whether review is “appropriate” and, if so, what that review entails.
2. Common issues to look for:
 - _____Step 1: Review the nature of the request to ensure the response is to the appropriate entity and in the right form. Frequent areas of confusion include: fee estimates and waivers, when to produce records, applicable privileges and exemptions, external agency consultations, external agency referrals and how to process appeals.
 - _____Step 2: Ensure that similar records receive similar treatment. Exemptions and responsiveness are subjective, and consistency is difficult to achieve in voluminous requests—especially with regard to responsiveness, (b)(5) Deliberative Process, and with the (b)(6)/(b)(7)(C) balancing inquiry.
 - _____Step 3: Ensure that FOIA Exemption (b)(5) Deliberative Process is applied only after determining if the 2-prong Vaughn inquiry is satisfied and would likely survive a challenge on administrative appeal.
 - _____Step 4: Check the adequacy of the search. Unless the records sought are specifically identified documents, adequacy of the search is more difficult to prove. Subject Matter Experts should search all locations where responsive records are reasonably likely to be found.
 - _____Step 5: Identify equity ownership or “interest” in a response. 15 CFR 4.5(b)-(e) require consultation or referral (depending on record origination) to other agencies or Bureaus that might have equities in the records. This is frequently missed, particularly in interagency email strings.
3. Notification: If the request has been identified as a high-interest request, notification to the proper entities before release will usually be required. This often includes notice to GC leadership, NOAA’s Office of Communications, USEC/Leg. Affairs, and/or DOC’s Office of Privacy and Open Government.
4. Please notify the NOAA FOIA Officer of any increased litigation risks and advance interim releases as soon as possible.

If you have any questions, please contact the FOIA POC and FOIA Liaison, or the NOAA FOIA Officer at 301-628-5658.

THANK YOU FOR YOUR SUPPORT FOR TRANSPARENCY!



FOIA QUICK REFERENCE GUIDE FOR FOIA ACTION OFFICE POINTS OF CONTACT



The information provided below is a list of quick and easy steps that FOIA Action Office Points of Contact (POCs) should take when they receive a FOIA request. NOAA Administrative Order NAO 205-14, 15 CFR Part 4, and 5 U.S.C. § 552 provide detailed information to follow in responding to FOIA requests.

When you receive a FOIA Request:

1. Review the FOIA Request and discuss any issues of scope, clarity of request, or the description of records sought with the FOIA Liaison.
2. You are responsible for:
 - ____ Step 1: Sending the subject matter experts (SMEs) a copy of the request and Search Log to complete.
 - ____ Step 2: Consulting with the SMEs to estimate search and review time, and estimated charges in the Fee Worksheet.
 - ____ Step 3: Sending an Acknowledgement Letter to the requester (this can include a fee estimate if known at the time). Sending a Fee Estimate Letter to the requester (after consulting with the Liaison) if not included in the Acknowledgement Letter.
 - ____ Step 4: Ensuring the SMEs understand the request, search for responsive documents, and appropriately identify exemptions and Personally Identifiable Information. . Exemption 4 protects confidential/proprietary information, including copyrighted material. Exemption 5 protects privileged information. Exemption 6 protects Personally Identifiable Information (PII) (note: use Exemption 7(C) to protect PII in Office of Law Enforcement docs)..If you think another exemption may apply, consult with your FOIA Coordinator or FOIA Liaison on applicability.
 - ____ Step 5: Prepare Interim Release Letters and/or Final Action Letter after receiving clearance from General Counsel (GC). Note: Clearance from the Line Office Assistant Administrator is needed for denials or partial denials.
 - ____ Step 6: Coordinate with the FOIA Liaison to ensure responsive records are correctly uploaded to FOIA Online.
3. Process the request within the allotted time specified for your response. Send Final Action Letter once all required steps have been completed.

If you have any questions, please contact the FOIA Liaison or the FOIA Officer at 301-628-5658.

THANK YOU FOR YOUR SUPPORT FOR TRANSPARENCY!



FOIA QUICK REFERENCE GUIDE FOR SUBJECT MATTER EXPERTS

The information provided below is a list of quick and easy steps that subject matter experts should take when they receive a FOIA request. NOAA Administrative Order NAO 205-14, 15 CFR Part 4, and 5 U.S.C. § 552 provide detailed information to follow in responding to FOIA requests.

When you receive a FOIA Request:

1. Review the FOIA Request and discuss any issues of scope, clarity of request, or the description of records sought with your FOIA Action Office Point of Contact (POC) or the FOIA Liaison.

2. Follow the steps listed:
 - ____ Step 1: Make sure you clearly understand what records the requester is seeking.

 - ____ Step 2: Determine if you are likely to have records responsive to the request.

 - ____ Step 3: Provide an estimate of search and review time. You may also need to estimate the number of pages of responsive documents to your POC and the FOIA Liaison.

 - ____ Step 4: Search for records responsive to the request once fees are resolved (usually through payment or a fee waiver).

 - ____ Step 5: Determine if records are to be released or withheld from the requester. Exemption 4 protects confidential/proprietary information, including copyrighted material. Exemption 5 protects privileged information. Exemption 6 protects Personally Identifiable Information (PII) (note: use Exemption 7(C) to protect PII in Office of Law Enforcement docs). If you think another exemption may apply, consult with your FOIA Coordinator or FOIA Liaison on applicability.

 - ____ Step 6: Redact the information (but do not "Apply" the redactions) that should be withheld. Complete the Search Log indicating how you conducted the search (e.g., search terms, where you searched).

 - ____ Step 7: Organize the records responsive to the request and submit them to your POC or the FOIA Liaison.

3. Process the request within the allotted time specified for your response.

If you have any questions, please contact the FOIA Liaison or the FOIA Officer at 301-628-5658.

THANK YOU FOR YOUR SUPPORT FOR TRANSPARENCY!



NOS FOIA Processing

Prepared by Mark H. Graff
NOAA FOIA Officer/Bureau Chief Privacy Officer
Office of the Chief Information Officer
Governance and Portfolio Division
mark.graff@noaa.gov; (301)-628-5658



Freedom of Information Act (5 USC 552)



Outline

1. Birth to Death Processing Flow
2. Regulatory Structure for Referrals
3. The Risks of Other Agency Docs
4. DOJ Office of Information Policy Guidance
5. Deliberative Process Privilege
 - a) (b)(5) Two-Prong Test
 - b) Extent of the Privilege
6. Questions



Birth to Death Processing Flow



Receipt and Perfection

1. A request can be submitted in almost any fashion, to any employee. If it has been misdirected, that employee has 10 working days to properly route the request before the 20-day clock begins.
2. A request is perfected when it reasonably describes the records being sought so a search can commence, and is not unduly burdensome.



Birth to Death Processing Flow



Fees and Expedited Processing

1. If a requester wants a waiver of fees, they have to satisfy 6 factors, outlined in 15 CFR 4.11(l).
2. If a requester wants Expedited Processing, they must satisfy 15 CFR 4.6(d)(2).
3. When either of these are requested, they will be adjudicated by the FOIA Officer prior to tasking the LO with a search. If this adjudication occurs after tasking to the LO, the LO should coordinate with the FOIA Officer, as this usually indicates a high-risk request.



Birth to Death Processing Flow



Fees and Expedited Processing (cont'd)

1. If a fee waiver is not granted, the LO will be tasked with estimating the fees.
2. If the estimated fee is greater than \$20, the liaison should send a fee estimate to the requester and toll the processing of the request.*

*This is the suggested time under the regulations to discuss narrowing the scope with the requester.



Birth to Death Processing Flow



Search and Processing

1. Once the fees are resolved—either through a fee waiver, payment of fees, or unassessed fees becoming non-billable by the request becoming backlogged, a search is required.
2. The search should be in all locations where responsive records are reasonably likely to be found.



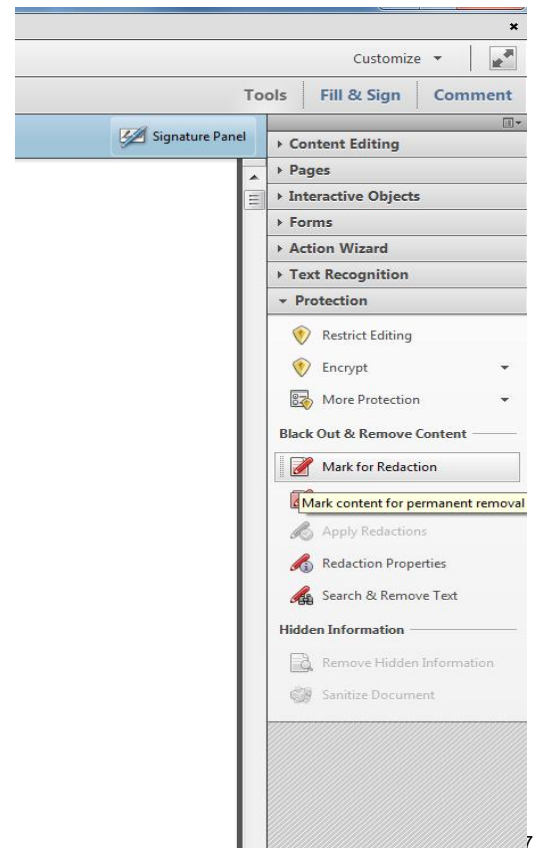
Birth to Death Processing Flow



Search and Processing

1. Once all responsive records are located, and de-duplicated*, the records need to be processed and have all exempt information redacted. This is also called “reasonable segregation”.
2. This can be done through Adobe or Clearwell.

*This can be either by hand, or through Clearwell for voluminous record searches.





Birth to Death Processing Flow



Search and Processing

1. After the records are redacted, provide the redacted copy to the FOIA Liaison.
2. Please make sure to note whether there is any particularly sensitive information, whether your search and processing is complete, or whether this is only an interim release. A completed search tasker needs to accompany the redacted records.



Birth to Death Processing Flow



Approving Release of Records

1. After the processed records are provided to the liaison, they will upload the records into FOIAOnline, and seek GC review (if necessary).
2. A review tasking will then be generated by the liaison for release of the records.



Birth to Death Processing Flow



Releasing Records

1. After the final review is complete, a tasking is generated from NOAA FOIA for the LO to release the records through FOIAOnline.

The screenshot shows the FOIAOnline interface with the following details:

- Page Title: Attach Records or Past Correspondence
- Filter: All
- Results: 50
- 58 items found, displaying 51 to 58.
- Table with columns: Send?, Title, Type, Record Release Type
- Records listed include: SWD_Tasker_DOC-NOAA-2015-001860.pdf, ScopeClarification_RE_DOC-NOAA-2015-001860.pdf, Search Log_DOC-NOAA-2015-001860.pdf, Tasker.PDF, Tasker2015-001860_Signed.pdf, ThirdInterimRelease_DOC-NOAA-2015-001860-1g.pdf, and Updated_Combined102 Responsive RecordsPart1_Redacted.
- Record Release Type: RR
- Selected Items To Be Sent To Requester: No records or correspondence have been selected.
- Buttons: SEND, CANCEL
- Footer: Help Desk (8:00 am - 6:00 pm ET, M-F) | Toll-Free: (844) 238-7744 | Local: (970) 494-5506 | Email Support



Regulatory Structure



MISDIRECTED WITHIN THE DEPARTMENT:

Where a component's FOIA office determines that a request was misdirected within the Department:

- The receiving component's FOIA office needs to route the request to the correct bureau(s).
- The search starts the time cutoff for records



Regulatory Structure (Cont'd)



OTHER BUREAUS MAY HAVE RECORDS:

How the proper Department component to respond to a FOIA Request is determined:

- The component that first receives the request and has responsive records.
 - When no records exist, the component that first receives the request and is likely to have responsive records should process the FOIA request.
- Or, the component to which the Departmental FOIA Officer or component FOIA Officer assigns lead responsibility for responding to the request.



Regulatory Structure (Cont'd)



CONSULTATIONS:

When a record is requested that originated with NOAA and another Federal agency has a *significant interest* in the record, NOAA must allow the other Federal agency to review the record before responding to a requester.





Consultations Continued...



Consultations can be done within FOIAOnline by uploading the record requiring consultation and then selecting the **“Create Consultation”** button found in the left hand column in FO (if the agency also uses FO)

- If attempts to consult with outside agencies cause a delay in responding to the request, notify the requester that the request will be processed or completed after the consultation has been completed.
- Consultation with another agency constitutes ***unusual circumstances*** and allows you to invoke a 10 day extension.



Regulatory Structure (Cont'd)



REFERRALS:

When NOAA possesses requested records that originated with another Federal agency.

NOAA routes these records to that agency for direct response to the requester.





OIP Referral Guidance



OIP's Summary:

“The agency that is best able to determine a record's sensitivity, and in turn its exemption status, is the agency that should process that record under the Act.

While this may vary in particular cases, as a general rule the agency that originated a record is usually the most appropriate agency to make a FOIA-disclosure determination regarding it.”



The Risks of Other Agency Docs



There are at least **7** different types of referrals and consultations:

1. External Referrals for direct response to the requester including Exemptions asserted by the referring agency to include their appeal language.

Example: ACOE referrals where we respond to requester with their appeal contact.




The Risks of Other Agency Docs




2. External Referrals of the request in its entirety with no asserted Exemptions or responsive records being located by the referring agency.

Example: Recent DOI Refers us records that fall entirely under our purview.




The Risks of Other Agency Docs (Cont'd)




3. Records in which all or part of the record requires a declassification review by the original classifying authority.

Example: Navy necropsy records OCA is the Director of the office that generated those docs.



The Risks of Other Agency Docs (Cont'd)



4. External Consultations for providing withholding recommendations to another agency

Example: Fisheries Management Council Records found within our Control



The Risks of Other Agency Docs (Cont'd)



5. Intra-Departmental taskings requiring a tasking Memorandum

Example: DOC sends us a tasking to conduct a search in Presidential Transition cases through FOIAOnline, and we, in turn, issue taskings within Bureau.



The Risks of Other Agency Docs (Cont'd)



6. External Litigation consultations seeking NOAA's asserted exemptions

Example: FBI recently asked NOAA in the DB Cooper case to provide withholding recommendations on the weather docs from the plane flight.

The Risks of Other Agency Docs (Cont'd)



7. Referrals asking for non-attribution

Example: If we ever have intelligence agency records, they frequently don't want to be identified as the originator of the records.



NAO 205-14: NOAA FOIA Taskings



There are at least 6 types of taskings—it must be clear which type you are being asked to review:

1. Conduct a search for responsive records (fees waived or non-billable)
2. Prepare a fee estimate in a non-referral
3. Prepare a fee estimate for a case being coordinated by DOC, and the aggregate threshold is not determined by NOAA
4. Review referred records and provide release recommendations to the referring entity
5. Review referred records, and respond directly to the requester, incorporating the referring entities exemptions and appeal language.
6. Respond to an adjudication on appeal



OIP GUIDANCE



If they are Agency Records:

When an agency receives a FOIA request for agency records in its possession it must take responsibility for searching for the records and processing the request. It cannot simply refuse to act on the ground that the documents originated elsewhere.





OIP Guidance (Cont'd)



“When litigation (results), the government generally has not raised any issue over which agency is the "proper party defendant," but instead has provided affidavits from the originating agencies to justify any contested nondisclosure.”

Plain English: DOJ won't challenge who the Plaintiff names in Court. If you worked on the request, you can be the one sued, and other agencies will just provide affidavits for the records they created.



(b)(5) Two Prong Test



When (b)(5) Deliberative Process Applies:

- (b)(5) Statute generally protects: “Inter and intra-agency” (internal and external) communications that would not be available by law to a party other than an agency in litigation with the agency”.
- Courts define this as only documents that are typically privileged in civil discovery



(b)(5) Two Prong Test (cont'd)



- Deliberative Process Privilege includes:
 - The Inter-agency (internal) and Intra-agency (external) communication requirement which encompasses the “consultant corollary”.
 - If the consultants, contractors, external advisors provided advice similar to what might have been received from an employee. Must ask—
 - Are they an interested party?
 - Seeking benefit at the expense of other applicants?
 - If yes, no (b)(5) protection.



(b)(5) Two Prong Test (cont'd)



Two Part Test:

- 1) Is the material pre-decisional?
 - a) i.e., antecedent to the adoption of the agency policy? (the making of the “policy sausage”)
- 2) Is it deliberative (not factual)—making recommendations, expressing opinions on legal or policy matters?



The Extent of the Privilege



- **Policy behind DPP:**
 - Encourage open and frank discussions among employees and protect the decision making processes of the government
 - Protect against premature disclosure of proposed policies before adopted
 - Protect against public confusion



The Extent of the Privilege



- Since the 2016 FOIA Improvement Act, a **Risk of Harm** must exist for the Privilege to apply.
- Previously, this was only advisory, although in practice, this should not change NOAA's approach, as NOAA routinely required a Risk of Harm Analysis for (b)(5) Deliberative Process.





Risk of Harm



Foreseeable Harm is now a requirement under the 2016 FOIA Improvement Act:

To Reach Foreseeable Harm, OIP summarizes the considerations:

- How sensitive is the decision?
- How sensitive is the decision-making process? (consider peer review)
- Is the decision final yet?
- Would disclosure affect the employees that contributed to the records?
- Would future decisions be jeopardized if the records were released?
- How significant would the “chilling” effect be?
- How old is the record?
- How sensitive are portions of the record?



The Extent of the Privilege



- There is also now a 25 year limit on the use of Deliberative Process.
- After that time—the privilege no longer applies.





Questions



QUESTIONS?

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Tuesday, August 1, 2017 5:07 PM
To: Lola Stith - NOAA Affiliate
Subject: Re: ACTION REQUIRED: Task for DOC-OS-2017-000958 (REVIEW/SIGN)
Attachments: NOAA RESPONSE_Powell_2017-000958- Dept Wide Input Memo mhg.pdf

Also looks good--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, Aug 1, 2017 at 1:29 PM, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:

Hi Mark - LA has uploaded unredacted records (UR) in response to the subject request.

I have attached a copy of the records and a draft of the tasker for your review/signature. Please sign and return to me.

Thanks!

--

Lola Stith
Contractor - The Ambit Group, LLC
NOAA Office of the Chief Information Officer (OCIO)
(c (b)(6))
lola.m.stith@noaa.gov



UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

April 11, 2017

MEMORANDUM FOR: Bobbie Parsons, IOS Vernon E. Curry, CEN
 Pam Moulder, ESA Stephen Kong, EDA
 Jennifer Kuo, BIS Victor Powers, ITA
 Josephine Arnold, MBDA Catherine Fletcher, NIST
 Wayne Strickland, NTIS Stacy Cheney, NTIA
 Robert Swisher, NOAA Jennifer Piel, OIG
 Ricou Heaton, PTO Dondi Staunton, BEA

FROM: Michael Toland
 Deputy Chief FOIA Officer
 Office of Privacy and Open Government

SUBJECT: FOIA Request from Eleanor Powell
 - DOC-OS-2017-000958

I am forwarding a copy of the attached FOIA request for your immediate attention. Please conduct a search for responsive records. “Pursuant to the Freedom of Information Act, 5 U.S.C. 552, we request all Department of Commerce Congressional Correspondence Logs between January 1, 2007, and December 31, 2016. We are not requesting the correspondence texts. We are requesting all fields of information recorded in logs or log databases about each correspondence such as the Correspondent Name, Correspondent Type, Addressee, Subject, Date Received, Date of Reply, Document Type, Processing Codes and Instructions, Reference or Control Numbers, and Office to which the correspondence may have been assigned.”

In order to be responsive to this request in a timely manner, we need all responsive records by C.O.B. April 25, 2017. Separate the Tasker from the responsive records when uploading to FOIAonline. Taskers should be uploaded in Case File/Correspondence/Other. Only the tasker signed by the FOIA Officer/Senior Official from the Bureau should be uploaded. Please do not upload Sub-Agency Taskers.

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. Link - List of Exemptions: <http://www.osec.doc.gov/omo/FOIA/exemptions.htm>.

- 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 of responsive documents are to be uploaded in Case/Records 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 – Unreleasable; and RU-Redacted-Unredacted, you must apply an Exemption in the Action Column.
- For referred documents use the following format for “Title:” 15 documents refer to NTIA.

You must begin the search immediately. Documents created outside the date range of this request, are not responsive to the request. The responsive date range is “January 1, 2007 to December 31, 2016.” If the search is delayed for any reason, please notify me immediately, but no later than 24 hours from the date listed.

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

Please contact Ayana Crawford if you have any questions about the scope of this request or the FOIA exemptions, at 202-482-9109.

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

Uploaded in FOIAonline are all documents in the possession of my office which are responsive and can be released in entirety.

Uploaded in FOIAonline are all documents within the possession of my office which are responsive and we have found reason to partially withhold. **One clean copy and one redacted copy have been uploaded.**

Uploaded in FOIAonline are all documents within the possession of my office which are responsive and we have found reason to withhold entirely, each document to be withheld entirely has been noted.

Uploaded in FOIAonline are all documents within the possession of my office which are responsive and must be referred to the originating office, bureau, or federal agency for disclosure determinations.

My office has found no responsive documents.

All disclosure determinations have been made by the Commerce Office that originated or has control of the documents

A foreseeable harm review and analysis has been completed for all withheld documents and portions of documents and it has been determined that disclosure of the withheld material would result in harm to an interest protected by the asserted exemption or that disclosure is prohibited by law. Name of person most knowledgeable with the issue of foreseeable harm: _____.

Interim response

Final response

GRAFF.MARK.HYRUM.1514447892

Digitally signed by GRAFF.MARK.HYRUM.1514447892
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI, ou=OTHER,
cn=GRAFF.MARK.HYRUM.1514447892
Date: 2017.08.01 17:06:28 -04'00'

Signature (Senior Official) Bureau

Date

Potts, Kristina (Federal)

From: Potts, Kristina (Federal)
Sent: Wednesday, August 2, 2017 11:16 AM
To: Graff, Mark (Federal)
Subject: FW: file for you
Attachments: 1501.57 Background.2docx.docx

(b) (5)

Kristina E. Potts
Department of Commerce
Office of General Counsel
HCHB 5098
Email: Kristina.potts@doc.gov
Phone: 202-482-7863
Iphon (b)(6)

-----Original Message-----

From: Potts, Kristina (Federal)
Sent: Wednesday, August 02, 2017 7:02 AM
To: Bogomolny, Michael (Federal) <MBogomolny@doc.gov>
Subject: FW: file for you

(b) (5)

Kristina E. Potts
Department of Commerce
Office of General Counsel
HCHB 5098
Email: Kristina.potts@doc.gov
Phone: 202-482-7863
Iphon (b)(6)

-----Original Message-----

From: Orr, Malcolm (Federal)
Sent: Tuesday, August 01, 2017 3:36 PM
To: Potts, Kristina (Federal) <Kristina.Potts@doc.gov>
Subject: RE: file for you

Hi Kristin (b)(5)

Thanks,

Malcolm Orr
Senior Counsel, General Law Division
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Washington, D.C. 20230
Cell (b)(6)
Fax: 202-482-2888
morr@doc.gov

-----Original Message-----

From: Potts, Kristina (Federal)
Sent: Tuesday, August 01, 2017 2:30 PM
To: Orr, Malcolm (Federal) <MOrr@doc.gov>
Subject: FW: file for you

O (b)(5)

?

Kristina E. Potts
Department of Commerce
Office of General Counsel
HCHB 5098
Email: Kristina.potts@doc.gov
Phone: 202-482-7863
Iphon (b)(6)

-----Original Message-----

From: Bogomolny, Michael (Federal)
Sent: Tuesday, July 18, 2017 6:39 PM

To: Potts, Kristina (Federal) <Kristina.Potts@doc.gov>
Subject: file for you

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

-bogo

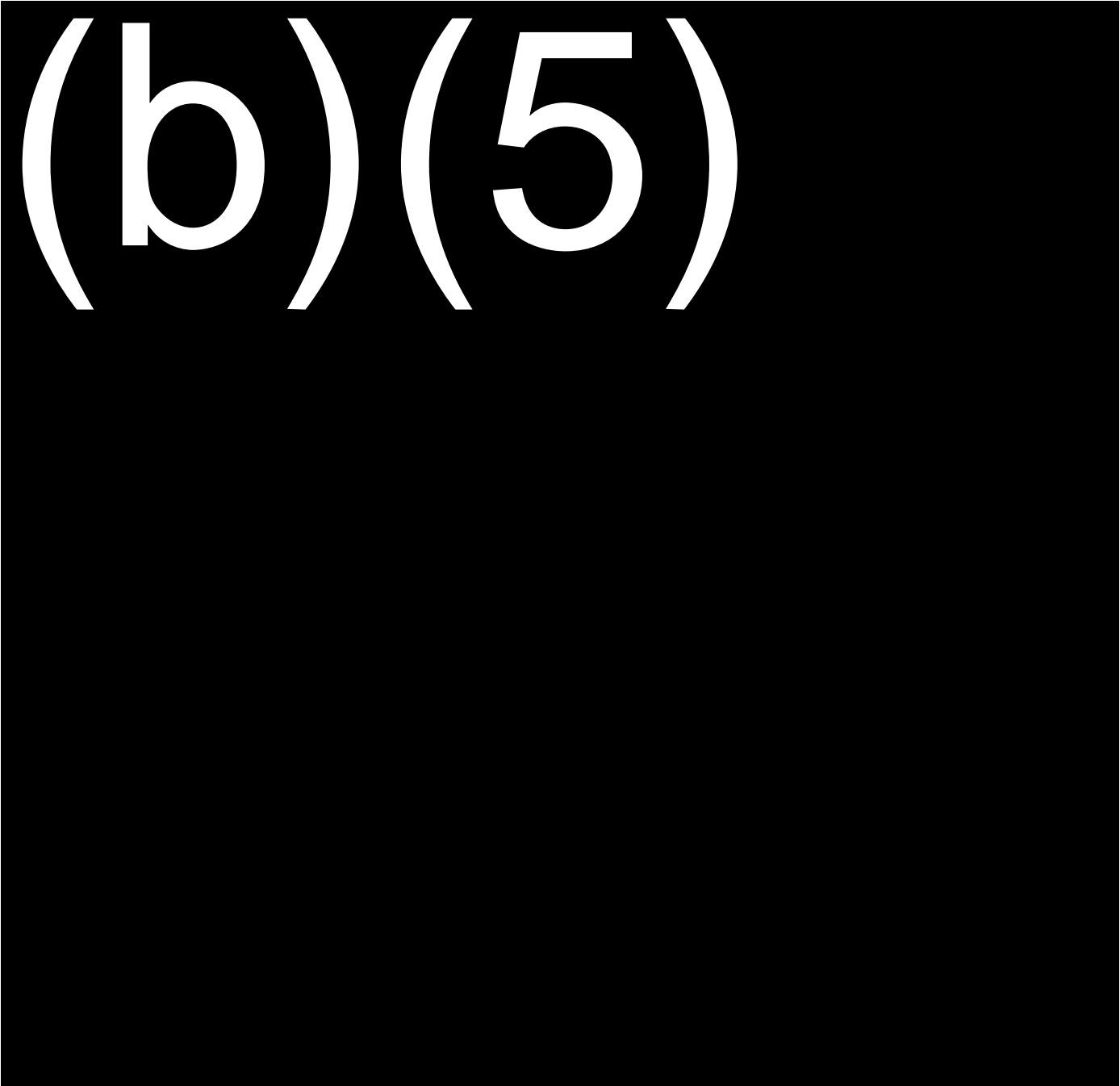
November 6, 2015

MEMORANDUM
FOR FILE (1501-57)

FROM: Malcolm Orr
General Law Division

SUBJECT: Background: Freedom of Information Act Fee Waiver Appeal of
Lawrence Kogan (DOC-NOAA-2014-001694)

(b) (5)



(b) (5)

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Wednesday, August 2, 2017 7:05 AM
To: Lola Stith - NOAA Affiliate
Cc: Robert Swisher - NOAA Federal
Subject: NOS FOIA Training to Post
Attachments: NOAA FOIA Processing Flow Chart (8-1-17).pdf; NOAA FOIA Quick Reference_GC (8-1-17).pdf; NOAA FOIA Quick Reference_POCs (8-1-17).pdf; NOAA FOIA Quick Reference_SMEs (8-1-17).pdf; NOS FOIA Processing PowerPoint.pdf

Hey Lola,

Here are the final versions of all the presentation materials for this morning's NOS FOIA Training. This can all go on the website (and replace any prior iterations of the same docs).

We're also going to record this WebEx broadcast, and at a later point, I'll get a copy of the .wav file from GC and we can post that to the website as well so that folks can get the training audio from the training events they weren't able to attend.

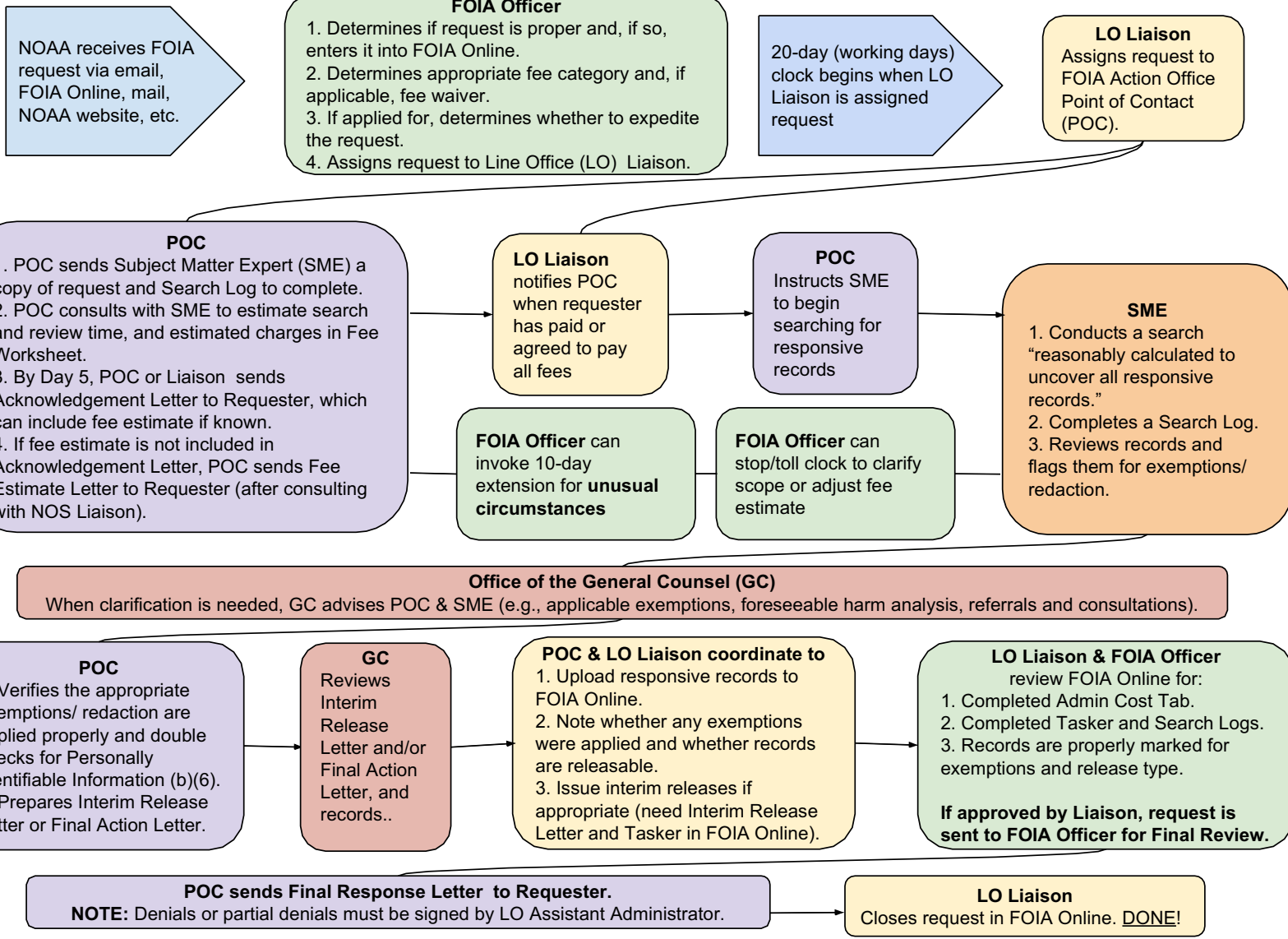
Here are also the links to other resources we can put on the website that we're making available to the attendees, in case you didn't already have these:

- [FOIA Timing](#)
- [Exemptions 1-pager](#)
- [FOIA Fee Matrix](#)

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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NOAA FOIA Processing



NOAA receives FOIA request via email, FOIA Online, mail, NOAA website, etc.

FOIA Officer

1. Determines if request is proper and, if so, enters it into FOIA Online.
2. Determines appropriate fee category and, if applicable, fee waiver.
3. If applied for, determines whether to expedite the request.
4. Assigns request to Line Office (LO) Liaison.

20-day (working days) clock begins when LO Liaison is assigned request

LO Liaison
Assigns request to FOIA Action Office Point of Contact (POC).

POC

1. POC sends Subject Matter Expert (SME) a copy of request and Search Log to complete.
2. POC consults with SME to estimate search and review time, and estimated charges in Fee Worksheet.
3. By Day 5, POC or Liaison sends Acknowledgement Letter to Requester, which can include fee estimate if known.
4. If fee estimate is not included in Acknowledgement Letter, POC sends Fee Estimate Letter to Requester (after consulting with NOS Liaison).

LO Liaison notifies POC when requester has paid or agreed to pay all fees

POC
Instructs SME to begin searching for responsive records

SME

1. Conducts a search "reasonably calculated to uncover all responsive records."
2. Completes a Search Log.
3. Reviews records and flags them for exemptions/redaction.

FOIA Officer can invoke 10-day extension for **unusual circumstances**

FOIA Officer can stop/toll clock to clarify scope or adjust fee estimate

Office of the General Counsel (GC)
When clarification is needed, GC advises POC & SME (e.g., applicable exemptions, foreseeable harm analysis, referrals and consultations).

POC

1. Verifies the appropriate exemptions/redaction are applied properly and double checks for Personally Identifiable Information (b)(6).
2. Prepares Interim Release Letter or Final Action Letter.

GC
Reviews Interim Release Letter and/or Final Action Letter, and records..

POC & LO Liaison coordinate to

1. Upload responsive records to FOIA Online.
2. Note whether any exemptions were applied and whether records are releasable.
3. Issue interim releases if appropriate (need Interim Release Letter and Tasker in FOIA Online).

LO Liaison & FOIA Officer review FOIA Online for:

1. Completed Admin Cost Tab.
2. Completed Tasker and Search Logs.
3. Records are properly marked for exemptions and release type.

If approved by Liaison, request is sent to FOIA Officer for Final Review.

POC sends Final Response Letter to Requester.
NOTE: Denials or partial denials must be signed by LO Assistant Administrator.

LO Liaison
Closes request in FOIA Online. DONE!



FOIA QUICK REFERENCE GUIDE FOR GENERAL COUNSEL REVIEW

The information provided below is a list of quick and easy steps for General Counsel (GC) to keep in mind from NOAA Administrative Order (NAO) 205-14 in reviewing a FOIA request. NAO 205-14, 15 CFR Part 4, and 5 U.S.C. § 552 provide detailed information to follow in responding to FOIA requests.

When you review a FOIA Request:

1. Under NAO 205-14 (Sec. 5(6)(b)), GC has discretion to determine whether review is “appropriate” and, if so, what that review entails.
2. Common issues to look for:
 - ____ Step 1: Review the nature of the request to ensure the response is to the appropriate entity and in the right form. Frequent areas of confusion include: fee estimates and waivers, when to produce records, applicable privileges and exemptions, external agency consultations, external agency referrals and how to process appeals.
 - ____ Step 2: Ensure that similar records receive similar treatment. Exemptions and responsiveness are subjective, and consistency is difficult to achieve in voluminous requests—especially with regard to responsiveness, (b)(5) Deliberative Process, and with the (b)(6)/(b)(7)(C) balancing inquiry.
 - ____ Step 3: Ensure that FOIA Exemption (b)(5) Deliberative Process is applied only after determining if the 2-prong Vaughn inquiry is satisfied and would likely survive a challenge on administrative appeal.
 - ____ Step 4: Check the adequacy of the search. Unless the records sought are specifically identified documents, adequacy of the search is more difficult to prove. Subject Matter Experts should search all locations where responsive records are reasonably likely to be found.
 - ____ Step 5: Identify equity ownership or “interest” in a response. 15 CFR 4.5(b)-(e) require consultation or referral (depending on record origination) to other agencies or Bureaus that might have equities in the records. This is frequently missed, particularly in interagency email strings.
3. Notification: If the request has been identified as a high-interest request, notification to the proper entities before release will usually be required. This often includes notice to GC leadership, NOAA’s Office of Communications, USEC/Leg. Affairs, and/or DOC’s Office of Privacy and Open Government.
4. Please notify the NOAA FOIA Officer of any increased litigation risks and advance interim releases as soon as possible.

If you have any questions, please contact the FOIA POC and FOIA Liaison, or the NOAA FOIA Officer at 301-628-5658.

THANK YOU FOR YOUR SUPPORT FOR TRANSPARENCY!



FOIA QUICK REFERENCE GUIDE FOR FOIA ACTION OFFICE POINTS OF CONTACT



The information provided below is a list of quick and easy steps that FOIA Action Office Points of Contact (POCs) should take when they receive a FOIA request. NOAA Administrative Order NAO 205-14, 15 CFR Part 4, and 5 U.S.C. § 552 provide detailed information to follow in responding to FOIA requests.

When you receive a FOIA Request:

1. Review the FOIA Request and discuss any issues of scope, clarity of request, or the description of records sought with the FOIA Liaison.
2. You are responsible for:
 - ____ Step 1: Sending the subject matter experts (SMEs) a copy of the request and Search Log to complete.
 - ____ Step 2: Consulting with the SMEs to estimate search and review time, and estimated charges in the Fee Worksheet.
 - ____ Step 3: Sending an Acknowledgement Letter to the requester (this can include a fee estimate if known at the time). Sending a Fee Estimate Letter to the requester (after consulting with the Liaison) if not included in the Acknowledgement Letter.
 - ____ Step 4: Ensuring the SMEs understand the request, search for responsive documents, and appropriately identify exemptions and Personally Identifiable Information. . Exemption 4 protects confidential/proprietary information, including copyrighted material. Exemption 5 protects privileged information. Exemption 6 protects Personally Identifiable Information (PII) (note: use Exemption 7(C) to protect PII in Office of Law Enforcement docs)..If you think another exemption may apply, consult with your FOIA Coordinator or FOIA Liaison on applicability.
 - ____ Step 5: Prepare Interim Release Letters and/or Final Action Letter after receiving clearance from General Counsel (GC). Note: Clearance from the Line Office Assistant Administrator is needed for denials or partial denials.
 - ____ Step 6: Coordinate with the FOIA Liaison to ensure responsive records are correctly uploaded to FOIA Online.
3. Process the request within the allotted time specified for your response. Send Final Action Letter once all required steps have been completed.

If you have any questions, please contact the FOIA Liaison or the FOIA Officer at 301-628-5658.

THANK YOU FOR YOUR SUPPORT FOR TRANSPARENCY!



FOIA QUICK REFERENCE GUIDE FOR SUBJECT MATTER EXPERTS

The information provided below is a list of quick and easy steps that subject matter experts should take when they receive a FOIA request. NOAA Administrative Order NAO 205-14, 15 CFR Part 4, and 5 U.S.C. § 552 provide detailed information to follow in responding to FOIA requests.

When you receive a FOIA Request:

1. Review the FOIA Request and discuss any issues of scope, clarity of request, or the description of records sought with your FOIA Action Office Point of Contact (POC) or the FOIA Liaison.
2. Follow the steps listed:
 - ____ Step 1: Make sure you clearly understand what records the requester is seeking.
 - ____ Step 2: Determine if you are likely to have records responsive to the request.
 - ____ Step 3: Provide an estimate of search and review time. You may also need to estimate the number of pages of responsive documents to your POC and the FOIA Liaison.
 - ____ Step 4: Search for records responsive to the request once fees are resolved (usually through payment or a fee waiver).
 - ____ Step 5: Determine if records are to be released or withheld from the requester. Exemption 4 protects confidential/proprietary information, including copyrighted material. Exemption 5 protects privileged information. Exemption 6 protects Personally Identifiable Information (PII) (note: use Exemption 7(C) to protect PII in Office of Law Enforcement docs). If you think another exemption may apply, consult with your FOIA Coordinator or FOIA Liaison on applicability.
 - ____ Step 6: Redact the information (but do not "Apply" the redactions) that should be withheld. Complete the Search Log indicating how you conducted the search (e.g., search terms, where you searched).
 - ____ Step 7: Organize the records responsive to the request and submit them to your POC or the FOIA Liaison.
3. Process the request within the allotted time specified for your response.

If you have any questions, please contact the FOIA Liaison or the FOIA Officer at 301-628-5658.

THANK YOU FOR YOUR SUPPORT FOR TRANSPARENCY!



NOS FOIA Processing

Prepared by Mark H. Graff
NOAA FOIA Officer/Bureau Chief Privacy Officer
Office of the Chief Information Officer
Governance and Portfolio Division
mark.graff@noaa.gov; (301)-628-5658



Freedom of Information Act (5 USC 552)



Outline

1. Birth to Death Processing Flow
2. Regulatory Structure for Referrals
3. The Risks of Other Agency Docs
4. DOJ Office of Information Policy Guidance
5. Deliberative Process Privilege
 - a) (b)(5) Two-Prong Test
 - b) Extent of the Privilege
6. Questions



Birth to Death Processing Flow



Receipt and Perfection

1. A request can be submitted in almost any fashion, to any employee. If it has been misdirected, that employee has 10 working days to properly route the request before the 20-day clock begins.
2. A request is perfected when it reasonably describes the records being sought so a search can commence, and is not unduly burdensome.



Birth to Death Processing Flow



Fees and Expedited Processing

1. If a requester wants a waiver of fees, they have to satisfy 6 factors, outlined in 15 CFR 4.11(l).
2. If a requester wants Expedited Processing, they must satisfy 15 CFR 4.6(d)(2).
3. When either of these are requested, they will be adjudicated by the FOIA Officer prior to tasking the LO with a search. If this adjudication occurs after tasking to the LO, the LO should coordinate with the FOIA Officer, as this usually indicates a high-risk request.



Birth to Death Processing Flow



Fees and Expedited Processing (cont'd)

1. If a fee waiver is not granted, the LO will be tasked with estimating the fees.
2. If the estimated fee is greater than \$20, the liaison should send a fee estimate to the requester and toll the processing of the request.*

*This is the suggested time under the regulations to discuss narrowing the scope with the requester.



Birth to Death Processing Flow



Search and Processing

1. Once the fees are resolved—either through a fee waiver, payment of fees, or unassessed fees becoming non-billable by the request becoming backlogged, a search is required.
2. The search should be in all locations where responsive records are reasonably likely to be found.



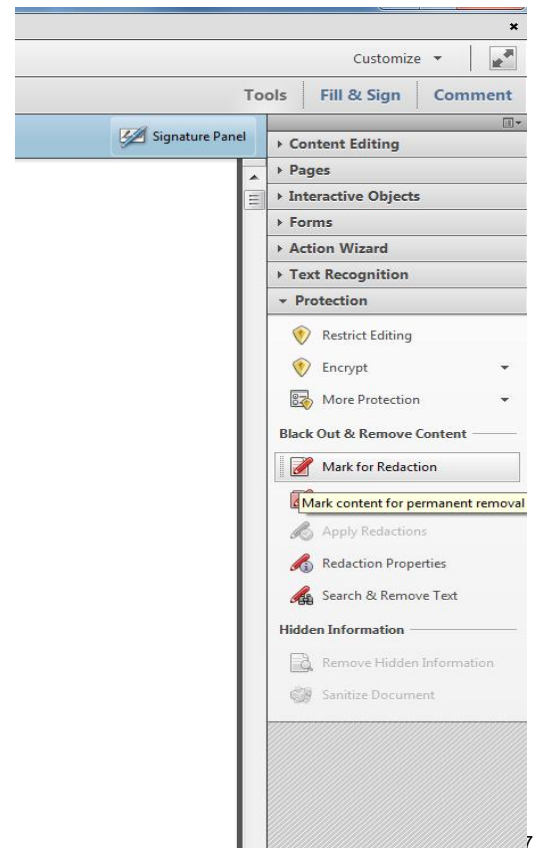
Birth to Death Processing Flow



Search and Processing

1. Once all responsive records are located, and de-duplicated*, the records need to be processed and have all exempt information redacted. This is also called “reasonable segregation”.
2. This can be done through Adobe or Clearwell.

*This can be either by hand, or through Clearwell for voluminous record searches.





Birth to Death Processing Flow



Search and Processing

1. After the records are redacted, provide the redacted copy to the FOIA Liaison.
2. Please make sure to note whether there is any particularly sensitive information, whether your search and processing is complete, or whether this is only an interim release. A completed search tasker needs to accompany the redacted records.



Birth to Death Processing Flow



Approving Release of Records

1. After the processed records are provided to the liaison, they will upload the records into FOIAOnline, and seek GC review (if necessary).
2. A review tasking will then be generated by the liaison for release of the records.



Birth to Death Processing Flow



Releasing Records

1. After the final review is complete, a tasking is generated from NOAA FOIA for the LO to release the records through FOIAOnline.

The screenshot shows the FOIAOnline interface with the following details:

- Page Title: Attach Records or Past Correspondence
- Filter: All
- Results: 50
- 58 items found, displaying 51 to 58.
- Table with columns: Send?, Title, Type, Record Release Type
- Records listed include: SWD_Tasker_DOC-NOAA-2015-001860.pdf, ScopeClarification_RE_DOC-NOAA-2015-001860.pdf, Search Log_DOC-NOAA-2015-001860.pdf, Tasker.PDF, Tasker2015-001860_Signed.pdf, ThirdInterimRelease_DOC-NOAA-2015-001860-1g.pdf, and Updated_Combined102 Responsive RecordsPart1_Redacted.
- Selected Items To Be Sent To Requester: No records or correspondence have been selected.
- Buttons: SEND, CANCEL
- Footer: Help Desk (8:00 am - 6:00 pm ET, M-F) | Toll-Free: (844) 238-7744 | Local: (970) 494-5506 | Email Support



Regulatory Structure



MISDIRECTED WITHIN THE DEPARTMENT:

Where a component's FOIA office determines that a request was misdirected within the Department:

- The receiving component's FOIA office needs to route the request to the correct bureau(s).
- The search starts the time cutoff for records



Regulatory Structure (Cont'd)



OTHER BUREAUS MAY HAVE RECORDS:

How the proper Department component to respond to a FOIA Request is determined:

- The component that first receives the request and has responsive records.
 - When no records exist, the component that first receives the request and is likely to have responsive records should process the FOIA request.
- Or, the component to which the Departmental FOIA Officer or component FOIA Officer assigns lead responsibility for responding to the request.



Regulatory Structure (Cont'd)



CONSULTATIONS:

When a record is requested that originated with NOAA and another Federal agency has a *significant interest* in the record, NOAA must allow the other Federal agency to review the record before responding to a requester.





Consultations Continued...



Consultations can be done within FOIAOnline by uploading the record requiring consultation and then selecting the **“Create Consultation”** button found in the left hand column in FO (if the agency also uses FO)

- If attempts to consult with outside agencies cause a delay in responding to the request, notify the requester that the request will be processed or completed after the consultation has been completed.
- Consultation with another agency constitutes ***unusual circumstances*** and allows you to invoke a 10 day extension.



Regulatory Structure (Cont'd)



REFERRALS:

When NOAA possesses requested records that originated with another Federal agency.

NOAA routes these records to that agency for direct response to the requester.





OIP Referral Guidance



OIP's Summary:

“The agency that is best able to determine a record's sensitivity, and in turn its exemption status, is the agency that should process that record under the Act.

While this may vary in particular cases, as a general rule the agency that originated a record is usually the most appropriate agency to make a FOIA-disclosure determination regarding it.”



The Risks of Other Agency Docs



There are at least **7** different types of referrals and consultations:

1. External Referrals for direct response to the requester including Exemptions asserted by the referring agency to include their appeal language.

Example: ACOE referrals where we respond to requester with their appeal contact.



The Risks of Other Agency Docs



2. External Referrals of the request in its entirety with no asserted Exemptions or responsive records being located by the referring agency.

Example: Recent DOI Refers us records that fall entirely under our purview.




The Risks of Other Agency Docs (Cont'd)




-
3. Records in which all or part of the record requires a declassification review by the original classifying authority.

Example: Navy necropsy records OCA is the Director of the office that generated those docs.



The Risks of Other Agency Docs (Cont'd)



4. External Consultations for providing withholding recommendations to another agency

Example: Fisheries Management Council Records found within our Control



The Risks of Other Agency Docs (Cont'd)



5. Intra-Departmental taskings requiring a tasking Memorandum

Example: DOC sends us a tasking to conduct a search in Presidential Transition cases through FOIAOnline, and we, in turn, issue taskings within Bureau.



The Risks of Other Agency Docs (Cont'd)



6. External Litigation consultations seeking NOAA's asserted exemptions

Example: FBI recently asked NOAA in the DB Cooper case to provide withholding recommendations on the weather docs from the plane flight.

The Risks of Other Agency Docs (Cont'd)



7. Referrals asking for non-attribution

Example: If we ever have intelligence agency records, they frequently don't want to be identified as the originator of the records.



NAO 205-14: NOAA FOIA Taskings



There are at least 6 types of taskings—it must be clear which type you are being asked to review:

1. Conduct a search for responsive records (fees waived or non-billable)
2. Prepare a fee estimate in a non-referral
3. Prepare a fee estimate for a case being coordinated by DOC, and the aggregate threshold is not determined by NOAA
4. Review referred records and provide release recommendations to the referring entity
5. Review referred records, and respond directly to the requester, incorporating the referring entities exemptions and appeal language.
6. Respond to an adjudication on appeal



OIP GUIDANCE



If they are Agency Records:

When an agency receives a FOIA request for agency records in its possession it must take responsibility for searching for the records and processing the request. It cannot simply refuse to act on the ground that the documents originated elsewhere.





OIP Guidance (Cont'd)



“When litigation (results), the government generally has not raised any issue over which agency is the "proper party defendant," but instead has provided affidavits from the originating agencies to justify any contested nondisclosure.”

Plain English: DOJ won't challenge who the Plaintiff names in Court. If you worked on the request, you can be the one sued, and other agencies will just provide affidavits for the records they created.



(b)(5) Two Prong Test



When (b)(5) Deliberative Process Applies:

- (b)(5) Statute generally protects: “Inter and intra-agency” (internal and external) communications that would not be available by law to a party other than an agency in litigation with the agency”.
- Courts define this as only documents that are typically privileged in civil discovery



(b)(5) Two Prong Test (cont'd)



- Deliberative Process Privilege includes:
 - The Inter-agency (internal) and Intra-agency (external) communication requirement which encompasses the “consultant corollary”.
 - If the consultants, contractors, external advisors provided advice similar to what might have been received from an employee. Must ask—
 - Are they an interested party?
 - Seeking benefit at the expense of other applicants?
 - If yes, no (b)(5) protection.



(b)(5) Two Prong Test (cont'd)



Two Part Test:

- 1) Is the material pre-decisional?
 - a) i.e., antecedent to the adoption of the agency policy? (the making of the “policy sausage”)
- 2) Is it deliberative (not factual)—making recommendations, expressing opinions on legal or policy matters?



The Extent of the Privilege



- **Policy behind DPP:**
 - Encourage open and frank discussions among employees and protect the decision making processes of the government
 - Protect against premature disclosure of proposed policies before adopted
 - Protect against public confusion



The Extent of the Privilege



- Since the 2016 FOIA Improvement Act, a **Risk of Harm** must exist for the Privilege to apply.
- Previously, this was only advisory, although in practice, this should not change NOAA's approach, as NOAA routinely required a Risk of Harm Analysis for (b)(5) Deliberative Process.





Risk of Harm



Foreseeable Harm is now a requirement under the 2016 FOIA Improvement Act:

To Reach Foreseeable Harm, OIP summarizes the considerations:

- How sensitive is the decision?
- How sensitive is the decision-making process? (consider peer review)
- Is the decision final yet?
- Would disclosure affect the employees that contributed to the records?
- Would future decisions be jeopardized if the records were released?
- How significant would the “chilling” effect be?
- How old is the record?
- How sensitive are portions of the record?



The Extent of the Privilege



- There is also now a 25 year limit on the use of Deliberative Process.
- After that time—the privilege no longer applies.





Questions



QUESTIONS?

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Thursday, August 3, 2017 8:48 AM
To: Stephen Lipps - NOAA Federal; Holmes, Colin; Robert Moller - NOAA Federal; Scott Smullen - NOAA Federal; Jeff Dillen - NOAA Federal; Kristen Gustafson - NOAA Federal; Robert Hogan
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; Cc: OCIO/OPPA; Troy Wilds - NOAA Federal; Lawrence Charters - NOAA Federal; Allison Soussi-Tanani - NOAA Federal; Bogomolny, Michael (Federal); Roxie Allison-Holman - NOAA Federal; John Almeida - NOAA Federal
Subject: Weekly FOIA Incoming and High Visibility Requests
Attachments: Weekly FOIA Incoming and High Visibility Requests 07.26.17 - 08.1.17.xls

Good Morning,

Attached is the weekly report.

There are two significant requests. The first, from Earthjustice, seeks info on bigeye tuna catch data. (DOC-NOAA-2017-001634). Information on this topic has gotten some press in terms of the value of tuna catches in the Western and Central Pacific Ocean. (See, <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/09/netting-billions-a-valuation-of-tuna-in-the-western-and-central-pacific-ocean>.)

The second, and more noteworthy request, is from the National Resources Defense Council, which is seeking records regarding Secretary Ross' decision that New Jersey was in compliance regarding the recreational summer flounder fishery under the Atlantic Coastal Fisheries Cooperative Management Act. This has received significant media attention, including a July 17, 2017 Washington Post article on point that was also reported by several other smaller news agencies. (DOC-NOAA-2017-001606). (See, e.g., <http://ktar.com/story/1659851/group-trump-officials-fish-ruling-could-harm-conservation/>). NOAA has asked DOC whether they intend to take the lead on this request or not.

In litigatio (b)(5)

[REDACTED]

[REDACTED]

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

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Tracking Number	Type	Requester	Requester Organization	Submitted
DOC-NOAA-2017-001634	Request	Paul Achitoff	Earthjustice	08/01/2017
DOC-NOAA-2017-001630	Request	Andrew Ogden	Turtle Island Restoration Network	08/01/2017
DOC-NOAA-2017-001616	Request	Russ Kick		07/30/2017
DOC-NOAA-2017-001620	Request	Andrew Hartzell	O'Neil LLP	07/28/2017
DOC-NOAA-2017-001613	Request	David B. Anderson	Cascadia Research Collective	07/28/2017
DOC-NOAA-2017-001610	Request	Janet Locke	Ms.	07/27/2017
DOC-NOAA-2017-001606	Request	Molly Masterton	Natural Resources Defense Council	07/26/2017

Custom Report - 08/02/2017 05:03:29

Received	Assigned To	Case File Assigned To	Perfect?	Due	Closed Date
08/01/2017	NOAA	NOAA	No	TBD	TBD
08/01/2017	NOAA	NOAA	No	TBD	TBD
07/31/2017	NOAA	NOAA	No	TBD	TBD
07/28/2017	Shawn L. Martin	Shawn L. Martin	Yes	08/28/2017	TBD
07/28/2017	Kehaupuaokal Kamaka	Kehaupuaokal Kamaka	Yes	08/25/2017	TBD
07/27/2017	NOAA	NOAA	No	TBD	TBD
07/26/2017	Amanda J. Patterson	Amanda J. Patterson	Yes	08/23/2017	TBD

Status	Dispositions
---------------	---------------------

Submitted

Submitted

Submitted

Assignment Determination

Assignment Determination

Submitted

Assignment Determination

Detail

Please provide 2016 bigeye tuna catch data, which has not yet been published at <https://pifsc-www.irc.noaa.gov/w>
see attachment

I hereby request all completed Reports of Whaling Operations (form 0648-0311) that have been turned in to NMFS
this firm respectfully requests a copy of all data, records, reports, correspondence, documents and other informatic
Please provide the positions (lat and lon) of false killer whale interactions with the Hawaiian longline fishery that ha
Under the Freedom of Information Act, I am requesting any and all information you have regarding any upcoming t
Please find attached a FOIA request from the Natural Resources Defense Council (NRDC) for records regarding tr

[REDACTED]
pacfin/hi/Data/Pelagic/hpel7.htm. This includes bigeye tuna catch, by pound, for longline, MHI troll, MHI l

since January 1, 2016. I am requesting the entire form/report, including any attachments. Further, I ask
on (received by, sent from, or in the possession of the National Marine Fisheries Service ("NMFS"
ve been recorded by the observer program. This information will be included in a map for publication to l
ransfers of dolphins, walrus, seals, or sea lions in and/or out of Six Flags Discovery Kingdom in Vallejo,
re Secretary of Commerce's decision determining that the state of New Jersey was in compliance with r

handline, and offshore handline fishers.

that these documents be sent to me in any digital formats in which they exist, such as PDF. Under the
quot;) and whether in written, electronic or other form) (collectively herein, "Information") from
help define the home range of the pelagic false killer whale stock beyond what we know from satellite ta
CA Please provide where these mammals are coming from and going to, what their names are, and wh
egard to management of its recreational summer flounder fishery under the Atlantic Coastal Fisheries C

terms of the E-FOIA Amendments of 1996, Section 5, if a document exists in electronic format, it must be made available for the period January 1, 2005 to the present, demonstrating the presence of listed individuals of Oncorhynchus tshawytscha (steelhead) and other listed species and their related or associated animals.

When the expected transfers will be made.

Operative Management Act. 1. Decision memoranda, letters, emails, situation summaries, discussion documents, and other records.

be released in that format upon request.

mus mykiss (i.e., that anadromous form of the species listed as endangered under the federal Endang

documents, or briefing documents that discuss summer flounder and New Jersey's 2017 recreational se

ered Species

ason; 2. Communications pertai

Arlyn Penaranda - NOAA Federal

From: Arlyn Penaranda - NOAA Federal
Sent: Thursday, August 3, 2017 1:42 PM
To: Charles Green - NOAA Federal; Mark Graff - NOAA Federal; Lorna Martin-Gross - NOAA Federal
Subject: FW: FOIA Appeal for DOC-NOAA-2017-000596 (PEER)
Attachments: DOC-NOAA-2017-000596 FOIA Appeal (1) (1).pdf; Fwd: Observer Harassment 2016 report, Request DOC-NOAA-2017-000596

From: Arlyn Penaranda - NOAA Federal [mailto:arlyn.penaranda@noaa.gov]
Sent: Monday, July 31, 2017 9:51 AM
To: Charles Green - NOAA Federal <charles.green@noaa.gov>; Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Cc: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>
Subject: FW: FOIA Appeal for DOC-NOAA-2017-000596 (PEER)

Chaz/Mark,

Good morning. Attached is the appeal letter from PEER sent by DOC GC. (b)(5)

[Redacted]

[Redacted]

[Redacted]

Please advise on what approach we can take to resolve this issue.

Thank you!

Arlyn

From: Torczon, Andrea (Federal) [mailto:aTorczon@doc.gov]
Sent: Friday, July 28, 2017 11:41 AM
To: Penaranda, Arlyn (Federal) <Arlyn.Penaranda@noaa.gov>
Cc: Graff, Mark (Federal) <Mark.Graff@noaa.gov>
Subject: FOIA Appeal for DOC-NOAA-2017-000596 (PEER)

Arlyn,

I am reviewing an appeal (attached) from NOAA's partial denial of a FOIA submitted on behalf of Public Employees for Environmental Responsibility, Request # DOC-NOAA-2017-000596.

Looking at the case file in FOIAOnline, you seem to be a contact for this request. If that is correct, please let me know your availability for a phone call o discuss this request.

Thank you.

Andrea

Andrea Torczon
Senior Attorney
Information Law Division
Office of the General Counsel
U.S. Department of Commerce
202-482-8028

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Public Employees for Environmental Responsibility

2000 P Street, NW, Suite 240 • Washington, DC 20036
Phone: (202) 265-PEER • Fax: (202) 265-4192
Email: info@peer.org • Web: <http://www.peer.org>

Assistant General Counsel for Litigation, Employment and Oversight
U.S. Department of Commerce
Office of General Counsel, Room 5875
14th and Constitution Avenue, N.W.
Washington, DC 20230

June 30, 2017

RE: Freedom of Information Act Appeal for Request No: DOC-NOAA-2017-00596:

VIA EMAIL

Dear FOIA Appeals Officer:

On February 2, 2017 Public Employees for Environmental Responsibility (PEER) submitted a Freedom of Information Act (“FOIA”) Request to National Oceanic and Atmospheric Administration. This request specifically sought:

- 1) A summary of all incidents of violence, threats, or harassment against NOAA employees that occurred in calendar year 2016. The summary should include the date, location, and nature of the incident or threat together with a summary of what, if any, outcome stemmed from the incident or threat (*e.g.*, arrest, conviction, ongoing investigation).
- 2) A summary of all incidents of violence, threats, or harassment against professional observers, including government contractors, that occurred in calendar year 2016. The summary should include incidents against observers aboard NOAA vessels or while otherwise carrying out their duties as NOAA contractors, and include the date, location, and nature of the incident or threat together with a summary of what, if any, outcome stemmed from the incident or threat (*e.g.*, arrest, conviction, ongoing investigation).

On March 28, NOAA provided a document pertaining to Part One of PEER’s February 2, FOIA. PEER is not appealing any decision/release related to NOAA’s production on March 28.

On June 12, 2017, the Office of Law Enforcement at NOAA’s National Marine Fisheries Service (“NMFS”) provided a document pertaining to Part Two of PEER’s February 2nd request that identified forty-six (46) alleged offenses against professional observers, including government contractors, for calendar year 2016. In this document, NMFS redacted in its entirety all and any details relating to thirty-three out of forty-six (33 out of 46) of the alleged incidents of violence, threats, or harassment against professional observers including government contractors.

The stated basis for withholding these details was as follows:

“Thirty-three... occur[ing] in the calendar year [2016] are currently open and are still undergoing

investigation. Information regarding these open incidents are exempted and are partially redacted under exemption 5 U.S.C. 552(b)(7)(A)...”

By this letter, PEER is appealing this partial denial for the following reasons:

I. NMFS redacted information not within the scope of FOIA’s (7)(A) exemption.

It is well settled that the mere pendency of an enforcement proceeding is alone insufficient reason for withholding information related to the investigation. Yet the stated reason that the agency withheld all information related to 33 out of 46 reported incidents is that the investigations were open or pending.

The agency must provide more than mere conclusory statements regarding how the investigatory records sought would interfere with a pending enforcement proceeding. *Grasso v IRS*, 785 F.2d 70, 77(3d Cir. 1986). For instance, the agency must show that revealing such information would result in an articulable harm, namely that releasing the information could reasonably be expected to interfere with a pending enforcement proceeding. No such showing is made in NMFS’s June 12th response. Instead NMFS has simply redacted any information, including information that could not reasonably indicate the individuals involved; information such as the division, the date, and the type of offense.

II. Requested Records are Segregable

The FOIA requires that any “reasonably segregable portion” of a record must be disclosed to a requester after the redaction of information that falls within an exception. 5 U.S.C. § 552(b). NMFS mischaracterizes its redactions as partial. The redaction of 33 out of 46 records are total redactions. Not a single detail of those records have been released. However those records very likely contain information that could be reasonably disclosed. Stated another way, agencies must release as much information as possible without thwarting the claimed exemption’s purpose. *King v Department of Justice*, 830 F.2d 210, 224 (D.C. Cir. 1987). The redactions within this records are beyond the purpose of exemption (7)(A).

The recognized purpose of exemption 7(A) is to prevent harm to the government’s case in court by preventing litigants “earlier or greater access” to investigatory files than they would otherwise have. *NLRB v. Robbins Tire Co.*, 437 U.S. 214, 241 (1978). The release of the date, type, or the NMFS regions in which the investigation is ongoing would in no way disclose the direction of potential investigation to follow. *Alyeska Pipeline Service Co. v. U.S. EPA*, 856 F.2d 309, 314. The information which PEER requested would help indicate whether professional observers face a higher risk of incidents in particular regions, and the kinds of risks they face.

If NMFS claims that the information requested is not segregable, it will be required to make this claim with the same level of specificity and detail with which it claims exemptions. *Vaughn v Rosen (I)*, 484 F.2d 820 (D.C. Cir. 1973) cert denied, 415 U.S. 977 (1974). In other words, NMFS will have to provide reasons in support of non-segregability that are not merely conclusory in nature. After redacting all information of the investigative records that fall under exemption (7)(A), NMFS must justify the remaining redactions, if any, with sufficient specificity.

For the above stated reasons, PEER appeals the withholding of 33 out of 46 records produced in the June 12th release.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Carlesco", enclosed within a thin black rectangular border.

Adam Carlesco, Staff Counsel
Public Employees for Environmental Responsibility
962 Wayne Ave, Suite 610
Silver Spring, MD 20910
Office: 202.265.7337 / Direct: 240.247.0298
Email: acarlesco@peer.org

From: "Lorna Martin-Gross - NOAA Federal" <lorna.martin-gross@noaa.gov>
To: "Elizabeth Mitchell" <emitch@efn.org>
Cc: "Arlyn Penaranda - NOAA Federal" <arlyn.penaranda@noaa.gov>, "FOIA Office - NOAA Service Account" <foia@noaa.gov>, <acarlesco@peer.org>
Subject: Fwd: Observer Harassment 2016 report, Request DOC-NOAA-2017-000596
Sent: Thu, 29 Jun 2017 15:17:16 -0400

[OLE Input PEERFOIA DOC-NOAA-2017-000596 RR.PDF](#)
[DOC-NOAA-2017-000596 Signed Partial Grant FAL.pdf](#)
[2. PEER Observer Reported Violations NOAA Records 1994-2004.pdf](#)
[7. PEER FOIA Observer Harassment Statistics 2007-2011.pdf](#)
[8. PEER FOIA Observer Harassment Statistics 2012.xls](#)
[9. PEER FOIA Observer Harassment Statistics 2013.pdf](#)
[10. PEER FOIA Observer Harassment Cases 2014.pdf](#)
[11. PEER FOIA Observer Harassment Cases 2015.pdf](#)
[1. PEER FOIA Observer Harassment Statistics 2004.pdf](#)

Dear Ms. Mitchell,

In response to your inquiry dated June 15, 2017, regarding the subject FOIA request, thank you for contacting us with your questions. The NOAA Fisheries Office of Law Enforcement (OLE) continues to place a high priority on investigations related to observer safety and actions that affect the integrity of observer data, such as assaults, interference or harassment of observers. OLE, as one of our overarching priorities, will play an integral role in the development and implementation of the agency action plan in response to the Observer Program Safety Review.

OLE derived the summary of observer harassment cases from 2016 incidents in OLE's Case Electronic Management System (ECMS). We apologize for the typographical error in our final action letter that caused confusion. With respect to our redaction of open incidents, all open incidents are completely redacted because the alleged offenses fall under 5 U.S.C. 552 exemption (b)(7)(A). Protecting unresolved investigations protects the integrity of the judicial process and the rights of witnesses, victims, and subjects. We apply this exception to all FOIA requests received by OLE. Any past release of open incident information was completed in error.

In September 2016, the Office of Law Enforcement implemented a new Electronic Case Management System (ECMS) that allows OLE to query incident data in more categories than we were able to in our previous system. The previous system consolidated observer related incidents into an inclusive single code. OLE staff went through each observer related alleged offense/incident reported for 2016 and diligently researched and reviewed each case file and followed up with investigating enforcement personnel to ensure accurate and thorough information on each of the incidents that alleged threats or harassment. This helped OLE eliminate incidents that were not responsive to the FOIA request as they did not involve harassment or an alleged threat. The type of incident information reported previously was generated through looking at each individual incident reported and manually applying a "type" to that particular incident based on the information contained in the investigative file and the ECMS.

OLE's new ECMS no longer has separate designations of "incidents" and "cases". The data that OLE extracts for its responses to PEER FOIA requests come from OLE's ECMS. OLE divisions report document incidents in the system according to national protocols. Observer programs report to OLE based on the protocols of each individual observer program.

Regarding the North Pacific Observer Program Annual Report: In general, the North Pacific Observer Program requires observers to write statements for all incidents of potentially bothersome behavior, corrected behavior, and/or behavior that impacts observers or observer data. These statements are entered into the North Pacific Observer Program database. Please note that not all of the statements, as reported by observers to the observer program, rise to the level, or definition, of harassment or threatening behavior.

OLE's Alaska Division has a Special Agent dedicated specifically to the observer program. This Special Agent coordinates training with the observer program and works with the program on a regular basis with respect to observer safety issues. OLE makes inquiry on all complaints alleged to have impacted an observer's safety or integrity of the data they collect. All such complaints are entered into OLE's Case Management System as incidents. OLE Special Agents and/or Enforcement Officers contact all potential victims and witnesses to provide support to alleged victims, and to gather facts and evidence victims and witnesses to determine the severity of the incident. OLE agents and officers also determine whether or not the affected observer and other potential witnesses are willing to cooperate with an investigation.

The observer program's annual report lists the number of observer statements whereas OLE reports on incidents documented in our ECMS. Not all statements made by the observer program are considered complaints of an alleged violation and are, therefore, not documented as incidents in OLE's ECMS. This is one reason why OLE may report less incidents than are reported by the observer program in their annual report. Additionally, not all documented observer related incidents in OLE's ECMS involve harassment, threats, assault or other violent or harassing acts. Another factor that accounts for fewer incidents being reported by enforcement is that multiple complaints are often combined into a single investigation (single incident) if they involve the same vessel, skipper, or alleged violator (referred to as a "subject" in OLE's ECMS). It is not uncommon for multiple observers to write separate statements for the same incident. This creates a "many to one" relationship where many complaints, as reported by the observer program, are handled under a single investigation which is documented as a single incident in OLE's ECMS.

We would be happy to further discuss our documentation procedures and any questions you may have related to our efforts to ensure the safety and well-being of observers and the integrity of the data they collect.

Kind regards,

Ms. Lorna Martin Gross

on behalf of Ms. Arlyn Penaranda

Ms. Lorna Martin-Gross
Records Manager
Office of Law Enforcement
NOAA Fisheries
U.S. Department of Commerce
Office: 301-427-8244
lorna.martin-gross@noaa.gov

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

From: **Arlyn Penaranda - NOAA Federal** <arlyn.penaranda@noaa.gov>
Date: Thu, Jun 29, 2017 at 2:01 PM
Subject: Fwd: Observer Harassment 2016 report, Request DOC-NOAA-2017-000596
To: Lorna Martin-Gross - NOAA Federal <lorna.martin-gross@noaa.gov>

Original email

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

From: **Elizabeth Mitchell** <emitch@efn.org>
Date: Thursday, June 15, 2017
Subject: Observer Harassment 2016 report, Request DOC-NOAA-2017-000596
To: Arlyn.Penaranda@noaa.gov
Cc: foia@noaa.gov, acarlesco@peer.org

Dear Arlyn,
I'm from the Association for Professional Observers (APO) and PEER has generously shared NOAA's response to their annual FOIA request for a summary of observer harassment since 2006. We are attempting to track observer harassment by region and the outcomes of observer complaints. I was wondering if you could clarify this year's NOAA response to PEER's FOIA request, No. DOC-NOAA-2017-000596 pertaining to observers. I assume you can speak about it since it's now available on the internet. If there are specific NOAA OLE personnel I could contact to help me analyze this and prior years summaries, can you please provide their contact information?

1. Your letter states that PEER requested a summary of 2017 observer harassment incidents, the on-line request says PEER requested a summary of 2015 observer harassment incidents. However, PEER requests

this annually and I'm guessing this particular PEER request is for 2016's summary. Is the document below 2015, 2016, or 2017's summary of observer harassment cases.

2. In the past, these response have showed the region, date, type of incident (i.e. harassment, interference, violence, etc.) and outcome but this year that information is redacted for open cases. I would like to know why this protocol for reporting to PEER has changed (i.e. open case summaries completely redacted). Surely the date, region, harassment type, and it's open status are not compromising.
3. PEER has been the only organization in the country that has been tracking observer harassment. They asked for "summary of incidents". In the document, "OLE Input_PEERFOIA_DOC-NOAA-2017-000596_RR.PDF", there are 46 incidents listed (33 of which are not redacted). Yet in the North Pacific Observer Program alone, the 2016 Annual Report states that there were 203 observer program complaints made in 2016 concerning interference, harassment, etc. Can you possibly explain this discrepancy? Of these 203 observer program complaints in Alaska alone (a complaint isn't necessarily investigated to even become a case), how many became "incidents" and of these incidents, how many became "cases", and of these cases, what were each of their outcomes? In other words, complain A on xx date, and complaint B on yy date, were elevated to an incident status warranting investigation. These were added with other incidents to become a "case". But complaints B-P weren't investigated. Complaint A was resulted in a written warning and complaint B received prosecution or is still open. So we need to figure out how NOAA OLE is reporting these observer complaints of harassment and how you are providing them to PEER...are those incidents or are they cases? Do all regions report the same way? I want to clarify these important distinctions because it makes it almost impossible to analyze. Perhaps it will take an additional FOIA, which I am happy to submit. Attached are the prior years' released records. Feel free to call me if that's easier: 541-515-3716

Thanks very much.

Elizabeth Mitchell
Association for Professional Observers
PO Box 933
Eugene, OR 97440
Tel: 541-344-5503
Cell: 541-515-3716
E-mail: emitch@efn.org
2017

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Arlyn Penaranda
Records Management Specialist
Office of Law Enforcement
NOAA, National Marine Fisheries Service
Office: [301-427-8256](tel:301-427-8256)
arlyn.penaranda@noaa.gov <arlyn.penaranda@noaa.gov>

--
Ms. Lorna Martin-Gross
Records Manager
Office of Law Enforcement
NOAA Fisheries
U.S. Department of Commerce
Office: 301-427-8244
lorna.martin-gross@noaa.gov

Incident Number	Division	Date Reported	Status	Disposition/Outcome	Alleged Offense/Incident Reported
1600262	West Coast	1/20/2016	Closed	Verbal Warning	Harassment
(b)(7)(A)					
(b)(7)(A)					
(b)(7)(A)					
(b)(7)(A)					
(b)(7)(A)					
(b)(7)(A)					
(b)(7)(A)					
(b)(7)(A)					
(b)(7)(A)					
1606224	Pacific Island	11/9/2016	Closed	Closed Lack of Evidence of actionable violation after consultation with NOAA General Counsel	Threaten/Verbal Harassment (Abusive comments made over the radio from another vessel)
I1601651	Northeast	3/18/2016	Closed	Closed Lack of Evidence of actionable violation	Harassment – (crew waking observer with excessive noise/lights while trying to sleep)
1601666	Northeast	3/30/2016	Closed	Closed Lack of Evidence of actionable violation	Harassment (initial phone conversations with vessel captain logged as “gruff” and reported to OLE as potential harassment by staff; observer stated no incidents on deployment and stated no harassment/problems occurred)
I1602316	Northeast	5/17/2016	Closed	Closed – no evidence of actionable violation based on interview of observer	Harassment – verbal comments and failure to provide reasonable assistance
(b)(7)(A)					
I1604003	Northeast	4/25/2016	Closed	Closed Lack of Evidence of actionable violation (observer no longer observing and not located for interview)	Harassment – verbally abusive comments noted in observer logbook
1604097	Northeast	8/6/2016	Closed	Closed Lack of Evidence of actionable violations after consultation with NOAA General Counsel	Harassment – verbal intimidation/profanity and tampering/theft of equipment (property later found)
(b)(7)(A)					
(b)(7)(A)					
1605714	Northeast	8/16/2016	Closed	Closed Lack of Evidence of actionable violation	Intimidation (verbal comment perceived as threatening prior to deployment – no incidents or problems on deployment)

1606742	Northeast	12/16/2016	Closed	OLE-Compliance Assistance Provided and education to vessel captain on observer assistance/sampling regulations	Harassment and Impeding/Interference (vessel crew failed to allow observer to sample bycatch on three occasions and used profanity on trip comment card)
1606750	Northeast	12/16/2016	Closed	Closed No Further Action Required (OLE contacted individual texting observer and situation was resolved)	Harassment (observer received multiple texts from vessel captain's spouse)

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1603161	Alaska	6/29/2016	CLOSED	OLE-education to involved crewmember on inappropriate comments to observers.	Harassment (verbal)
1603550	Alaska	8/31/2016	CLOSED	Written Warning Issued	Hostile Work Environment (Crewmember used profanity and hostile comments toward observer)

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1602562	Alaska	5/31/2016	CLOSED	Vessel captain fired crew member in response to incident reported by observer. Closed with no further OLE action	Sexual Harassment and Hostile Work Environment (crew member urinated in observer sampling area, verbal insults)
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(b)(7)(A)



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

Mr. Adam Carlesco
962 Wayne Ave
Suite 610
Silver Spring, MD 20910

JUN 12 2017

Re: FOIA Request No. DOC-NOAA-2017-000596

Dear Mr. Carlesco,

This letter is in response to your Freedom of Information Act (FOIA) request entered into FOIAonline on February 2, 2017 and was received by our office on February 14, 2017, in which you requested:

- (1) A summary of all incidents of violence, threats, or harassment against NOAA employees that occurred in calendar year 2016. The summary should include the date, location, and nature of the incident or threat together with a summary of what, if any, outcomes stemmed from the incident or threat (e.g., arrest, conviction, ongoing investigation).
- (2) A summary of all incidents of violence, threats, or harassment against professional observers, including government contractors, that occurred in calendar year 2017. The summary should include incidents against observers aboard NOAA vessels or while otherwise carrying out their duties as NOAA contractors, and include the date, location, and nature of the incident or threat together with a summary of what, if any, outcomes stemmed from the incident or threat (e.g., arrest, conviction, ongoing investigation).

On March 28, 2017, we have provided you one document from the Department of Commerce, Office of Security in response to Request One of your FOIA request, "summary of all incidents of violence, threats, or harassment against NOAA employees that occurred in calendar year 2016."

For this final release, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Office of Law Enforcement is providing you a response to Request Two of your FOIA request, "summary of all incidents of violence, threats, or harassment against professional observers, including government contractors, which occurred in calendar year 2017."

For the calendar year 2017, the Office of Law Enforcement identified forty-six (46) alleged offenses/reported incidents of violence, threats, or harassment against professional observers, including government contractors.



Thirty-three of the forty-six (33 out of 46) alleged offenses/reported incidents of violence, threats, or harassment against professional observers, including government contractors, that occurred in the calendar year 2017 are currently open and are still undergoing investigation. Information regarding these open incidents are exempted and are partially redacted under exemption 5 U.S.C. 552(b)(7)(A), which authorizes the withholding of "records or information compiled for law enforcement purposes, but only to the extent that production of such law enforcement records or information ... could reasonably be expected to interfere with enforcement proceedings."

You have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must be received within 90 calendar days of the date of this response letter at the following address:

Assistant General Counsel for Litigation, Employment, and Oversight
U.S. Department of Commerce
Office of General Counsel
Room 5875
14th and Constitution Avenue, N.W.
Washington, D.C. 20230

An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to [202-482-2552](tel:202-482-2552), 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

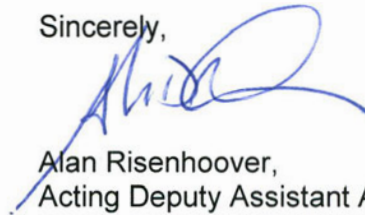
Phone: 301-837-1996

Fax: 301-837-0348

Toll-free: 1-877-684-6448

If you have questions regarding this correspondence, please contact please contact Arlyn Penaranda at (301) 427-8256 or Arlyn.Penaranda@noaa.gov, or the NOAA FOIA Public Liaison Robert Swisher at (301) 628-5755.

Sincerely,



Alan Risenhoover,
Acting Deputy Assistant Administrator
for Regulatory Programs

AK Observer Cases

CCN	CNT	DATE OF VIOLATION	FISH PLAN	INVESTIGATION TYPE	REG	CURRENT STATUS	CURRENT STATUS DATE	FINAL PENALTY	FINAL PENALT Y DATE	DATE CLOSED
AK001132A	1	8/10/00	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Written warning issued by F/EN	3/13/01			3/13/01
AK004015A	1	7/17/00	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)	* Summary Settlement paid	11/27/00	2,500.00	11/27/00	11/27/00
AK004022A	1	8/23/00	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* All Settlement Agreement conditions satisfied	4/6/06			4/6/06
AK004050A	1	11/13/00		Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	Issues addressed by Program Staff during cruise. Corrective actions taken. Case closed due to lack of resources.	8/5/02			8/5/02
	2	11/13/00		Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(7)		8/5/02			8/5/02
	3	11/13/00		Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(4)		8/5/02			8/5/02
	4	11/13/00		Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)		8/5/02			8/5/02
	5	11/13/00		Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.27(e)		8/5/02			8/5/02
AK004051A	1	9/1/00	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Prosecution declined by GCEL. Based on records retention schedule, this case file no longer exists.	6/17/03			6/17/03
	2	9/1/00		Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)		6/17/03			6/17/03
AK004089A	1	3/30/00	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Case/count merged with on-going investigation.	9/13/02			9/13/02
	2	3/14/00	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)		9/13/02			9/13/02
AK004090A	1	2/12/00	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Closed by F/EN due to lack of evidence	11/29/00			11/29/00
AK004091A	1	2/9/00	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Closed by F/EN due to lack of evidence	11/29/00			11/29/00

AK014026A	1	4/27/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)	* Closed by F/EN due to lack of evidence	5/21/01			5/21/01
AK014040A	1	3/9/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Case reviewed by Special Agent. Case closed for lack of resources.	5/22/01			5/22/01
	2	3/9/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(vi)		5/22/01			5/22/01
AK014047A	1	8/12/99	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	Settlement Agreement signed by GC	9/15/03	12,500.00	9/15/03	
	2	8/12/99	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(13)		9/15/03	2,500.00	9/15/03	
	3	1/29/00	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)		9/15/03	500.00	9/15/03	
	4	1/29/00	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)		9/15/03	6,500.00	9/15/03	
	5	3/12/00	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)		9/15/03	100.00	9/15/03	
	6	3/13/00	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(13)		9/15/03	3,000.00	9/15/03	
	7	3/30/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)		9/15/03	25.00	9/15/03	
	8	8/19/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)		9/15/03	2,000.00	9/15/03	
	9	8/19/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)		9/15/03	15,100.00	9/15/03	
	10	9/3/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	MSFCMA; NPHA		9/15/03	275.00	9/15/03	
AK014053A	1	3/7/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(f)(1)	* Closed by F/EN due to lack of evidence	5/22/01			5/22/01
	2	3/5/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(f)(3)		5/22/01			5/22/01
AK014057A	1	4/29/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Written warning issued by F/EN	5/6/02			5/6/02
	2	4/29/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.21(b)(2)(ii)		5/6/02			5/6/02
AK014061A	1	2/3/01		Non-fisheries federal regulations	OTHER FEDERAL REGS - USCG	* Transferred to the US Coast Guard.	5/30/01			5/30/01

AK014071A	1	5/1/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Written warning issued by F/EN	5/13/02			5/13/02
	2	5/7/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(13)(iv)		5/13/02			5/13/02
AK014074A	1	7/30/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Closed by F/EN due to lack of evidence	8/20/01			8/20/01
AK014075A	1	8/9/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	Settlement Agreement signed by GC	1/9/04	40,000.00	2/1/07	
AK014079A	1	4/8/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Dismissed by F/EN (no violation)	5/13/02			5/13/02
AK014095A	1	9/30/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Declined by F/EN. Company contacted by Special Agent.	4/9/02			4/9/02
	2	8/16/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(vi)		4/9/02			4/9/02
	3	10/9/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)		4/9/02			4/9/02
AK014096A	1	11/12/91	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Written warning issued by F/EN	5/13/02			5/13/02
	2	10/3/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(vi)		5/13/02			5/13/02
	3	11/2/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(13)(iv)		5/13/02			5/13/02
AK014097A	1	11/11/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.21(b)(2)(ii)	* Summary Settlement paid	7/3/02	2,500.00	7/3/02	7/3/02
	2	7/1/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(vi)		6/17/02			
	3	7/1/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)		6/17/02			6/17/02
AK014098A	1	10/1/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Written warning issued by F/EN	4/17/02			4/17/02
	2	9/14/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(vi)		4/17/02			4/17/02
AK014110A	1	10/29/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(iii)(A)	* Closed by F/EN due to lack of evidence	11/1/02			11/1/02
AK014124A	1	8/25/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Closed by F/EN due to lack of evidence	12/19/01			12/19/01

AK014128A	1	6/27/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Closed by F/EN due to lack of evidence	12/19/01			12/19/01
AK014130A	1	8/1/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Closed by F/EN due to lack of evidence	12/19/01			12/19/01
AK024004A	1	10/25/01	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(vi)	* Written warning issued by F/EN	7/1/02			7/1/02
AK024005A	1	1/30/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(13)(iv)	* Closed by F/EN due to lack of evidence	6/6/02			6/6/02
	2	1/30/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(iii)		6/6/02			6/6/02
AK024008A	1	1/17/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(vi)	Suspended. Case remains open pending further action	11/10/05			
	2	1/17/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.21(b)(2)(ii)		11/10/05			
AK024010A	1	1/20/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(3)	Sent to GC for prosecution. Final Settlement. Merged with another case.	11/7/02	12,500.00	9/15/03	
AK024017A	1	2/4/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.27(c)(2)(i)(A)	* Written warning issued by F/EN	8/5/02			8/5/02
	2	3/12/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)		8/5/02			8/5/02
	3	2/26/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.21(b)(2)(ii)		8/5/02			8/5/02
	4	2/26/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.750(f)(1)(c)(vi)		8/5/02			8/5/02
	5	2/26/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(c)(viii)(A)		8/5/02			8/5/02
	6	2/26/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	216.11(b)		8/5/02			8/5/02
AK024020A	1	1/17/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(i)	* Closed by F/EN due to lack of evidence	2/4/03			2/4/03
	2	1/17/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(7)		2/4/03			2/4/03
AK024022A	1	3/20/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(i)	* Dismissed by F/EN (no violation)	4/26/02			4/26/02

	2	3/16/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)		4/26/02			4/26/02
AK024034A	1	2/3/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Closed by F/EN due to lack of evidence	5/28/02			5/28/02
	2	2/13/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(2)(ii)		5/28/02			5/28/02
AK024044A	1	3/25/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Summary Settlement paid	11/14/02	2,500.00	11/14/02	11/14/02
	2	3/17/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(3)		11/14/02	2,500.00	11/14/02	11/14/02
	3	4/9/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)		11/14/02	2,500.00	11/14/02	11/14/02
AK024055A	1	4/12/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Not sustained.	6/6/03			6/6/03
	2	5/3/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	67937(g)(2)		6/6/03			6/6/03
AK024060A	1	6/3/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7 (g)(1)	* Case/count merged with on-going investigation.	7/16/02			7/16/02
AK024075A	1	8/13/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(3)	* Transferred to the NW Division.	5/10/05			5/10/05
AK024083A	1	8/15/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(4)	* Summary Settlement paid	12/5/02	5,000.00	11/19/02	12/5/02
AK024094A	1	8/5/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.32(c)(4)(iv)	* Verbal Warning issued by F/EN	11/4/02			11/4/02
	2	8/20/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)		11/4/02			11/4/02
	3	8/30/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)		11/4/02			11/4/02
AK024095A	1	9/15/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(o)	* Dismissed by F/EN (no violation)	6/6/03			6/6/03
AK024096A	1	10/3/02		Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Case reviewed by Special Agent. Case closed.	11/4/02			11/4/02
	2	10/3/02		Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(e)(3)		11/4/02			11/4/02
AK024103A	1	10/15/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Closed by F/EN due to lack of evidence	12/9/03			12/9/03

	2	10/7/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(vi)		12/9/03			12/9/03
	3	10/13/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.21(b)(2)(ii)		12/9/03			12/9/03
	4	10/6/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.24(e)(3)		12/9/03			12/9/03
AK024104A	1	8/12/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Written warning affirmed after review	8/20/03			8/20/03
	2	10/15/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(13)		5/7/03	2,500.00	5/7/03	5/7/03
AK024133A	1	10/10/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Closed by F/EN due to lack of evidence	7/11/03			7/11/03
	2	10/8/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.25(q)		7/11/03			7/11/03
AK024141A	1	9/17/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(o)	* Dismissed by F/EN (no violation)	1/7/03			1/7/03
AK024146A	1	11/18/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Dismissed by F/EN (no violation)	1/7/02			1/7/02
AK024161A	1	8/6/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Preliminary inquiry made by Special Agent. Case closed.	4/21/04			4/21/04
	2	8/6/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(vii)		4/21/04			4/21/04
	3	8/6/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(vi)		4/21/04			4/21/04
	4	11/3/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(13)(iv)		4/21/04			4/21/04
AK025008A	1	2/18/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Settlement Agreement conditions not met; case closed	12/1/05	7,500.00	10/12/02	12/1/05
AK034001A	1	12/29/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)	* Preliminary review made by Special Agent. Case closed.	3/12/03			3/12/03
	2	1/1/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)		3/12/03			3/12/03
	3	1/2/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(13)(iv)		3/12/03			3/12/03
	4	1/13/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)		3/12/03			3/12/03

AK034007A	1	2/3/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(vi)	* Transferred to the NW Division.	4/21/04			4/21/04
	2	2/3/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(viii)		4/21/04			4/21/04
AK034031A	1	1/1/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* All Settlement Agreement conditions satisfied	10/10/05	1,500.00	10/10/05	10/10/05
	2	1/16/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(13)(iv)		9/12/05			9/12/05
	3	2/1/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(4)		9/12/05			9/12/05
AK034032A	1	2/9/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(4)	* Verbal Warning issued by F/EN	8/1/03			8/1/03
	2	3/8/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(vi)		8/1/03			8/1/03
AK034033A	1	1/23/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Dismissed by F/EN (no violation)	6/25/03			6/25/03
	2	3/8/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)		6/25/03			6/25/03
	3	1/20/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.27(e)		6/25/03			6/25/03
	4	1/18/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(d)(19)		6/25/03			6/25/03
AK034034A	1	1/13/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(3)	* Dismissed by F/EN (no violation)	5/22/03			5/22/03
	2	1/13/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(i)		5/22/03			5/22/03
AK034037A	1	1/17/0203	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Dismissed by F/EN (no violation)	5/12/03			
AK034047A	1	4/14/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Dismissed by F/EN (no violation)	6/4/03			6/4/03
	2	3/16/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(18)		6/4/03			6/4/03
AK034050A	1	4/2/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	Settlement Agreement signed by GC	2/22/05			
AK034051A	1	4/3/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.21(b)(2)(ii)	* Case/count merged with another investigation.	5/19/03			5/19/03

	2	1/17/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(vi)		5/19/03			5/19/03
	3	1/17/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(12)		5/19/03			5/19/03
	4	1/22/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(2)		5/19/03			5/19/03
	5	4/11/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)		5/19/03			5/19/03
	6	3/27/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)		5/13/03			5/13/03
	7	3/27/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(i)		5/13/03			
AK034054A	1	2/27/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Closed by F/EN due to lack of evidence	8/29/03			8/29/03
AK034075A	1	1/24/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Case reviewed by Special Agent and closed.	5/21/03			5/21/03
AK034082A	1	5/6/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.27(b)(5)	* Written warning issued by F/EN	9/10/03			9/10/03
	2	5/6/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)		9/10/03			9/10/03
	3	9/5/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(10)(i)		9/10/03			9/10/03
	4	9/5/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(10)(i)		11/25/03	3,750.00	11/25/03	11/25/03
	5	9/5/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(10)(iii)		9/10/03			9/10/03
AK034083A	1	4/30/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Closed by F/EN due to lack of evidence	7/28/03			7/28/03
AK034086A	1	5/11/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Dismissed by F/EN (no violation)	6/2/03			6/2/03
AK034114A	1	6/19/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(3)	* Written warning issued by F/EN	10/1/03			10/1/03
AK034124A	1	6/11/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Closed by F/EN due to lack of evidence	9/8/03			9/8/03
AK034132A	1	7/4/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Case reviewed by Special Agent. Case closed.	10/8/03			10/8/03

	2	7/17/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(13)(ii)		10/8/03		10/8/03
AK034143A	1	8/20/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* For Intel Only	10/8/03		10/8/03
AK034149A	1	7/17/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	Returned by GC to F/EN for further investigation	4/6/05		
	2	7/21/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(14)(iv)(B)(1)		4/6/05		
	3	7/21/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(10)(iii)		4/6/05		
AK034164A	1	8/31/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Verbal Warning issued by F/EN	11/5/03		11/5/03
AK034168A	1	9/22/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Written warning issued by F/EN	1/9/04		1/9/04
	2	9/22/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(3)		1/9/04		1/9/04
AK034189A	1	10/1/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Closed by F/EN due to lack of evidence	11/18/03		11/18/03
	2	9/20/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(i)		11/18/03		11/18/03
AK034192A	1	11/6/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Closed by F/EN due to lack of evidence	1/21/04		1/21/04
AK044003A	1	2/1/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(k)(1)(vi)(a)	Preliminary case received; investigation on-going	11/14/05		
AK044004A	1	1/26/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	Sent to GCEL for prosecution.	3/11/05		
	2	1/26/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)		3/11/05		
	3	1/26/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(v)		3/11/05		
	4	1/26/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)		3/11/05		
AK044009A	1	1/20/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(ii)(A)	* Case merged into another on-going investigation.	11/8/05		11/8/05
	2	1/20/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.59(g)(1)(vi)		11/8/05		11/8/05

	3	1/20/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)		11/8/05		11/8/05
	4	1/20/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(4)		11/8/05		11/8/05
	5	1/20/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.79(a)(2)		11/8/05		11/8/05
	6	1/20/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.5(a)(14)(iv)(B)(1)		11/8/05		11/8/05
AK044010A	1	1/20/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Case merged with another on-going investigation.	11/8/05		11/8/05
	2	1/20/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(vi)		11/8/05		11/8/05
AK044012A	1	2/16/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Verbal Warning issued by F/EN	7/9/04		7/9/04
AK044013A	1	2/24/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	Sent to GCEL for prosecution.	3/4/05		
AK044019A	1	2/20/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Settlement Agreement with a companion case.	4/6/05		4/6/05
	2	2/20/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(vi)		4/6/05		4/6/05
AK044021A	1	1/17/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Case merged into on-going investigation.	11/9/05		11/9/05
	2	1/17/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)(l)		11/9/05		11/9/05
AK044030A	1	1/1/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(3)	Preliminary case received; investigation on-going	3/28/06		
	2	2/9/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679321(b)(2)(ii)		3/28/06		
	3	1/8/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)		3/28/06		
AK044034A	1	3/13/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Dismissed by F/EN (no violation)	12/6/04		12/6/04
AK044042A	1	1/30/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7 (g)(5)	* Closed by F/EN due to lack of evidence.	4/28/04		4/28/04
AK044062A	1	3/27/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Verbal Warning issued by F/EN	10/13/04		10/13/04

	2	3/27/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(r)		10/13/04		10/13/04
AK044065A	1	2/1/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	Case reviewed by Special Agent. Case closed.	2/2/05		
	2	2/24/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(2)(ii)		2/2/05		
	3	2/1/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a0(10)(iii)		2/2/05		
AK044066A	1	1/30/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(vi)	* Closed by F/EN due to lack of evidence.	6/8/04		6/8/04
	2	2/11/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(14)(iv)(B)		6/8/04		6/8/04
AK044069A	1	1/3/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(3)	* Case reviewed by Special Agent. Case closed.	10/26/04		10/26/04
	2	1/30/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(12)		10/26/04		10/26/04
	3	2/21/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(2)(ii)		10/26/04		10/26/04
AK044081A	1	1/25/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Closed by F/EN due to lack of evidence	10/12/04		10/12/04
AK044109A	1	7/31/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Closed by F/EN due to lack of evidence	10/18/05		10/18/05
AK044114A	1	5/5/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)	* Case reviewed by Special Agent. Case closed.	10/26/04		10/26/04
AK044120A	1	9/17/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Closed by F/EN due to lack of evidence	5/31/05		5/31/05
AK044124A	1	9/17/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Closed by F/EN due to lack of evidence	11/25/05		11/25/05
	2	9/17/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(k)(vi)(a)		11/25/05		11/25/05
AK044127A	1	9/2/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Verbal Warning issued by F/EN	12/9/04		12/9/04
AK044147A	1	9/21/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Verbal Warning issued by F/EN	5/21/05		5/21/05
	2	9/21/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(viii)		5/21/05		5/21/05

AK044148A	1	10/18/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Closed by F/EN due to lack of evidence	1/14/05		1/14/05
AK044163A	1	9/14/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Dismissed by F/EN (no violation)	12/9/04		12/9/04
AK044165A	1	8/20/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Verbal Warning issued by F/EN	7/12/05		7/12/05
	2	8/19/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(vi)		7/12/05		7/12/05
AK044172A	1	9/12/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Verbal Warning issued by F/EN	7/12/05		7/12/05
	2	9/12/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)		7/12/05		7/12/05
AK044190A	1	11/14/04	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(t)	Case investigated by Special Agent; company notified. Case closed.	1/13/05		
AK054007A	1	1/26/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Written warning issued by F/EN	8/8/05		8/8/05
	2	1/26/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(1)(iii)		8/8/05		8/8/05
	3	2/2/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(vi)		8/8/05		8/8/05
	4	1/26/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.5(a)(14)(iv)(B)(1)		8/8/05		8/8/05
AK054008A	1	2/4/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Written warning issued by F/EN	8/11/05		8/11/05
	2	2/3/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)		8/11/05		8/11/05
	3	2/3/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(4)		8/11/05		8/11/05
	4	2/3/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(iii)(A)		8/11/05		8/11/05
AK054014A	1	1/20/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(viii)	* Case merged with another on-going investigation.	11/9/05		11/9/05
	2	1/20/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(vi)		11/9/05		11/9/05

	3	1/20/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.5(a)(14)(iv)(B)(1)		11/9/05			11/9/05
AK054019A	1	1/5/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(vi)	* Summary Settlement paid	1/23/06	2,500.00	1/23/06	1/23/06
	2	1/6/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(viii)		1/23/06	2,500.00	1/23/06	1/23/06
AK054026A	1	2/6/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(3)	Settlement Agreement signed by GC	5/17/06			
	2	2/6/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)		4/18/06			4/18/06
AK054033A	1	2/23/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Case reviewed by Special Agent. Case closed for lack of resources.	4/27/05			4/27/05
	2	1/19/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(2)(i)		4/27/05			4/27/05
	3	1/3/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(2)(ii)		4/27/05			4/27/05
AK054042A	1	2/6/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Verbal Warning issued by F/EN	5/16/06			5/16/06
	2	3/8/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(iii)		5/16/06			5/16/06
	3	2/8/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(vi)		5/16/06			5/16/06
	4	2/11/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)		5/16/06			5/16/06
AK054055A	1	3/16/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Case merged into ongoing investigation.	4/30/05			4/30/05
	2	3/8/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(3)		4/30/05			
	3	3/25/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(vi)		4/30/05			
AK054059A	1	2/1/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Verbal Warning issued by F/EN	12/6/05			
	2	2/10/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(3)		12/6/05			

AK054081A	1	7/5/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Closed by F/EN due to lack of evidence	12/5/05			12/5/05
	2	7/6/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)		12/5/05			12/5/05
	3	7/8/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(iii)(B)		12/5/05			12/5/05
AK054084A	1	7/12/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Case reviewed by Special Agent. Action taken by company. Case closed.	12/5/05			12/5/05
AK054093A	1	7/22/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Closed by F/EN due to lack of evidence.	12/5/05			12/5/05
AK054099A	1	9/4/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Dismissed by F/EN (no violation)	1/25/06			1/25/06
AK054109A	1	8/18/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Dismissed by F/EN (no violation).	12/5/05			12/5/05
AK054119A	1	10/1/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	Closed by F/EN due to lack of evidence.	12/5/05			
AK054129A	1	9/25/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	Case merged. Forwarded to GCEL for prosecution.	12/5/05			
	2	10/1/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)		12/15/05			
AK054146A	1	10/31/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	Case merged. Forwarded to GCEL for prosecution.	1/17/06			
	2	10/27/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(13)(iv)		1/17/06			
	3	10/31/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.24(e)(2)(vi)		1/17/06			
	4	9/29/06		Magnuson Fishery Conservation and Mgt Act (MFCMA)	50 CFR 679.21(b)(2)(ii) □		1/17/06			
AK054148A	1	10/10/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Case reviewed by Special Agent. Case closed.	1/25/06			1/25/06
AK054153A	1	8/28/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	On-going investigation.	1/20/06			
	2	9/27/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.21(B)(2)(II)		1/20/06			

AK054157A	1	8/29/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	Case reviewed by Special Agent. Case closed.	1/23/06		
AK054161A	1	10/22/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Verbal Warning issued by F/EN	1/25/06		1/25/06
	2	10/24/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.27(c)(2)		1/25/06		1/25/06
AK054163A	1	10/13/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	Verbal and written warning issued.	1/31/06		
	2	10/25/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(10)(iii)		1/31/06		
AK054164A	1	10/2/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(i)	On-going investigation.	5/11/06		
	2	12/6/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)		5/11/06		
	3	11/26/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(vi)		5/11/06		
AK054170A	1	9/6/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	Reviewed by Special Agent. Case closed for lack of resources.	4/6/06		
AK054172A	1	9/25/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	Reviewed by Special Agent. Case closed for lack of resources.	4/7/06		
	2	9/25/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(viii)(D)		4/7/06		
	3	10/18/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(13)(iv)		4/7/06		
	4	10/20/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(viii)(F)		4/7/06		
	5	9/26/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)		4/7/06		
	6	7/3/05	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(4)		4/18/06		
AK950036A	1	3/9/94	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	1857(1)(L)	* Prosecution declined by GC. Based on records retention, this case file no longer exists.	3/1/99		3/1/99
	2	3/9/94	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	672.7(b)		3/1/99		3/1/99

AK950467A	1	7/15/95	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	672.7(b)	* Summary Settlement paid	11/19/99	120.00	8/1/95	11/19/99
AK991242A	1	11/28/99	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Suspended, case closed	10/18/05			10/18/05
	2	11/28/99	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(7)(vi)		10/18/05			10/18/05
	3	11/28/99	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.21(a)(ii)		10/18/05			10/18/05
AK994047A	1	3/24/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)	* Case reviewed by Special Agent. Case closed for lack of resources.	6/1/01			6/1/01
	2	3/24/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)		6/1/01			6/1/01
	3	3/24/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.27		6/1/01			6/1/01
	4	3/24/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(4)		6/1/01			6/1/01
AK994053A	1	5/20/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)	* Summary Settlement paid	8/28/00	2,500.00	8/28/00	8/28/00
	2	6/16/99	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)		10/4/00			10/4/00
AK994054A	1	4/4/99	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(4)	* Case reviewed by Special Agent. Closed for lack of resources.	6/1/01			6/1/01
	2	4/28/99	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)		6/1/01			6/1/01
AK994056A	1	1/18/99	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Case reviewed by Special Agent. Case closed for lack of resources.	6/1/01			6/1/01
	2	1/18/99	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.27		6/1/01			6/1/01
AK994076A	1	2/17/99	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(3)	* Case reviewed by Special Agent. Case closed for lack of resources.	3/30/00			3/30/00
AK994079A	1	5/19/99	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Case reviewed by Special Agent. Case closed for lack of resources.	6/1/01			6/1/01

AK994091A	1	4/1/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Case reviewed by Special Agent. Case closed for lack of resources.	3/22/01			3/22/01
	2	4/1/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)		3/22/01			3/22/01
	3	4/1/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(4)		3/22/01			3/22/01
	4	4/1/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)		3/22/01			3/22/01
	5	4/1/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)		3/22/01			3/22/01
	6	4/1/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.24(e)		3/22/01			3/22/01
AK994108A	1	1/1/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)	* Summary Settlement paid	1/24/00	2,500.00	1/24/00	1/24/00
	2	1/1/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)		1/24/00			1/24/00
AK994114A	1	6/9/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Case reviewed by Special Agent. Closed for lack of resources.	6/1/01			6/1/01
AK994117A	1	2/1/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(2)	* All Settlement Agreement conditions satisfied	4/17/02	18,305.56	4/17/02	3/10/03
	2	2/1/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(13)		12/28/01			12/28/01
AK994124A	1	2/1/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Case reviewed by Special Agent. Closed for lack of resources.	6/5/01			6/5/01
	2	3/1/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(13)		6/5/01			6/5/01
	3	11/12/98	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.27		6/5/01			6/5/01
	4	3/1/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(iii)		6/5/01			6/5/01
	5	3/1/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(viii)(C)		6/5/01			6/5/01
	6	3/1/99	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(i)		6/5/01			6/5/01

	7	3/1/99		Marine Mammal Protection Act (MMPA)	1372		6/5/01		6/5/01
AK994126A	1	3/1/99		Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(7)	* Summary Settlement paid	7/12/00	2,500.00	7/12/00 7/12/00
AK994129A	1	2/3/99		Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Case reviewed by Special Agent. Closed for lack of resources.	11/28/00		11/28/00
AK994139A	1	10/1/99	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)	* Closed by F/EN due to lack of F/EN resources	1/8/02		1/8/02
AK994145A	1	7/1/99		Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Case reviewed by Special Agent. Case closed for lack of resources.	6/1/01		6/1/01
	2	7/1/99		Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.21(b)(2)		6/1/01		6/1/01
	3	7/1/99		Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)		6/1/01		6/1/01
AK994146A	1	5/11/99		Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)	* Case reviewed by Special Agent. Case closed for lack of resources.	6/1/01		6/1/01
AK994169A	1	7/1/99	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)	* Written warning issued by F/EN	10/4/00		10/4/00
	2	7/1/99	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.21(b)(2)		10/4/00		10/4/00
	3	7/1/99	Bering Sea & Aleutian Islands groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)		10/4/00		10/4/00

NE Observer Cases

CCN	CNT	DATE OF VIOLATION	FISH PLAN	INVESTIGATION TYPE	REG	CURRENT STATUS	CURRENT STATUS DATE	FINAL PENALTY	FINAL PENALTY DATE	DATE CLOSED
NE021811A	1	11/8/02	Sea scallops	Other fisheries investigation	600.725(o)	* All Settlement Agreement conditions satisfied	4/23/04	6,000.00	4/23/04	4/23/04
NE000113A	1	4/30/00	Northeast multi-species(to replace GF)	Magnuson Fishery Conservation and Mgt Act (MFCMA)	648.14(a)(8)	* Dismissed by F/EN (no violation)	10/19/00			10/19/00

NW Observer Cases

CCN	CNT	DATE OF VIOLATION	FISH PLAN	INVESTIGATION TYPE	REG	CURRENT STATUS	CURRENT STATUS DATE	FINAL PENALTY	FINAL PENALTY DATE	DATE CLOSED
NW042070A	1	8/17/04	WA, OR, and CA trawl fishery	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(4)	* Written warning issued by F/EN	1/13/05			1/13/05
	2	8/17/04	WA, OR, and CA trawl fishery	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(f)(1)(vii)		1/13/05			1/13/05
	3	8/17/04	WA, OR, and CA trawl fishery	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(5)		1/13/05			1/13/05
	4	8/17/04	WA, OR, and CA trawl fishery	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.306(y)(2)		1/13/05			1/13/05
	5	8/17/04	WA, OR, and CA trawl fishery	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.360(3)(1)(i)		1/13/05			1/13/05
NW030087A	1	1/9/03	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)	* Closed by F/EN due to lack of evidence	6/4/03			6/4/03
NW030086A	1	1/21/03	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(10)(i)	* Written warning issued by F/EN	6/30/03			6/30/03
NW030085A	1	2/22/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(i)	* Verbal Warning issued by F/EN	6/30/03			6/30/03
NW030082A	1	3/7/03	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(1)(i)	* Closed by F/EN due to lack of evidence	6/30/03			6/30/03
NW030081A	1	2/3/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(vi)	* Closed by F/EN due to lack of F/EN resources	2/18/04			2/18/04
	2	2/3/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.50(g)(1)(viii)		2/18/04			2/18/04

NW030080A	1	10/16/02		Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)	* Case reviewed by Special Agent. Case closed.	2/9/04			2/9/04
	2	10/16/02		Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(a)(13)(iv)		2/9/04			2/9/04
NW030078A	1	10/14/02	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(4)	* Verbal Warning issued by F/EN	6/30/03			6/30/03
NW030077A	1	4/21/03	Magnuson Act	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)(2)	* Closed by F/EN due to lack of evidence	6/30/03			7/14/03
NW030030A	1	8/13/02	Gulf of Alaska groundfish	Magnuson Fishery Conservation and Mgt Act (MFCMA)	679.7(g)((3)	* Closed by F/EN due to lack of evidence	4/2/03			4/2/03

PI Observer Cases

CCN	CNT	DATE OF VIOLATION	FISH PLAN	INVESTIGATION TYPE	REG	CURRENT STATUS	CURRENT STATUS DATE	FINAL PENALTY	FINAL PENALT Y DATE	DATE CLOSED
PI050233A	1	12/13/05		Magnuson Fishery Conservation and Mgt Act (MFCMA)	50CFR660.35(a)(6)	Case reviewed by Special Agent. Closed for lack of resources.	12/13/05			
PI050225A	1	10/24/05		Magnuson Fishery Conservation and Mgt Act (MFCMA)	50CFR660.28(f)(7)	* Written warning issued by F/EN	10/24/05			
PI050103A	1	4/4/05		Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.28(g)	* Written warning issued by F/EN	4/5/05			4/5/05
PI050006A	1	1/6/05	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.28(f)(7)	* Verbal Warning issued by F/EN	1/11/05			1/11/05
PI050004A	1	12/8/04	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.28(g)	Case reviewed by Special Agent. Case closed.	1/11/05			
PI050230A	1	12/13/05		Magnuson Fishery Conservation and Mgt Act (MFCMA)	50CFR600.725(t)	Sent to GC by F/EN	2/18/06			
PI050209A	1	10/6/05		Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(t)	* Verbal Warning issued by F/EN	10/6/05			
PI050206A	1	9/20/05		Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(o)	* Dismissed by F/EN (no violation)	9/20/05			
PI050148A	1	6/20/05		Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.35(a)(6), 600.725(t)	* Verbal Warning issued by F/EN	6/20/05			
PI050145A	1	7/5/05		Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(t)	* Written warning dismissed after review	1/20/06			1/20/06

PI050144A	1	6/20/05	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.35(a)(6), 600.725(t)	* Verbal Warning issued by F/EN	7/5/05			
PI050138A	1	6/14/05		Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(t)	* Dismissed by F/EN (no violation)	6/14/05			
PI050135A	1	5/13/05	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(t)	* Written warning issued by F/EN	6/13/05			6/13/05
PI050093A	1	1/14/05		Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(t)	* Written warning issued by F/EN	3/28/05			3/28/05
PI040216A	1	10/22/04	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.28(f)(6)	Closed. Duplicate investigation.	11/22/04			
PI040214A	1	11/3/04	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.28(f)(6)	* Dismissed by F/EN (no violation)	11/16/04			11/16/04
PI040190A	1	9/3/04	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.28(g)	Unfounded.	9/15/04			
PI040184A	1	9/13/04	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.28(6)	Case reviewed by Special Agent. Closed for lack of resources.	9/15/04			
PI040176A	1	8/23/04	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.33(a)(6)	* Verbal Warning issued by F/EN	5/3/05			
PI040175A	1	8/23/04	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.33(a)(6)	* Closed by F/EN due to lack of evidence	5/3/05			5/3/05
PI040174A	1	8/23/04	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.33(a)(6)	* Dismissed by F/EN (no violation)	5/3/05			5/3/05
PI040172A	1	8/25/04	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.35(a)(6)/660.28(g)	Unfounded.	8/31/04			
PI040136A	1	6/23/04	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.28(g)	* Dismissed by F/EN (no violation)	5/4/05			5/4/05
PI040097A	1	4/28/04	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.28(f)	Written warning issued.	4/29/04			
PI040198A	1	10/6/04	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(g)(i)	Case reviewed by Special Agent. Closed for lack of resources.	10/13/04			
PI040167A	1	8/12/04	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725	* Unfounded	2/15/06			2/15/06
PI040132A	1	5/24/04	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(0)	Reviewed by Special Agent. Closed for lack of resources.	6/18/04			

PI040115A	1	5/17/04	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725	Reviewed by Special Agent. Closed for lack of resources.	5/17/04			
SW Observer Cases										
CCN	CNT	DATE OF VIOLATION	FISH PLAN	INVESTIGATION TYPE	REG	CURRENT STATUS	CURRENT STATUS DATE	FINAL PENALTY	FINAL PENALTY DATE	DATE CLOSED
SW020380A	1	9/25/02	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(f)	* Prosecution declined by GCEL. Observer terminated.	7/7/03			7/7/03
SW020368A	1	9/25/02	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(o)	* Closed by F/EN due to lack of evidence	12/19/02			12/19/02
	2	8/9/02	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	1857(1)(l)		12/19/02			12/19/02
SW020367A	1	9/25/02	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725	* Closed by F/EN due to lack of evidence	12/19/02			12/19/02
SW020098A	1	3/14/02	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(f)	* Closed by F/EN due to lack of evidence	3/19/02			3/19/02
SW020090A	1	1/17/02		Marine Mammal Protection Act (MMPA)	600.725(t)	* Dismissed by GCEL.	5/5/06			5/5/06
	2	1/22/02		Marine Mammal Protection Act (MMPA)	600.725(u)		5/5/06			5/5/06
SW010287A	1	10/22/01	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(u)	* Closed by F/EN due to lack of evidence	5/27/03			5/27/03
SW010258A	1	7/23/01	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(t)	* All Settlement Agreement conditions satisfied	9/28/06	800.00	9/28/04	9/28/06
SW010257A	1	8/17/01	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(u)	* Dismissed by F/EN (no violation)	10/16/02			10/16/02
SW010162A	1	4/30/01	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(a)	* Closed by F/EN due to lack of evidence	8/3/04			8/3/04
SW010091A	1	3/6/01	Western Pacific Pelagics	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(t)	* Closed by F/EN due to lack of evidence	8/15/01			8/15/01
SW050140A	1	12/10/04		Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(s)	* Dismissed by F/EN (no violation)	5/15/06			5/15/06
SW050078A	1	2/28/05	WA, OR, and CA trawl fishery	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(t)	Settlement Agreement signed by GC	10/5/05	3,750.00	10/5/05	
SW050069A	1	2/24/05	WA, OR, and CA trawl fishery	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.306(i)(1)(2)	* Written warning issued by F/EN	4/25/05			4/25/05

SW040136A	1	5/12/04	WA, OR, and CA trawl fishery	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.306(y)	* Closed by F/EN due to lack of evidence	6/29/04			6/29/04
SW040106A	1	4/22/04	WA, OR, and CA trawl fishery	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(t)	* Dismissed by F/EN (no violation)	5/17/05			5/17/05
	2	3/23/03		Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(j)		1/13/04	570.00	1/13/04	
SW030140A	1	3/23/03		Marine Mammal Protection Act (MMPA)	216.11(b)	Settlement Agreement signed by GC	1/13/04	380.00	1/13/04	
SW020048A	1	9/14/01	WA, OR, and CA trawl fishery	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.306(f)	* Settlement Agreement conditions not met; case closed	10/4/05	2,986.00	9/4/02	12/20/05
	2	9/15/01	WA, OR, and CA trawl fishery	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.306(f)		10/4/05	1,913.00	9/4/02	12/20/05
	3	2/8/02	WA, OR, and CA trawl fishery	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(i)		10/4/05	2,500.00	9/4/02	12/20/05
	4	9/14/01	WA, OR, and CA trawl fishery	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.306(g)		10/4/05	2,500.00	9/4/02	12/20/05
SW020047A	1	9/14/01	WA, OR, and CA trawl fishery	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(a)	* Settlement Agreement conditions not met; case closed	10/4/05	2,500.00	10/23/02	12/20/05
	2	9/14/01	WA, OR, and CA trawl fishery	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.306(g)		10/4/05	2,500.00	10/23/02	12/20/05
	3	2/18/02	WA, OR, and CA trawl fishery	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(i)		10/4/05	2,500.00	10/23/02	12/20/05
SW020046A	1	9/14/01	WA, OR, and CA trawl fishery	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(a)	* Settlement Agreement conditions not met; case closed	10/4/05	2,500.00	10/23/02	12/20/05
	2	9/14/01	WA, OR, and CA trawl fishery	Magnuson Fishery Conservation and Mgt Act (MFCMA)	660.306(g)		10/4/05	2,500.00	10/23/02	12/20/05
	3	9/14/01	WA, OR, and CA trawl fishery	Magnuson Fishery Conservation and Mgt Act (MFCMA)	600.725(i)		10/4/05	2,500.00	10/23/02	12/20/05

Appendix 5: All complaints of observer mistreatment, nationwide, reported to NMFS since January 1, 2008, to present, and any associated reports presenting findings and resultant actions.

OBSERVER HARASSMENT/INTIMIDATION/ASSAULT CASES 1/1/2007 TO 12/31/2007

Incident	Location	Date	Regulation	Violation Description	Status
I0700840	AK	3/13/2007	50 CFR 679.7(g)(5)	HARASS AN OBSERVER	Closed - Lack of Evidence
I0701012	AK	3/20/2007	50 CFR 679.7(g)(5)	HARASS AN OBSERVER	Closed - EMIS
I0701723	AK	4/17/2007	50 CFR 679.7(g)(5)	HARASS AN OBSERVER	Closed - Lack of Evidence
I0701356	AK	4/27/2007	18 USC 1857(1)(L)	SEXUALLY HARASS AN OBSERVER	Criminally Prosecuted
I0701561	PI	5/7/2007	50 CFR 600.725(o)	SEXUALLY HARASS AN OBSERVER	Closed - Lack of Evidence
I0701762	PI	5/31/2007	50 CFR 600.725(o)	HARASS AN OBSERVER	Case Adjudicated
I0702929	NE	8/7/2007	50 CFR 648.14(a)(8)	OBSERVER ASSAULT	Closed - EMIS
I0703739	NE	9/12/2007	50 CFR 600.725(o)	HARASS AN OBSERVER	Closed - Information Only
I0704448	SE	10/23/2007	50 CFR 600.725(o)	HARASS AN OBSERVER	Closed - EMIS
I0704024	AK	10/8/2007	50 CFR 679.7(g)(5)	SEXUALLY HARASS AN OBSERVER	Case Open
I0704176	AK	10/11/2007	50 CFR 679.7(g)(5)	HARASS AN OBSERVER	Closed - Information Only
I0704527	NE	11/16/2007	50 CFR 648.14(a)(8)	HARASS AN OBSERVER	Case Adjudicated
I0704656	AK	11/29/2007	50 CFR 679.7(g)(5)	HARASS AN OBSERVER	Closed - Information Only
I0704645	AK	12/5/2007	50 CFR 679.7(g)(5)	HARASS AN OBSERVER	Case Open
I0704665	AK	12/11/2007	50 CFR 679.7(g)(5)	HARASS AN OBSERVER	Case Open

OBSERVER HARASSMENT/INTIMIDATION/ASSAULT CASES 1/1/2008 TO 12/31/2008

Incident	Date	Regulation	Violation Description	Status
I0800243	01/23/2008	50CFR600.725(w)	OBSERVER SAFETY	Closed - Unfounded
I0800954	03/14/2008	50CFR600.725(w)	OBSERVER SAFETY	Closed (EMIS)
I0800954	03/14/2008	50CFR600.725(t)	OBSERVER INTIMIDATION	Closed (EMIS)
I0801387	04/14/2008	50CFR648.14(a)(8)	OBSERVER INTIMIDATION	Case Initiated
I0801387	04/14/2008	50CFR648.14(a)(8)	OBSERVER INTIMIDATION	Case Initiated

I0801422	04/15/2008	50CFR648.14(a)(8)	OBSERVER INTERFERENCE	Case Initiated
I0801422	04/15/2008	50CFR648.14(a)(8)	OBSERVER HARASSMENT	Case Initiated
I0801422	04/15/2008	50CFR648.14(a)(79)	OBSERVER ACCOMODATION	Case Initiated
I0801488	04/20/2008	50CFR600.725(w)	OBSERVER SAFETY ISSUE	Case Initiated
I0801804	05/07/2008	50CFR600.725(w)	OBSERVER SAFETY	Case Initiated
I0801804	05/07/2008	50CFR600.725(w)	OBSERVER SAFETY	Case Initiated
I0802912	07/17/2008	50CFR648.14(a)(8)	OBSERVER INTIMIDATION	Case Initiated
I0803122	08/05/2008	50CFR648.14(a)(8)	HARASS AN OBSERVER	Closed (EMIS)
I0803188	08/06/2008	50CFR648.14(a)(8)	OBSERVER INTERFERENCE	Closed - Unfounded
I0803188	08/06/2008	50CFR648.14(a)(8)	OBSERVER INTERFERENCE	Closed - Unfounded
I0803188	08/06/2008	50CFR648.14(a)(8)	OBSERVER HARASSMENT	Closed - Unfounded
I0803764	09/09/2008	50CFR648.14(a)(8)	OBSERVER INTIMIDATION	Case Initiated
I0803955	09/24/2008	50CFR648.14(a)(8)	OBSERVER INTIMIDATION	Case Initiated
I0804830	09/19/2008	50CFR648.14(a)(8)	OBSERVER INTERFERENCE	Closed - Unfounded
I0804868	11/10/2008	50CFR648.14(a)(8)	OBSERVER HARASSMENT HOSTILE ENVIRONMENT	Case Initiated
I0804969	12/04/2008	50CFR600.725(o)	SEXUALLY HARRASS AN OBSERVER	Case Initiated

OBSERVER HARASSMENT/INTIMIDATION/ASSAULT CASES 1/1/2009 TO 12/31/2009

Incident	Location	Date	Regulation	Violation Description	Status
I0901245	AK	N/A	50 CFR 679.7(g)(1)	INTIMIDATE, SEXUALLY HARASS AN OBSERVER	Closed--Lack of Evidence
I0901534	AK	1/20/2009	50 CFR 679.7(g)(5)	HARASS AN OBSERVER TAMPER WITH OBSERVER EQUIPMENT	Open Investigation
I0901714	AK	2/2/2009	50 CFR 679.7(g)(3)	HARASS AN OBSERVER	Open Investigation
I0909121	AK	1/28/2009	50 CFR 679.7(g)(5)	HARASS AN OBSERVER CREATE AN OFFENSIVE WORK ENVIRONMENT	Open Investigation
I0901984	AK	2/23/2009	50 CFR 679.7(g)(1)	HARASS AN OBSERVER	Open Investigation
I0902151	AK	2/17/2009	50 CFR 679.7(g)(5)	OBSERVER THREAT	Closed--Verbal Warning
I0901434	AK	4/8/2009	50 CFR 679.7(g)(5)	INTIMIDATING, HOSTILE, WORK ENVIRONMENT	Open Investigation
I0902415	AK	6/4/2009	50 CFR 679.7(g)(5)	HARASS AN OBSERVER	Closed--Verbal Warning
I0903126	AK	5/23/2009	50 CFR 679.7(g)(5)	HARASS AN OBSERVER	Open Investigation
I0903356	AK	8/1/2009	50 CFR 600.725(o)	OBSERVER HARASSMENT observer v observer	Open Investigation
I0903516	AK	N/A	50 CFR 679.7(g)(1)	INTIMIDATE AN OBSERVER	Closed--Lack of Evidence

I0904367	AK	10/15/2009	50 CFR 679.7(g)(4)	TAMPER/DESTROY OBSERVER'S EQUIPMENT	Open Investigation
I1000251	AK	11/17/2009	50 CFR 679.7(g)(5)	OBSERVER HARASSMENT observer v observer	Open Investigation
I1000820	AK	11/6/2009	50 CFR 679.7(g)(5)	OBSERVER HARASSMENT	Open Investigation
I0900875	NE	3/11/2009	50 CFR 600.725(o)	UNWANTED ATTENTION FROM CREWMEMBER	Closed--Verbal Warning
I0901122	NE	3/5/2009	50 CFR 648.14(e)(8)	UNWELCOME SEXUAL SOUNDS TO OBSERVER	Closed--Verbal Warning
I0902123	NE	6/2/2009	50 CFR 600.725(o)	UNWANTED ATTENTION FROM CREWMEMBER	Closed--Lack of Evidence
I0902537	NE	3/14/2009	50 CFR 600.725(o)	CREWMEMBER MADE RACIST COMMENTS	Closed--Lack of Evidence
I0902601	NE	7/14/2009	50 CFR 648.14(e)(1)	OPERATOR YELLED AT & THREATENED OBSERVER	Open--Forwarded to GCEL
I0902681	NE	7/3/2009	50 CFR 648.14(e)(1)	HOSTILE ENVIRONMENT & INSULTED OBSERVER	Closed--Lack of Evidence
I0902682	NE	7/5/2009	50 CFR 648.14(e)(1)	OPERATOR YELLED AT & INSULTED OBSERVER	Closed--Verbal Warning
I0903576	NE	9/1/2009	50 CFR 648.14(e)(1)	OPERATOR YELLED AT & INSULTED OBSERVER	Closed--Lack of Evidence
I0904013	NE	10/20/2009	50 CFR 648.14(e)(1)	HOSTILE ENVIRONMENT & INSULTED OBSERVER	Open--Forwarded to GCEL
I0901170	PI	3/6/2009	16 USC 1857(L)	HARASS AN OBSERVER	Open Investigation
I0901370	PI	4/20/2009	50 CFR 600.725(o)	HARASS AN OBSERVER	Open--Forwarded to GCEL
I0902200	PI	6/2/2009	16 USC 1857(L)	HARASS AN OBSERVER	Hearing requested
I0902568	PI	6/13/2009	50 CFR 666.22	THREATEN OBSERVER WITH KNIFE	Hearing requested
I1000128	PI	12/16/2009	16 USC 1857(L)	HARASS & INTIMIDATE AN OBSERVER	Open Investigation

OBSERVER HARASSMENT/INTIMIDATION/ASSAULT CASES 1/1/2010 TO 12/31/2010

INCIDENT	Date	Regulation	Violation Description	Status
I1001010	4/19/2010	16USC1857(L)	HARASS AN OBSERVER	Open
I1001296	5/13/2010	16USC1857(1)(L)	HARASS AN OBSERVER	Closed-Adjudicated
I1002602	8/11/2010	16USC1857(L)	INTIMIDATE AN OBSERVER	Sent to GCEL
I1002013	6/28/2010	50 CFR 600.725	SEXUAL HARASSMENT OF OBSERVER	Closed-Declined by GC

I1000271	2/5/2010	50CFR648.14(e)(1)	INTIMIDATE AN OBSERVER	Closed - COPPS Closed - Verbal Warning
I1001959	6/23/2010	50CFR648.14(e)(1)	HARASS AN OBSERVER	Closed - Verbal Warning
I1001615	6/2/2010	50CFR648.14(e)(1)	INTIMIDATE AN OBSERVER	Closed - Verbal Warning
I1001836	6/17/2010	50CFR648.14(e)(1)	HARASS AN OBSERVER	Closed - Verbal Warning
I1002085	7/1/2010	50CFR648.14(e)(1)	INTIMIDATE AN OBSERVER	Closed - Verbal Warning
I1002213	7/13/2010	16USC1857(1)(L)	ASSAULT/HARASSMENT OF AN OBSERVER	Criminal Prosecution
I1002347	7/23/2010	16USC1857(1)(L)	HARASS AN OBSERVER	Criminal Prosecution Closed - Written Warning
I1002344	7/23/2010	50CFR648.14(e)(1)	INTIMIDATE AN OBSERVER	Closed - Verbal Warning
I1002428	7/28/2010	50CFR648.14(e)(1)	HARASS AN OBSERVER	Warning
I1002213	7/13/2010	16USC1857(1)(L)	ASSAULT OF AN OBSERVER	Criminal Prosecution
I1002347	7/23/2010	16USC1857(1)(L)	SEXUAL ASSAULT OF AN OBSERVER	Criminal Prosecution Closed - Verbal Warning
I1000921	4/2/2010	50CFR679.7(g)(1)	INTIMIDATE AN OBSERVER	Closed - Written Warning
I1001013	4/19/2010	50 CFR679.7(g)(5)	SEXUAL HARASSMENT OF OBSERVER	Closed - Written Warning
I1001013	4/19/2010	50CFR679.7(g)(5)	SEXUAL HARASSMENT OF OBSERVER	Closed - Written Warning
I1001177	5/7/2010	50CFR679.7(g)(5)	CREATE HOSTILE WORK ENVIRONMENT	Closed - Summary Settlement
I1003090	8/19/2010	50CFR679.7(g)(5)	SEXUAL HARASSMENT OF OBSERVER	Closed - Verbal Warning
I1004005	10/19/2010	50 CFR 679.7(g)(5)	HOSTILE WORK ENVIRONMENT	Open Closed - Written Warning
I1003993	10/27/2010	50 CFR 679.7(g)(1)	INTERFERE WITH OBSERVER	Warning

OBSERVER HARASSMENT/INTIMIDATION/ASSAULT CASES 1/1/2011 TO 12/31/2011

Incident	Location	Date	Regulation	Violation Description	Status
I1100557	NE	2/9/2011	50CFR648.14(e)(1)	OBSERVER HARASSMENT (Verbal)	Closed - Information Only (Observer)

					Declined to Pursue)
I1100861	NE	3/3/2011	50CFR614.14(e)(1)	OBSERVER INTIMIDATION OBSERVER HARRASSMENT -	Closed - Lack of Evidence
I1101497	NE	3/21/2011	50CFR648.14(e)(1)	PASSIVE	Closed - COPPS
I1101558	AK	1/20/2011	50CFR679.7(g)(5)	INTIMIDATE AN OBSERVER	OPEN
I1101579	NE	3/4/2011	50CFR614.14(e)(1)	ASSAULT, INTIMIDATE, INTERFERE	Closed - Unfounded
I1101592	AK	3/29/2011	50CFR679.7(g)(5)	INTIMIDATE AN OBSERVER	Closed - Lack of ENF Resources
I1101618	NE	4/7/2011	50CFR648.14(e)(1)	OBSERVER HARASSMENT & INTIMIDATION	Open
I1101773	AK	2/22/2011	50CFR679.7(g)(5)	INTIMIDATE, HARASS, CREATE A HOSTILE WORK ENVIRONMENT	Open
I1101816	AK	1/22/2011	50CFR679.7(g)(5)	INTIMIDATE AND COERCE AN OBSERVER RE DATA AND RESULTS	Closed - Information Only
I1101828	AKD	2/8/2011	50CFR679.7(g)(5)	SEXUALLY HARASS AND INTIMIDATE AN OBSERVER	Closed-Verbal Warning Closed - Information Only
I1102043	AK	3/9/2010	50CFR679.7(g)(5)	INTERFERE WITH OBSERVER PERFORMANCE	Only
I1102634	AK	6/13/2011	16 USC 1857(L)	SEXUALLY ASSAULT AN OBSERVER	Open
I1102634	AK	6/13/2011	16 USC 1857(L)	SEXUALLY HARASS AN OBSERVER	Open
I1102931	AK	6/29/2011	50CFR679.7(g)(1)	ASSAULT/IMPEDE/HARASS	Open
I1103062	NE	6/24/2011	50CFR648.14(e)(1)	INTIMIDATE/HARASS	Open
I1103074	NE	6/5/2011	50CFR648.14(e)(1)	HARASS AN OBSERVER	Closed - Lack of Evidence
I1103284	NE	6/21/2011	50CFR600.725(u)(1)	HARASS AN OBSERVER	Open
I1103504	NE	7/4/2011	50CFR600.725(o)	HARASS AN OBSERVER	Closed - COPPS
I1103538	AK	8/1/2011	50CFR679.7(g)(5)	HOSTILE WORK ENVIRONMENT	Closed - COPPS
I1103999	AK	3/9/2011	50CFR679.7(g)(5)	SEXUALLY HARASS OBSERVER	Closed - COPPS
I1104469	AK	6/19/2011	50CFR679.7(g)(5)	FORCIBLY ASSAULT, INTERFERE, INTIMIDATE	Open
I1104474	AK	8/1/2011	50CFR679.7(g)(5)	INTIMIDATE AN OBSERVER	Open

I1104579	NE	9/25/2011	50CFR648.14(e)(1)	HARASS AN OBSERVER INTIMIDATE OR INTERFERE	Closed - COPPS
I1104896	NED	10/6/2011	50CFR648.14(e)(1)	WITH OBSERVER	Closed - COPPS
I1105058	AKD	5/3/2011	50CFR679.7(g)(1)	SEXUALLY HARASS OBSERVER	Open
I1105058	AKD	5/3/2011	50CFR679.7(g)(5)	HARASS AN OBSERVER CREATE AN INTIMIDATING, HOSTILE, OFFENSIVE WORK ENVIRONMENT.	Open
I1105108	AKD	8/13/2011	50CFR679.7(g)(5)		Open Closed-Verbal
I1105320	NED	12/8/2011	50CFR648.14(e)(1)	HARASS AN OBSERVER	Warning Closed-Verbal
I1105320	NED	12/8/2011	50CFR648.14(e)(1)	HARASS AN OBSERVER	Warning Closed - Information
I1105337	NED	12/27/2011	50CFR648.14(e)(1)	HARASS AN OBSERVER CREATE AN INTIMIDATING/OFFENSIVE OR HOSTILE WORK ENVIRONMENT	Only Closed - Information Only
I1105340	AKD	9/26/2011	50CFR679.7(g)(5)	CREATE AN INTIMIDATING, HOSTILE OR OFFENSIVE WORK ENVIRONMENT	Only Closed - Information Only
I1105343	AKD	2/9/2011	50CFR679.7(g)(5)	INTERFERE OR INTIMIDATE AN OBSERVER	Only Closed - Information Only CLOSED- DUPLICATE CASE
I1105347	AKD	4/14/2011	50CFR679.7(g)(5)		(I1105320) Closed - Lack of Evidence
I1200030	NED	12/19/2011	50CFR648.14(e)(1)	HARASS AN OBSERVER	Closed - Information Only
I1200113	NED	10/20/2011	50CFR648.14(e)(1)	INTIMIDATION	Closed - Information Only Closed - Unfounded
I1200120	NED	9/27/2011	50CFR648.14(e)(1)	HARASS AN OBSERVER	Open
I1200858	NED	4/8/2011	50CFR648.14(e)(1)	HARASS AN OBSERVER	Open
I1200884	NED	8/25/2011	50CFR648.14(e)(1)	OBSERVER INTIMIDATION	
I1200885	NED	7/21/2011	50CFR648.14(e)(1)	HARASS AN OBSERVER	

Division	Incident #	GC #	Date Opened	CNT	Law/Program/Reg	Case Status	Date Closed	Case Disposition	Regulaton
Alaska	I1201004	AK1201004	3/14/2012	01	MSFCMA	Closed	2/28/2013	Written Warning	50CFR679.7(g)(5)
Alaska	I1201852	AK1201852	4/3/2012	01	MSFCMA	Open		Ongoing investigation	50CFR679.7(g)(1)
Alaska	I1201501	AK1201501	4/20/2012	01	MSFCMA	Open		Ongoing investigation	50CFR679.7(g)(5)
Alaska	I1201553	AK1201553	4/20/2012	02	MSFCMA	Closed	5/14/2012	Alleged violation unfounded	50CFR679.7(g)(1)
Alaska	I1201506	AK1201506	5/1/2012	01	MSFCMA	Closed	5/15/2013	Written Warning	50CFR679.7(g)(5)
Alaska	I1202343	AK1202343	7/17/2012	01	MSFCMA	Closed	5/31/2013	Lack of Evidence	16USC1857(1)(L)
Alaska	I1203775	AK1203775	9/26/2012	01	MSFCMA	Open		Ongoing investigation	50CFR679.7(g)(4)
Alaska	I1203987	AK1203987	11/27/2012	01	MSFCMA	Closed	4/11/2013	Verbal Warning	18USC1857(1)(L)
Northeast	I1203268	NE1203268	8/1/2012	03	MSFCMA	Closed	9/25/2012	Verbal Warning	50CFR648.14(e)(1)
Northeast	I1202596	NE1202596	8/6/2012	01	MSFCMA	Closed	8/7/2012	Information Only	50CFR648.14(e)(1)
Northeast	I1203240	NE1203240	8/14/2012	02	MSFCMA	Closed	9/24/2012	Information Only	50CFR648.14(e)(1)
Northeast	I1200466	NE1200466	2/28/2012	01	MSFCMA	Closed	8/1/2012	Lack of Evidence	50CFR648.14(e)(1)
Northeast	I1202295	NE1202295	5/7/2012	01	MSFCMA	Closed	5/7/2012	Education/COPPS	50CFR600.725(o)
Northeast	I1202845	NE1202845	8/23/2012	01	MSFCMA	Closed	6/24/2013	Intel Only	50CFR648.14(e)(1)
Northeast	I1200377	NE1200377	4/4/2012	01	MSFCMA	Closed	4/4/2012	Verbal Warning	50CFR648.14(e)(1)
Northwest	I1200376	NW1200376	2/9/2012	01	MSFCMA	open		Ongoing investigation	16USC1857(1)(L)
Northwest	I1201085	NW1201085	3/8/2012	01	MSFCMA	Closed	3/15/2012	Information Only	50CFR660.12(e)(1)
Northwest	I1201399	NW1201399	10/3/2012	03	MSFCMA	open		Ongoing investigation	50CFR660.12(e)(4)
Northwest	I1201687	NW1201687	5/24/2012	01	MSFCMA	open		Submitted for prosecution	50CFR600.725(w)
Northwest	I1201720	NW1201720	5/22/2012	01	MSFCMA	open		Submitted for prosecution	50CFR660.12(e)(4)(iii)
Northwest	I1203400	NW1203400	10/3/2012	02	MSFCMA	open		Ongoing investigation	50CFR660.12(e)(4)(iii)
Northwest	I1300284	NW1300284	1/28/2013	01	MSFCMA	open		Ongoing investigation	16USC1857(1)(L)
Northwest	I1302760	NW1302760	9/26/2012	01	MSFCMA	Closed	5/31/2013	Lack of Evidence	50CFR660.12(e)(4)(iii)
Northwest	I1300271	NW1300271	1/23/2013	01	MSFCMA	Closed	6/4/2013	Information Only/Unfounded	50CFR660.12(e)(4)(i)
Pacific Islands	I1204062	PI1204062	12/6/2012	01	MSFCMA	Open		Submitted for prosecution	16USC1857(1)(L)
Southwest	I1201771	SW1201771	5/31/2012	04	MSFCMA	Open		Submitted for prosecution	50 CFR 600.725(t)

PI = Pacific Islands

Violation Description

INTIMIDATE AN OBSERVER (VERBAL)
INTIMIDATE AN OBSERVER
HARASS OR INTIMIDATE WITH THE PURPOSE OR EFFECT OF INTERFERING
INTIMIDATE/IMPEDE/INTERFERE BY FAILURE TO MAINTAIN SAFE CONDITIONS
CREATE AN INTIMIDATING OR HOSTILE WORK ENVIRONMENT
SEXUALLY ASSAULT NMFS OBSERVER
COERCE OR BAR BY COMMAND AN OBSERVER FROM COMPLETION OF SAMPLING DUTIES
SEXUALLY HARASS AN OBSERVER
INTIMIDATE AN OBSERVER (VERBAL)
INTIMIDATE AN OBSERVER (VERBAL)
INTIMIDATE AN OBSERVER (VERBAL)
OBSERVER HARASSMENT
OBSERVER HARASSMENT
OBSERVER INTIMIDATION AND OBSERVER GEAR TAMPERING
OBSERVER INTIMIDATION
SEXUAL ASSAULT/HARASSMENT OF AN OBSERVER
OBSERVER SAFETY - HARASSMENT
HARASS AN OBSERVER
INTIMIDATE AN OBSERVER
HARASS AN OBSERVER
HARASSMENT AND INTERFERENCE WITH OBSERVER
ASSAULT OBSERVER
INTIMIDATE AN OBSERVER
SEXUALLY HARASS AN OBSERVER
OBSERVER HARASSMENT
ASSAULT OBSERVER

Case Type	Incident Disp	Incident Status	Port	Offense Date	Violation Description	Offense Type
Civil-Domestic	Closed - Lack of Evidence	Completed	DUTCH HARBOR	Feb 15, 2013 12:00:00 AM	INTIMIDATE/INTERFERE/COERCE AN OBSERVER	Lack of Evidence
Civil-Domestic	Closed - Lack of Evidence	Completed	DUTCH HARBOR	Feb 15, 2013 12:00:00 AM	INTIMIDATE/INTERFERE/COERCE AN OBSERVER	Lack of Evidence
Criminal-Domestic	Case Initiated	Pending	DUTCH HARBOR	Feb 13, 2013 12:00:00 AM	SEXUALLY HARASS AN OBSERVER	Violation
Criminal-Domestic	Case Initiated	Pending	DUTCH HARBOR	Feb 13, 2013 12:00:00 AM	SEXUALLY HARASS AN OBSERVER	Violation
	Open	Pending	DUTCH HARBOR	Apr 25, 2013 12:00:00 AM	INTIMIDATE AND THREATEN AN OBSERVER	Violation
Civil-Domestic	Closed - Info Only	Completed	DUTCH HARBOR, AK	Sep 14, 2013 12:00:00 AM	SEXUALLY HARASS AN OBSERVER	Verbal Warning
Civil-Domestic	Closed - Info Only	Completed	DUTCH HARBOR, AK	Oct 15, 2013 12:00:00 AM	THREATEN OR INTIMIDATE AN OBSERVER	Verbal Warning
Criminal-Domestic	Case Initiated	Completed	DUTCH HARBOR	Nov 4, 2013 12:00:00 AM	RESULT OBSERVER	
Criminal-Domestic	Case Initiated	Pending	DUTCH HARBOR, AK	Mar 7, 2014 12:00:00 AM	INTIMIDATE WITH THE PURPOSE OF INTERFERING OR BIASING OBSERVER SAMPLING	
Civil-Domestic	Closed - Case Adjudicated	Completed	MONTAUK, NY	2013-04-26 00:00:00	OBSERVER HARASSMENT	Written Warning
Civil-Domestic	Closed - Lack of Resources	Completed	MONTAUK, NY	2013-04-26 00:00:00	OBSERVER INTIMIDATION	
	Closed - COPPS	Completed	MONTAUK, NY	2013-04-26 00:00:00	OBSERVER INTIMIDATION	Other
	Closed - COPPS	Completed	PORTSMOUTH, NH	2013-08-21 00:00:00	OBSERVER INTIMIDATION	Unknown
	Closed - COPPS	Completed	PORTLAND, ME	2013-07-11 00:00:00	OBSERVER INTERFERENCE	Other
	Closed - COPPS	Completed	PORTLAND, ME	2013-09-02 00:00:00	OBSERVER INTERFERENCE	Other
Civil-Domestic	Case Initiated	Completed	OCEAN CITY, MD	2013-10-31 00:00:00	OBSERVER HARASSMENT, INTIMIDATION, IMPEDE OR INTERFERE	Violation
	Closed - Lack of Evidence	Completed	OCEAN CITY, MD	2013-10-31 00:00:00	OBSERVER INTERFERENCE	Lack of Evidence
Criminal-Domestic	Closed - Info Only	Completed	ASTORIA	Dec 21, 2013 12:00:00 AM	SEXUALLY HARASS AN OBSERVER	Lack of Evidence
Civil-Domestic	Case Initiated	Completed		Dec 31, 2013 12:00:00 AM	TO FORCIBLY ASSAULT ANY OBSERVER ON A VESSEL	Unfounded
	Closed - Lack of Evidence	Completed	COOS BAY, OR	Jul 16, 2013 12:00:00 AM	INTERFERE WITH OBSERVER	Lack of Evidence
	Closed - Unfounded	Completed	COOS BAY, OR	Oct 14, 2013 12:00:00 AM	HARASS AN OBSERVER	Unfounded
	Closed - Lack of Resources	Completed	COOS BAY, OR	Aug 27, 2013 12:00:00 AM	HARASS AN OBSERVER	Unknown
Civil-Domestic	Closed - Case Adjudicated	Completed		2013-04-22 00:00:00	OBSERVER HARASSMENT/INTERFERENCE/INTIMIDATION	
Civil-International	Case Initiated	Pending		2012-07-14 00:00:00	INTIMIDATING OF AN FFA OBSERVER	Violation
Civil-International	Case Initiated	Pending		2012-07-25 00:00:00	INTIMIDATING OF AN FFA OBSERVER	Violation
Criminal-Domestic	Closed - Unfounded	Completed		2013-06-13 00:00:00	OBSERVER INTERFERENCE/HARASSMENT	
Civil-Domestic	Closed - Case Adjudicated	Completed			OBSERVER INTERFERENCE	Verbal Warning
	Closed - COPPS	Completed			OBSERVER INTERFERENCE	Other

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Case Type	Incident Disp	Disp. Date	Incident Status	Port	Offense Date	Violation Description	Offense Type
Criminal-Domestic	Closed - Case Adjudicated	Dec 9, 2014 12:00:00 AM	Ongoing	DUTCH HARBOR	Mar 4, 2014 12:00:00 AM	HARASS A NMFS OBSERVER	Written Warning
Civil-Domestic	Case Initiated	Mar 14, 2014 12:00:00 AM	Completed	ST. PAUL	Jan 4, 2014 12:00:00 AM	SEXUALLY HARASS AN OBSERVER	Violation
Civil-Domestic	Case Initiated	Mar 14, 2014 12:00:00 AM	Completed	ST. PAUL	Jan 4, 2014 12:00:00 AM	HARASS AN OBSERVER; INTERFERE WITH WORK PERFORMANCE	Violation
Civil-Domestic	Case Initiated	Apr 14, 2014 12:00:00 AM	Ongoing	DUTCH HARBOR, AK	Jul 3, 2013 12:00:00 AM	CREATE AN INTIMIDATING OR HOSTILE WORK ENVIRONMENT FOR OBSERVER	
Civil-Domestic	Closed - Case Adjudicated	Sep 24, 2014 12:00:00 AM	Completed	SEWARD, AK	Jan 12, 2014 12:00:00 AM	CREATE AN INTIMIDATING OR HOSTILE WORK ENVIRONMENT	Unfounded
	Closed - Info Only	Apr 17, 2014 12:00:00 AM	Ongoing	DUTCH HARBOR, AK	Jan 19, 2014 12:00:00 AM	CREATE AN OFFENSIVE OR HOSTILE WORK ENVIRONMENT	Lack of Evidence
Civil-Domestic	Transferred to Another Agency	Oct 18, 2014 12:00:00 AM	Completed	SEATTLE, WA	Apr 13, 2014 12:00:00 AM	ASSAULT AN OBSERVER	Other
Civil-Domestic	Case Initiated	Jun 6, 2014 12:00:00 AM	Completed		Apr 29, 2014 12:00:00 AM	HARASS OR EMPEDE OBSERVER	Verbal Warning
Criminal-Domestic	Case Initiated	Sep 15, 2014 12:00:00 AM	Ongoing	DUTCH HARBOR, AK	Feb 5, 2014 12:00:00 AM	INTIMIDATE AND CREATE A HOSTILE WORK ENVIRONMENT FOR AN OBSERVER	
Criminal-Domestic	Case Initiated	Sep 29, 2014 12:00:00 AM	Ongoing	DUTCH HARBOR, AK	Jan 20, 2014 12:00:00 AM	CREATE AN INTIMIDATING AND HOSTILE WORK ENVIRONMENT	
Civil-Domestic	Case Initiated	Aug 27, 2014 12:00:00 AM	Ongoing	DUTCH HARBOR, AK	Feb 21, 2014 12:00:00 AM	CREATE AN INTIMIDATING AND HOSTILE WORK ENVIRONMENT	
Civil-Domestic	Case Initiated	Jun 30, 2014 12:00:00 AM	Ongoing		Jun 24, 2014 12:00:00 AM	SEXUALLY HARASS OBSERVER	Violation
	Closed - Case Adjudicated	Aug 4, 2014 12:00:00 AM	Completed	DUTCH HARBOR, AK	Apr 19, 2014 12:00:00 AM	CREATE HOSTILE WORK ENVIRONMENT FOR OBSERVER- REHABILIT	Verbal Warning
Civil-Domestic	Closed - Case Adjudicated	Jul 11, 2014 12:00:00 AM	Completed	SEWARD, AK	Apr 15, 2014 12:00:00 AM	ASSAULT AN OBSERVER WITH SEAL BOMB	Lack of Evidence
Civil-Domestic	Closed - Case Adjudicated	Dec 6, 2014 12:00:00 AM	Completed	HOMER, AK	Jun 3, 2014 12:00:00 AM	CREATE AN OFFENSIVE WORK ENVIRONMENT	Verbal Warning
Civil-Domestic	Closed - Info Only	Mar 1, 2015 12:00:00 AM	Completed	DUTCH HARBOR, AK	Apr 10, 2014 12:00:00 AM	CREATE A HOSTILE WORK ENVIRONMENT FOR OBSERVER	Count Merged
Civil-Domestic	Case Initiated	Apr 21, 2015 12:00:00 AM	Ongoing	KODIAK, AK	May 27, 2014 12:00:00 AM	CREATE A SEXUALLY OFFENSIVE WORK ENVIRONMENT FOR OBSERVER	
	Open	Jul 3, 2014 12:00:00 AM	Ongoing	SAND POINT, AK	May 27, 2014 12:00:00 AM	CREATE A HOSTILE WORK ENVIRONMENT FOR OBSERVER	
	Closed - Case Adjudicated	Jul 17, 2014 12:00:00 AM	Completed	KODIAK, AK	Apr 23, 2014 12:00:00 AM	CREATE AN INTIMIDATING AND HOSTILE WORK ENVIRONMENT	Verbal Warning
	Closed - Unfounded	Oct 17, 2014 12:00:00 AM	Completed	ATKA	Jul 20, 2014 12:00:00 AM	INTIMIDATE AN OBSERVER	Unfounded
Civil-Domestic	Case Initiated	Apr 7, 2015 12:00:00 AM	Ongoing	DUTCH HARBOR, AK	Apr 11, 2014 12:00:00 AM	CREATE A HOSTILE OR INTIMIDATING OR OFFENSIVE WORK ENVIRONMENT	
Civil-Domestic	Case Initiated	Sep 11, 2014 12:00:00 AM	Ongoing	DUTCH HARBOR, AK	Jul 28, 2014 12:00:00 AM	CREATE AN INTIMIDATING, HOSTILE OR OFFENSIVE WORK ENVIRONMENT	
	Open	Sep 5, 2014 12:00:00 AM	Ongoing	ATKA, AK	Jul 18, 2014 12:00:00 AM	INTIMIDATE AN OBSERVER	
Criminal-Domestic	Transferred to Another Agency	Oct 22, 2014 12:00:00 AM	Completed	KODIAK, AK	Apr 1, 2013 12:00:00 AM	HARASS AN OBSERVER, CREATE HOSTILE WORK ENVIRONMENT	Other
	Open	Sep 30, 2014 12:00:00 AM	Ongoing	DUTCH HARBOR, AK	Jul 30, 2014 12:00:00 AM	HARASS, INTIMIDATE, CREATE HOSTILE WORK ENVIRONMENT	
	Open	Oct 3, 2014 12:00:00 AM	Ongoing	DUTCH HARBOR, AK	Jun 26, 2014 12:00:00 AM	INTIMIDATE OR CREATE HOSTILE WORK ENVIRONMENT	Unfounded
Civil-Domestic	Closed - Info Only	Feb 19, 2015 12:00:00 AM	Completed	AKUTAN, AK	Sep 18, 2014 12:00:00 AM	CREATE AN INTIMIDATING, HOSTILE AND HARASSING WORK ENVIRONMENT	Verbal Warning
Civil-Domestic	Case Initiated	Feb 19, 2015 12:00:00 AM	Ongoing	DUTCH HARBOR, AK	Aug 17, 2014 12:00:00 AM	HARASS OR CREATE A HOSTILE OR OFFENSIVE WORK ENVIRONMENT	Verbal Warning
Civil-Domestic	Case Initiated	Apr 20, 2015 12:00:00 AM	Ongoing	SEWARD, AK	Oct 19, 2014 12:00:00 AM	CREATE AN INTIMIDATING AND HOSTILE WORK ENVIRONMENT	
Civil-Domestic	Closed - Info Only	Feb 19, 2015 12:00:00 AM	Completed	HOMER, AK	Nov 2, 2014 12:00:00 AM	CREATE AN INTIMIDATING, OR HOSTILE WORK ENVIRONMENT, OBSERVER INTIMIDATION	Verbal Warning
	Closed - COPPS	Feb 21, 2014 12:00:00 AM	Completed	MONTAUK	2014-02-13 00:00:00		Verbal Warning
	Closed - COPPS	May 14, 2014 12:00:00 AM	Completed	NEW BEDFORD, MA	2014-03-25 00:00:00	OBSERVER HARASSMENT	Verbal Warning
	Closed - COPPS	May 20, 2014 12:00:00 AM	Completed	NEW BEDFORD, MA	2014-05-19 00:00:00	OBSERVER INTIMIDATION COMPLAINT	Verbal Warning

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Closed - COPPS	Completed	WANCHESI, NC	2014-02-20 00:00:00	OBSERVER HARASSMENT	Unknown
Closed - COPPS	Completed	POINT JUDITH	2014-07-23 00:00:00	OBSERVER HARASSMENT	Verbal Warning
Case Initiated	Ongoing	GLOUCESTER, MA	2014-10-10 00:00:00	OBSERVER HARASSMENT	Unknown
Closed - Lack of Evidence	Completed	NEW BEDFORD	2014-11-24 00:00:00	OBSERVER HARASSMENT	Lack of Evidence
Case Initiated	Completed	NEAH BAY, WA	Apr 15, 2014 12:00:00 AM	OBSERVER HARASSMENT	Lack of Evidence
Open	Ongoing		May 18, 2014 12:00:00 AM	OBSERVER ASSAULT	
Case Initiated	Ongoing		May 18, 2014 12:00:00 AM	ASSAULT, RESIST, OPPOSE, IMPED, INTIMIDATE & INTERFERE WITH FEDERAL OBSERVER	Violation
Case Initiated	Ongoing		May 18, 2014 12:00:00 AM	ASSAULTING, RESISTING OR IMPEDING CERTAIN OFFICERS OF EMPLOYEES	Violation
Case Initiated	Ongoing	GOLD BEACH	Sep 13, 2014 12:00:00 AM	OBSERVER HARASSMENT	
Case Initiated	Ongoing		Sep 17, 2014 12:00:00 AM	SEXUAL HARASSMENT OF AN OBSERVER	Violation
Case Initiated	Ongoing		Sep 18, 2014 12:00:00 AM	SEXUAL HARASSMENT OF AN OBSERVER	Violation
Case Initiated	Ongoing	SEATTLE, WA	Sep 2, 2014 12:00:00 AM	OBSERVER HARASSMENT	Violation
Case Initiated	Ongoing		2013-11-15 00:00:00	ASSAULT ON AN OBSERVER UNDER THE SPT	Violation
Open	Ongoing		2014-04-12 00:00:00	HARASS AND INTIMIDATE A NOAA OBSERVER ABOARD A VESSEL	
Closed - Case Adjudicated	Completed		2014-06-15 00:00:00	SEXUAL HARASSMENT OF AN OBSERVER	
Case Initiated	Completed	HONOLULU HARBOR	2014-09-11 00:00:00	SEXUALLY HARASS OBSERVER	Violation
Case Initiated	Ongoing		2014-08-01 00:00:00	INTERFERENCE OR INTIMIDATING A NMFS- APPROVED OBSERVER	Violation
Open	Completed		2014-10-29 00:00:00	THREAT MADE TO CONTRACTED DATA COLLECTOR	
Case Initiated	Ongoing		Jun 5, 2013 12:00:00 AM	OBSERVER REFUSAL/HARRASMENT	Verbal Warning
Case Initiated	Ongoing		Jun 26, 2013 12:00:00 AM	OBSERVER REFUSAL/HARRASMENT	Violation





UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Office of Law Enforcement (OLE)
1315 East West Hwy
SSMC 3 RM 3301
Silver Spring, Maryland 20910

March 30, 2016

Ms. Laura Dumais
2000 P Street NW
Suite 240
Washington, DC 20036

Re: FOIA Request No. DOC-NOAA-2016-000706

Dear Ms. Dumais,

This is the first interim response to your Freedom of Information Act request in which you asked for the following:

- (1) A summary of all incidents of violence, threats, or harassment against NOAA employees that occurred in calendar year 2015. The summary should include the date, location, and nature of the incident or threat together with a summary of what, if any, outcomes stemmed from the incident or threat (e.g., arrest, conviction, ongoing investigation).
- (2) A summary of all incidents of violence, threats, or harassment against professional observers, including government contractors, that occurred in calendar year 2015. The summary should include incidents against observers aboard NOAA vessels or while otherwise carrying out their duties as NOAA contractors, and include the date, location, and nature of the incident or threat together with a summary of what, if any, outcomes stemmed from the incident or threat (e.g., arrest, conviction, ongoing investigation).



We are now providing summary response, in a table format, to Request Two, with the understanding that you reserve the right to request additional records or information based on the content of the initial responses.

Vessel Name	Date Reported	Nature of Incident	Port of Delivery	Case Disposition	Status
Alaska Warrior	11/24/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Info Only	
Alaska Victory	7/1/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Ongoing	Open

Royal Atlantic	5/7/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Lack of Resources	
Laura	12/30/2014	Harassment - Intimidate/Interfere/Hostile Work Environment	Unknown	Verbal Warning	
Deep Pacific	5/22/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Ongoing	Open
Defender (Am80)	10/29/2014	Harassment - Intimidate/Interfere/Hostile Work Environment	Unknown	Ongoing	Open
Pacific Glacier	10/21/2014	Harassment - Other	Unknown	Info Only	
American No 1	1/7/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Unknown	Ongoing	Open
Blue Attu	1/22/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Unknown	Verbal Warning	
US Intrepid	12/7/2014	Harassment - Intimidate/Interfere/Hostile Work Environment	Unknown	Ongoing	Open
Gulf Prowler	2/25/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Unknown	Ongoing	Open
Alaskan Leader	5/11/2015	Harassment - Sexual	Unknown	Ongoing	Open
Alaskan Leader	8/5/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Unknown	Ongoing	Open
Chellissa	3/17/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Unknown	COPPS	
St Dominick	4/28/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Unknown	Ongoing	Open
Cynosure	4/28/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Unknown	COPPS	
Gulf Prowler	4/30/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Unknown	Ongoing	Open

Enterprise	4/30/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Unknown	Ongoing	Open
Margaret Lyn	5/8/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Unknown	Ongoing	Open
Katie Ann	3/20/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Unknown	Ongoing	Open
Pacific Storm	4/6/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Unknown	Ongoing	Open
Ocean Hope 3	4/28/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Mothership	Info Only	
Arctic Prowler	6/4/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Ongoing	Open
Walter N	6/12/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	King Cove	Info Only	
Gold Rush	8/17/2015	Harassment - Sexual	Akutan	Ongoing	Open
Gold Rush	8/17/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Akutan	Ongoing	Open
Alaska Juris	9/17/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Ongoing	Open
Alaska Juris via Alaska Spirit	10/8/2015	Harassment - Sexual	Dutch Harbor/Unalaska	Ongoing	Open
Ocean Phoenix	10/1/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Ongoing	Open
Excalibur II	8/13/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Kodiak	Ongoing	Open
Alaskan Leader	8/5/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Written Warning	

Starlite	8/6/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Info Only	
Constellation	8/12/2015	Harassment - Sexual	Dutch Harbor/Unalaska	Verbal Warning	
Viking	8/5/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Ongoing	Open
Pacific Storm	6/30/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Kodiak	Ongoing	Open
Kodiak Enterprise	9/4/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Ongoing	Open
Katie Jean	9/8/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Adak	Verbal Warning	
Golden Fleece	8/4/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Kodiak	Info Only	
Rebecca Irene	8/25/2015	Harassment - Other	Dutch Harbor/Unalaska	Ongoing	Open
New Life	5/5/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Kodiak	Ongoing	Open
Columbia	9/30/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Akutan	Ongoing	Open
Alaska Warrior	9/18/2015	Harassment - Other	Dutch Harbor/Unalaska	Summary Settlement	
Alaska Ocean	10/6/2015	Harassment - Sexual	Dutch Harbor/Unalaska	Info Only	
Alaska Ocean	10/29/2015	Harassment - Sexual	Dutch Harbor/Unalaska	Info Only	
Frontier Explorer	9/16/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Info Only	
Nordic Star	9/29/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Verbal Warning	
Star Fish	9/17/2015	Harassment - Other	Dutch	Ongoing	Open

			Harbor/Unalaska		
Elizabeth F	10/13/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Kodiak	Unfounded	
Frontier Mariner	11/16/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Ongoing	Open
Island Enterprise	10/20/2015	Harassment - Other	Dutch Harbor/Unalaska	Ongoing	Open
Defender (Am80)	10/20/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Info Only	
Kristina	10/29/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Sitka	Info Only	
Bay Islander	10/29/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Kodiak	Ongoing	Open
Pacific Glacier	10/6/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Info Only	
Arica	5/11/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Ongoing	Open
Peggy JO	10/12/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Ongoing	Open
Northern Glacier	11/6/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Info Only	
Alaskan Star	11/4/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Kodiak	Ongoing	Open
Alaskan Star	11/4/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Kodiak	Ongoing	Open
Karen Evich	11/6/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Sand Point	Ongoing	Open

Golden Fleece	11/12/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Kodiak	Ongoing	Open
Rebecca Irene	10/21/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Info Only	
Vaerdal	12/7/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Ongoing	Open
Northern Endurance	11/16/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Sand Point	Ongoing	Open
Alaska Juris	11/2/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Ongoing	Open
Bering Leader	12/7/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Ongoing	Open
Frontier Mariner	12/9/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Ongoing	Open
American No I	12/22/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Ongoing	Open
Anthem	12/7/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Kodiak	Ongoing	Open
Enterprise	11/10/2015	Harassment - Other	Dutch Harbor/Unalaska	Ongoing	Open
American Eagle	10/6/2014	Harassment - Intimidate/Interfere/Hostile Work Environment	Mothership	Info Only	
Gulf Prowler	11/5/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Ongoing	Open
Gulf Prowler	11/19/2015	Harassment - Intimidate/Interfere/Hostile Work Environment	Dutch Harbor/Unalaska	Ongoing	Open
Deep Pacific	12/17/2015	Harassment - Other	Dutch	Ongoing	Open



Karoline Marie	07/29/2015	Observer Harassment	Gloucester, MA	Verbal Warning	
Provider	9/29/2015	Observer Harassment	New London, CT	Verbal Warning	
Jordan Taylor	9/22/2015	Observer Harassment	Marshfield	Verbal Warning	
Kenneth J. Duncan	9/21/2015	Observer Harassment	Gloucester, MA	Lack of Evidence	
Dawn T	7/20/2015	Observer Intimidation	Chatham, MA	Lack of Evidence	
Sea Dancer	8/1/2015	Observer Interference	Chatham, MA	Verbal	
Alex	1/16/2015	Require/Pressure observer to perform duties normally performed by crew members.	Eureka, CA	Verbal Warning	
Ashlyne	4/2/2015	Verbal Harassment	Warrenton, OR	Referred to USCG	
Jaka B	6/8/2015	Observer Interference, harassment	Astoria, OR	NOVA issued by GCES	Open
Kodiak Enterprise	12/1/2015	Observer Harassment, sample bias	Seattle, WA	COPPS	

We are currently waiting for another office to provide input that is responsive to your Request One, "summary of all incidents of violence, threats, or harassment against NOAA employees that occurred in calendar year 2015."

If additional records are found, we will forward them to you as soon as possible.

Although we do not consider this to be a denial of your request, you are granted appeal rights for this determination. Your appeal must be received within 30 calendar days of the date of the denial letter. Please address your appeal to:

**Assistant General Counsel for Administration
Freedom of Information Act Appeal
Room 5898-C
U.S. Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, DC 20230**

Your appeal may be sent by the following methods:

- by email to FOIAAppeals@doc.gov
- by facsimile (fax) to (202) 482-2552

- by FOIAonline, if you have an account at <https://foiaonline.regulations.gov>.

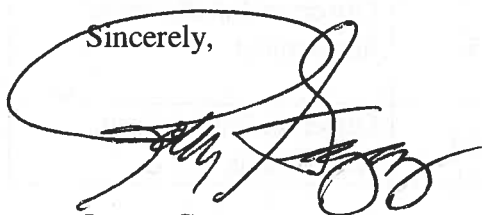
For your appeal to be complete, it must include the following items:

- a copy of the original request,
- our response to your request,
- your 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.

We receive correspondence only on business days from 8:30 a.m. to 5:00 p.m., Eastern Time. FOIA appeals received outside of our normal business hours will be deemed received on the next business day.

If you have any questions regarding this request or would like to request additional records or information based on the content of the initial responses, please contact Arlyn Penaranda at (301) 427-8256 or via email at Arlyn.Penaranda@noaa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Logan Gregory', written over a large, loopy flourish that extends to the left and loops back under the signature.

Logan Gregory
Deputy Director
Office of Law Enforcement

OLE's 2004 Observer Harassment Cases

No.:	Date:	Division:	Nature of Threat:	Outcome:	Reason:
1	01/16/04	SE	Create Hostile Work Environment for observer and Interfere with an observer	On-Going	Open Investigation
2	01/17/04	AK	Intimidate an observer	On-Going	Open Investigation
3	01/20/04	AK	Intimidate an observer	On-Going	Open Investigation
4	01/25/04	AK	Intimidate an observer	Closed	Lack of Evidence
5	01/26/04	AK	Intimidate and Interfere with an observer	On-Going	Open Investigation
6	02/01/04	AK	Intimidate and Interfere with an observer	On-Going	Open Investigation
7	02/01/04	AK	Create Hostile Work Environment for observer	On-Going	Open Investigation
8	02/16/04	AK	Intimidate an observer	Closed	Adjudicated
9	02/20/04	AK	Intimidate an observer	Closed	Adjudicated
10	02/24/04	AK	Sexually Harass an observer	On-Going	Open Investigation
11	03/13/04	AK	Intimidate an observer	On-Going	Open Investigation
12	04/17/04	PI	Sexually Harass an observer	On-Going	Open Investigation
13	05/24/04	PI	Assault on observer	On-Going	Open Investigation
14	06/14/04	SW	Create Hostile Work Environment for observer	Closed	Lack of Evidence
15	07/07/04	NE	Observer Harassment and Intimidate an Observer	On-Going	Open Investigation
16	07/31/04	AK	Sexually Harass an observer	Closed	Lack of Evidence
17	08/06/04	PI	Interfere with an observer	On-Going	Open Investigation
18	08/20/04	AK	Intimidate an observer	On-Going	Open Investigation
19	09/02/04	AK	Intimidate and Interfere with an observer	Closed	Adjudicated
20	09/12/04	AK	Interfere with an observer	On-Going	Open Investigation
21	09/14/04	AK	Intimidate an observer	Closed	No Violation

OLE's 2004 Observer Harassment Cases

22	09/17/04	AK	Create Hostile Work Environment for observer	On-Going	Open Investigation
23	09/17/04	AK	Intimidate an observer	On-Going	Open Investigation
24	09/21/04	AK	Intimidate an observer	On-Going	Open Investigation
25	10/18/04	AK	Create Hostile Work Environment for observer	Closed	Lack of Evidence
26	11/14/04	AK	Assault an observer	On-Going	Open Investigation

Lola Stith - NOAA Affiliate

From: Lola Stith - NOAA Affiliate
Sent: Monday, August 7, 2017 7:48 AM
To: Mark Graff - NOAA Affiliate
Subject: July Monthly FOIA Report (DRAFT FOR YOUR REVIEW/APPROVAL)
Attachments: FOIA Monthly Status Report 07-31-2017.pdf; FOIA Monthly Status Report 07-31-2017.xlsx; Closed 072017.xls; Incoming 072017.xls; Open Requests 072017.xls; Backlog 072017.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

Tracking Number	Type	Requester	Submitted
DOC-NOAA-2017-000298	Request	Charles Mouton	11/30/2016
DOC-NOAA-2015-001484	Request	Richard Knudsen	06/29/2015
DOC-NOAA-2015-001485	Request	Richard Knudsen	06/29/2015
DOC-NOAA-2015-001487	Request	Richard Knudsen	06/29/2015
DOC-NOAA-2017-001382	Request	Margaret Townsend	06/13/2017
DOC-NOAA-2017-000580	Request	Bill Marshall	02/08/2017
DOC-NOAA-2017-000613	Request	Dan Vergano	02/07/2017
DOC-NOAA-2017-000579	Request	Emily Yehle	02/08/2017
DOC-NOAA-2016-000351	Request	Bill Marshall	10/30/2015
DOC-NOAA-2017-001431	Request	Margaret Townsend	06/27/2017
DOC-NOAA-2017-001419	Request	Russ Kick	06/25/2017
DOC-NOAA-2017-001420	Request	Russ Kick	06/25/2017
DOC-NOAA-2017-001376	Request	Gabe Flick	06/12/2017
DOC-NOAA-2017-001426	Referral	William W. Sapp	06/26/2017
DOC-NOAA-2017-000226	Request	Emma Hiolski	11/29/2016
DOC-NOAA-2017-001285	Request	Jared S. Goodman	05/30/2017
DOC-NOAA-2017-001198	Request	Nicholas Fromherz	05/11/2017
DOC-NOAA-2017-001383	Request	Margaret Townsend	06/13/2017
DOC-NOAA-2017-001333	Request	Russ Rector	06/05/2017
DOC-NOAA-2017-001230	Request	Maurice Tamman	05/18/2017
DOC-NOAA-2017-001238	Request	Dale Perkins	05/19/2017
DOC-NOAA-2017-001200	Request	Meera Gajjar	05/11/2017
DOC-NOAA-2017-001092	Request	Brettny E. Hardy	04/26/2017
DOC-NOAA-2017-001093	Request	Brettny E. Hardy	04/26/2017
DOC-NOAA-2017-001094	Request	Brettny E. Hardy	04/26/2017
DOC-NOAA-2017-001038	Request	Sean Sherman	04/17/2017
DOC-NOAA-2017-001220	Request	Nathan Eagle	05/16/2017
DOC-NOAA-2017-001217	Request	Nathan Eagle	05/16/2017
DOC-NOAA-2017-001219	Request	Nathan Eagle	05/16/2017
DOC-NOAA-2017-000058	Request	Christopher T. Clack	10/13/2016
DOC-NOAA-2017-000994	Request	Mariel Combs	04/10/2017
DOC-NOAA-2017-001068	Request	Zeenat Mian	04/21/2017
DOC-NOAA-2017-000865	Request	Zeenat Mian	03/23/2017
DOC-NOAA-2017-000986	Request	Tristan R. Armer	04/10/2017
DOC-NOAA-2017-000744	Request	Zeenat Mian	03/08/2017
DOC-NOAA-2017-000304	Request	Bryn Blomberg	11/30/2016
DOC-NOAA-2017-000615	Request	Russ Rector	02/07/2017
DOC-NOAA-2017-000342	Request	Ryan P. Mulvey	12/13/2016
DOC-NOAA-2016-001479	Request	Christopher Hudak	07/20/2016
DOC-NOAA-2017-000170	Request	Kara McKenna	11/09/2016
DOC-NOAA-2017-000195	Request	Thomas Knudson	11/17/2016
DOC-NOAA-2016-001762	Request	Thomas Knudson	09/14/2016
DOC-NOAA-2016-001214	Request	bruce weyhrauch	05/27/2016
DOC-NOAA-2016-001751	Request	Thomas Knudson	09/14/2016
DOC-NOAA-2016-001763	Request	Thomas Knudson	09/14/2016
DOC-NOAA-2016-001299	Request	Thomas Knudson	06/15/2016
DOC-NOAA-2016-000604	Request	Margaret Townsend	02/10/2016
DOC-NOAA-2016-001390	Request	Jennie Frost	07/05/2016
DOC-NOAA-2016-001533	Request	J W August	07/27/2016
DOC-NOAA-2016-001326	Request	Thomas Knudson	06/21/2016
DOC-NOAA-2016-000959	Request	Office Administrator	04/12/2016

DOC-NOAA-2016-000423	Request Ryan P. Mulvey	12/21/2015
DOC-NOAA-2016-000807	Request Basil Scott	03/16/2016
DOC-NOAA-2015-001860	Request Delcianna Winders	09/04/2015
DOC-NOAA-2016-000603	Request Margaret Townsend	02/10/2016
DOC-NOAA-2016-000094	Request Josh Schopf	10/14/2015
DOC-NOAA-2014-001474	Request Eric Huber	08/12/2014
DOC-NOAA-2015-000295	Request Office Administrator	11/21/2014
DOC-NOAA-2015-000190	Request Miyo Sakashita	11/02/2014
DOC-NOAA-2017-000438	Request Claudia Lucio	01/11/2017
DOC-NOAA-2017-000299	Request Chris Hogan	11/30/2016
DOC-NOAA-2017-000204	Request Belinda Brannon	11/21/2016
DOC-NOAA-2016-001743	Request John Greenewald	09/12/2016
DOC-NOAA-2017-000384	Request Marshall R. Morales	01/03/2017
DOC-NOAA-2017-001161	Request Karen MacDonald	05/04/2017
DOC-NOAA-2017-000414	Request Arnold & Porter Kaye Scholer LLP	01/09/2017
DOC-NOAA-2016-001599	Request Machele R. Hall	08/12/2016
DOC-NOAA-2016-000192	Request John Ferro	11/03/2015
DOC-NOAA-2015-000706	Request Megan R. Wilson	02/18/2015
DOC-NOAA-2017-001059	Request Richard Hirn	04/18/2017
DOC-NOAA-2017-001326	Request Hans Bader	06/07/2017
DOC-NOAA-2017-001055	Request Richard Hirn	04/17/2017
DOC-NOAA-2017-001306	Request Paula M. Rychtar	06/05/2017
DOC-NOAA-2017-000768	Request Julio C. Gomez	03/10/2017
DOC-NOAA-2017-001403	Request Robert Shuchman	06/20/2017
DOC-NOAA-2017-000034	Request Christopher T. Clack	10/11/2016
DOC-NOAA-2017-000794	Request Jared E. Knicley	03/14/2017
DOC-NOAA-2017-001101	Request Ryan P. Mulvey	04/27/2017
DOC-NOAA-2017-001163	Request Jacqueline Iwata	05/05/2017
DOC-NOAA-2017-000917	Request James Renaldi	03/30/2017
DOC-NOAA-2017-001079	Request Austin R. Evers	04/24/2017
DOC-NOAA-2017-001007	Request Seth Borenstein	03/31/2017
DOC-NOAA-2017-000846	Request Elizabeth N. Moran	03/16/2017
DOC-NOAA-2017-000845	Request Elizabeth N. Moran	03/16/2017
DOC-NOAA-2016-001346	Request Tammy Murphy	06/10/2016

Assigned To	Due	Days Backlogged
AGO	01/13/2017	97
AGO	10/08/2015	456
AGO	10/08/2015	456
AGO	07/31/2015	504
LA	07/13/2017	15
NESDIS	04/05/2017	84
NESDIS	03/29/2017	89
NESDIS	03/24/2017	92
NESDIS	01/14/2016	391
NMFS	07/28/2017	1
NMFS	07/28/2017	2
NMFS	07/28/2017	4
NMFS	07/26/2017	6
NMFS	07/25/2017	7
NMFS	08/18/2017	7
NMFS	07/13/2017	15
NMFS	07/21/2017	15
NMFS	09/15/2017	15
NMFS	07/10/2017	18
NMFS	07/07/2017	19
NMFS	07/12/2017	21
NMFS	06/30/2017	23
NMFS	07/03/2017	23
NMFS	07/03/2017	23
NMFS	07/03/2017	23
NMFS	05/16/2017	27
NMFS	08/16/2017	29
NMFS	06/20/2017	31
NMFS	06/20/2017	31
NMFS	11/25/2016	33
NMFS	05/09/2017	44
NMFS	06/01/2017	44
NMFS	05/08/2017	57
NMFS	05/09/2017	60
NMFS	04/06/2017	83
NMFS	01/13/2017	93
NMFS	03/15/2017	99
NMFS	02/03/2017	116
NMFS	09/22/2016	123
NMFS	01/05/2017	146
NMFS	12/30/2016	149
NMFS	11/10/2016	182
NMFS	07/31/2017	182
NMFS	10/28/2016	191
NMFS	10/27/2016	192
NMFS	07/20/2016	201
NMFS	03/15/2016	205
NMFS	10/14/2016	211
NMFS	08/29/2016	233
NMFS	07/26/2016	257
NMFS	05/25/2016	292

NMFS	02/04/2016	293
NMFS	05/04/2016	301
NMFS	10/23/2015	305
NMFS	03/15/2016	343
NMFS	02/18/2016	377
NMFS	09/10/2014	470
NMFS	12/24/2014	647
NMFS	12/05/2014	660
NOAA FOIA	02/24/2017	112
NOAA FOIA	01/13/2017	140
NOAA FOIA	12/30/2016	142
NOAA FOIA	10/13/2016	202
NOS	02/24/2017	9
NOS	06/16/2017	12
NOS	03/07/2017	30
NOS	09/29/2016	187
NOS	12/04/2015	418
NOS	10/13/2015	598
NWS	05/19/2017	19
NWS	07/07/2017	19
NWS	05/17/2017	21
NWS	07/03/2017	22
NWS	04/12/2017	68
OAR	07/25/2017	7
OAR	11/09/2016	36
OC	04/17/2017	76
OGC	06/16/2017	33
OGC	06/16/2017	33
OMAO	05/08/2017	56
USEC	06/16/2017	33
USEC	05/09/2017	60
USEC	04/18/2017	75
USEC	04/13/2017	78
WFMO	08/31/2016	231

Tracking Number	Type	Requester	Requester Organization
DOC-NOAA-2017-000121	Request	Lauree Valverde	
DOC-NOAA-2017-001203	Request	Zeenat Mian	
DOC-NOAA-2017-000922	Request	Megan M. Lucente	infoBase Publishers, Inc.
DOC-NOAA-2017-001329	Request	Ronald B. Hardwig	
DOC-NOAA-2016-001718	Request	Jordan Waltz	
DOC-NOAA-2017-001556	Request	Andrew Ogden	Turtle Island Restoration Network
DOC-NOAA-2017-001555	Request	Andrew G. Ogden	Turtle Island Restoration Network
DOC-NOAA-2017-001554	Request	Andrew Ogden	Turtle Island Restoration Network
DOC-NOAA-2017-001553	Request	Andrew Ogden	Turtle Island Restoration Network
DOC-NOAA-2017-001552	Request	Andrew G. Ogden	Turtle Island Restoration Network
DOC-NOAA-2017-001550	Request	Andrew G. Ogden	Turtle Island Restoration Network
DOC-NOAA-2017-001548	Request	Andrew G. Ogden	Turtle Island Restoration Network
DOC-NOAA-2017-001547	Request	Andrew G. Ogden	Turtle Island Restoration Network
DOC-NOAA-2017-001545	Request	Andrew G. Ogden	Turtle Island Restoration Network
DOC-NOAA-2017-001435	Request	Nathan Eagle	Honolulu Civil Beat
DOC-NOAA-2017-001413	Request	Daniel Seligman	
DOC-NOAA-2017-001367	Request	Shannon M. Cremeans	
DOC-NOAA-2017-001359	Request	Jordan Waltz	
DOC-NOAA-2017-001328	Request	Andrew G. Ogden	Turtle Island Restoration Network
DOC-NOAA-2017-001267	Request	Raimundo Espinoza	Conservacion ConCiencia
DOC-NOAA-2017-001264	Request	Mirabai H. Galashan	
DOC-NOAA-2017-001195	Request	David Gotfredson	KFMB CBS News 8
DOC-NOAA-2017-001188	Request	Jordan Waltz	
DOC-NOAA-2017-001179	Request	Eileen L. Morrison	Goodwin Procter LLP
DOC-NOAA-2017-001130	Request	Nicholas Patton	Delaware Riverkeeper Network
DOC-NOAA-2017-001085	Request	Philip J. Wuest	Black Helterline LLP
DOC-NOAA-2017-001024	Request	Arthur Severance	Coastal Villages
DOC-NOAA-2017-001069	Request	Mark Sassak	DENEWETH, DUGAN & PARFITT, P.C.
DOC-NOAA-2017-000632	Request	David Gotfredson	KFMB CBS News 8
DOC-NOAA-2017-001594	Request	Daniel Davis	Colodny Fass
DOC-NOAA-2017-001498	Request	Thad S. Mogensen	Cohn, Lambert, Ryan & Schneider, Ltd.
DOC-NOAA-2017-001348	Request	Sarah Emerson	MuckRock
DOC-NOAA-2017-000186	Request	Elizabeth Nowicki	
DOC-NOAA-2017-000107	Request	Elizabeth Nowicki	
DOC-NOAA-2016-001403	Request	Ivria Fried	Miyares and Harrington
DOC-NOAA-2017-001462	Request	Michael Ravnitzky	
DOC-NOAA-2017-001021	Request	RICHARD J. HIRN	National Weather Service Employees Organization
DOC-NOAA-2017-000885	Request	Radu Munteanu	
DOC-NOAA-2017-000884	Request	Radu Munteanu	
DOC-NOAA-2017-000883	Request	Radu Munteanu	
DOC-NOAA-2017-000882	Request	Radu Munteanu	
DOC-NOAA-2017-000880	Request	Radu Munteanu	

Dispositions

Full grant
Partial grant/partial denial
Partial grant/partial denial
Partial grant/partial denial
Full grant
Other - Aggregate cases
Other - Aggregate cases
Other - Aggregate cases
Other - Aggregate cases
Other - Aggregate cases
Other - Aggregate cases
Other - Aggregate cases
Other - Aggregate cases
Other - Aggregate cases
Partial grant/partial denial
Full grant
Full grant
Full grant
Partial grant/partial denial
Partial grant/partial denial
No records
Full grant
Full grant
Full grant
Full grant
Fee-related reason
Partial grant/partial denial
Fee-related reason
Full grant
Improper FOIA request for other reason
Improper FOIA request for other reason
Request withdrawn
Full grant
Other - Admin close - no response from requester
Not an agency record
Other - Publicly available information
Full grant
Fee-related reason
Fee-related reason
Fee-related reason
Fee-related reason
Fee-related reason

Detail

Under FOIA, we are requesting information about the following; Science and Technology Corporation, Riverside Te
- Full and complete content of any and ALL contracts/cooperation agreements/grants signed and dated between H
Am requesting the following releasable or non-classified documents under the Freedom of Information (FOIA Act 5
I am requesting the findings of my sufficiency review on OIG referral 17-0468-N on my tornado research meteorolo

• A complete necropsy report of Makapuu (NOA0000187), False Killer Whale, Sea Life Park Hawaii, died 2/17/199
TIRN requests from the National Oceanic & Atmospheric Administration ("NOAA"), National Marine Fisheries Servi
TIRN requests from the National Oceanic & Atmospheric Administration ("NOAA"), National Marine Fisheries Servi
("NOAA"), National Marine Fisheries Services ("NMFS") and any other divisions under NOAA; all "records" as defin
TIRN requests from the National Oceanic & Atmospheric Administration ("NOAA"), National Marine Fisheries Servi
TIRN requests from the National Oceanic & Atmospheric Administration ("NOAA"), National Marine Fisheries Servi
TIRN requests from the National Oceanic & Atmospheric Administration ("NOAA"), National Marine Fisheries Servi
TIRN requests from the National Oceanic & Atmospheric Administration ("NOAA"), National Marine Fisheries Servi
TIRN requests from the National Oceanic & Atmospheric Administration ("NOAA"), National Marine Fisheries Servi
TIRN requests from the National Oceanic & Atmospheric Administration ("NOAA"), National Marine Fisheries Servi
Hi, I'd like to request the 2017 nomination packets of the six nominees submitted by the Hawaii governor's office to
All e-mails (including attachments) between the NOAA Fisheries Northwest Fisheries Science Center in Seattle, W
am writing to request a copy of the Marine Mammal Inventory Report (MMIR). I would like this copy to include all m
I wish to request a copy of the most recent 2017 Marine Mammal Inventory Report.

(1) The 2015 West Coast Entanglement Summary; (2) The 2016 West Coast Entanglement Summary; (3) The sta
We could not find any investigation on the subject in 2016 but we have found an incident that looks like the informa
Peer review and conflict of interest reports for Tyne, J. A., Pollock, K. H., Johnston, D. W., & Bejder, L. (2014)
On NOAA's Marine Mammal Inventory Report, bottlenose dolphins TT860, TT846 AND TT844 are listed as dead v
I would like to request the following documents: A complete necropsy report of MEAOLAMAKANI (NOA0000208), I

This request is made to the National Marine Fisheries Service. I request the following: All Records (defined to inclu
Please provide any records/documents/emails/letters/correspondence in the possession of National Marine Fisheri
This request is for National Marine Fisheries Service for offices in Oregon. 1) All correspondence, notes, logs, men
The recommendations that Alaska Governor Wally Hickel made to the North Pacific Fishery Management Council (A
A. All submissions made&middledot;to NOAA by the City of Troy, Michigan (Including submissions made to NOAA by
1) All MMIR notifications & verifications of transfer/transport related to mammals in the Navy's Marine Mamm
All documents in the possession, custody, or control of the National Oceanic and Atmospheric Administration and t

I am requesting the following historical weather information for Chicago, Illinois (specifically, zip code 60623): 1) Th
Copies of all complaints (written, emailed, faxed, or called in) to the Monterey Bay National Marine Sanctuary abou
Please accept this e-mail as my request pursuant to FOIA for all e-mails or other documents created by or received
Pursuant to FOIA for all e-mails, text messages, "pings," or SMS that NOAA employee John "Brei

1. All maps or plans depicting permitted or operational natural gas compressor stations located at the point of natu
A copy of each NOAA Circular dated between August 1, 2016 and the present. This is a noncommercial individual

1. A copy of the most recent report prepared by the NOAA Budget Office or NOAA WFMO Office indicating the tota

FOIA REQUEST Dear FOIA Officer: As a candidate for the following position: Job title: Contract Specialist, GS-11C

FOIA REQUEST Dear FOIA Officer: As a candidate for the following position: Job title: Contract Specialist, GS-11C

FOIA REQUEST Dear FOIA Officer: As a candidate for the following position: Job title: Contract Specialist, GS-11C

FOIA REQUEST Dear FOIA Officer: As a candidate for the following position: Job title: Grants Management Specia

FOIA REQUEST Dear FOIA Officer: As a candidate for the following position: Job title: Grants Management Specia

Technology, Inc, Global Science & Technology, Inc, Earth Resources Technology, Inc. and I.M. Systems
MMA and NOAA. - List of all documents and procedures required and mandatory to comply with the MMA
(5 U.S.C. § 552) for the (GS06F0683Z) (STARS II- SB) (07/11/2016). This is my request list for documents
ecologists have overlooked.

1; • A complete necropsy report of Mamo (NOA0000210), Hybrid Tursiops truncatus x Steno bredanensis
ces ("NMFS") and any other divisions under NOAA; all "records" as defined in this Request, including wi
ces ("NMFS") and any other divisions under NOAA; all "records" as defined in this Request, including wi
ed in this Request, including without limitation all inter and intra agency communications, data and other
ces ("NMFS") and any other divisions under NOAA; all "records" as defined in this Request, including wi
ces ("NMFS") and any other divisions under NOAA; all "records" as defined in this Request, including wi
ces ("NMFS") and any other divisions under NOAA; all "records" as defined in this Request, including wi
ces ("NMFS") and any other divisions under NOAA; all "records" as defined in this Request, including wi
ces ("NMFS") and any other divisions under NOAA; all "records" as defined in this Request, including wi
ces ("NMFS") and any other divisions under NOAA; all "records" as defined in this Request, including wi
fill two at-large seats on the Western Pacific Regional Fishery Management Council that are set to be
Washington, and the Fish Passage Center (____@fpc.org) between January 1, 2015 and July 1, 2015, re
marine mammals (pinnipeds, cetaceans). I would like it to include all living and dead animals and include

standards and/or criteria for information or data that was sufficient (or, in the alternative, insufficient) to mal
tion the requester is requesting for but it was reported in 2014 and received a Notice of Violation and As
). Abundance and Survival Rates of the Hawai'i Island Associated Spinner Dolphin (*Stenella longirostris*)
with a note that reads, "report attached." I am requesting a copy of these three reports. Even
rough-toothed dolphin, Sea Life Park Hawaii, died 8/30/1984; A complete necropsy report of L'ANUI HAI
de data, information, emails, reports, and comments) received on or after January 29, 2013 from the Ne
es Service or NOAA regarding the Delaware City Refinery (NPDES Permit# DE0000256) that have been
nos, minutes, appointment and meeting records, voicemails, files, papers and other records that include
("NPFMC") on or about November 25, 1992, regarding Community Development Programs ("CDPs") an
others on behalf of the City of Troy); B. All documents prepared by the engineering firm Hubbell, Roth &
al Program covering the time period January 1, 2016 to present. 2) All MMIR dispositions (deaths, escap
he National Hurricane Center, related to the impact of Hurricane Matthew (the 2016 Hurricane) on Miarr
ie daily amount of snowfall for zip code 60623 between December 1, 2013 - December 11, 2013; 2) The
t wildlife being harassed or disturbed by drones or unmanned aerial vehicles. This request is for January
d John "Brent" Wachter pertaining to that 50 (FIFTY!) hour estimate. Meaning, if Brent e-mai
nt" Wachter sent or received regarding the Yarnell Hill Fire (aka Yarnell, aka Yarnell Fire, aka YHF
iral gas production and within the "V Zones" on the Federal Emergency Management Agency's Flood Ins
request. Other circulars are available on this page: <http://www.corporateservices.noaa.gov/ames/circular>
al number of vacant positions in the National Weather Service. (In response to an earlier FOIA request, I
12-13 (Direct Hire) Agency: Department Of Commerce, National Oceanic and Atmospheric Administrat
12-13/14 (Direct Hire) Agency: Department Of Commerce, National Oceanic and Atmospheric Administr
12-09/11/12 (Direct Hire) Agency: Department Of Commerce, National Oceanic and Atmospheric Admin
alist, GS-1109-09/12 (DE/CR) Agency: Department Of Commerce, National Oceanic and Atmospheric A
alist (MAP) Agency: Department Of Commerce, National Oceanic and Atmospheric Administration Job #

[REDACTED]

ems Group have fulfilled the National Environmental Satellite, Data, and Information Service (NESDIS) r
IPA and ESA. - A copy of each latest officially approved documents and procedures required and mand
mentation: Task order: DOCST133016NC0630, Statement of Work or Performance Work Statement, T

is, Sea Life Park Hawaii, died 9/27/1975; • A complete necropsy report of Auwaha (NOA0000270), Spini
thout limitation all inter and intra agency communications, data and other information, used to prepare o
thout limitation all inter and intra agency communications, data and other information, used to prepare o
r information, used to prepare or otherwise responsive to the following: (1) Regarding the FY 2018-2022
thout limitation all inter and intra agency communications, data and other information, used to prepare o
thout limitation all inter and intra agency communications, data and other information, used to prepare o
thout limitation all inter and intra agency communications, data and other information, used to prepare o
thout limitation all inter and intra agency communications, data and other information, used to prepare o
thout limitation all inter and intra agency communications, data and other information, used to prepare o
thout limitation all inter and intra agency communications, data and other information, used to prepare o
ome open in August 2017. The nominees were: Tim Johns, Trisha Kehaulani Watson, 'Aulani Wilhelm, V
garding juvenile fish passage on the Snake River (including the fish transportation program, in-river pas
every facility. Please sort/organize this request first by holder/facility then chronologically.

ke an identification of fishery or gear type under "Identified Sources of Entanglement" for the summaries
sessment in 2016. Requester confirmed that "...2014 reported incident that was notified in 2016 is the
Stock. PLoS ONE, 9(1), e86132. <http://doi.org/10.1371/journal.pone.0086132>. This SAPPHIRE research
if they are reports issued by the Navy, since they are in the possession of NOAA they are public records
IAI (NOA0000188), false killer whale, Sea Life Park, died 7/26/1987; A complete necropsy report of MAI
New York State Department of Environmental Conservation about, related to, or concerning the Biological
n created/received/sent since September 3, 2015. Thank you.

the following terms: Baker Rock, Grand Island, Harney Site. 2) All correspondence, notes, logs, memos
d the percentages of the Community Development Quota ("CDQ") reserve to be allocated to each CDP
& Clark, Inc. and/or any other engineer or professional of any sort; C. All studies, analyses, reports,
es, releases) related to mammals in the Navy's Marine Mammal Program covering the time period Janu
i-Dade County, and any of Miami-Dade County's subdivisions (such as the City of Miami). This request
accumulated amount of snowfall for zip code 60623 between December 1, 2013 - December 11, 2013;
y 1, 2016 until the time this request is processed.

led Ms. Hernandez or his supervisor or someone else about the matter to estimate that it might take FIF
).

urance Rate Maps, including, Zone V, Zone VI-30, Zone VE, and Zone VO (44 CFR §64.3) (collectively,
rs/

I was recently provided a copy of a report dated on or about November 1, 2016. I am seeking an update
n Job announcement number: SO-AGO-2016-0013 Series and Grade: GS-1102-13 and pursuant to the
ation Job announcement number: SO-AGO-2016-0012 Series and Grade: GS-1102-13/14 and pursuan
istration Job announcement number: SO-AGO-2016-0014 Series and Grade: GS-1102-09/12 and pursu
administration Job announcement number: SO-AGO-2016-0002 Series and Grade: GS-1109-09/12 and
announcement number: SO-AGO-2016-0001 Series and Grade: GS-1109-09/12 and pursuant to the fed

requirement for scientific and technical support services under the SCIENTIFIC AND TECHNICAL SUPP
atory to comply with the MMPA and ESA.

ask order all mods, addendums, RFP for above Task Order, CPARS, Source Selection Decision Docun

ner Dolphin, Sea Life Park Hawaii, died 4/2/1977; • A complete necropsy report of LUC (NOA0005035 o
r otherwise responsive to the following: 1. Regarding the FY 2018-2022 Office of Law Enforcement Prio
r otherwise responsive to the following: 1. Regarding the FY 2018-2022 Office of Law Enforcement Prio
Office of Law Enforcement Priorities (Draft) ("Report")1 all records used, considered or referred to by N
r otherwise responsive to the following: Regarding the FY 2018-2022 Office of Law Enforcement Prioriti
r otherwise responsive to the following: 1. Regarding the FY 2018-2022 Office of Law Enforcement Prio
r otherwise responsive to the following: Regarding the FY 2018-2022 Office of Law Enforcement Prioriti
r otherwise responsive to the following: Regarding the FY 2018-2022 Office of Law Enforcement Prioriti
r otherwise responsive to the following: Regarding the FY 2018-2022 Office of Law Enforcement Prioriti
r otherwise responsive to the following: Regarding the FY 2018-2022 Office of Law Enforcement Prioriti
William Aila, Sol Kaho'ohalahala and Sean Martin. I'd also like to request the successful nomination pack
sage, project spill and project by-pass).

specified in (1) and (2), above; (4) The standards and/or criteria for information or data that was sufficie
specific case I mention."

h project sponsored by NOAA and captive dolphin corporation Dolphin Quest is cited in the draft EIS En
to be released by NOAA. If you determine that some elements of the reports are exempt from public re
KAPUU'S 86 CALF (NOA0000372), False killer whale, Sea Life Park Hawaii, died 3/2/1988; A complete
Opinion and Biological Monitoring Plan for Indian Point Units 2 and 3.

s, minutes, appointment and meeting records, files, relating to "Baker Rock", "Grand Island", "Harney Sit
(the "NPFMC Recommendations"); Any materials that Governor Hickel or the State of Alaska submitte
or Investigations (by whatever name they are known); D. All correspondence to and/or from NOAA (incl
ary 1, 2016 to present. 3) All necropsy reports related to dead mammals in the Navy's Marine Mammal
includes (1) any Forecast Advisories, Public Advisories, Discussions, Wind Speed Probabilities that mei
3) Total amount of snowfall for zip code 60623 between December 1, 2013 - December 11, 2013

TY hours to find and compile the records that I was requesting, I want a copy of that e-mail. If Brent fille

, hereinafter referred to as "Coastal High Hazard Area"). 2. All maps or plans depicting permitted or ope

d report- there is no need to resend me the November 1 report if that is the most recent report). 2. A list
ederal Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of: -For the su
t to the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of: -For
ant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of: -l
pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies
eral Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of: -For the succe

[REDACTED]
itations issued to the IDIQ holders of this contrac

information be placed on a CD and mailed to me or sent via e-mai

ach, an
ach, an
assessment, feeding, i

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ach, an
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ch, and i
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ch, and i
sts for Michael Duenas and M

nk)" for the summaries specified i

PRB_COI_Policy_110606.html accessed 10/21//16 "Requires Pub
f record be released.
complete necropsy of KILAKILA, (NOA0000222), short-finned pi

HWL", "annual high water even
el submitted to the U.S. Secretary of Commerce on or about November 26 or 27, 19
ns and specifications
ving mammals in the Navy's Marine Mammal P
mages showing the impac

d within the Coastal High Hazard Area. 3. All maps or plans depicting pe

istory and starting salary upon hire in the posi
nce history and starting salary upon hire in the po
erience history and starting salary upon hire in the
d experience history and starting salary upon hire i
y and starting salary upon hire in the pos





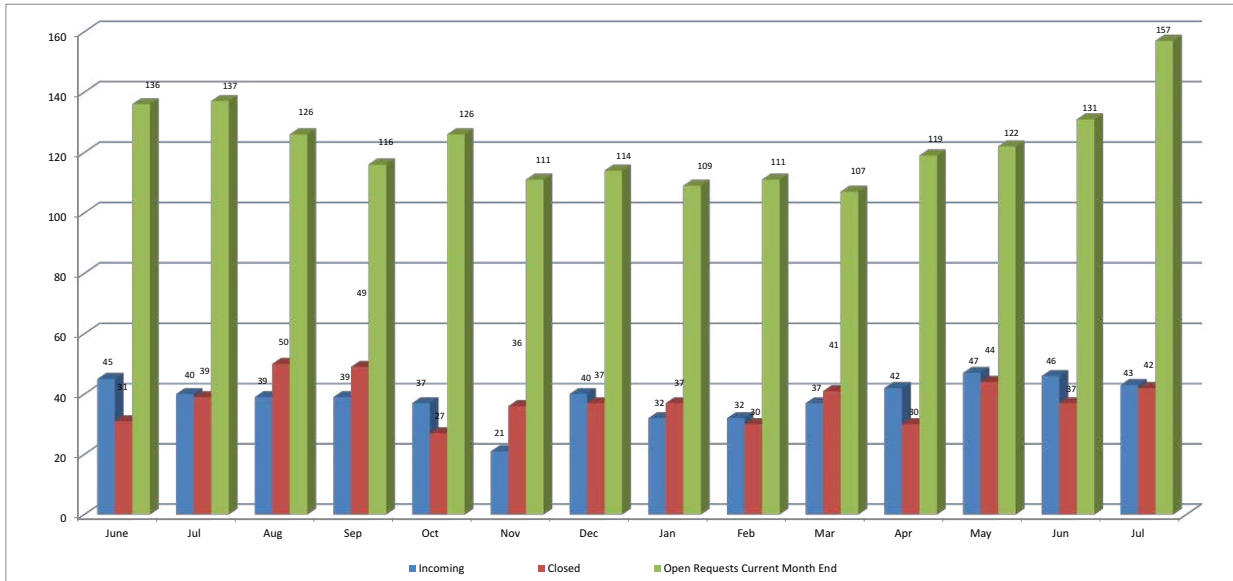




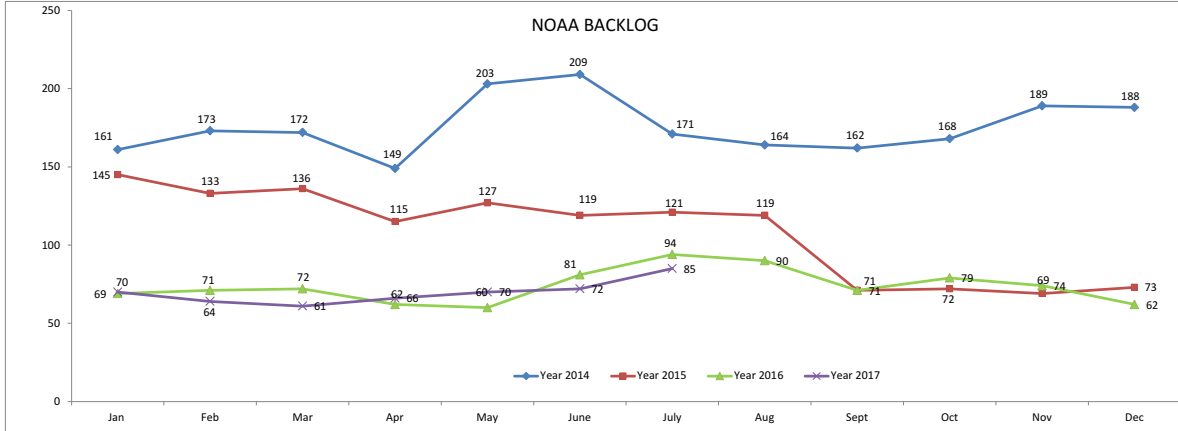
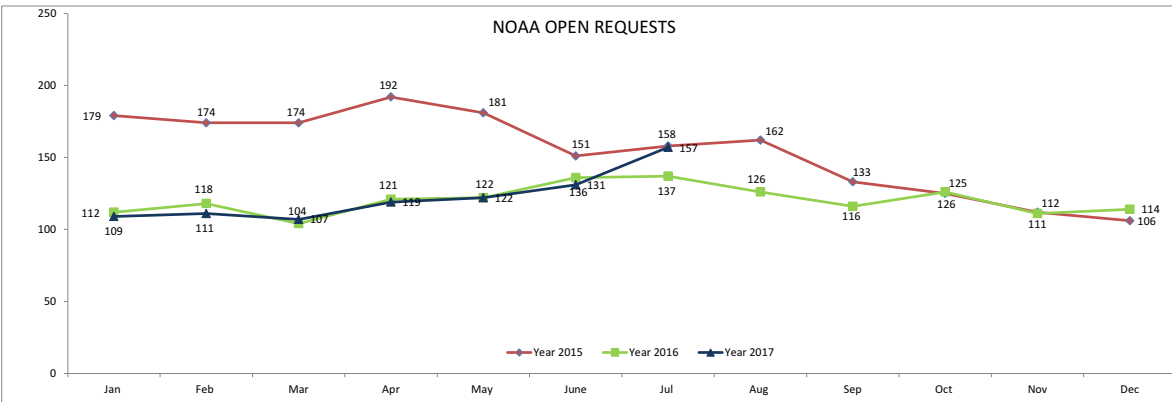


FOIA Monthly Status Report 07-31-2017

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	0	6	3	10	1	0	3	4
CAO	0	1	1	1	0	0	0	0
CFO	0	0	0	0	0	0	0	0
CIO	2	0	0	2	0	0	0	0
CIO/FOIA	4	5	2	9	0	4	0	4
GC	4	0	0	2	2	0	0	2
IA	0	0	0	0	0	0	0	0
LA	1	0	0	1	1	0	0	1
NESDIS	4	0	0	5	3	0	1	4
NMFS	86	22	25	86	29	17	4	50
NOS	7	1	1	10	3	1	2	6
NWS	11	0	3	7	5	0	0	5
OAR	2	2	0	7	2	0	0	2
OMAO	0	0	0	1	1	0	0	1
OC	2	1	0	4	1	0	0	1
PPI	0	0	0	0	0	0	0	0
USAO	4	3	0	8	4	0	0	4
WFMO	4	2	7	4	0	1	0	1
NOAA Totals	131	43	42	157	52	23	10	85

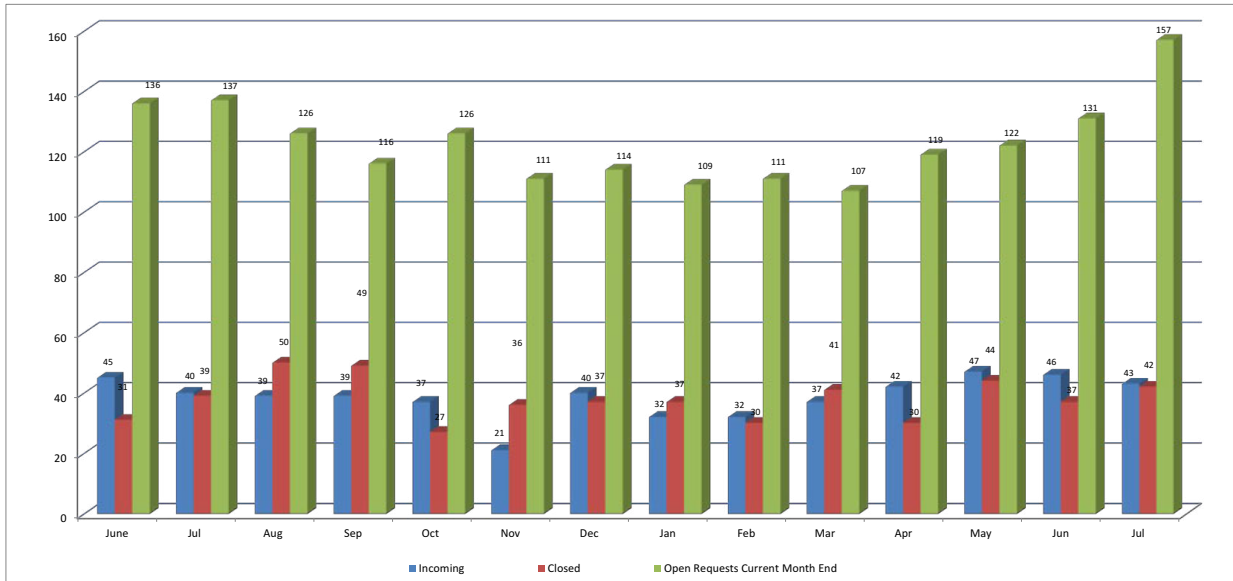


FOIA Monthly Status Report 07-31-2017

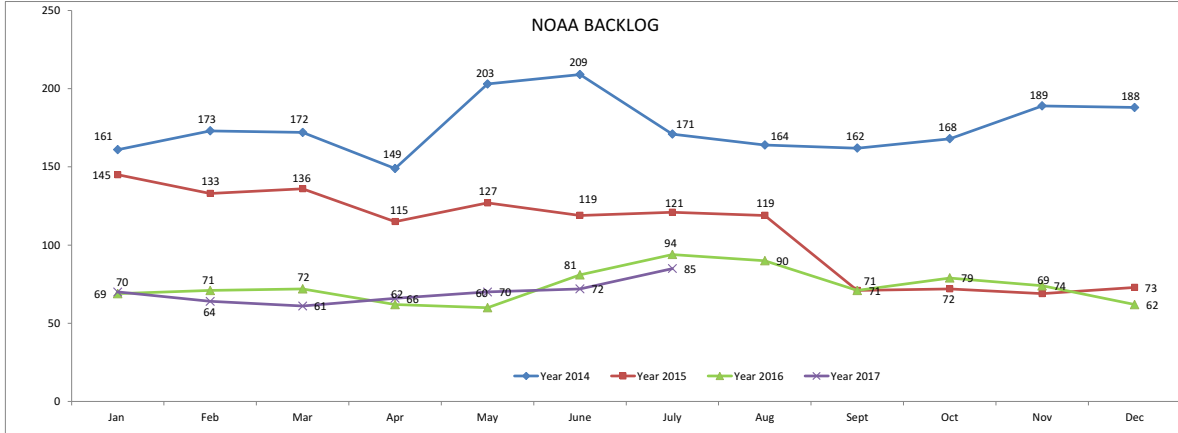
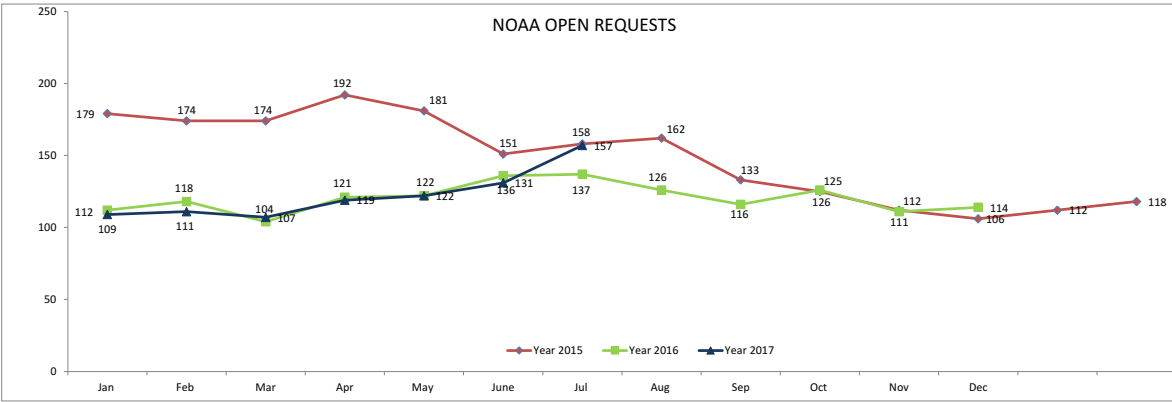


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Organization	Open Requests Previous Month End	Incoming Requests	Closed Requests	Open Requests Current Month End	Backlog 21-120 days	Backlog 121-364 days	Backlog 365 or more days	Total Backlog
AGO	0	6	3	10	1	0	3	4
CAO	0	1	1	1	0	0	0	0
CFO	0	0	0	0	0	0	0	0
CIO	2	0	0	2	0	0	0	0
CIO/FOIA	4	5	2	9	0	4	0	4
GC	4	0	0	2	2	0	0	2
IA	0	0	0	0	0	0	0	0
LA	1	0	0	1	1	0	0	1
NESDIS	4	0	0	5	3	0	1	4
NMFS	86	22	25	86	29	17	4	50
NOS	7	1	1	10	3	1	2	6
NWS	11	0	3	7	5	0	0	5
OAR	2	2	0	7	2	0	0	2
OMAO	0	0	0	1	1	0	0	1
OC	2	1	0	4	1	0	0	1
PPI	0	0	0	0	0	0	0	0
USAO	4	3	0	8	4	0	0	4
WFMO	4	2	7	4	0	1	0	1
NOAA Totals	131	43	42	157	52	23	10	85



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Tracking Number	Type	Requester	Requester Organization
DOC-NOAA-2017-001575	Request	Karen Markin	
DOC-NOAA-2017-001574	Request	Karen Markin	
DOC-NOAA-2017-001573	Request	Karen Markin	
DOC-NOAA-2017-001564	Request	Rose Santos	FOIA GROUP INC
DOC-NOAA-2017-001563	Request	Rose Santos	FOIA GROUP INC
DOC-NOAA-2017-001463	Request	Patrick Wardell	
DOC-NOAA-2017-001582	Request	Lisa Conley	
DOC-NOAA-2017-001620	Request	Andrew Hartzell	O'Neil LLP
DOC-NOAA-2017-001613	Request	David B. Anderson	Cascadia Research Collective
DOC-NOAA-2017-001606	Request	Molly Masterton	Natural Resources Defense Council
DOC-NOAA-2017-001598	Request	David MacDonald	
DOC-NOAA-2017-001556	Request	Andrew Ogden	Turtle Island Restoration Network
DOC-NOAA-2017-001555	Request	Andrew G. Ogden	Turtle Island Restoration Network
DOC-NOAA-2017-001554	Request	Andrew Ogden	Turtle Island Restoration Network
DOC-NOAA-2017-001553	Request	Andrew Ogden	Turtle Island Restoration Network
DOC-NOAA-2017-001552	Request	Andrew G. Ogden	Turtle Island Restoration Network
DOC-NOAA-2017-001550	Request	Andrew G. Ogden	Turtle Island Restoration Network
DOC-NOAA-2017-001548	Request	Andrew G. Ogden	Turtle Island Restoration Network
DOC-NOAA-2017-001547	Request	Andrew G. Ogden	Turtle Island Restoration Network
DOC-NOAA-2017-001546	Request	Andrew G. Ogden	Turtle Island Restoration Network
DOC-NOAA-2017-001545	Request	Andrew G. Ogden	Turtle Island Restoration Network
DOC-NOAA-2017-001534	Request	Zeenat Mian	
DOC-NOAA-2017-001531	Request	Mara Shlackman	Law Offices of Mara Shlackman, P.L.
DOC-NOAA-2017-001528	Request	James L. Buchal	Murphy & Buchal LLP
DOC-NOAA-2017-001530	Request	Katherine Poole	Natural Resources Defense Council
DOC-NOAA-2017-001529	Request	Rafe Petersen	Holland & Knight LLP
DOC-NOAA-2017-001505	Request	Baylee Bunyard	
DOC-NOAA-2017-001481	Request	Ted Lund	Citizen
DOC-NOAA-2017-001458	Request	Russ Kick	
DOC-NOAA-2017-001610	Request	Janet Locke	Ms.
DOC-NOAA-2017-001616	Request	Russ Kick	
DOC-NOAA-2017-001594	Request	Daniel Davis	Colodny Fass
DOC-NOAA-2017-001527	Request	Russ Kick	
DOC-NOAA-2017-001498	Request	Thad S. Mogensen	Cohn, Lambert, Ryan & Schneider, Ltd.
DOC-NOAA-2017-001569	Request	Sarah N. Emerson	VICE
DOC-NOAA-2017-001487	Request	John Greenewald	The Black Vault
DOC-NOAA-2017-001461	Request	Michael Ravnitzky	
DOC-NOAA-2017-001523	Request	Brian L. Kahn	Climate Central
DOC-NOAA-2017-001538	Request	Zachary Kopplin	Government Accountability Project
DOC-NOAA-2017-001522	Request	Yule Kim	
DOC-NOAA-2017-001483	Request	Stanley Tromp	
DOC-NOAA-2017-001585	Request	Anthony V. Schick	Oregon Public Broadcasting
DOC-NOAA-2017-001462	Request	Michael Ravnitzky	

Submitted	Received	Assigned To	Perfected?	Due	Closed Date
07/20/2017	07/20/2017	AGO	Yes	08/21/2017	TBD
07/20/2017	07/20/2017	AGO	Yes	08/21/2017	TBD
07/20/2017	07/20/2017	AGO	Yes	08/21/2017	TBD
07/19/2017	07/19/2017	AGO	Yes	08/16/2017	TBD
07/19/2017	07/19/2017	AGO	Yes	08/16/2017	TBD
07/02/2017	07/03/2017	AGO	Yes	08/02/2017	TBD
07/24/2017	07/24/2017	CAO	Yes	08/21/2017	TBD
07/28/2017	07/28/2017	NMFS	Yes	08/28/2017	TBD
07/28/2017	07/28/2017	NMFS	Yes	08/25/2017	TBD
07/26/2017	07/26/2017	NMFS	Yes	08/23/2017	TBD
07/24/2017	07/24/2017	NMFS	Yes	08/23/2017	TBD
07/18/2017	07/19/2017	NMFS	Yes	08/16/2017	07/24/2017
07/18/2017	07/19/2017	NMFS	Yes	08/16/2017	07/24/2017
07/18/2017	07/19/2017	NMFS	Yes	08/16/2017	07/24/2017
07/18/2017	07/18/2017	NMFS	Yes	08/16/2017	07/24/2017
07/18/2017	07/18/2017	NMFS	Yes	08/16/2017	07/24/2017
07/18/2017	07/18/2017	NMFS	Yes	08/16/2017	07/24/2017
07/18/2017	07/18/2017	NMFS	Yes	08/16/2017	07/26/2017
07/18/2017	07/18/2017	NMFS	Yes	08/30/2017	TBD
07/18/2017	07/18/2017	NMFS	Yes	08/16/2017	07/26/2017
07/17/2017	07/17/2017	NMFS	Yes	08/16/2017	TBD
07/14/2017	07/14/2017	NMFS	Yes	08/16/2017	TBD
07/13/2017	07/13/2017	NMFS	Yes	08/28/2017	TBD
07/13/2017	07/13/2017	NMFS	Yes	08/29/2017	TBD
07/13/2017	07/13/2017	NMFS	Yes	08/14/2017	TBD
07/07/2017	07/10/2017	NMFS	Yes	08/14/2017	TBD
07/06/2017	07/06/2017	NMFS	Yes	08/14/2017	TBD
07/01/2017	07/03/2017	NMFS	Yes	08/02/2017	TBD
07/27/2017	07/27/2017	NOAA FOIA	No	TBD	TBD
07/30/2017	07/31/2017	NOAA FOIA	No	TBD	TBD
07/24/2017	07/24/2017	NOAA FOIA	No	TBD	07/26/2017
07/15/2017	07/17/2017	NOAA FOIA	Yes	08/16/2017	TBD
07/11/2017	07/11/2017	NOAA FOIA	No	TBD	07/17/2017
07/19/2017	07/19/2017	NOS	Yes	08/21/2017	TBD
07/06/2017	07/07/2017	OAR	Yes	08/14/2017	TBD
07/02/2017	07/03/2017	OAR	Yes	08/02/2017	TBD
07/14/2017	07/14/2017	OC	Yes	08/16/2017	TBD
07/18/2017	07/18/2017	USEC	Yes	08/16/2017	TBD
07/14/2017	07/14/2017	USEC	Yes	08/14/2017	TBD
07/06/2017	07/06/2017	USEC	Yes	08/14/2017	TBD
07/24/2017	07/24/2017	WFMO	Yes	08/21/2017	TBD
07/02/2017	07/03/2017	WFMO	Yes	08/02/2017	07/18/2017

Status	Dispositions
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Closed	Other - Aggregate cases
Closed	Other - Aggregate cases
Closed	Other - Aggregate cases
Closed	Other - Aggregate cases
Closed	Other - Aggregate cases
Closed	Other - Aggregate cases
Closed	Other - Aggregate cases
Closed	Other - Aggregate cases
Assignment Determination	
Closed	Other - Aggregate cases
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Submitted	
Submitted	
Closed	Improper FOIA request for other reason
Assignment Determination	
Closed	Improper FOIA request for other reason
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Assignment Determination	
Closed	Other - Publicly available information

[REDACTED]
ed to SEA RESEARCH FOUNDATION, INC
SEARCH FOUNDATION, INC
00,000.00
at pricing if not.

ropriate. DOC OIG informed me to contact NOAA FOIA to request more information into my complaint. I
quot;) and whether in written, electronic or other form) (collectively herein, "Information") from
help define the home range of the pelagic false killer whale stock beyond what we know from satellite tra
egard to management of its recreational summer flounder fishery under the Atlantic Coastal Fisheries Cr
could not sell the product this year due to high lobster prices in Canada - and there is speculation McDor
thout limitation all inter and intra agency communications, data and other information, used to prepare o
thout limitation all inter and intra agency communications, data and other information, used to prepare o
r information, used to prepare or otherwise responsive to the following: (1) Regarding the FY 2018-2022
thout limitation all inter and intra agency communications, data and other information, used to prepare o
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thout limitation all inter and intra agency communications, data and other information, used to prepare o
thout limitation all inter and intra agency communications, data and other information, used to prepare o
“records” as defined in this Request, including without limitation all inter and intra agency communicatio
thout limitation all inter and intra agency communications, data and other information, used to prepare o
ntees or others) of seal RW08 from the time the camera was attached until its drowning, broken down
AFS. In addition to documents which pertain to the incident itself, we are also seeking subsequent docur

013 to the present. 2. All records related to the effect on endangered winter-run chinook salmon, threate
t Drive) at SW 73rd Court (the "Property"; sometimes also described as the "Christ Jou

nmfs.noaa.gov/pr/interactions/mmap/ Further, I ask that these documents be sent to me in any digital fo
CA Please provide where these mammals are coming from and going to, what their names are, and wh
: that these documents be sent to me in any digital formats in which they exist, such as PDF. Under the i
mi-Dade County, and any of Miami-Dade County’s subdivisions (such as the City of Miami). This request
est; proactive release; etc. I ask that these logs include fields indicating the subject and the disposition o
: accumulated amount of snowfall for zip code 60623 between December 1, 2013 - December 11, 2013;
imited to the time-frame between January 1, 2016 and the time this request is processed. For this requ
rst Author: Interagency Conference on Weather Modification (13th : 1971 : Skyland, Va.) Publisher: U.S
ividual noncommercial request.

-up-40-percent-since-1990 I would prefer to receive these in electronic format if possible.

or agreements, oral or written, not to disclose information or documents, or pledges, oaths, requests or
stated: “The Department of Commerce will receive a copy of and consider all public comments submitte
mate Accord is an agreement within the United Nations Framework Convention on Climate Change (UN
since March 1, 2017.

rs/

[REDACTED]

n requesting NOAA FOIA to provide me with the management follow up records and the closing records
nchus mykiss (i.e., that anadromous form of the species listed as endangered under the federal Endang

documents, or briefing documents that discuss summer flounder and New Jersey's 2017 recreational se
from June 1, 2017 to present.

rities (Draft) ("Report")¹ all records used, considered or referred to by NOAA to identify the "patrol, outre
rities (Draft) ("Report")¹ all records used, considered or referred to by NOAA to identify the "patrol, outre
OAA to identify the "patrol, outreach, and investigation to deter and detect: Illegal takes (e.g. Level A har
es (Draft) ("Report")¹ all records used, considered or referred to by NOAA to identify the "patrol, outreac
rities (Draft) ("Report")¹ all records used, considered or referred to by NOAA to identify the "patrol, outre
es (Draft) ("Report")¹ all records used, considered or referred to by NOAA to identify the "patrol, outreac
es (Draft) ("Report")¹, all records used, considered or referred to by NOAA to identify the "patrol, outreac
es (Draft) ("Report")¹, all records used, considered or referred to by NOAA to identify the "patrol, outreac
FY 2018-2022 Office of Law Enforcement Priorities (Draft) ("Report"): all records used, considered or re
es (Draft) ("Report")¹ all records used, considered or referred to by NOAA to identify the "patrol, outreac
an HMMMA/HMAR volunteers and other members of the public - location and date; + All communications
r reference, this incident has been the subject of a Miami Herald article, in which you were quoted, at th

of Reclamation to meet the demands of the Sacramento River Settlement Contracts from 2013 to the p
io Juan Mayol (attached). This request includes but is not limited to: 1. Any and all communications by a

it exists in electronic format, it must be released in that format upon request.

be released in that format upon request.

ntion Miami-Dade County and any of its subdivisions (such as the City of Miami); and (2) any graphical in
Excel, Word, etc.). Under the terms of the E-FOIA Amendments of 1996, Section 5, if a document exists

/ Bay National Marine Sanctuary (via email, mail, fax, and phone) about wildlife being harassed or disturbi
al Library Call number: QC926.6 .I5 1971

lent, the Vice President, the Office of the President or the Office of the Vice President, or any individual
National Monuments that are affected by Executive Orders 13792 and 13795." 82 Fed. Reg. 28827. Plea
)20. It was negotiated by representatives of 196 parties at the 21st Conference of the Parties of the UNF



(resolution) for my complaint #17-0469-N. I have not been contacted by anyone in NOAA regarding Endangered Species

Reason; 2. Communications pertaining to

Seal, and

Seal, and

Assessment, feeding, and

;

Seal, and

Seal, and

Seal, and

Seal, and

referred to by

Seal, and

and reports related to Seal selection assessment

see following URL: <http://www.miamiherald.com>

present.

and between Tom Jackson, Research Fisheries Biologist

images showing the impact

of seals in electronic format, it must

be provided by drones or unmanned aerial

vehicles working in the White House or the White

House. Please provide the copies of the comments received by NOAA from the Department

of the Interior in Paris and adopted by consensus on 12 December 2015.











DOC-NOAA-2017-000298 Request Charles Mouton
DOC-NOAA-2017-001575 Request Karen Markin
DOC-NOAA-2017-001574 Request Karen Markin
DOC-NOAA-2017-001573 Request Karen Markin
DOC-NOAA-2017-001564 Request Rose Santos
DOC-NOAA-2017-001563 Request Rose Santos
DOC-NOAA-2015-001487 Request Richard Knudsen
DOC-NOAA-2015-001484 Request Richard Knudsen
DOC-NOAA-2015-001485 Request Richard Knudsen
DOC-NOAA-2017-001261 Request Laura E. Nielsen
DOC-NOAA-2017-001582 Request Lisa Conley
DOC-NOAA-2017-001382 Request Margaret Townsend
DOC-NOAA-2016-000351 Request Bill Marshall
DOC-NOAA-2017-001321 Request Elizabeth N. Moran
DOC-NOAA-2017-000579 Request Emily Yehle
DOC-NOAA-2017-000580 Request Bill Marshall
DOC-NOAA-2017-000613 Request Dan Vergano
DOC-NOAA-2016-000423 Request Ryan P. Mulvey
DOC-NOAA-2017-000342 Request Ryan P. Mulvey
DOC-NOAA-2017-000304 Request Bryn Blomberg
DOC-NOAA-2017-000226 Request Emma Hiolski
DOC-NOAA-2015-000295 Request Office Administrator
DOC-NOAA-2017-000195 Request Thomas Knudson
DOC-NOAA-2017-000170 Request Kara McKenna
DOC-NOAA-2015-000190 Request Miyo Sakashita
DOC-NOAA-2016-000094 Request Josh Schopf
DOC-NOAA-2016-001763 Request Thomas Knudson
DOC-NOAA-2016-001762 Request Thomas Knudson
DOC-NOAA-2016-001751 Request Thomas Knudson
DOC-NOAA-2015-001860 Request Delcianna Winders
DOC-NOAA-2014-001474 Request Eric Huber
DOC-NOAA-2017-001620 Request Andrew Hartzell
DOC-NOAA-2017-001613 Request David B. Anderson
DOC-NOAA-2016-001533 Request J W August
DOC-NOAA-2017-001606 Request Molly Masterton
DOC-NOAA-2017-001598 Request David MacDonald
DOC-NOAA-2016-001479 Request Christopher Hudak
DOC-NOAA-2017-001546 Request Andrew G. Ogden
DOC-NOAA-2017-001534 Request Zeenat Mian
DOC-NOAA-2017-001531 Request Mara Shlackman
DOC-NOAA-2017-001528 Request James L. Buchal
DOC-NOAA-2017-001530 Request Katherine Poole
DOC-NOAA-2017-001529 Request Rafe Petersen
DOC-NOAA-2017-001505 Request Baylee Bunyard
DOC-NOAA-2017-001481 Request Ted Lund
DOC-NOAA-2016-001390 Request Jennie Frost
DOC-NOAA-2017-001458 Request Russ Kick
DOC-NOAA-2017-001448 Request Elizabeth A. Mitchell
DOC-NOAA-2017-001442 Request Chandra Taylor
DOC-NOAA-2017-001431 Request Margaret Townsend
DOC-NOAA-2016-001402 Request Stephen S. Schwartz

DOC-NOAA-2017-001421 Request Russ Kick
DOC-NOAA-2017-001420 Request Russ Kick
DOC-NOAA-2017-001419 Request Russ Kick
DOC-NOAA-2017-001482 Request Robin McDowell
DOC-NOAA-2017-001412 Request Daniel Seligman
DOC-NOAA-2017-001411 Request Margaret Townsend
DOC-NOAA-2016-001326 Request Thomas Knudson
DOC-NOAA-2017-001394 Request Ivy N. Fredrickson
DOC-NOAA-2017-001391 Request Elizabeth A. Mitchell
DOC-NOAA-2017-001390 Request Elizabeth A. Mitchell
DOC-NOAA-2016-001299 Request Thomas Knudson
DOC-NOAA-2017-001380 Request Tom McDonald
DOC-NOAA-2017-001383 Request Margaret Townsend
DOC-NOAA-2017-001381 Request Margaret Townsend
DOC-NOAA-2017-001376 Request Gabe Flick
DOC-NOAA-2017-001346 Request Catha Lewey
DOC-NOAA-2017-001316 Request Chris Saeger
DOC-NOAA-2017-001333 Request Russ Rector
DOC-NOAA-2017-001285 Request Jared S. Goodman
DOC-NOAA-2017-001279 Request Jane Reldan
DOC-NOAA-2016-001214 Request bruce weyhrauch
DOC-NOAA-2017-001275 Request Kara McKenna
DOC-NOAA-2017-001345 Request David A. Moskowitz
DOC-NOAA-2017-001238 Request Dale Perkins
DOC-NOAA-2017-001230 Request Maurice Tamman
DOC-NOAA-2017-001220 Request Nathan Eagle
DOC-NOAA-2017-001219 Request Nathan Eagle
DOC-NOAA-2017-001217 Request Nathan Eagle
DOC-NOAA-2017-001200 Request Meera Gajjar
DOC-NOAA-2017-001198 Request Nicholas Fromherz
DOC-NOAA-2017-001196 Request Kristen L. Boyles
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-2017-001073 Request Christopher Hudak
DOC-NOAA-2017-001072 Request Christopher Hudak
DOC-NOAA-2017-001071 Request Christopher Hudak
DOC-NOAA-2017-001070 Request Christopher Hudak
DOC-NOAA-2017-001068 Request Zeenat Mian
DOC-NOAA-2017-001038 Request Sean Sherman
DOC-NOAA-2016-000959 Request Office Administrator
DOC-NOAA-2017-000994 Request Mariel Combs
DOC-NOAA-2017-000986 Request Tristan R. Armer
DOC-NOAA-2017-000940 Request Elizabeth Zultoski
DOC-NOAA-2017-000865 Request Zeenat Mian
DOC-NOAA-2016-000807 Request Basil Scott
DOC-NOAA-2017-000744 Request Zeenat Mian
DOC-NOAA-2016-000604 Request Margaret Townsend
DOC-NOAA-2016-000603 Request Margaret Townsend
DOC-NOAA-2017-000615 Request Russ Rector

DOC-NOAA-2017-001616 Request Russ Kick
DOC-NOAA-2017-001610 Request Janet Locke
DOC-NOAA-2017-000361 Request Peter Shelley
DOC-NOAA-2017-000299 Request Chris Hogan
DOC-NOAA-2017-000204 Request Belinda Brannon
DOC-NOAA-2016-001786 Request Ana Gutierrez
DOC-NOAA-2016-001743 Request John Greenewald
DOC-NOAA-2017-001527 Request Russ Kick
DOC-NOAA-2017-000438 Request Claudia Lucio
DOC-NOAA-2017-000268 Request Brian D. Israel
DOC-NOAA-2016-000192 Request John Ferro
DOC-NOAA-2016-001599 Request Machele R. Hall
DOC-NOAA-2017-001569 Request Sarah N. Emerson
DOC-NOAA-2017-001233 Request Derek Miller
DOC-NOAA-2017-001161 Request Karen MacDonald
DOC-NOAA-2017-001009 Request Edward Duhe
DOC-NOAA-2015-000706 Request Megan R. Wilson
DOC-NOAA-2017-000414 Request Arnold & Porter Kaye Scholer LLP
DOC-NOAA-2017-000384 Request Marshall R. Morales
DOC-NOAA-2017-001326 Request Hans Bader
DOC-NOAA-2017-001306 Request Paula M. Rychtar
DOC-NOAA-2017-001059 Request Richard Hirn
DOC-NOAA-2017-001055 Request Richard Hirn
DOC-NOAA-2017-000790 Request Brian Gaffney
DOC-NOAA-2017-000768 Request Julio C. Gomez
DOC-NOAA-2017-000600 Request Amanda Johnson
DOC-NOAA-2017-000058 Request Christopher T. Clack
DOC-NOAA-2017-000034 Request Christopher T. Clack
DOC-NOAA-2014-001694 Request Lawrence A. Kogan
DOC-NOAA-2017-001487 Request John Greenewald
DOC-NOAA-2017-001461 Request Michael Ravnitzky
DOC-NOAA-2017-001403 Request Robert Shuchman
DOC-NOAA-2014-000714 Request Lawrence Kogan
DOC-NOAA-2017-001523 Request Brian L. Kahn
DOC-NOAA-2017-001565 Request Charles Seife
DOC-NOAA-2017-000843 Request Benjamin Levitan
DOC-NOAA-2017-000794 Request Jared E. Knicley
DOC-NOAA-2017-001163 Request Jacqueline Iwata
DOC-NOAA-2017-001101 Request Ryan P. Mulvey
DOC-NOAA-2017-000917 Request James Renaldi
DOC-NOAA-2017-001538 Request Zachary Kopplin
DOC-NOAA-2017-001522 Request Yule Kim
DOC-NOAA-2017-001483 Request Stanley Tromp
DOC-NOAA-2017-001317 Request Chris Saeger
DOC-NOAA-2017-001079 Request Austin R. Evers
DOC-NOAA-2017-001007 Request Seth Borenstein
DOC-NOAA-2017-000846 Request Elizabeth N. Moran
DOC-NOAA-2017-000845 Request Elizabeth N. Moran
DOC-NOAA-2017-001585 Request Anthony V. Schick
DOC-NOAA-2017-001436 Request Susan Swartz
DOC-NOAA-2016-001346 Request Tammy Murphy
DOC-NOAA-2017-001347 Request Alexander Rony

Mahtook & Lafleur	11/30/2016	11/30/2016	AGO
	07/20/2017	07/20/2017	AGO
	07/20/2017	07/20/2017	AGO
	07/20/2017	07/20/2017	AGO
FOIA GROUP INC	07/19/2017	07/19/2017	AGO
FOIA GROUP INC	07/19/2017	07/19/2017	AGO
	06/29/2015	06/29/2015	AGO
	06/29/2015	06/29/2015	AGO
	06/29/2015	06/29/2015	AGO
Riverside Technology, inc.	05/23/2017	05/24/2017	AGO
	07/24/2017	07/24/2017	CAO
	06/13/2017	06/13/2017	LA
Judicial Watch	10/30/2015	10/30/2015	NESDIS
GARY GILBERT & ASSOCIATES, P.C.	06/02/2017	06/02/2017	NESDIS
Environment & Energy Publishing	02/08/2017	02/08/2017	NESDIS
Judicial Watch	02/08/2017	02/08/2017	NESDIS
BuzzFeed News	02/07/2017	02/07/2017	NESDIS
Cause of Action	12/21/2015	12/21/2015	NMFS
Cause of Action	12/13/2016	12/13/2016	NMFS
Western Resources Legal Center	11/30/2016	11/30/2016	NMFS
	11/29/2016	11/29/2016	NMFS
Friends of Animals	11/21/2014	11/21/2014	NMFS
Center for Investigative Reporting	11/17/2016	11/18/2016	NMFS
Cause of Action	11/09/2016	11/09/2016	NMFS
Center for Biological Diversity	11/02/2014	11/03/2014	NMFS
Cause of Action	10/14/2015	10/14/2015	NMFS
Center for Investigative Reporting	09/14/2016	09/15/2016	NMFS
Center for Investigative Reporting	09/14/2016	09/15/2016	NMFS
Center for Investigative Reporting	09/14/2016	09/14/2016	NMFS
Harvard Law School	09/04/2015	09/04/2015	NMFS
Sierra Club	08/12/2014	08/12/2014	NMFS
O'Neil LLP	07/28/2017	07/28/2017	NMFS
Cascadia Research Collective	07/28/2017	07/28/2017	NMFS
KNSD	07/27/2016	07/28/2016	NMFS
Natural Resources Defense Council	07/26/2017	07/26/2017	NMFS
	07/24/2017	07/24/2017	NMFS
Environmental Advocates	07/20/2016	07/21/2016	NMFS
Turtle Island Restoration Network	07/18/2017	07/18/2017	NMFS
	07/17/2017	07/17/2017	NMFS
Law Offices of Mara Shlackman, P.L.	07/14/2017	07/14/2017	NMFS
Murphy & Buchal LLP	07/13/2017	07/13/2017	NMFS
Natural Resources Defense Council	07/13/2017	07/13/2017	NMFS
Holland & Knight LLP	07/13/2017	07/13/2017	NMFS
	07/07/2017	07/10/2017	NMFS
Citizen	07/06/2017	07/06/2017	NMFS
Trustees for Alaska	07/05/2016	07/06/2016	NMFS
	07/01/2017	07/03/2017	NMFS
Association for Professional Observers	06/29/2017	06/29/2017	NMFS
SOUTHERN ENVIRONMENTAL LAW CENTER	06/28/2017	06/28/2017	NMFS
	06/27/2017	06/27/2017	NMFS
Cause of Action Institute	06/27/2016	06/27/2016	NMFS

	06/25/2017	06/26/2017	NMFS
	06/25/2017	06/26/2017	NMFS
	06/25/2017	06/26/2017	NMFS
Associated Press	06/23/2017	06/23/2017	NMFS
	06/22/2017	06/23/2017	NMFS
	06/22/2017	06/23/2017	NMFS
Center for Investigative Reporting	06/21/2016	06/22/2016	NMFS
Ocean Conservancy	06/19/2017	06/19/2017	NMFS
Association for Professional Observers	06/16/2017	06/16/2017	NMFS
Association for Professional Observers	06/16/2017	06/16/2017	NMFS
Center for Investigative Reporting	06/15/2016	06/15/2016	NMFS
Cascadia Law Group PLLC	06/14/2017	06/15/2017	NMFS
	06/13/2017	06/13/2017	NMFS
	06/13/2017	06/13/2017	NMFS
	06/12/2017	06/12/2017	NMFS
Penobscot Nation	06/08/2017	06/08/2017	NMFS
Western Values Project	06/07/2017	06/07/2017	NMFS
	06/05/2017	06/05/2017	NMFS
PETA Foundation	05/30/2017	05/31/2017	NMFS
Seal Conservancy	05/27/2017	05/30/2017	NMFS
law office of bruce b weyhrauch llc	05/27/2016	05/27/2016	NMFS
Cause of Action	05/24/2017	05/24/2017	NMFS
The Conservation Angler	05/24/2017	05/24/2017	NMFS
	05/19/2017	05/19/2017	NMFS
Reuters	05/18/2017	05/18/2017	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
National Whistleblower Center	05/11/2017	05/11/2017	NMFS
	05/11/2017	05/11/2017	NMFS
Earthjustice	05/10/2017	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
Environmental Advocates	04/21/2017	04/21/2017	NMFS
Environmental Advocates	04/21/2017	04/21/2017	NMFS
Environmental Advocates	04/21/2017	04/21/2017	NMFS
Environmental Advocates	04/21/2017	04/21/2017	NMFS
	04/21/2017	04/21/2017	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
HSCBPA	04/10/2017	04/10/2017	NMFS
Advocates for the West	04/03/2017	04/04/2017	NMFS
	03/23/2017	03/23/2017	NMFS
Kauai Community Cat Project	03/16/2016	03/16/2016	NMFS
	03/08/2017	03/08/2017	NMFS
	02/10/2016	02/10/2016	NMFS
	02/10/2016	02/10/2016	NMFS
	02/07/2017	02/07/2017	NMFS

	07/30/2017	07/31/2017	NOAA
Ms.	07/27/2017	07/27/2017	NOAA
Conservation Law Foundation	12/22/2016	12/22/2016	NOAA FOIA
	11/30/2016	11/30/2016	NOAA FOIA
	11/21/2016	11/21/2016	NOAA FOIA
	09/20/2016	09/20/2016	NOAA FOIA
The Black Vault	09/12/2016	09/12/2016	NOAA FOIA
	07/15/2017	07/17/2017	NOAA FOIA
Brayton Purcell LLP	01/11/2017	01/11/2017	NOAA FOIA
ARNOLD & PORTER LLP	11/28/2016	11/28/2016	NOS
Poughkeepsie Journal	11/03/2015	11/03/2015	NOS
Tulane Environmental Law Clinic	08/12/2016	08/12/2016	NOS
VICE	07/19/2017	07/19/2017	NOS
Saving Seafood	05/19/2017	05/19/2017	NOS
	05/04/2017	05/04/2017	NOS
LISKOW & LEWIS	03/31/2017	03/31/2017	NOS
The Hill newspaper	02/18/2015	02/18/2015	NOS
Arnold & Porter Kaye Scholer LLP	01/09/2017	01/09/2017	NOS
Beveridge and Diamond	01/03/2017	01/04/2017	NOS
Competitive Enterprise Institute	06/07/2017	06/07/2017	NWS
NOAA	06/05/2017	06/05/2017	NWS
National Weather Service Employees	04/18/2017	04/18/2017	NWS
National Weather Service Employees	04/17/2017	04/17/2017	NWS
Law Office of Brian Gaffney	03/14/2017	03/14/2017	NWS
GOMEZ LLC Attorney At Law	03/10/2017	03/10/2017	NWS
Massachusetts Institute of Technology	02/02/2017	02/02/2017	NWS
	10/13/2016	10/13/2016	OAR
	10/11/2016	10/11/2016	OAR
Institute for Trade, Standards and Sustainable Development	09/22/2014	09/22/2014	OAR
The Black Vault	07/06/2017	07/07/2017	OAR
	07/02/2017	07/03/2017	OAR
MTRI, Michigan Technological University	06/20/2017	06/20/2017	OAR
ITSSD	03/26/2014	03/26/2014	OAR
Climate Central	07/14/2017	07/14/2017	OC
	06/19/2017	06/19/2017	OC
Environmental Defense Fund	03/20/2017	03/20/2017	OC
Natural Resources Defense Council	03/14/2017	03/14/2017	OC
Natural Resources Defense Council	05/05/2017	05/05/2017	OGC
Cause of Action	04/27/2017	04/27/2017	OGC
Professional Aviation Safety Specialists	03/30/2017	03/30/2017	OMAO
Government Accountability Project	07/18/2017	07/18/2017	USEC
	07/14/2017	07/14/2017	USEC
	07/06/2017	07/06/2017	USEC
Western Values Project	06/07/2017	06/07/2017	USEC
American Oversight	04/24/2017	04/25/2017	USEC
The Associated Press	03/31/2017	03/31/2017	USEC
The Law Offices of Gary M. Gilbert & Associates, P.C.	03/16/2017	03/16/2017	USEC
The Law Offices of Gary M. Gilbert & Associates, P.C.	03/16/2017	03/16/2017	USEC
Oregon Public Broadcasting	07/24/2017	07/24/2017	WFMO
	06/27/2017	06/28/2017	WFMO
	06/10/2016	06/10/2016	WFMO
MuckRock	06/01/2017	06/01/2017	WFMO

Dalton Cummings	Yes	01/13/2017	TBD	Assignment Determination
AGO	Yes	08/21/2017	TBD	Assignment Determination
AGO	Yes	08/21/2017	TBD	Assignment Determination
AGO	Yes	08/21/2017	TBD	Assignment Determination
AGO	Yes	08/16/2017	TBD	Assignment Determination
AGO	Yes	08/16/2017	TBD	Assignment Determination
Dalton Cummings	Yes	07/31/2015	TBD	Assignment Determination
Shem Yusuf	Yes	10/08/2015	TBD	Assignment Determination
Shem Yusuf	Yes	10/08/2015	TBD	Assignment Determination
Dalton Cummings	Yes	06/22/2017	TBD	Final Preparation of Response
Lawanda Fisher	Yes	08/21/2017	TBD	Assignment Determination
LA	Yes	07/13/2017	TBD	Assignment Determination
Maria S. Williams	Yes	01/14/2016	TBD	Evaluation of Records
Maria S. Williams	Yes	07/07/2017	TBD	Research Records
Maria S. Williams	Yes	03/24/2017	TBD	Evaluation of Records
Maria S. Williams	Yes	04/05/2017	TBD	Evaluation of Records
Maria S. Williams	Yes	03/29/2017	TBD	Evaluation of Records
Samuel B. Dixon	Yes	02/04/2016	TBD	Evaluation of Records
Amanda J. Patterson	Yes	02/03/2017	TBD	Evaluation of Records
Jerenda Burroughs	Yes	01/13/2017	TBD	Evaluation of Records
Ana Liza Malabanan	Yes	08/18/2017	TBD	Research Records
Beverly J. Smith	Yes	12/24/2014	TBD	Evaluation of Records
Jennifer Pralgo	Yes	12/30/2016	TBD	Evaluation of Records
Samuel B. Dixon	Yes	01/05/2017	TBD	Research Records
Kehaupuaokal Kamaka	Yes	12/05/2014	TBD	Research Records
Arlyn E. Penaranda	Yes	02/18/2016	TBD	Evaluation of Records
Jennifer Pralgo	Yes	10/27/2016	TBD	Evaluation of Records
Jennifer Pralgo	Yes	11/10/2016	TBD	Research Records
Jennifer Pralgo	Yes	10/28/2016	TBD	Evaluation of Records
Arlyn E. Penaranda	Yes	10/23/2015	TBD	Evaluation of Records
Tawand Hodge Tonic	Yes	09/10/2014	TBD	Evaluation of Records
Shawn L. Martin	Yes	08/28/2017	TBD	Assignment Determination
Kehaupuaokal Kamaka	Yes	08/25/2017	TBD	Assignment Determination
Tawand Hodge Tonic	Yes	08/29/2016	TBD	Evaluation of Records
Amanda J. Patterson	Yes	08/23/2017	TBD	Assignment Determination
Kimberly Young	Yes	08/23/2017	TBD	Assignment Determination
Ana Liza Malabanan	Yes	09/22/2016	TBD	Research Records
Arlyn E. Penaranda	Yes	08/30/2017	TBD	Assignment Determination
Julie Whitaker	Yes	08/16/2017	TBD	Assignment Determination
Beverly J. Smith	Yes	08/16/2017	TBD	Assignment Determination
Laurie Mukai	Yes	08/28/2017	TBD	Assignment Determination
Shawn L. Martin	Yes	08/29/2017	TBD	Assignment Determination
Sophia Howard	Yes	08/14/2017	TBD	Assignment Determination
David Landsman	Yes	08/14/2017	TBD	Assignment Determination
Tawand Hodge Tonic	Yes	08/14/2017	TBD	Assignment Determination
James A. Bruschi	Yes	10/14/2016	TBD	Research Records
Tawand Hodge Tonic	Yes	08/02/2017	TBD	Final Preparation of Response
Kehaupuaokal Kamaka	Yes	07/31/2017	TBD	Assignment Determination
David Landsman	Yes	08/11/2017	TBD	Evaluation of Records
Tawand Hodge Tonic	Yes	07/28/2017	TBD	Assignment Determination
Amanda J. Patterson	Yes	08/19/2016	TBD	Assignment Determination

Beverly J. Smith	Yes	08/14/2017	TBD	Research Records
Jerenda Burroughs	Yes	07/28/2017	TBD	Assignment Determination
Jerenda Burroughs	Yes	07/28/2017	TBD	Research Records
Amanda J. Patterson	Yes	08/11/2017	TBD	Assignment Determination
Shawn L. Martin	Yes	08/17/2017	TBD	Research Records
Tawand Hodge Tonic	Yes	08/10/2017	TBD	Assignment Determination
Lorna D. Martin Gross	Yes	07/26/2016	TBD	Final Preparation of Response
Beverly J. Smith	Yes	08/11/2017	TBD	Research Records
Arlyn E. Penaranda	Yes	08/01/2017	TBD	Assignment Determination
Arlyn E. Penaranda	Yes	08/01/2017	TBD	Assignment Determination
Jennifer Pralgo	Yes	07/20/2016	TBD	Final Preparation of Response
Ana Liza Malabanan	Yes	07/14/2017	TBD	Assignment Determination
Ellen Sebastian	Yes	09/15/2017	TBD	Assignment Determination
Shawn L. Martin	Yes	08/11/2017	TBD	Research Records
Arlyn E. Penaranda	Yes	07/26/2017	TBD	Assignment Determination
Amanda J. Patterson	Yes	07/11/2017	TBD	Assignment Determination
Samuel B. Dixon	Yes	07/07/2017	TBD	Assignment Determination
Tawand Hodge Tonic	Yes	07/10/2017	TBD	Final Preparation of Response
Tawand Hodge Tonic	Yes	07/13/2017	TBD	Assignment Determination
Ana Liza Malabanan	Yes	06/28/2017	TBD	Final Preparation of Response
Ana Liza Malabanan	Yes	07/31/2017	TBD	Research Records
Samuel B. Dixon	Yes	07/10/2017	TBD	Assignment Determination
Laurie Mukai	Yes	08/02/2017	TBD	Evaluation of Records
Sophia Howard	Yes	07/12/2017	TBD	Evaluation of Records
Arlyn E. Penaranda	Yes	07/07/2017	TBD	Research Records
Kehaupuaokal Kamaka	Yes	08/16/2017	TBD	Assignment Determination
Kehaupuaokal Kamaka	Yes	06/20/2017	TBD	Evaluation of Records
Kehaupuaokal Kamaka	Yes	06/20/2017	TBD	Evaluation of Records
Arlyn E. Penaranda	Yes	06/30/2017	TBD	Research Records
Beverly J. Smith	Yes	07/21/2017	TBD	Research Records
Shawn L. Martin	Yes	06/16/2017	TBD	Assignment Determination
Amanda J. Patterson	Yes	06/22/2017	TBD	Assignment Determination
Amanda J. Patterson	Yes	06/22/2017	TBD	Assignment Determination
Sophia Howard	Yes	07/03/2017	TBD	Assignment Determination
Sophia Howard	Yes	07/03/2017	TBD	Assignment Determination
Sophia Howard	Yes	07/03/2017	TBD	Assignment Determination
Ana Liza Malabanan	Yes	06/16/2017	TBD	Assignment Determination
Ana Liza Malabanan	Yes	06/16/2017	TBD	Assignment Determination
Ana Liza Malabanan	Yes	06/16/2017	TBD	Research Records
Ana Liza Malabanan	Yes	06/15/2017	TBD	Assignment Determination
Kehaupuaokal Kamaka	Yes	06/01/2017	TBD	Assignment Determination
Jeffrey N. Lonergan	Yes	05/16/2017	TBD	Research Records
Jerenda Burroughs	Yes	05/25/2016	TBD	Research Records
Kehaupuaokal Kamaka	Yes	05/09/2017	TBD	Assignment Determination
Jennifer Pralgo	Yes	05/09/2017	TBD	Evaluation of Records
Ana Liza Malabanan	Yes	08/18/2017	TBD	Research Records
Kehaupuaokal Kamaka	Yes	05/08/2017	TBD	Research Records
Brent Miyamoto	Yes	05/04/2016	TBD	Evaluation of Records
Kehaupuaokal Kamaka	Yes	04/06/2017	TBD	Research Records
Jerenda Burroughs	Yes	03/15/2016	TBD	Research Records
Jerenda Burroughs	Yes	03/15/2016	TBD	Evaluation of Records
Tawand Hodge Tonic	Yes	03/15/2017	TBD	Final Preparation of Response

NOAA	No	TBD	TBD	Initial Evaluation
NOAA	No	TBD	TBD	Initial Evaluation
NOAA	No	TBD	TBD	Initial Evaluation
Lola Stith	Yes	01/13/2017	TBD	Assignment Determination
Lola Stith	Yes	12/30/2016	TBD	Research Records
Mark Graff	No	TBD	TBD	Assignment Determination
Lola Stith	Yes	10/13/2016	TBD	Evaluation of Records
Lola Stith	Yes	08/16/2017	TBD	Assignment Determination
Lola Stith	Yes	02/24/2017	TBD	Assignment Determination
NOS	Yes	01/10/2017	TBD	Assignment Determination
NOS	Yes	12/04/2015	TBD	Research Records
NOS	Yes	09/29/2016	TBD	Assignment Determination
NOS	Yes	08/21/2017	TBD	Assignment Determination
Nkolika Ndubisi	Yes	06/22/2017	TBD	Final Preparation of Response
NOS	Yes	06/16/2017	TBD	Assignment Determination
NOS	Yes	05/23/2017	TBD	Assignment Determination
NOS	Yes	10/13/2015	TBD	Research Records
NOS	Yes	03/07/2017	TBD	Research Records
Nkolika Ndubisi	Yes	02/24/2017	TBD	Final Preparation of Response
NWS	Yes	07/07/2017	TBD	Assignment Determination
NWS	Yes	07/03/2017	TBD	Evaluation of Records
NWS	Yes	05/19/2017	TBD	Assignment Determination
NWS	Yes	05/17/2017	TBD	Assignment Determination
Beverly Hernandez	Yes	04/17/2017	TBD	Assignment Determination
Symone Stone	Yes	04/12/2017	TBD	Research Records
Beverly Hernandez	Yes	03/28/2017	TBD	Assignment Determination
Annie Thomson	Yes	11/25/2016	TBD	Research Records
Annie Thomson	Yes	11/09/2016	TBD	Research Records
Annie Thomson	Yes	10/22/2014	TBD	Assignment Determination
Annie Thomson	Yes	08/14/2017	TBD	Assignment Determination
Annie Thomson	Yes	08/02/2017	TBD	Assignment Determination
Annie Thomson	Yes	07/25/2017	TBD	Assignment Determination
Annie Thomson	Yes	05/13/2014	TBD	Assignment Determination
OC	Yes	08/16/2017	TBD	Assignment Determination
OC	Yes	08/16/2017	TBD	Research Records
OC	Yes	04/25/2017	TBD	Assignment Determination
OC	Yes	04/17/2017	TBD	Assignment Determination
OGC	Yes	06/16/2017	TBD	Assignment Determination
OGC	Yes	06/16/2017	TBD	Assignment Determination
Refael Klein	Yes	05/08/2017	TBD	Final Preparation of Response
USEC	Yes	08/16/2017	TBD	Assignment Determination
USEC	Yes	08/14/2017	TBD	Assignment Determination
USEC	Yes	08/14/2017	TBD	Assignment Determination
James LeDuc	Yes	07/07/2017	TBD	Final Preparation of Response
USEC	Yes	06/16/2017	TBD	Research Records
James LeDuc	Yes	05/09/2017	TBD	Final Preparation of Response
USEC	Yes	04/18/2017	TBD	Evaluation of Records
USEC	Yes	04/13/2017	TBD	Research Records
WFMO	Yes	08/21/2017	TBD	Assignment Determination
Karen Robin	Yes	08/11/2017	TBD	Assignment Determination
Karen Robin	Yes	08/31/2016	TBD	Assignment Determination
Karen Robin	Yes	07/11/2017	TBD	Final Preparation of Response

Partial grant/partial denial

Full grant

Full denial based on exemptions

All records referred to another agency

Fee-related reason

Other - Admin close - no response from requester

Full grant

Full grant

Partial grant/partial denial

Full grant

We are representing Harvest Pipeline Company in connection with an incident which occurred on 5 September 2011.
Funded proposal: NA12OAR4600060: OAR Office of Ocean Exploration and Research (OER) - 07/01/2012 - 06/30/2013
Funded proposal: NA11OAR4600071: OAR Office of Ocean Exploration and Research (OER) - 07/01/2011 - 06/30/2012
Funded grant proposal: NA07OAR4600490: Archaeological and Oceanographic Exploration of the Sea of Crete and the Aegean Sea [FGI 53605] Relevant to DOCAB133F14CQ0018, we seek the contractor's proposal (or Statement of Qualifications [FGI 53604] Relevant to DOCAB133F14CQ0017, we seek contractor's proposal (or statement of qualifications) for a request on April 1, 2009 Blanked Purchase Agreement (BPA) order for Verizon Wireless wireless supplies-and see Information relating to DOC's "Blanket Purchase Agreement with AT&T Corporation"
Information relating to DOC's "Blanket Purchase Agreement with Sprint"

REVISED REQUEST SCOPE: We are requesting information under the Freedom of Information Act for NOAA SC 1, Lisa Conley am the complainant for DOC OIG Referral 17-0469-N. I was informed by DOC OIG (Briane Jones - I The Center requests the following records from the National Oceanic and Atmospheric Administration ("NOAA"): 1. 1. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors. • Copies of any and all documents and communications related to the application, review, and consideration of The I request all communications from NOAA principal scientist John Bates concerning the study authored by Thomas Any and all records of communication between NOAA scientist Thomas Karl and Director of the Office of Science ; Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of any age All records of communications between (i) Eileen Sobeck, Assistant Administrator for Fisheries; (ii) Samuel Rauch, Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), CoA Institute hereby requests access to This request generally concerns records related to the NMFS document entitled " Technical Guidance for As: I request access to and copies of any and all documents pertaining to California Governor Jerry Brown's request (F I request all records considered by the National Marine Fisheries Service (?NMFS?) in determining that the queen

DISCUSSION WITH REQUESTER FURTHER NARROWED: Agreed to a copy of the speech given by William Ka 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 1. All records relating to the destruction or shredding of documents authorized, approved, overseen or carried out t Copies of all emails pertaining to observer health and safety written or received by National Marine Fisheries Servic Copies of all National Marine Fisheries Service documents, including but not limited to emails, investigative reports A copy of the NMFS contract Arinex Pty Ltd. for the 8th International Fisheries Observer & Monitoring Confere The requester had agreed to amend her request to exclude personal private information, such as such as SSN, DC Endangered Species Act Section 7 Consultation Programmatic Biological Opinion of the US EPA's Issuance and Ir this firm respectfully requests a copy of all data, records, reports, correspondence, documents and other informati Please provide the positions (lat and lon) of false killer whale interactions with the Hawaiian longline fishery that ha Under the Freedom of Information Act I am requesting any information your agency may have in regards to the de Please find attached a FOIA request from the Natural Resources Defense Council (NRDC) for records regarding th I'm looking for any documents which make reference to the fast-food chain McDonald's and its product known as e Note: all requests set forth below are for documents generated on or after January 1, 2009 through the date that N

REQUEST CONSOLIDATED & UPDATED 7/24: TIRN requests from the National Oceanic & Atmospheric Adminis Under the Freedom of Information Act I would like to request all the information below inter agency (within NOAA) ; All documents relating to the mass stranding of nearly 100 false killer whales (Pseudorca crassidens) near Hog Ke We are therefore requesting that the Center provide COMPASS modeling of increases in spill to gas cap levels at 1. All records 1 related to the effect on endangered winter-run chinook salmon, threatened spring-run chinook salm I request access to and copies of any and all documents in the possession of the National Oceanic and Atmospher Please provide documentation that shows and/or tracks how much money is dedicated to gulf coast sea turtle cons An electronic version of the complete Marine Mammal Inventory for Seaworld Parks and Entertainment. This request is submitted on behalf of Suzanne Bostrom for Cook Inletkeeper. Please see attached document for r I hereby request all completed Marine Mammal Authorization Program: Mortality/Injury Reporting Forms that have I request copies of NOAA communications (fax, e-mail, supporting documents) to other departments within NOAA Pursuant to the Freedom informational Act (5 U.S.C. § 552), the Southern Environmental Law Center ("S 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

According to the document "Vessel Strike Avoidance Measures and Reporting for Mariners" from NMFS, I hereby request all Marine Mammal Stranding Report forms (NOAA Form 89-864) that have been turned in to NMFS. The following webpage contains the annual "Large Whale Entanglement and Ship Strike Report" for 2016. Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request the following information: Copies of all e-mails (including attachments) between the NOAA Fisheries office in Portland, Oregon, and the Fish Passage Center requests from the National Marine Fisheries Service ("NMFS") all records generated in connection with all emails and hard-copy communications (including attachments) directed to NMFS Office of Law Enforcement Division. We request copies of all memoranda, studies, reports, data, correspondence, comments, conversation records, files. On 28 June 2017, via email, the requester clarified the search scope of the request to: "I would like both foreign and domestic records. Through the Freedom of Information Act, I request the following documents: 1. E-mails, photographs and possibly video. Copies of all NOAA/NMFS training videos for fisheries observers for the years 2000 to 2016.

This request is directed to the National Marine Fisheries Service and pertains to the Pacific Northwest region (Wasco County). The Center requests from the National Marine Fisheries Service ("NMFS"): all records mentioning, including, and/or containing information about the Center requests from the National Marine Fisheries Service ("NMFS") from January 1, 2015 to May 1, 2017: all text messages, facsimiles and any and all documents consisting of or related to the National Oceanic and Atmospheric Administration ("NOAA"). SCOPE REVISION 6/20 - To exclude the following information: out-of-office replies, duplicates of the same emails, and any information that is already in the public domain. Attached is an 1989 nmfs mmir. please send me all the necropsy's for all animals listed with a "YES" or "NO". On behalf of People for the Ethical Treatment of Animals (PETA), and pursuant to the Freedom of Information Act, I request all correspondence (emails, letters, documents) dated between April 1, 2016 and May 27, 2017, composed or received by NMFS. Please provide copies of the following documents (including emails and letters): • All communications and documents regarding the rate of conversion (i.e. passage loss, natural mortality, unaccounted for harvest, or other factors). I would like some socio-economic data for a racial composition study. Please provide the racial/ethnicity of the population in the area. This request relates to the Vessel Monitoring System (VMS) that is maintained by the National Marine Fisheries Service. I'd like to request information related to lobbying by the Western Pacific Regional Fishery Management Council (WPRMFC). I'd like to request information related to the staff, consultants, and members of the Western Pacific Regional Fishery Management Council (WPRMFC). I'd like to request financial information concerning the Western Pacific Regional Fishery Management Council (WPRMFC). Please see attachment for full response. Under the Freedom of Information Act, 5 U.S.C. § 552, I am requesting access to the following records: I am writing with a request for records maintained by the National Marine Fisheries Service ("NMFS") regarding the implementation of the Vessel Monitoring System (VMS). See attached document. Please send copies of any and all documents, records, communications, correspondence, and information. Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), CoA Institute hereby requests access to the following records: Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), CoA Institute hereby requests access to the following records: We request copies of all memoranda, studies, reports, data, correspondence, comments, conversation records, files, and other documents. We request copies of all memoranda, studies, reports, data, correspondence, comments, conversation records, files, and other documents. We request copies of all memoranda, studies, reports, data, correspondence, comments, conversation records, files, and other documents. Note: all requests set forth in paragraphs 1-4 below are requests for documents generated on or after January 1, 2007. Note: all requests set forth in paragraphs 1-2 below are requests for documents generated on or after January 1, 2007.

1. Any reports, memoranda, correspondence, studies, or other documents pertaining to the extent to which the National Marine Fisheries Service (NMFS) has implemented the provisions of Executive Order 13771, entitled "Reducing Regulation and Controlling Regulatory Costs".
1. Any reports, memoranda, correspondence, or other documents (including electronic mail messages) concerning the implementation of Executive Order 13771, entitled "Reducing Regulation and Controlling Regulatory Costs".

Under the Freedom of Information Act I would like to request the following: All communications inter office (within NMFS) and all records concerning implementation of Executive Order 13771, entitled "Reducing Regulation and Controlling Regulatory Costs". Unless otherwise specified, Requesters seek all documents for the time period starting January 26th, 2007 and ending on the date of this request.

REVISED SCOPE: PART 1: You request the following information for the HI SLL Fishery from 2014 to 2017 (Prior to 2014, NMFS was the lead agency for the HI SLL Fishery):

1. All joint enforcement agreements between NOAA/NMFS and the states of Tx., La., Ms., Al., Fl.;
2. All contracts concerning the HI SLL Fishery.

1. Any Endangered Species Act ("ESA") section 7 consultations or draft consultations regarding the effects of the Yuma River Project on the Hawaiian Monk Seal.

REQUEST MODIFIED 4/13: - Commencement/start and end date of any contracts, cooperation agreements, grant agreements, and other documents related to Monk Seals on and around the island of Kauai.

Under the Freedom of Information Act I would like to request all documents and communications inter office (within NMFS) and all records concerning implementation of Executive Order 13771, entitled "Reducing Regulation and Controlling Regulatory Costs".

1. All records related to: Interagency Cooperation: Endangered Species Act – Incidental Take Statements, Docketing, and Critical Habitat Rulemaking and Policy.
1. All records related to: Interagency Cooperation—Endangered Species Act – Incidental Take Statements, Docketing, and Critical Habitat Rulemaking and Policy.

Please send me all information on record for each BDTTLENOSE OOLPHIN - TURSIOPS TRUNCATUS listed on the following webpage:

I hereby request all completed Reports of Whaling Operations (form 0648-0311) that have been turned in to NMFS Under the Freedom of Information Act, I am requesting any and all information you have regarding any upcoming to Expedited Review is sought pursuant to 15 CFR § 4.6(f) Re: Freedom of Information Act Request – Northeast Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of the folk Fishing Trawler Lady Julie Documentation No. : 1089342 Incident: All documentation related to this incident report Daily water conditions for Corona del Mar for the week of June 26, 2016.

I prefer electronic delivery of the requested material either via email or via CD-ROM or DVD via postal mail. I respect I am requesting all previously released FOIA logs, covering any time period from 2000 to the present. This refers to We are trying to obtain some records relating to the construction of a Survey ship that was built for the National Oceanic 1. All information (including work plans, quality assurance plans, validated and unvalidated data, results, correspondence Under FOIA, I hereby request any emails, reports or other documents prepared by, or for, NOAA relating to, or conducted On behalf of the Waterkeeper Alliance, Louisiana Environmental Action Network, and Apalachicola Riverkeeper Inc. I request Please provide all records generated in connection to complaints made to the Monterey Bay National Marine Sanctuary Saving Seafood seeks any correspondence between staff of NOAA's office of National Marine Sanctuaries and staff Please provide the following from NOAA Office of Response and Restoration, regarding the Carla Maersk/Conti Pelagic 1. Any and all records, photographs, correspondence, documents, including email communication, pertaining to the request I request that I be sent copies of the following documents or, if there is a large number, be permitted to inspect the REQUEST UPDATED 3/27 - The requester has approved that the \$18,212 refund for FOIA #2017-000320 be rolled back We request that a copy be provided, in digital format, of the following documents (or documents containing the following) 1. Any records memorializing, quoting, citing, or summarizing a conference call among National Weather Service personnel Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of: I am seeking 1. A copy of any and all reports on the testing of the radiosonde autolauncher manufactured by the Vaisala Corporation 1. A copy of all contracts for services between the agency and Joseph Swerdzewski and Associates, LLC., for services ...all records from January 1, 2015 to the present discussing, documenting, memorializing, or otherwise concerning Copies of all reports submitted to the Secretary of Commerce pursuant to 15 U.S.C. §330a, concerning "weather 1. All correspondence between the Service and representatives of the Executive Office of the President of the United States UPDATED DESCRIPTION 10/26/16: All emails (and attachments) that have been received by or sent by the following NOAA Employees (and attachments) that have been received by or sent by the following NOAA employees (over the course of This new FOIA Request seeks disclosure of as yet publicly disclosed documents substantiating the IQA conformance I respectfully request a copy of records, electronic or otherwise, of the following document: Title: Proceedings of the A digital/electronic copy of the NOAA Library Subject Guide to MARINE DEBRIS, subject guide 1989-03, dated October Michigan Tech kindly requests a formal debrief on the CILER21 proposal that was not selected for funding. NOAA-Enactment by the USEPA of a series of national greenhouse gas (GHG) emission regulations based primarily upon 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 Environmental Defense Fund ("EDF") respectfully requests records, as that term is defined at 5 U.S.C. § 552(f)(2) . Please produce records of the following types in NOAA's possession, custody or control: 1. All records setting forth 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 Requester clarified request: Organization titles, position titles and/or occupational series, and bargaining unit code Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, I am requesting any and all documents, including In NOAA's notice published 6/26/2017, entitled "Review of National Marine Sanctuaries and Marine National Monuments Please send me your records on the U.S. withdrawing from the Paris Agreement, from June 1, 2017 to June 15, 20 I request access to and copies of documents addressed or directed to the President of the United States that include 1. Any memoranda, policies, rules, protocols, restrictions, directives, guidance, or other guidelines addressing the p • From Jan. 20, 2017 to March 29, 2017, all emails to or from Troy Wilds with the phrases "climate change", "global Copies of any and all records, documents, and communications, including but not limited to emails, regarding any : Copies of the Reports of Investigation for any and all informal or formal EEO complaints filed by, or on behalf of, TIA I request copies of any records detailing plans for reorganization or layoffs in the regions covering Oregon and Washington Investigation on NOAA Ship Fairweather into a pattern of harrasment in the Steward Dept. February through April I wish to obtain any and all documents related to the position at both the ZP III and ZP IV band levels. This includes A list of the vacant positions that the National Oceanic and Atmospheric Administration cannot fill due to the presid

Southwest Region, when a vessel injures or kills a marine mammal, a "vessel strike reporting for FS since July 1, 2016. Further, I ask that these documents be sent to me in any digital formats in which I can view them. (https://www.greateratlantic.fisheries.noaa.gov/whaletrp/plan/dissent/1) I hereby request all commercial Landing Statistics for Yellowfin Tuna by MONTH for New York state from Jan. 1, 2013 until present. I request copies of all records regarding the National Marine Fisheries Service (NMFS) National Marine Fisheries Center (NMFS) (____@fpc.org) between January 1, 2015 and July 1, 2015, regarding juvenile fish passage on the Atlantic coast. I request copies of all records regarding the issuance of incidental harassment authorizations for oil and gas seismic exploration in the Atlantic (Atlantic Ocean) from Director James Landon and Deputy Director Logan Gregory from Aug. 1, 2015 to June 21, 2016 pertaining to all records, electronic mail records, or other documents, which were generated, received, kept, and/or considered on servers (on US vessels) and US observers. For all observers I would like to know the regional observer contact information, including phone numbers, faxes and other communications before and after and relating to my observer trip on board the America

Washington state). Full text of the request is contained on the uploaded .pdf file entitled FOIA - NMFS-PacNW and referencing NMFS's decision to deny the petition to list the Lillamna Lake Seal under the Endangered Species Act. I request all records of correspondence between, from, to, or with any NMFS employee and/or agent and any member of the public (including attachments) sent or received by: Will Ellis, NOAA OLE, Alaska Division Assistant Director; and the relicensing of the Mattaceunk Hydroelectric Project on the Penobscot River, Maine (including attachments disseminated to large volumes of recipients. I request access to and copies of all records under right column stating necrp filed with nmfs

I request copies of all records regarding Permit No. 774, issued to SeaWorld on October 7, 1992, to import and exhibit marine mammals by the National Marine Fisheries Service, West Coast Region, in which "Children's Pool" was established from January 1, 2015 to date that were sent to or received by any employee of NOAA/Dep't of Commerce from January 31, 2016 to the present: 1. The processing notes for CoA Institute's FOIA request dated October 31, 2016 regarding non-harvest sources of mortality) of Passive Integrated Transponder (PIT)-tagged adult salmon and other fishery participants; 1. Red Snapper IFQ share holders. 2. IFQ dealers. 3. Charterboat/Headboat services. 4. Office for Law Enforcement and managed by Kelly Spalding (kelly.spalding@noaa.gov/301.427.8300) (PRFMC). Specifically, I'm requesting: 1) Documents sufficient to show the amount of time spent by WPRFMC on the WPRFMC Management Council (WPRFMC). Specifically, I'm requesting: 1) Documents sufficient to identify the WPRFMC. Specifically, I'm requesting: 1) The WPRFMC formal books of accounts over the 5 years preceding the request. I request copies of information as detailed below on behalf of the National Whistleblower Center (NWC), a non-profit organization, regarding mass stranding ("Stranding") of nearly 100 false killer whales at Hog Key, on Florida's southwestern coast. I request all records, or materials relating in any way to the management of these lands, including but not limited to consideration of all communications—including, but not limited to, e-mail, instant messaging, Google hangouts or Google+—including, but not limited to, e-mail,8 instant messaging, Google hangouts or Google+, electronic mail records, or other documents, which were generated, received, kept, and/or considered on servers, electronic mail records, or other documents, which were generated, received, kept, and/or considered on servers, electronic mail records, or other documents, which were generated, received, kept, and/or considered on servers. I request copies of information from 2005 through the date that NMFS responds to this request, but excluding any documents already submitted to NMFS from 2000 through the date that NMFS responds to this request. 1. Any reports, memoranda, correspondence, or other documents regarding the National Flood Insurance Program ("NFIP"), administered by the Federal Emergency Management Agency (FEMA). 2. Any potential, contemplated, proposed, or completed Endangered Species Act ("ESA") section 7 consultation records (JOAA) and intra office (between NOAA and external sources/entities) where the following message from NOAA is included: "Reducing Regulatory Costs," the February 2, 2017 OMB guidance entitled, "Interim Guidance Implementing Executive Order 13771," dated April 11, 2016. Over the course of several years, NOAA has issued multiple Letters of Authorization (LOAs) regarding: All video and photographs of injured or dead sea turtles and marine mammals All photographs and video of all communications with private contractors that do the Marine Recreational Information Programs (MRIP), in the context of the Makima Project, the YRBWEP, or the YBIP, or any federal projects or actions taken pursuant to the Yakima Project. 3. All affiliations signed between Barbara/Robert Billand and NOAA from 2009 until present. - Communications regarding the Hawaiian monk seal (Phocoena partellus) in Hawaii; their habitats; their health issues; and plans for research related to animal-borne diseases within the context of the Hawaiian monk seal (Phocoena partellus) (NOAA) and intra office (between NOAA and external sources/entities) where the hawaiian monk seal (Phocoena partellus) is the subject. No. NOAA_FRDOC_0001-3430

I request copies of all records regarding the definition of Destruction or Adverse Modification of Critical Habitat, Docket No. 13-001-0001, as Amended; Definition of Destruction or Adverse Modification of Critical Habitat, Docket No. 13-001-0001, the attached document.

since January 1, 2016. I am requesting the entire form/report, including any attachments. Further, I ask transfers of dolphins, walrus, seals, or sea lions in and/or out of Six Flags Discovery Kingdom in Vallejo, t Canyons and Seamounts Marine National Monument and any other marine national monument records owing document, the Agency Fact Sheet/Brochure or a similar document providing a description or over and documentation to confirm whether or if this vessel sank.

ctfully request a copy of records, electronic or otherwise, pertaining to FOIA Case DOC-NOAA-2015-00 FOIA logs released for any reason - FOIA request, appeal, or lawsuit; court order; Congressional requ eanic and Atmospheric Administration in 1960 at National Steel and Ship Building Corp (Nassco now pa idence, reports and presentations) related to the "Avian Injury Study egg injection studies conducta taining, any audits or analyses of Northeast Analytical Laboratory in Schenectady (now known as Pace A equest 1. All maps of Mississippi Canyon 20 in the Gulf of Mexico 2. All images of Mississippi Canyon 21 tuary about wildlife being harassed or disturbed by drones or unmanned aerial vehicles. This request is l ff of the National Marine Sanctuary Foundation (<https://www.marinesanctuary.org/>) regarding the Monte ridot ship collision of 3/9/2015 in the Houston Ship Channel: 1- Fate and transport forecast for both the e National Oceanic and Atmospheric Administration's approval of Louisiana's State and Local Coastal R following documents: A copy of any and all communications and drafts, regarding the national interest c d into the cost of this FOIA (#2017-000414). As such, this FOIA has been narrowed to the production of owing information) that are in the possession or control of your agency. This request is subject to the foll meteorologists in Boston, New York, Philadelphia, and/or Washington on the afternoon of March 13, 201 eeking the job announcement (if there was one) for National Weather Service Voluntary Observing Ship ation conducted by the National Weather Service. We understand that such testing has been conducted ices to the National Weather Service, including statements of work, and such elements of those contrac ; (1) weather modification within the Weather Service Organization Workforce Analysis; (2) the reason f her modification" as defined by federal law 15 U.S.C. §330, from 1971 (the date this federal law wa ed States, the President, and/or those purporting to contact the Agency on behalf of the President, creat ing NOAA employees since April of 2016 to the present: 1. Melinda Marquis [Melinda.Marquis@noaa.g f 2016); 1. Melinda Marquis [Melinda.marquis@noaa.gov], 2. Kevin Kelleher [Kevin.Kelleher@noaa.gov] ice of NOAA and NOAA third-party contractor peer reviews of ten NOAA-developed climate assessment e thirteenth Interagency Conference on Weather Modification, October 12-15, 1971, Skyland, Virginia Fi tober 1989, mentioned on this page: <http://library.noaa.gov/Research-Tools/Subject-Guides> This is an .OAR-CIPO-2017-2005127 - candice.jongsma@noaa.gov on reviews of third-party (including NOAA) prepared scientific assessments. '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 of the Freedom of Information Act ("FOIA"), of the National Oceanic and Atmospheric Administration (the general policy or guidance for NOAA staff to apply when determining whether to remove information, di 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 s for current positions. Note: NOT employees, but positions. See Correspondence - Other), but not limited to, notes, e-mails, memos, or any other materials concerning pledges, oaths, requests ments Designated or Expanded Since April 28, 2007; Notice of Opportunity for Public Comment" NOAA)17, its impacts on the world's climate, politics, environment and economy, the nation, etc. The Paris Cli de recommendations regarding monument designation for the National Monuments listed below, during rovision of information to representatives of the press or media by employees of NOAA (including but n il warming", "greenhouse gases", "carbon dioxide" or "Paris Agreement." and all actions taken by any Agency employee, including but not limited to Mark Paese and Tahara Daw omas Smith, including, but not limited to, Agency Nos. 54-2012-01801, 54-2011-02074, 54-2011-00267 shington, as well as any letters of reassignment to staff in Oregon or Washington. I am seeking records of 2017 s, but is not limited to, the entire job opportunity announcement file from which I was first appointed and ent's hiring freeze. Please include the job title, GS level, office, and division.

Under the Freedom of Information Act, we request you provide us with a true and correct copy of the official records of the
provided to SEA RESEARCH FOUNDATION, INC
SEARCH FOUNDATION, INC
\$10,000.00
at pricing if not.

Management Division I MC3; 325 Broadway, Boulder, CO 80305. The NOAA Contracting Officer was Mark.

warded to I.M. Systems Group, Inc. (IMSG). ----- We
appropriate. DOC OIG informed me to contact NOAA FOIA to request more information into my complaint. I
I monument designations made by any President of the United States since January 1, 1996 (See Attach
to adjust ship and buoy temperature data. 2. Any and all documents and records of communications se
NSDIS-OSP0-2016-0037, located in Suitland, Maryland, from January 1, 2016 to present, including but r
the recent global surface warming hiatus"). Please include e-mails, letters, hand-written notes, m
rough January 20, 2017.
re (see <http://science.sciencemag.org/content/348/6242/1469>) from July 30, 2014 to February 4, 2017. I
Management and Budget; (iv) Alan Risenhoover, Director of the Office of Sustainable Fisheries; or (v) Joh
correspondence, created or received by (1) John Bullard, Regional Administrator for the Greater Atlantic
Ids for Onset of Permanent and Temporary Threshold Shifts" ("Technical Guidance").
clared following extended closure of West Coast Dungeness crab fisheries. This includes but is not limite
provide all records in your possession, whether received, created, and/or distributed by NMFS, that the a
as Observer and Monitoring Conference in San Diego this year, along with an audio recording of the spe
ing 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
and/or non-pending investigations of the same. 2. All records referring or recommending Dale J. Jones
(including attachments).

I NMFS correspondence (electronic and hard-copy) with Arinex Pty Ltd. regarding the conference, includ
OLE agents names and other exempted information (i.e. pounds of catch) are redacted as non-responsi

quot;) and whether in written, electronic or other form) (collectively herein, "Information") from
help define the home range of the pelagic false killer whale stock beyond what we know from satellite ta

regard to management of its recreational summer flounder fishery under the Atlantic Coastal Fisheries C
would not sell the product this year due to high lobster prices in Canada - and there is speculation McD
ing electronic mail messages) concerning any Endangered Species Act ("ESA") section 7 consultations
records" as defined in this Request, including without limitation all inter and intra agency communicatio
nteers or others) of seal RW08 from the time the camera was attached until its drowning, broken down
AFS. In addition to documents which pertain to the incident itself, we are also seeking subsequent docur

2013 to the present. 2. All records related to the effect on endangered winter-run chinook salmon, threate
t Drive) at SW 73rd Court (the "Property" sometimes also described as the "Christ Jou

ata related to Cook Inlet or any Cook Inlet species that was gathered, created, or received by the Nation:
nmfs.noaa.gov/pr/interactions/mmap/ Further, I ask that these documents be sent to me in any digital fo
Coast Guard, that were made in response to observer reports - documentation notebooks or field journa
enda and handouts for the public meeting held by the Navassa Trustee Council, in Navassa, regarding t
gical evaluation of chlorpyrifos under the Endangered Species Act, 16 U.S.C. §§ 1531-1544 ("
mburse the expenses of industry-funded at-sea monitoring.

must be filed. [http://sero.nmfs.noaa.gov/protected_resources/section_7/guidance_docs/docu they exist. Under the terms of the E-FOIA Amendments of 1996, Section 5, if a document exists in elect sequent reports (or their equivalent). That is, the reports for 2009 to present. 2) These reports appear to nt. I would like to receive the information in electronic format.

he Snake River (including the fish transportation program, in-river passage, project spill and project by-p Ocean under the Marine Mammal Protection Act, 16 U.S.C. §§ 1361-1389 ("MMPA"), from Jar g to Keith Davis, an American fisheries observer who disappeared at sea last year, along with Mr. Landc d by NMFS relating to the reopening of the red snapper season, between the dates of January 20, 2017 r program from which the observers are deployed. " Through the Freedom of Information Act, I request tl No. 1, a US-flagged Patagonia Toothfish longline vessel then owned by Lawrence Lasarow, PacFish, Ir

W-WA (061417). All public disclosure records requests made to NATIONAL MARINE FISHERIES SERV species Act, 16 U.S.C. §§ 1531-1544 ("ESA").

iber and/or agent of the California Department of Fish and Wildlife mentioning, including, and/or referenc rector Nathan Lagerwey, OLE, Alaska Division, Deputy Special Agent in Charge to or from James W. B "the Project"). This includes, but is not limited to, all internal and external emails and other co s of any information used to inform the development of the following national monument proclamations c

port the orca Tilikum pursuant to the Marine Mammal Protection Act (MMPA), from July 7, 2014, to the p t; appears in the correspondence.

nerce and any representative of any of the Northwest United States Treaty Tribes that are subject to the 16, tracking number DOC-NOAA-2017-000168, and the NOAA Tasker memorandum regarding or relate steelhead between Bonneville dam on the Columbia River and the Lower Granite dam on the Snake Riv eef fish and pelagic fish permit holders. 4. Headboard Pilot Program Participants 5. IFQ Gulf Reef Fish / 269). I am requesting a duplicate copy of the statutorily permitted VMS data which includes latitude, long RFMC staff on lobbying activities from 2014 to 2017. By lobbying activities, I am referring to any e name and position of all WPRFMC staff for the 5 years preceding a response to this request. 2) For eac ding a response to this request, including a cash receipts and disbursements journal, a general journal, ;

profit organization focused on advocating for whistleblowers. 1. I am requesting any and all documents ast, on or about January 14, 2017. I respectfully request the following records from NMFS: 1. All records ration of amending, revising, repealing, or replacing the 2016 plans between or among any officer, repre gle chat messages, text messages, SMS messages, Blackberry messages, Skype messages, handwritl

gle chat messages, text messages, SMS messages, Blackberry messages, Skype messages, handwrit d by NMFS Southeast Regional Office relating to: 1. The data sources used to estimate the bycatch of s d by NMFS relating to: 1. The data sources used to estimate shark bycatch in the Gulf of Mexico reef fis d by NMFS relating to: 1. The data sources used to estimate shark bycatch in the HMS pelagic longline ed by NMFS in response to EcoRights' FOIA request dated July 20, 2016 (DOC-NOAA-2016-001479). 1 , or other documents (including electronic mail messages) concerning any Endangered Species Act ("ES

("FEMA"), causes, promotes, or leads to development (i.e., human modification of the landscape, includ Itations (16 U.S.C. § 1536) that have been initiated or proposed, including Biological Opinions, Biologica r Marjorie Zoll is included, from 1st March 2015 until present: 1. " Hi David, I just sent the webpage Section 2 of the Executive Order of January 30, 2017, Titled 'Reducing Regulation and Controlling Regi ("LoA") and Incidental Harassment Authorizations ("IHA") for Level B takes of Cook Inlet beluga whales

otograph of injured or dead seabirds (up to 10 per year/species) All photographs of each fish spec cluding but not limited to the telephone survey operator and the dockside-intercept program; 3. All mater a Project, the YRBWEP, or the YBIP, on threatened or endangered species or their critical habitat. Wild itions between Barbara/Robert Billand and NOAA from February 2017 until present. -----

ich may affect them. The dates for records requested vary for the different topics, but general range is J 2912-Nihoa-Sally is mentioned from June 28th 2016 until present.

NOAA-NMFS-2014-0093-0001. 2. All records related to: Policy Regarding Implementation of Section 4(

nents/copy_of_vessel_strike_avoidance_february_2008.pdf] I hereby request all completed forms that h
ronic format, it must be released in that format upon request.

cover the Atlantic / Eastern seaboard exclusively. I am also requesting the equivalent annual reports (al

ass). The FPC is a contractor of the Bonneville Power Administration.

bruary 20, 2017 to the date of the search.

n's and Mr. Gregory's responses. I am making this request on behalf of Reveal News and the Center fo

' and June 19, 2017. This includes documents, records, and materials regarding: 1. extension or reopen

he following documents: A summary of all complaints of violence, threats, or harassment against fisherie

ic. I met the vessel in Spain September 28, 2003, sailed for the Southern Ocean to test CCAMLR seabir

/ICE (Pacific Northwest/Washington State) by any of the entities listed below: 1. Any and all representati

cing whales and/or sea turtles entangled and/or possibly entangled in fishing gear on the U.S. West Coa

alsiger – NOAA, Alaska Regional Administrator Robert D. Mecum – NOAA, Alaska Deputy Regional Adr

mmunications pertaining to the Project, all NOAA meeting notes and minutes regarding or discussing th

or expansions during the specified time periods: Northeast Canyons and Seamounts Marine National Mc

resent, excepting correspondence between the agency and PETA, the Animal Welfare Institute, and the

: US Canada Salmon Treaty. • All communications and documents from January 1, 2015 to date that we

ed to this request. 2. The processing notes for CoA Institute's FOIA request dated October 31, 2016, tra

er during the period from January 1, 2012 to the date of the agency's search for documents responsive

Account Shareholders Additionally please provide the average weight of red snapper caught by the comi

plitude, and date for all commercial vessels sailing from Atlantic ports for as far back as data is available.

effort to influence legislation or executive action, including indirect or grassroots lobbying. 2) All WPRFM

sh person identified, documents sufficient to identify the individual's employment status, including but not

and a general ledger, in the greatest level of detail available without need for redaction. I would like this i

regarding the Lacey Act Reward Fund and/ or the Lacey Act Reward Account (hereinafter referred to as

s relating to the facts surrounding the Stranding, including how the event was discovered, the condition c

representative, or agent of the U.S. Department of Commerce, the National Marine Fisheries Service or NOAA

ten notes, or communications through any other media—sent or received by the following individuals for

ten notes, or communications through any other media—sent or received by any and all NOAA employe

sharks in the Gulf of Mexico reef fish fishery (bottom longline and vertical line) and the Southeastern Atla

sh fishery (bottom longline and vertical line) and the Southeastern Atlantic snapper-grouper fishery (bottc

and shark bottom longline fisheries. 2. Logbook data related to shark bycatch, by species, in the HMS s

l. Any reports, memoranda, correspondence, or other documents (including electronic mail messages) c

3A") section 7 consultations (16 U.S.C. § 1536) that have been initiated or proposed, including Biological

ling through grading, construction of buildings, roads, parking lots, etc.) in any Special Flood Hazard Are

l Assessments, Biological Evaluations, or informal consultations, pertaining to the implementation of the

s (<http://himonkseal.wix.com/himonkseal>) the following message..." 2 "I will attempt to contac

ulatory Costs," or the April 5, 2017 Office of Management and Budget (OMB) guidance entitled, "Implem

under the Marine Mammal Protection Act ("MMPA") incidental to anthropogenic activities in Cook Inlet.

cies discarded dead (up to 10 per year/species) (Prioritizing images of sea turtles and marine mammal

rials used to formulate a bid request or RFP for the contractors handling the MRIP, including but not limi

Fish Conservancy only requests records described in this paragraph that were created or obtained after

----- Under the Freedom of Information Act I wo

January 1, 2006 to present.

b)(2) of the Endangered Species Act, Docket No. FWS-R9-ES-2011-0104-0026.

terms of the E-FOIA Amendments of 1996, Section 5, if a document exists in electronic format, it must be made available in the expected transfers will be made.

; emails, inter-agency communications, etc. that may pertain to my request.

of the requests. Further, I request that these files be sent in any digital formats in which they exist (PDF, etc.). 1. All Insurance Certificates or any other documents identifying the liability insurance carrier or insurance policy (including but not limited to "Trustees"), as well as all information generated by the Trustees as part of the 2008, 2009 and any other

studies conducted at Mississippi Canyon 20 in the Gulf of Mexico

1. All records, but not limited to, any and all complaints submitted to the Monterey office of National Marine Sanctuaries and the California Marine Sanctuary Foundation (<http://www.californiamarine.org>) regarding air exposure 3 - The environmental impact analysis report of the MTBE air release.

2. All records, but not limited to, photographs, correspondence, documents, including email communication, related to every periodic report submitted to the final comments. Please include communications between the Office of the Secretary of the California Department of Water Resources and the New York State Department of Environmental Conservation regarding Hudson River fish using model emulation, Science of the Total Environment 557-558:489-501 (July 2007) regarding the Columbia River from river mile 0 to river mile 146--i.e., below the Bonneville Dam. The "Willamette River" project, for any storm occurring on March 13, 2017 or March 13-14, 2017. 2. Any records about a realization of a project that was discussed to have started around November 2016 and the actual date of hire was advertised. 2. Documents, but not limited to, contracts associated with the National Weather Service's collective bargaining with the National Weather Service Core Teams; a copy of which is attached.

3. All records, but not limited to, social media accounts. 2. Any documents or materials, including but not limited to, guides, manuals, handbooks, etc. that pertain to the following subjects: 1. The reasons for the National Energy with Weather Systems project, 2. The future direction of the NEWS project, 3. Plans for the Clean Air Act endangerment analysis the EPA had been required to undertake in response to the Dept. of Commerce, National Oceanic and Atmospheric Administration Pub date: [1971?] NOAA Center for Global Change Science

1. All records, but not limited to, "embargoed until" and "press conference" and "press briefing" records, but not limited to, public communication about scientific research or findings; 2) all questionnaires or other solicitations, but not limited to, instructing NOAA staff within the Office of Communications to remove specific information, documents, etc. from the Attorney General, Office of Legal Counsel, from John Leshy, Solicitor, Department of the Interior, James Hansen's ("NOAA") Unified Messaging System (i.e., NOAA's Google-hosted agency e-mail platform). According to

1. All records, but not limited to, agreements, oral or written, having to do with loyalty, allegiance, or similar concepts, made to the President during the Department of the Interior's public comment period for Executive Order 13792 for Marine National System of Islands (MNSI) dealing with greenhouse gas emissions mitigation, adaptation and finance starting in the year 2016 (Hawaii 2/26/2016 to 8/26/2016 Pacific Remote Islands 3/25/2014 to 9/25/2014 Marianas Trench 7/06/2014 to 10/06/2014) such directives or guidance issued internally by NOAA or issued to NOAA by the White House or any other

complaint filed by Thomas Smith (EEO Appeal No. 0120130553, Agency No. 54-2009-00092).

2. All records, but not limited to, correspondence, drafts, sent, received, and/or maintained by the EEO Counselor(s) for any and all EEO

1 memo: 0096-DE-3, 0096-DE-4 and 0095-MAP-3. It also includes copies of any emails regarding the se

ing the Cheniere Ronquille Barrier Island Coastal Restoration Project FED NO. BA-76 and the pipeline sp

G133E12CQ0021 Task Order 0003 awarded to I.M. Systems Group, Inc. (IMSG).

n requesting NOAA FOIA to provide me with the management follow up records and the closing records
Order No. 13792, 82 F.R. 20429 (Apr. 26, 2017), "Review of Designations Under the Antiquities Act" (S
other global temperature datasets for both NOAA's in-house dataset improvements and monthly press r
any and all documents and com_munications which refer or relate to potentially placing Thomas E. Smil

lowing entities concerning industry funding for the Northeast Multispecies Fishery's At-Sea Monitor Prog
r GARO. The time period for this request is January 1, 2014 to the present.² Please restrict your search
S relied upon in the Technical Guidance, including scientific documents, studies, and reports. 2. Technic
merce and between the DOC and external agencies.

anted 12-month finding with respect to the Queen conch. This request includes any documents, writings

uest), including · but not limited to all written comments, as well as all communications with nonq
See attached for full request and fee waiver request.

gnment. 3. All records regarding John Yates and/or Sandy Yates including without limitation the investige

me to the agents names as (b)(7)(C) vice non-responsive and catch info as (b)(4).

nchus mykiss (i.e., that anadromous form of the species listed as endangered under the federal Endang

documents, or briefing documents that discuss summer flounder and New Jersey's 2017 recreational se
from June 1, 2017 to present.

ments, or informal consultations, pertaining to the implementation of the National Flood Insurance Prog
FY 2018-2022 Office of Law Enforcement Priorities (Draft) ("Report"): all records used, considered or re
an HMMA/HMAR volunteers and other members of the public - location and date; + All communications
r reference, this incident has been the subject of a Miami Herald article, in which you were quoted, at th

of Reclamation to meet the demands of the Sacramento River Settlement Contracts from 2013 to the p
io Juan Mayol (attached). This request includes but is not limited to: 1. Any and all communications by a

< Inlet General Permit for Oil and Gas Production and Development Facilities ("General Permit")), and 2.
it exists in electronic format, it must be released in that format upon request.

s – which pertain to the following vessel conditions on board the Hawaii-based and American Samoa-ba

l of malathion under the ESA; 3. All records mentioning, including, and/or referencing the draft and/or fin

ave been sent to NMFS, including all regional offices, from January 1, 2017, to present. Further, I ask th
bout whale entanglements and/or ship strikes) for all other areas, such as the Pacific, Gulf of Mexico, all

r Investigative Reporting, a non-profit news media outlet in California, for an article about Keith Davis an
ing of the private recreational red snapper season; 2. how or whether this action would affect progress to
s observers in US fisheries observer programs that occurred in calendar year 2013, 2014, 2015, and 20
rd mitigation measures to be confirmed prior to entry into a CCAMLR Ross Sea experimental fishery. My

ves and employees of Smith & Lowney PLLC law firm of Seattle, Washington; 2. Any and all representat

ist.

ministrator Glenn G. Merrill – NOAA, Alaska Region Sustainable Fisheries Fish and Wi
ie Project, and any and all memoranda, agreements, notes, letters, and c01T espondences relating to or
nument (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

re sent to or received by any employee of the US Department of Justice and any representative of the U
cking number DOC-NOAA-2017-000169, and the NOAA Tasker memorandum regarding or related to th

to this request, specifically including (but not limited to): ☐ Emails, notes, and other correspondence betw
mercial sector and the average weight of red snapper caught by the recreational sector. This email addr

. I am also requesting a summary of all commercial fishing vessels that should include a count of those \

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-delir
the “Lacey Act Reward Fund” or “Fund”). In particular, I am requesting: a. Any and all documents regar

of the animals, any efforts made to assist the animals, and mortality data. 2. All records relating to any in
VA Fisheries, the U.S. Environmental Protection Agency, as well as documents or communications with:

the time period of April 17, 2017 through April 24, 2017: ☐ John F. Quinn ☐ E.F. “Terry” Stockwell III ☐
æes who attended the April 18–20, 2017 NEFMC meetings in their official capacity. The time period for th

entic 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
concerning any potential, contemplated, proposed, or completed Endangered Species Act (“ESA”) sectic

I Opinions, Biological Assessments, or informal consultations, or any study or analysis to determine if co
a. 2. Any reports, memoranda, correspondence, or other documents (including electronic mail message

National Flood Insurance Program (“NFIP”) by the Federal Emergency Management Agency (“FEMA”)
t Ms. Mian in person to resolve the situation amicably"

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
ted to the telephone survey operator and the dockside-intercept program; 4. All materials, programs, po

January 1, 2000. 2. Any correspondence with BOR concerning the Yakima Project, the YRBWEP, o
uld I

be released in that format upon request.

Excel, Word, etc.). Under the terms of the E-FOIA Amendments of 1996, Section 5, if a document exists
nce coverage for M. SLAYEN ("M. SLAYEN" shall refer to M. Slayen & Associates, Mor
ost-2009 avian egg injection work. 2. All information (including work plans, quality assurance plans, vali

/ Bay National Marine Sanctuary (via email, mail, fax, and phone) about wildlife being harassed or distur
rniamnsf.org/index.html) regarding the Monterey Bay National Marine Sanctuary. We are looking for corre

: evaluation by the National Oceanic and Atmospheric Administration of Louisiana's State and Local Coe
ommerce Department and the State Department between January 1, 2014 and February 2, 2015 about
2016), and as time permits, John Kern and Jay Field will organize and provide computer code to read th
ver" as used herein refers to the Willamette River from river mile 0 to river mile 28--i.e., below Will
r or conclusion by National Weather Service meteorologists on or before the afternoon of March 13, 201
d that this person, Michael Potochney, started on February 6, 2017. I don't believe this job vacancy was
ts that reveal the cost of the Vaisala radiosonde autolaunchers procured by the National Weather Servic
Weather Service Employees Organization, and that services are still being provided. It is unknown whet

ooks, policies, or presentations used to instruct or train Service personnel in the use of its public-facing 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 Act
al Library Call number: QC926.6 .I5 1971

quot; "press call" "press event" "press strategy" "presser"
s of information sent to Agency scientific staff that relate to (
; or webpages from any NOAA website. In this request, the term "records" means anything denoted by t
; Dorskind, General Counsel, National Oceanic and Atmospheric Administration, and Dinah Bear, Gene
ng to a March 2012 handbook, "[p]er the decision of NOAA General Counsel," communications through

lent, the Vice President, the Office of the President or the Office of the Vice President, or any individual v
National Monuments that are affected by Executive Orders 13792 and 13795." 82 Fed. Reg. 28827. Plea
20. It was negotiated by representatives of 196 parties at the 21st Conference of the Parties of the UNF
008 to 1/06/2009 Rose Atoll 7 /06/2008 to 1/06/2009 This should include, but is not limited to, copies of
er office. 2. Any memoranda, policies, rules, protocols, restrictions, directives, guidance, or other gu

EO complaints filed by, or on behalf of, Thomas Smith, against the Agency, including, but not limited to,

election and hiring for this position. I am also requesting copies of all emails between NOAA Workforce I

bill which occurred on 5 September 2016. This request is

for a resolution) for my complaint #17-0469-N. I have not been contacted by anyone in NOAA regarding Attachment B. Presidential Executive Orders conveying information to the public about global climate change, in the Physical

to communications
and modeling

materials, and

government

of Dale J. Jones, Jr., John Jones

Endangered Species

Reason; 2. Communications pertaining

Program ("NFIP") by the Federal Emergency Management Agency
referred to by
and reports related to Seal selection assessment
see following URL: <http://www.miamiherald.com>

present.
and between Tom Jackson, Research Fisheries Biologist

. All correspondence, electronic or written

used longline vessels and the

of biological evaluation of diaz

that these documents be sent to me in any digital format

inclusive, etc., for 2000 to present. Further, I ask

of fisheries observers.

oward rebuilding under the red snapper rebuilding plan; 3. how or when
2016, separated by: 1. Year; 2. Whether the complaint was initiated
/ time on board this vessel was from September 28, 200

lives and employees of Puget

discussing the Project, whether
- 12/31/16) Pacific Remote Islands Marine National Monument

is, and other correspondence.

IS Department of Justice related to the US Canada Salmon
his request. 3. The processing notes for CoA Institute's FOIA request dated October 31, 2016, tracking records
between and among "NOAA
records will be fine for the records

for
for the 10 years preceding
national serv

initiated format, please let
regarding the Fund's creation (including but not limited to the specific
investigation, whether conducted by NMFS or other

Any member of the White House and/or White House

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 limited to
of sharks, by species, in the Gulf of Mexico reef fish fishery (bottom longline and vertical line) and the Second
Updates to the National Bycatch Report. 2. Logbook data used to estimate shark bycatch, by species,
ship, by species, in the HMS

in 7 consultations (16 U.S.C. § 1536) that have been
consultation

has) submitted to NMFS by FEMA, the U.S.

request includes both records related to implementation generally

provided by NOAA: (

includes, including

where points, manuals or like materials used to train personnel

s in electronic format, it must be
retrieved from the files of Morris Slayen aka Morris Slayen, an insulation subcontractor
dated and unvalidated

provided by drones or unmanned aerial vehicles
correspondence sent or received between January 2014 and January 2015

under the National Environmental Policy Act of 1978 and the National
the Keystone XL pipeline project.
The data files and produce relevant inputs/assumptions/information for the
Lamette Falls. This report

7, that a winter storm was not likely to produce snow totals in northeastern cities in general, or in
Baltimore, Maryland, and thus not open to all qualified applicants
; estimated cost of installation per unit; and estimated cost of
the government contracting party

Twitter account
making process of the cancellation
information on the Wind Boundary Layer [WBL] or Atmospheric
GHG Endangerment

“media event” “media call” “

the use of the
General Counsel, Council on Environmental Quality, Re: Request for Opinion
Google Chat (or Google Hangouts) “will be conducted

working in the White House or the White House
Please provide the copies of the comments received by NOAA from the Department of
CCC in Paris and adopted by consensus on 12 December 2015.
memoranda from the NOAA Administrator or their

Agency Nos. 54-2015-00137, 54-2014-

Management, OPM and the

umber DOC-NOA

/ □ 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
utheastern Atlantic snapper-grouper fishery (bottom longline and vertical line). 3. Observer data regardi
cies, in the Gulf of Mexico reef fish fishery (bottom longline and vertical line) and the Southeastern Atlant
-grouper fisher

trie □ John Pappalardo □ Douglas Grout □ Peter T. Kendall □ Mark Godfory □ Thomas A. Nies □ Chris
r Hare □ Moira Kelly □ Carrie Nordeen

ng the bycatch of sharks, by species, in the Gulf of Mexico reef fish fishery (bottom longline and vertical
tic snapper-grouper fishery (bottom longline and vertical line) in the First Edition of the U.S. National Byc
y. 5. The number of vessels that have both a directed shark permit and a directed reef fish or directed si

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
napper-grouper permit in the Gulf of Mexico and Southeastern Atlantic. 6. The number of vessels that h:

oelke □ Jamie Cournane □ Rachel Feeney □ Lou Goodreau □ Demet Haksever □ Fiona Hogan □ Jon:

associated observer reports or characterizations of the f
o estimate shark bycatch, by species, in the Gulf of Mexico ree
ave both an incidental permit to land sharks and a directed reef fish

athon Peros □ Naresh Pradhan □ Rob

Lola Stith - NOAA Affiliate

From: Lola Stith - NOAA Affiliate
Sent: Monday, August 7, 2017 8:05 AM
To: Mark Graff - NOAA Federal
Subject: Re: DOC-NOAA-2017-001070
Attachments: M.Graff Ltr With Exhibits_051817.pdf

Good morning Mark - The requester response was uploaded into the Supporting Files section. I have also attached it here.

R/
Lola

On Thu, Aug 3, 2017 at 3:33 PM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

Hi Ana Liza,

(b)(5)

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

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

(b)(6) (C)

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--

Lola Stith
Contractor - The Ambit Group, LLC
NOAA Office of the Chief Information Officer (OCIO)
(c (b)(6)
lola.m.stith@noaa.gov

ECOLOGY LAW CENTER

P.O. BOX 1000
SANTA CRUZ, CALIFORNIA 95061
TELEPHONE (831) 454-8216
EMAIL: ECORIGHTS@EARTHLINK.NET

May 18, 2017

Mark Graff
NOAA FOIA Officer
Email: foia@noaa.gov

RE: *Ecological Rights Foundation FOIA Request: DOC-NOAA-2017-001070*

Mr. Graff,

This letter serves as the Ecological Rights Foundation's ("EcoRights") response to your May 16, 2017 email requesting additional information clarifying 1) how EcoRights "does not have a commercial interest in the requested records," and 2) how the requested records "are not an attempt to circumvent discovery" in pending litigation. Your email states that NOAA has tolled EcoRights' FOIA request pending a response to these requests.

As an initial matter, especially considering the agency has granted EcoRights' past fee waiver requests based on essentially the same information provided in the present request, we are concerned by what appears to be a continuing pattern and practice by NMFS in delaying FOIA responses.¹ This is not an unfounded concern. In March 2015, a U.S. District Court Judge in the Northern District of California granted EcoRights declaratory judgment against NMFS for "repeatedly and substantially" violating the FOIA time limits. Judge Conti called NMFS delays "troubling" and found that the agency "does not take the FOIA's deadlines seriously." *See* Exhibit B.

Following that decision, in a ruling granting EcoRights attorneys' fees, Judge William H. Orrick found that EcoRights' lawsuit "effectively and publicly disclosed NMFS's history of untimely responses and significant backlog" and "shed important light about the agency's non-compliance with its duty under FOIA," a situation Judge Conti repeatedly referred to as "clear, undisputed, and troubling."

Judge Orrick's decision also relates directly to your request for information regarding pending litigation and commercial interests, stating:

"[T]he plaintiff 'is indigent or a nonprofit public interest group, an award of attorney's fees furthers the FOIA policy of expanding access to government information.' The Ninth Circuit has instructed that, pursuant to the second and third factors, a court 'should generally award fees if the complainant's interest in the information sought was scholarly or journalistic or public-oriented,' but should not do so 'if his interest was of a frivolous or purely commercial nature.'

¹ Attached as Exhibit A are examples of letters signed by you where the agency determined that EcoRights "adequately addressed the statutory requirements for a waiver of fees."

Judge Orrick also rejected NMFS argument that the real purpose of the FOIA requests and lawsuits was to force the production of documents that plaintiffs could and did use in an Endangered Species Act lawsuit against Stanford University, where some of the FOIA production was in fact used on a motion to compel and on a motion for summary judgment in that case. NMFS unsuccessfully argued that use of the documents in the underlying litigation was a private commercial interest. Judge Orrick's decision is attached as Exhibit C.

As described in the request for fee waiver, EcoRights' FOIA request seeks documents the organization intends to use in a multi-faceted public advocacy campaign. The requested information is likely to illuminate how FEMA's NFIP impacts development in floodplains and critical habitat for endangered species, and the resource agencies' official positions on FEMA's legal obligation to engage in formal ESA consultations as part of the NFIP rulemaking process. EcoRights intends to inform the public of these issues through press releases, briefings in public meetings, correspondence to other public interest groups, and postings on their own or other groups' internet web sites and social media accounts.

As described in the fee waiver request, EcoRights has no commercial interest in the information requested. EcoRights seeks the information solely to elucidate FEMA's and NMFS's positions and efforts regarding Endangered Species Act obligations in NFIP implementation; to determine whether FEMA is complying with the requirements of the ESA in its implementation or amendment of the NFIP; to educate the public regarding FEMA's compliance or non-compliance with the ESA as it implements the NFIP; and to assist in EcoRights' efforts to advocate that the appropriate state, federal, or private entities take needed actions to protect California's floodplains and endangered species. EcoRights's interests clearly are not "frivolous" or of a "purely commercial nature."

The "controversial" nature of the ESA consultation documents sought here has also been acknowledged by a U.S. District Court. In her order denying FEMA's request to "claw back" certain communications between FEMA and NMFS, which the agency claimed were inadvertently produced, Magistrate Judge Donna M. Ryu found that "[o]n their faces, the letters seem to stake out each agency's official position on a controversial issue: namely, whether FEMA is legally obligated to engage in a section 7(a)(2) consultation with NMFS pursuant to the Endangered Species Act as part of FEMA's rulemaking process regarding the National Flood Insurance Program. FEMA says it is not legally obligated to do so; NMFS says that FEMA is. This does not appear to be predecisional, because the letters convey each agency's official policy to the other agency." *See* Exhibit D.

The fact that EcoRights has initiated litigation against FEMA has no bearing on the fee waiver analysis, and does not negate or in any way change the agency's obligations under FOIA. EcoRights has no financial interest in the information sought or any enforcement actions that may result from it. EcoRights's goal in urging enforcement of environmental laws is not for private financial gain, but to vindicate the larger public interest in compliance with environmental laws designed to protect endangered species and their habitats. EcoRights seeks no monetary damages or other private personal benefit—only environmental protection for the benefit of all.

EcoRights' request is in no way intended to "circumvent" discovery in any litigation. That claim would be particularly ironic considering the Federal Government has taken the position that EcoRights has no right to discovery in its Endangered Species Act lawsuit. Nevertheless, there simply is no

M. Graff
May 17, 2017

statutory prohibition on the use of FOIA as a discovery tool. Through Exemption 5, Congress has specifically preserved the important policies underlying discovery privileges (when they legitimately apply), and the Supreme Court has held that a FOIA requester's rights are not diminished by their status as a litigant. Numerous courts have addressed this issue, primarily in the context of awarding attorneys' fees to public interest groups that utilize FOIA for developing evidence to support public interest litigation and/or to advance broadly scoped public education and advocacy efforts. *E.g.*, *Sierra Club*, 75 F. Supp. 3d at 1144 (rejecting argument that attorneys' fees should be denied because Sierra Club intended to use FOIA documents in part to develop public interest litigation); *Hajro v. U.S. Citizenship and Immigration Services*, 900 F. Supp. 2d 1034, 1046-48 (N.D. Cal. 2012); *rev'd on other grounds*, 807 F.3d 1054 (9th Cir. 2015) (awarding fees to plaintiff using FOIA to obtain documents beneficial to client in immigration proceeding when lawsuit also established benefit of improved FOIA practices by agency found to have pattern and practice of FOIA violation); *Hernandez*, 2012 U.S. Dist. LEXIS 14290, *31-36 (awarding fees to plaintiff using FOIA to obtain documents beneficial to deportation case defense when documents shed light on agency immigration enforcement policy); *Windel v. United States*, 2006 WL 1036786, at *3 (D. Alaska Apr. 19, 2006) (awarding portion of requested fees, even though plaintiff's FOIA request "clearly implicated her own pecuniary interests" in obtaining documents for gender discrimination claim); *McCoy v. Federal Bureau of Prisons*, 2005 WL 1972600, at *2 (E.D. Ky. Aug. 16, 2005) (finding fee entitlement, even though plaintiff's FOIA request "served her personal interest in obtaining . . . evidence" for use in related tort litigation against government); *Jarno v. Dep't of Homeland Sec.*, 365 F. Supp. 2d 733, 740 (E.D. Va. 2005) (concluding that the plaintiff's interest in the requested documents "support[ed] an award of attorney's fees," despite his motivation to seek disclosure in order to "facilitate the fair adjudication of his political asylum claim").

I hope the above information satisfies your inquiry, that NMFS grants EcoRights' fee waiver request, and that the agency timely produces the requested information.

Best regards,



Fredric Evenson,
Attorney for Ecological Rights Foundation

Exhibit A



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

Via FOIAonline

May 17, 2017

Attn: Christopher Hudak
Environmental Advocates
208 Panoramic Way
Berkeley, CA 94704

Re: FOIA Request No. DOC-NOAA-2017-000087

Dear Ms. Hudak:

This letter is in response to your Freedom of Information Act (FOIA) request entered into FOIAonline on October 19, 2016, seeking the following records:

1. Any reports, memoranda, correspondence, or other documents (including electronic mail messages) concerning any Endangered Species Act (“ESA”) section 7 consultations (16 U.S.C. § 1536) that have been initiated or proposed, including Biological Opinions, Biological Assessments, or informal consultations, pertaining to the following Letters of Map Change (with Product ID Number and Effective Date) issued for properties in Monterey County, California by the Federal Emergency Management Agency (“FEMA”) through the National Flood Insurance Program (“NFIP”)

In order to determine whether your request qualifies for a fee waiver or reduction in fees, pursuant to 5 C.F.R. § 4.11(k) (2010), we must evaluate whether disclosure of the requested information is: 1) in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, and 2) not primarily in the commercial interest of the requester.

In determining whether your request meets the first fee waiver requirement, we considered the following factors.

- 1) Whether the subject of the requested records concerns the operations of activities of the Government.
- 2) Whether the disclosure is “Likely to contribute” to an understanding of Government operations or activities.
- 3) Whether disclosure of the requested information 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.
- 4) Where the disclosure is likely to contribute “significantly” to public understanding of Government operations or activities.

In determining whether your request meets the second fee waiver requirement, we considered the

following factors:

- 1) Whether the requester has a commercial interest that would be furthered by the requested disclosure.
- 2) Whether any identified commercial interests of the requester is sufficiently great, in comparison with the public interest in disclosure that disclosures are “primarily in the commercial interest of the requester.”

Based on the above criteria we have determined that you adequately addressed the statutory requirements for a waiver of fees in your October 19, 2016 submission. You have been granted a full waiver for the records requested. Please be advised however, granting this waiver does not automatically apply to future requests submitted by you or your organization. Requests for fee waivers are determined on a case-by-case basis for the records requested under statutory fee waiver requirements.

If you have any questions concerning the response to your fee waiver request, please call (301) 628-5658.

Sincerely,

/S/

Mr. Mark Graff
NOAA FOIA Officer



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

Via FOIAonline

5/17/2017

Attn: Christopher Hudak
Environmental Advocates
208 Panoramic Way
Berkley, CA 94704

Re: FOIA Request No. DOC-NOAA-2016-001479

Dear Mr. Hudak:

This letter is in response to your Freedom of Information Act (FOIA) request entered into FOIAonline on July 20, 2016, seeking the following records:

(A)ll requests set forth below are for documents generated on or after January 1, 2009 through the date that NMFS responds to this request. 1. Any reports, memoranda, correspondence, or other documents (including electronic mail messages) concerning any Endangered Species Act ("ESA") section 7 consultations (16 U.S.C. § 1536) that have been initiated or proposed, including Biological Opinions, Biological Assessments, or informal consultations, pertaining to the implementation of the National Flood Insurance Program ("NFIP") by the Federal Emergency Management Agency ("FEMA") at the California statewide level or relating to any of the following California counties and/or towns/cities/unincorporated territories therein: Humboldt, Santa Cruz, Monterey, Ventura, Santa Barbara, San Luis Obispo, San Mateo, Marin, and Sonoma Counties. 2. Any reports, memoranda, correspondence, or other documents (including electronic mail messages) concerning any ESA section 10 permits that have been applied for or issued, pertaining to the implementation of the NFIP in California at any location within any of the following California counties and/or towns/cities/unincorporated territories therein: Humboldt, Santa Cruz, Monterey, Ventura, Santa Barbara, San Luis Obispo, San Mateo, Marin, and Sonoma Counties. 3. Any reports, memoranda, correspondence, or other documents (including electronic mail messages) submitted to NMFS by FEMA, U.S. Fish and Wildlife Service ("USFWS"), the California Department of Fish and Wildlife, or any other State or Federal agency or department pertaining to how implementation of the NFIP in California may affect species listed as threatened or endangered under the federal Endangered Species Act ("ESA") or critical habitat for such species located within the following California counties: Humboldt, Santa Cruz, Monterey, Ventura, Santa Barbara, San Luis Obispo, San Mateo, Marin, and Sonoma Counties.

In order to determine whether your request qualifies for a fee waiver or reduction in fees, pursuant to 5 C.F.R. § 4.11(k) (2010), we must evaluate whether disclosure of the requested information is: 1) in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, and 2) not primarily in the commercial interest of the requester.

In determining whether your request meets the first fee waiver requirement, we considered the following factors.

- 1) Whether the subject of the requested records concerns the operations of activities of the Government.
- 2) Whether the disclosure is “Likely to contribute” to an understanding of Government operations or activities.
- 3) Whether disclosure of the requested information 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.
- 4) Where the disclosure is likely to contribute “significantly” to public understanding of Government operations or activities.

In determining whether your request meets the second fee waiver requirement, we considered the following factors:

- 1) Whether the requester has a commercial interest that would be furthered by the requested disclosure.
- 2) Whether any identified commercial interests of the requester is sufficiently great, in comparison with the public interest in disclosure that disclosures are “primarily in the commercial interest of the requester.”

Based on the above criteria we have determined that you adequately addressed the statutory requirements for a waiver of fees in your July 20, 2016 submission. You have been granted a full waiver for the records requested. This supersedes the partial grant of your prior request for a waiver of fees. Please be advised however, granting this waiver does not automatically apply to future requests submitted by you or your organization. Requests for fee waivers are determined on a case-by-case basis for the records requested under statutory fee waiver requirements.

If you have any questions concerning the response to your fee waiver request, please call (301) 628-5658.

Sincerely,

/S/

Mr. Mark Graff
NOAA FOIA Officer

Exhibit B

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

)	Case No. 14-1130 SC
)	
OUR CHILDREN'S EARTH FOUNDATION,)	ORDER GRANTING IN PART AND
et al.,)	DENYING IN PART MOTIONS FOR
)	<u>SUMMARY JUDGMENT</u>
Plaintiffs,)	
)	
v.)	
)	
NATIONAL MARINE FISHERIES)	
SERVICE, et al.,)	
)	
Defendants.)	
)	
)	
)	

I. INTRODUCTION

Now before the Court are cross-motions for partial summary judgment seeking to resolve Freedom of Information Act ("FOIA") claims in this environmental and administrative law case. ECF Nos. 34 ("Mot."), 39 ("Opp'n & Cross-Mot."). Plaintiffs are two groups of environmental advocates seeking summary judgment on their claims that Defendants,¹ the National Marine Fisheries Service (the

¹ The operative complaint, ECF No. 20 ("Compl.") names several other defendants including Penny Pritzker, Secretary of Commerce, Rodney McInnis, Regional Administrator of the Fisheries Service, and Sally Jewell, Secretary of the Interior. Nevertheless, because this motion solely concerns FOIA claims against the Fisheries Service and the Fish and Wildlife Service, these defendants' actions are not at issue in the motion. As a result, the Court will treat this order as though there were only two defendants, the Fisheries Service and the Fish and Wildlife Service.

1 "Fisheries Service") and the Fish and Wildlife Service ("FWS"),
2 failed to comply with the FOIA in responding to Plaintiffs'
3 requests for documents. Additionally, Plaintiffs allege that the
4 Fisheries Service has a pattern and practice of such failures.
5 Defendants disagree and have moved for summary judgment in their
6 own right, arguing they have complied with the law.

7 The motions are fully briefed, ECF Nos. 47 ("Pls.' Opp'n &
8 Reply"), 49 ("Gov't Reply"), and appropriate for resolution without
9 oral argument under Civil Local Rule 7-1(b). For the reasons set
10 forth below the motions are GRANTED IN PART and DENIED IN PART.

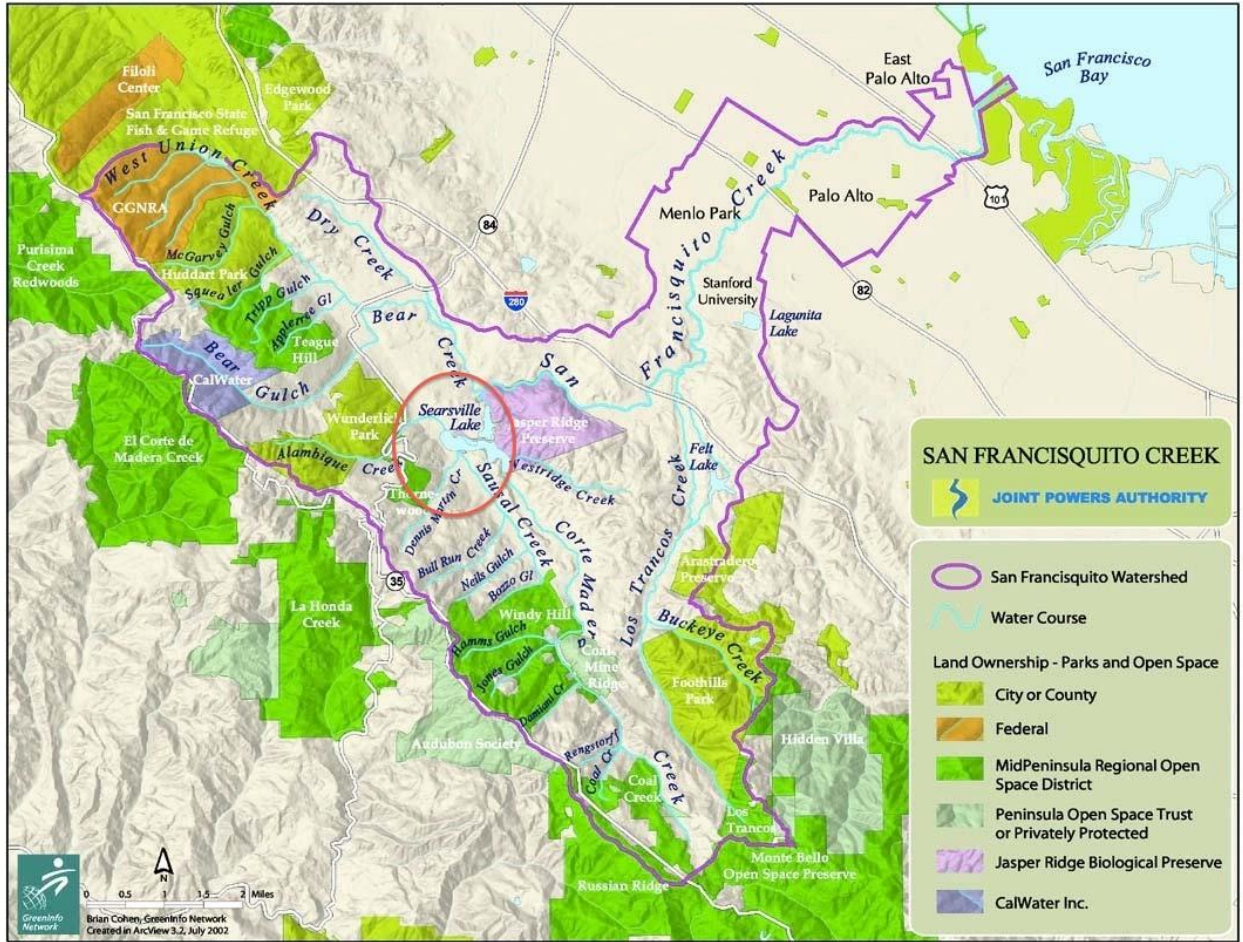
11

12 **II. BACKGROUND**

13 Plaintiffs have two intertwined concerns in this case: the
14 fate of a fish protected by the Endangered Species Act, the Central
15 California Coast Steelhead, and the activities of Stanford
16 University, which they believe are adversely impacting Steelhead
17 population and habitat.

18 The Steelhead is a species of trout with a habitat stretching
19 along the California coast from Sonoma County to Santa Cruz County.
20 See NOAA Fisheries, West Coast Region, Central California Coast
21 Steelhead, [http://www.westcoast.fisheries.noaa.gov/
22 protected_species/salmon_steelhead/salmon_and_steelhead_listings/
23 steelhead/central_california_coast/Central%20California%20Coast%20S
24 teelhead.html](http://www.westcoast.fisheries.noaa.gov/protected_species/salmon_steelhead/salmon_and_steelhead_listings/steelhead/central_california_coast/Central%20California%20Coast%20Steelhead.html) (last accessed March 27, 2015). Steelheads spend
25 most of their adult life in the ocean, but they spawn and raise
26 young in freshwater rivers or streams like the San Francisquito
27 Creek, which flows from the Santa Cruz Mountains above Menlo Park,
28 California into the San Francisco Bay. San Francisquito Creek and

its watershed are outlined in purple in this map:



United States District Court
For the Northern District of California

Wikipedia, San Francisquito Creek, http://en.wikipedia.org/wiki/San_Francisquito_Creek (last accessed March 27, 2015).

Circled in orange in the left-center of the above map is Searsville Lake, a man-made reservoir formed by the Searsville Dam. Stanford owns the dam, which was built in 1892, as well as the lake and other related water diversions and infrastructure, which it refers to collectively as the "Lake Water System." Stanford uses the Lake Water System to provide non-potable water for its campus. Plaintiffs believe the Lake Water System adversely affects the Steelhead by reducing water flows in San Francisquito Creek and its

1 tributaries and cutting the Steelhead off from access to upstream
2 spawning habitat.

3 In a case pending before Magistrate Judge Laporte, Plaintiffs
4 seek to enjoin Stanford's activities. See Our Children's Earth
5 Foundation v. Stanford Univ., No. 13-cv-00402-EDL (N.D. Cal.). In
6 this action, Plaintiffs take a different tack, challenging the
7 Fisheries Service's issuance of a biological opinion to the U.S.
8 Army Corps of Engineers assessing the impact of Stanford's planned
9 upgrades to two water diversion facilities dubbed (inaptly in
10 Plaintiffs' view) the "Steelhead Habitat Enhancement Project."
11 Specifically, Plaintiffs believe the Fisheries Service failed to
12 assess all the appropriate effects of the Project in issuing its
13 report. See 50 C.F.R. § 402.02. Additionally, Plaintiffs argue
14 that the biological opinion's authorization of the "take" (a term
15 of art in the Endangered Species Act) of the Steelhead in the
16 course of the project was also improper. See 16 U.S.C. § 1538
17 (defining "take" within the meaning of the Endangered Species Act).
18 Plaintiffs challenge both actions under Section 706(2) (a) of the
19 Administrative Procedure Act, which prohibits arbitrary and
20 capricious agency actions. See 5 U.S.C. § 706(2) (a).

21 While this allegedly arbitrary and capricious biological
22 opinion forms the gravamen of Plaintiffs' complaint, these motions
23 involve only two related FOIA issues. The first concerns the
24 Fisheries Service and the FWS' allegedly tardy and incomplete
25 response to four FOIA requests Plaintiffs made regarding four
26 topics: (1) the Steelhead and two other endangered species with
27 habitat in the San Francisquito Creek watershed, (2) the Fisheries
28 Service's biological opinion, (3) Stanford's Steelhead Habitat

1 Enhancement Project, and (4) the rest of the Lake Water System.
2 The second dispute concerns whether the Fisheries Service has a
3 pattern and practice of such tardy and incomplete responses and, if
4 so, whether the Service should be enjoined from continuing that
5 practice. The parties have both moved for summary judgment.

6
7 **III. LEGAL STANDARD**

8 Entry of summary judgment is proper "if the movant shows that
9 there is no genuine dispute as to any material fact and the movant
10 is entitled to judgment as a matter of law." Fed. R. Civ. P.
11 56(a). Summary judgment should be granted if the evidence would
12 require a directed verdict for the moving party. Anderson v.
13 Liberty Lobby, Inc., 477 U.S. 242, 251 (1986). "A moving party
14 without the ultimate burden of persuasion at trial—usually, but not
15 always, a defendant—has both the initial burden of production and
16 the ultimate burden of persuasion on a motion for summary
17 judgment." Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Cos.,
18 Inc., 210 F.3d 1099, 1102 (9th Cir. 2000).

19 "In order to carry its burden of production, the moving party
20 must either produce evidence negating an essential element of the
21 nonmoving party's claim or defense or show that the nonmoving party
22 does not have enough evidence of an essential element to carry its
23 ultimate burden of persuasion at trial." Id. "In order to carry
24 its ultimate burden of persuasion on the motion, the moving party
25 must persuade the court that there is no genuine issue of material
26 fact." Id. "The evidence of the nonmovant is to be believed, and
27 all justifiable inferences are to be drawn in his favor." Anderson,
28 477 U.S. at 255.

1 FOIA cases are typically decided on motions for summary
2 judgment. Yonemoto v. Dept. of Veterans Affairs, 686 F.3d 681, 688
3 (9th Cir. 2011) as amended (Jan. 18, 2012). "To carry their
4 summary judgment burden, agencies are typically required to submit
5 an index and 'detailed public affidavits' that, together, 'identify
6 the documents withheld, the FOIA exemptions claimed, and a
7 particularized explanation of why each document falls within the
8 claimed exemption.'" Id. (quoting Lion Raisins v. Dep't of Agric.,
9 354 F.3d 1072, 1082 (9th Cir. 2004) (alterations in original).
10 These submissions are typically referred to as a Vaughn index,
11 after Vaughn v. Rosen, 484 F.2d 820, 823-25 (D.C. Cir. 1973), and
12 they must be "from 'affiants who are knowledgeable about the
13 information sought' and 'detailed enough to allow court[s] to make
14 an independent assessment of the government's claim of exemption."
15 Yonemoto, 686 F.3d at 688 (internal alterations omitted) (quoting
16 Lion Raisins, 354 F.3d at 1079).

17

18 **IV. DISCUSSION**

19 The parties' motions concern four FOIA requests. Plaintiffs'
20 first request sought, among other things, documents related to
21 impacts on the Steelhead and two other species in the San
22 Francisquito Creek watershed stemming from Stanford's Lake Water
23 System. Second, Plaintiffs sought documents related to Stanford's
24 efforts to mitigate the impact of the Searsville Dam on the
25 Steelhead pending the Fisheries Service's final action on
26 Endangered Species Act authorization for Stanford's activities. In
27 their third request, Plaintiffs requested documents responsive to
28 their first request coming into the Fisheries Service's possession

1 after the date of that request as well as some additional
2 documents. Finally, Plaintiffs' fourth request targeted documents
3 relating to the search cutoff dates for Plaintiffs' first two
4 requests and documents pertaining to the Fisheries Service's
5 general policy toward search cutoff dates for FOIA searches.

6 Now the parties have moved for summary judgment to resolve
7 claims stemming from these requests and the Fisheries Service's and
8 FWS' response to them. Plaintiffs make three basic arguments.
9 First, Plaintiffs contend the Fisheries Service either failed to
10 adequately describe its searches or conducted an inadequate search
11 and withheld documents without sufficient justification. Second,
12 Plaintiffs argue they are entitled to declaratory judgment that the
13 Fisheries Service violated FOIA's deadlines in responding to these
14 four requests and in three related internal appeals, and FWS
15 violated FOIA's deadlines in responding to a referral of documents
16 from the Fisheries Service. Third, Plaintiffs argue these alleged
17 violations of the FOIA are a part of the Fisheries Service's
18 pattern and practice of non-compliance with the FOIA's mandates,
19 and ask the Court to issue an injunction ordering the Fisheries
20 Service to comply with the FOIA in the future. The Government
21 disagrees with these allegations, and urges the Court to decline to
22 enter declaratory or injunctive relief and instead enter summary
23 judgment in its favor.

24 The Court will address the adequacy of the search and improper
25 withholding arguments first, before turning to Plaintiffs' requests
26 for declaratory or injunctive relief.

27 ///

28 ///

1 **A. Adequacy of the Search**

2 First, Plaintiffs challenge the adequacy of the Fisheries
3 Service's search for records responsive to their first and third
4 FOIA requests.

5 To comply with the FOIA, an agency must conduct a "'search
6 reasonably calculated to uncover all relevant documents.'" Zemansky v. EPA, 767 F.2d 569, 571 (9th Cir. 1985) (quoting
7 Weisberg v. U.S. Dep't of Justice, 745 F.2d 1476, 1485 (D.C. Cir.
8 1984)). In so doing, "the issue to be resolved is not whether
9 there might exist any other documents possibly responsive to the
10 request, but whether the search for those documents was adequate."
11 Id. (quotation omitted) (emphasis in original).
12

13 To prevail on a motion for summary judgment, the agency must
14 demonstrate "'beyond material doubt . . . that it has conducted a
15 search reasonably calculated to uncover all relevant documents.'" S. Yuba River Citizens League v. Nat'l Marine Fisheries Serv., No.
16 CIV. S-06-2845 LKK/JFM, 2008 WL 2523819, at *11 (E.D. Cal. June 20,
17 2008) (quoting Zemansky, 767 F.2d at 571). In so doing, the agency
18 may rely on "reasonably detailed, non-conclusory affidavits and
19 declarations submitted in good faith," id., describing "what
20 records were searched, by whom, and through what process."
21 Lawyers' Comm. for Civil Rights v. U.S. Dep't of the Treasury, 534
22 F. Supp. 2d 1126, 1131 (N.D. Cal. 2008) (citing Steinberg v. U.S.
23 Dep't of Justice, 23 F.3d 548, 552 (D.C. Cir. 1994)). The purpose
24 of this requirement is "to afford a FOIA requester an opportunity
25 to challenge the adequacy of the search and to allow the district
26 court to determine if the search was adequate in order to grant
27
28

1 summary judgment." Oglesby v. U.S. Dep't of Army, 920 F.2d 57, 68
2 (D.C. Cir. 1990).

3 To comply with this requirement, the Fisheries Service
4 submitted a declaration from Gary Stern, the Branch Chief of the
5 Fisheries Service's San Francisco Bay Branch detailing its searches
6 in response to Plaintiffs' first and third FOIA requests. ECF No.
7 41 ("Stern Decl."). After reviewing Plaintiffs' first request,
8 Stern "tasked all [Fisheries Service] staff within the San
9 Francisco Bay Branch and administrative support staff within the
10 [North-Central Coast Office] with searching for responsive
11 documents, because the San Francisco Bay Branch of the [North-
12 Central Coast Office] were [sic] the only [Fisheries Service]
13 branch and office in the West Coast Region that would be in
14 possession of any records sought by Plaintiffs" Id. at ¶
15 5; see also id. at ¶ 9 (making similar conclusions and giving
16 similar instructions regarding Plaintiffs' third FOIA request).
17 The searches were limited to these offices because the Fisheries
18 Service's work with Stanford, the Searsville Dam, and the San
19 Francisquito Creek all fell within the San Francisco Bay Branch's
20 geographic area of responsibility. Stern Decl. at ¶¶ 5, 9.

21 In response to Plaintiffs' first FOIA request, the Fisheries
22 Service staff and North-Central Coast Office administrative support
23 staff searched hard copy and electronic files including emails,
24 office files, and "relevant project folders" for responsive
25 records. Id. at ¶ 6. In describing these files, Stern provides
26 parenthetical examples, pointing, for example, to the project file
27 for the Fisheries Service's Endangered Species Act consultations
28 with the Army Corps of Engineers for Stanford's Steelhead Habitat

1 Enhancement Project. Id. Relevant project files were identified
2 using a database, and then, having retrieved the corresponding
3 paper records, reviewed by Stern and other Fisheries Service
4 biologists. Id. at ¶ 8. Fisheries Service staff took six weeks
5 (averaging 15 hours per week) to conduct the search and compile the
6 relevant records. Id. at ¶ 7. Records scanning and index
7 preparation took approximately five weeks (averaging 20 hours per
8 week). Id. Finally, Stern and his team reviewed the records over
9 the course of approximately one week, reviewing for an average of
10 two hours per day. Id. Once completed, the review yielded 1,051
11 documents (36,009 pages). Id.

12 The details of the Fisheries Service's search for Plaintiffs'
13 third FOIA request are scarcer. Stern describes the search in
14 similar terms, again stating the staff searched hard copy and
15 electronic files including emails, office files, and "relevant
16 project folders," and providing parenthetical examples. Id. at ¶
17 10. However, unlike his description of the search in response to
18 Plaintiffs' first request, Stern provides no detail on how
19 potentially relevant documents were reviewed, by whom they were
20 reviewed, and how "relevant project files" were identified.
21 Puzzlingly, unlike his description of the first search, Stern does
22 aver that "[t]he staff at the [North-Central Coast Office] searched
23 in all areas of its office where responsive documents could
24 reasonably be expected to be found." Id. at ¶ 10. In any event,
25 the search identified just one responsive document that had not
26 already been produced. Id. at ¶ 13.

27 Even if Stern's declaration were sufficiently detailed, the
28 Fisheries Service has not carried its burden of showing "beyond a

1 material doubt, and viewing the facts in the light most favorable
2 to the requester, that it 'has conducted a search reasonably
3 calculated to uncover all relevant documents.'" See Lawyers'
4 Comm., 534 F. Supp. 2d at 1131 (quoting Steinberg v. U.S. Dep't of
5 Justice, 23 F.3d 548, 551 (D.C. Cir. 1994)). As Plaintiffs point
6 out, an email chain (involving Stern), report, and other documents
7 produced in Plaintiffs' parallel litigation against Stanford
8 demonstrate that the Fisheries Service's Office of Law Enforcement
9 in Monterey, California had an open investigation between at least
10 2009 and 2013 into the Endangered Species Act "take" of the
11 Steelhead by the Searsville Dam. See Costa Reply Decl. Exs. 3, 33.
12 Documents from that investigation clearly fall within the scope of
13 Plaintiffs' first and third FOIA requests, which sought, among
14 other things, any documents in the Fisheries Service's possession
15 related to the impact of the Searsville Dam on the Steelhead. ECF
16 No. 43 ("Malabanan Decl.") at ¶ 12. Yet it is undisputed that
17 Plaintiffs' requests were not forwarded to the Office of Law
18 Enforcement and no searches took place there. See id. at ¶ 13.

19 Neither Stern, the FOIA coordinator for the Fisheries
20 Service's West Coast Region, Ana Liza Malabanan, nor the Fisheries
21 Service discusses this issue, even though Plaintiffs pressed it in
22 their opening brief. See Mot. at 18-19. Ignoring this issue is
23 particularly puzzling given that Stern personally exchanged emails
24 regarding the investigation and suggested a telephone conference to
25 discuss it. See Costa Reply Decl. Ex. 33. As a result, Stern and
26 the Fisheries service "had reason to know that [the Office of Law
27 Enforcement] . . . contain[ed] responsive documents," and was thus
28 "obligated under FOIA to search barring an undue burden."

1 Valencia-Lucena v. U.S. Coast Guard, 180 F.3d 321, 327 (D.C. Cir.
2 1999). This renders the Fisheries Service's searches in response
3 to Plaintiffs' first and third requests inadequate. Accordingly,
4 the Fisheries Service's motion is DENIED as to the adequacy of the
5 searches for the first and third requests and Plaintiffs' motion is
6 GRANTED as to the same. Because Plaintiffs do not challenge the
7 adequacy of Defendants' second and fourth searches, both of which
8 are supported by affidavits establishing the reasonability of the
9 searches conducted, summary judgment is GRANTED in favor of the
10 defendants on those searches.

11 **B. FOIA Exemptions**

12 The FOIA's goal is to "ensure an informed citizenry, vital to
13 the functioning of a democratic society, needed to check against
14 corruption and to hold the governors accountable to the governed."
15 NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 242 (1978). While
16 this goal reflects a general philosophy of full agency disclosure,
17 John Doe Agency v. John Doe Corp., 493 U.S. 146, 152 (1989), FOIA
18 incorporates nine exemptions, which reflect the need to balance the
19 public's interest full disclosure against the sometimes legitimate
20 need for the Government to maintain secrecy. See 5 U.S.C. §
21 552(b)(1)-(9). Because, "[t]hese limited exceptions do not obscure
22 the basic policy that disclosure, not secrecy, is the dominant
23 objective of the Act," Dep't of Interior v. Klamath Water Users
24 Protective Ass'n, 532 U.S. 1, 7-8 (2001) (citation omitted),
25 exemptions are to be narrowly construed, and "information not
26 falling within any of the exemptions has to be disclosed"
27 Yonemoto, 686 F.3d at 688.

28

1 The Court finds the record insufficient to decide whether the
2 Fisheries Service's withholdings are appropriate under Exemptions
3 b(6) or b(5). As a result, the Court orders further submissions
4 from the agency and will hold the motions for summary judgment as
5 to the agency's withholdings in abeyance until the record is
6 supplemented.

7 **1. Exemption (b) (6)**

8 First, Plaintiffs challenge the redaction of the names of two
9 Fisheries Service investigators from an email chain under FOIA
10 Exemption (b) (6), which exempts from disclosure "personnel and
11 medical files and similar files the disclosure of which would
12 constitute a clearly unwarranted invasion of personal
13 privacy" 5 U.S.C. § 552(b) (6). The email chain at issue,
14 Exhibit 3 to the Costa Reply Declaration, is the same email
15 discussed above between Gary Stern and individuals at the Fisheries
16 Service's Office of Law Enforcement regarding the Office's pending
17 investigation of Endangered Species Act "takes" of the Steelhead at
18 the Searsville Dam. While Stern's name and several others appear
19 unredacted in the email chain, the Fisheries Service redacted the
20 names and contact information for two individuals in its Office of
21 Law Enforcement, stating in its Vaughn Index that the "withheld
22 information consists of the names and contact information of NOAA
23 law enforcement officers. The withheld information constitutes
24 personal information that would constitute an unwarranted invasion
25 of personal privacy in which no public interest has been
26 identified." Malabanan Decl. Ex. 1 ("Vaughn Index") at Record No.
27 164.

28

1 Under Exemption (b) (6), the Court must first determine whether
2 the email chain qualifies as a "similar file[]" within the meaning
3 of the exemption. Forest Serv. Emp. for Envt'l Ethics v. U.S.
4 Forest Serv., 524 F.3d 1021, 1024 (9th Cir. 2008). The phrase
5 "similar files" is to be construed broadly, and Congress intended
6 it to cover "detailed Government records on an individual which can
7 be identified as applying to that individual." U.S. Dep't of State
8 v. Wash. Post Co., 456 U.S. 595, 602 (1982). If the emails qualify
9 as "similar files," then two steps remain. First, the Court must
10 determine if "disclosure implicates a personal privacy interest
11 that is 'nontrivial'" Yonemoto, 686 F.3d at 693 (quoting
12 Forest Serv., 524 F.3d at 1026). If the agency fails to establish
13 that disclosure "would lead to the invasion of a non-trivial
14 personal privacy interest protected by Exemption 6, the FOIA
15 demands disclosure, without regard to any showing of public
16 interest." Id. at 694 (collecting cases). If, on the other hand,
17 the agency meets its burden, the Court then engages in a balancing
18 approach, asking whether the privacy interests the agency
19 identified outweigh the public's interest in the disclosure of
20 information that "'would shed light on an agency's performance of
21 its statutory duties or otherwise let citizens know what their
22 government is up to.'" Id. Nevertheless, if the agency's Vaughn
23 index fails to provide "a particularized explanation of why each
24 document falls within the claimed exemption," the court cannot
25 usually make a categorical judgment of the privacy interests at
26 issue. Id.

27 Here the agency has failed to provide a particularized
28 explanation of what non-trivial privacy interest would be

1 implicated if these individuals' names and contact information are
2 disclosed. True, as the Fisheries Service points out (in its
3 brief, not its declarations or Vaughn index), Plaintiffs have
4 stated they will publicize the information they receive. See Gov't
5 Reply at 8 (citing Costa Decl. Ex. 1, at 7-8). However, unlike
6 other cases in which courts have found privacy interests in
7 individuals' names or contact information, there is no reason aside
8 from speculation for concluding these individuals will be subjected
9 to "harassment," "embarrassment," "stigma," or other negative
10 consequences if their associations with this email are publicly
11 revealed. See Forest Serv., 524 F.3d at 1026; see also U.S. Dep't
12 of State v. Ray, 502 U.S. 164, 176 (1991) (concluding that
13 releasing the identities of individuals cooperating with a State
14 Department investigation "could subject them or their families to
15 embarrassment in their social and community relationships");
16 Prudential Locations LLC v. U.S. Dep't of Hous. & Urban Dev., 739
17 F.3d 424, 432 (9th Cir. 2013) (finding individuals who reported
18 violations of the Real Estate Settlement Procedures Act could
19 reasonably expect their names would remain anonymous based on HUD's
20 confidentiality policy); Lahr v. Nat'l Transp. Safety Bd., 569 F.3d
21 964, 975 (9th Cir. 2009) ("Releasing unredacted documents would
22 reveal publicly these eyewitnesses' involvement in a controversial
23 criminal investigation."). On the contrary, the investigation of
24 the Steelhead takes at the Searsville Dam is not hotly
25 controversial and is unlikely to subject any of the individuals
26 involved to harassment or embarrassment. Instead, the only obvious
27 consequence of disclosure is that Plaintiffs and interested members
28 of the public will be able "'shed light on an agency's performance

1 of its statutory duties' or otherwise let citizens know 'what their
2 government is up to.'" Dep't of Def., 510 U.S. at 497 (quoting
3 U.S. Dep't of Justice v. Reporters Comm. for Freedom of Press, 489
4 U.S. 749, 773 (1989)).

5 To be sure, there may well be some non-trivial privacy
6 interest implicated here. However the Court cannot conclude these
7 documents are categorically protected merely because they contain
8 names and contact information. See Yonemoto, 686 F.3d at 695-96
9 ("Disclosure of most of these records may indeed constitute a
10 nontrivial invasion of personal privacy, but the [Fisheries
11 Service] has yet to articulate why."). Yet that is the only basis
12 aside from speculation that the Fisheries Service has furnished.
13 As a result the Court ORDERS the Fisheries Service to supplement
14 the factual record within 30 days of the signature date of this
15 Order to enable the Court to more fully assess what, if any,
16 privacy interests are at stake. See id. at 696. The Court HOLDS
17 IN ABEYANCE the motion to summary judgment as to this document
18 until the record is supplemented and the Court determines if
19 additional filings or in camera review is necessary.

20 **2. Exemption (b) (5)**

21 Second, Plaintiffs argue that the Fisheries Service has failed
22 to adequately justify some of its withholdings under FOIA Exemption
23 (b) (5), which protects materials produced as part of the agency's
24 deliberative process or protected by attorney-client privilege.
25 Id. at (b) (5). The Fisheries Service has invoked this exception in
26 withholding 15 documents in part and another five documents in
27 their entirety.

28

1 Exemption (b) (5) applies to "inter-agency or intra-agency
2 memorandums or letters which would not be available by law to a
3 party other than an agency in litigation with the agency." 5
4 U.S.C. § 552(b) (6). As a result, the rule protects from disclosure
5 "those documents normally privileged in the civil discovery
6 context." NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 149 (1975).
7 There are two such privileges at issue here: attorney-client
8 privilege and the executive "deliberative process" privilege.

9 "(1) When legal advice of any kind is sought (2) from a
10 professional legal adviser in his or her capacity as such, (3) the
11 communications relating to that purpose, (4) made in confidence (5)
12 by the client, (6) are, at the client's instance, permanently
13 protected (7) from disclosure by the client or by the legal adviser
14 (8) unless the protection be waived." U.S. v. Martin, 278 F.3d
15 988, 999 (9th Cir. 2002). The privilege extends to agencies as
16 well to the extent the agency is consulting its attorney "'as would
17 any private party seeking advice to protect personal interest."
18 Ctr. for Bio. Diversity v. Office of Mgmt. & Budget, 625 F. Supp.
19 2d 885, 892 (N.D. Cal. 2009) (quoting Coastal States Gas Corp. v.
20 Dep't of Energy, 617 F.2d 854, 863 (D.C. Cir. 1980)). To support
21 claims of attorney-client privilege, the agency must, in its Vaughn
22 index, "show that these documents involved the provision of
23 specifically legal advice or that they were intended to be
24 confidential and were kept confidential." Nat'l Resource Def.
25 Council v. U.S. Dep't of Def., 388 F. Supp. 2d 1086, 1104 (C.D.
26 Cal. 2005) (emphasis in original) (quotation omitted). The agency
27 fails to meet its burden if it uses boilerplate language and
28 makes "no effort . . . to tailor the explanation to the specific

1 document withheld" Wiener v. FBI, 943 F.2d 972, 978-79
2 (9th Cir. 1991).

3 Deliberative process privilege seeks "'to prevent injury to
4 the quality of agency decisions' by ensuring that the 'frank
5 discussion of legal or policy matters,' in writing, within the
6 agency, is not inhibited by public disclosure." Maricopa Audubon
7 Soc. v. U.S. Forest Serv., 108 F.3d 1089, 1092 (9th Cir. 1997)
8 (quoting Sears, 421 U.S. at 150-51). To fall within the
9 deliberative process privilege, the material withheld or redacted
10 must be "'predecisional' in nature and must also form part of the
11 agency's 'deliberative process.'" Id. at 1093 (quoting Sears, 421
12 U.S. at 151-52) (emphasis in original). Predecisional documents
13 are those "prepared in order to assist an agency decisionmaker in
14 arriving at his decision, and may include recommendations, draft
15 documents, proposals, suggestions, and other subjective documents
16 which reflect the personal opinions of the writer rather than the
17 policy of the agency." Assembly of State of Cal. v. U.S. Dep't of
18 Commerce, 968 F.2d 916, 920 (9th Cir. 1992) (quoting Formaldehyde
19 Inst. v. Dep't of Health & Human Servs., 889 F.2d 1118, 1122 (D.C.
20 Cir. 1989)) (internal citations and quotation marks omitted).
21 Documents falling within that definition are part of the agency's
22 "deliberative process" if disclosing those documents "would expose
23 an agency's decisionmaking process in such a way as to discourage
24 candid discussion within the agency and thereby undermine the
25 agency's ability to perform its functions." Id. (quoting
26 Formaldehyde, 889 F.2d at 1122).

27 Plaintiffs challenge the Fisheries Service's declarations and
28 Vaughn index, arguing that the Fisheries Service failed to comply

1 with its duty to provide Plaintiffs with "[a]ny reasonably
2 segregable portion of a record . . . after deletion of the portions
3 which are exempt" from disclosure under the FOIA. 5 U.S.C. §
4 552(b). Under this standard, "non-exempt portions of a document
5 must be disclosed unless they are inextricably intertwined with
6 exempt portions." Mead Data Ctr., Inc. v. U.S. Dep't of the Air
7 Force, 566 F.2d 242, 260 (D.C. Cir. 1977). The burden is on the
8 agency to establish that segregable portions of documents have been
9 disclosed, Pacific Fisheries, Inc. v. United States, 539 F.3d 1143,
10 1148 (9th Cir. 2008), and to meet this burden, the agency must
11 provide "'a detailed justification and not just conclusory
12 statements.'" ACLU of N. Cal. v. FBI, No. 12-cv-03728-SI, 2015 WL
13 678231, at *3 (N.D. Cal. Feb. 17, 2015) (quoting Charles v. Office
14 of the Armed Forces Med. Examiner, 979 F. Supp. 2d 35, 42 (D.D.C.
15 2013)). In so doing, "a blanket declaration that all facts are so
16 intertwined [as] to prevent disclosure under the FOIA does not
17 constitute a sufficient explanation of non-segregability."
18 Wilderness Soc'y v. U.S. Dep't of the Interior, 344 F. Supp. 2d 1,
19 19 (D.D.C. 2004).

20 The Fisheries Service has fallen well short of its burden as
21 to segregability. At issue are the four records, Record Nos. 595,
22 681, 682, and 684, which the Fisheries Service withheld in full
23 pursuant to the deliberative process privilege. The Fisheries
24 Service's declaration merely contains a blanket statement that
25 "[t]o the best of [FOIA Coordinator Ana Liza Malabanan's]
26 knowledge, to the extent . . . there is factual material . . . in
27 the withheld portions of the . . . documents listed in the Vaughn
28 Index, that information is not segregable from the withheld

1 portions." Malabanan Decl. ¶ 78. This is clearly insufficient.
2 See ACLU of N. Cal. v. FBI, No. 12-cv-03728-SI, 2014 WL 4629110, at
3 *9 (N.D. Cal. Sept. 16, 2014) (concluding a similarly conclusory
4 declaration was insufficient to carry the agency's burden on
5 segregability).

6 For similar reasons, the Fisheries Service's justification for
7 redactions and withholdings on attorney-client privilege grounds
8 are also insufficient. As in the segregability context, the agency
9 bears the burden of showing that the exemption applies, including
10 showing that "it supplied information to its lawyers with the
11 expectation of secrecy and the information was not known by or
12 disclosed to any third party." Elec. Frontier Found. v. CIA, No. C
13 09-3351 SBA, 2013 WL 5443048, at *16 (N.D. Cal. Sept. 30, 2013).
14 Also as in the segregability context, the Fisheries Service has
15 failed to comply with this rule, simply providing a blanket
16 conclusion that "to the best of" Ms. Malabanan's knowledge the
17 documents in the Vaughn index "have not been disclosed outside the
18 U.S. Government." Malabanan Decl. ¶ 79. Because the Fisheries
19 Service has made "no effort . . . to tailor the explanation to the
20 specific document withheld," it has not met its burden. See Elec.
21 Frontier, 2013 WL 5443048, at *16 (quoting Wiener, 943 F.2d at 978-
22 79).

23 Finally, Plaintiffs argue that the Fisheries Service
24 improperly withheld an attachment to an email chain between Gary
25 Stern and counsel for the National Oceanic and Atmospheric
26 Administration. See Malabanan Decl. ¶ 74. The attachment is "a
27 record of a telephone conversation between Gary Stern . . . and
28 Matt Stoecker ([from the organization] Beyond Searsville Dam),

1 being forwarded for legal advice" Id. Plaintiffs rightly
2 object to this conclusion, because "[a]ttachments which do not, by
3 their content, fall within the realm of the [attorney-client]
4 privilege cannot become privileged by merely attaching them to a
5 communication with the attorney." Pacamor Bearings, Inc. v.
6 Minebea Co., Ltd., 918 F. Supp. 491, 511 (D.N.H. 1996); see also
7 Hanson v. Wells Fargo Home Mortg., Inc., No. C13-0939JLR, 2013 WL
8 5674997, at *4 (W.D. Wash. Oct. 17, 2013) ("Documents attached to
9 or included in an attorney-client communication are not
10 automatically privileged, and the party asserting privilege must
11 prove that each attachment is protected by privilege.") (citing
12 O'Connor v. Boeing N. Am., Inc., 185 F.R.D. 272, 280 (C.D. Cal.
13 1999)). As it stands now, the Fisheries Service has not shown by
14 its description of the record that this attachment is likely to be
15 protected by the attorney-client privilege.

16 In light of these issues with the Fisheries Service's
17 submissions, the Court ORDERS the Fisheries Service to supplement
18 the record within 30 days of the signature date of this Order to
19 provide sufficient explanations for the non-segregability of the
20 records withheld in full under Exemption (b) (5) (with the exception
21 of those also withheld in full on the grounds of attorney-client
22 privilege, see Pacific Fisheries, Inc. v. U.S., 539 F.3d 1143, 1148
23 (9th Cir. 2008)), tailored explanations of whether the
24 confidentiality of records withheld on attorney-client privilege
25 grounds have been maintained, and a more detailed explanation of
26 why the record of Stern's phone conversation attached to Record No.
27 761 is protected by the attorney-client privilege. The Court HOLDS
28 IN ABEYANCE the motions for summary judgment as to these documents

1 until the record is supplemented and the Court determines if
2 additional filings or in camera review is necessary.

3 **C. Deadline Allegations**

4 The balance of the parties' submissions focuses on Plaintiffs'
5 allegations that the Fisheries Service and Fish and Wildlife
6 Service were tardy in responding to Plaintiffs' FOIA requests and
7 internal appeals. Further, Plaintiffs argue that the Fisheries
8 Service has a pattern and practice of late and incomplete
9 responses. Finally, Plaintiffs contend that the Fisheries Service
10 has deviated from Department of Commerce (of which the Fisheries
11 Service is a part) regulations and a prior ruling, Oregon Natural
12 Desert Association v. Gutierrez, 419 F. Supp. 2d 1284 (D. Or.
13 2006), addressing what "cutoff date" the agency may impose for its
14 searches.

15 The pattern and practice and cutoff date allegations are
16 repeated, with a fuller evidentiary record, in cross-motions for
17 summary judgment pending in the related case, Our Children's Earth
18 Foundation v. National Marine Fisheries Service, 14-4365 (N.D.
19 Cal.), and the Court will address them fully in a forthcoming order
20 in that case. For the purpose of this order, the Court addresses
21 only the first question -- whether declaratory judgment should
22 issue that the Fisheries Service and FWS violated the FOIA's
23 internal deadlines in responding to Plaintiffs' requests and
24 internal appeals.

25 **1. Declaratory Judgment**

26 Unless exceptional circumstances exist (in which case the
27 deadline is thirty working days), an agency must provide a
28 "determination" with respect to a FOIA request or internal appeal

1 within twenty working days of receipt. See 5 U.S.C. §
2 552(a)(6)(A)(i)-(ii). A "determination" need not be the full
3 production of documents, but at a minimum the agency must inform
4 the requester what documents it will produce and the exceptions it
5 will claim in withholding documents. See Citizens for
6 Responsibility & Ethics in Wash. v. Fed. Election Comm'n, 711 F.3d
7 180, 184 (D.C. Cir. 2013).

8 In adopting the FOIA, Congress was specifically concerned that
9 agencies would delay in responding to requests, and as a result "an
10 agency's failure to comply with the FOIA's time limits is, by
11 itself, a violation of the FOIA." Gilmore v. U.S. Dep't of Energy,
12 33 F. Supp. 2d 1184, 1187 (N.D. Cal. 1998); see also Long v. IRS,
13 693 F.2d 907, 910 (9th Cir. 1982) (concluding that an agency's
14 unreasonable delay in disclosing non-exempt documents violated the
15 FOIA and "courts have a duty to prevent those abuses"). As a
16 result, courts have found that entering declaratory judgment that
17 the agency violated the FOIA is appropriate when the agency has a
18 pattern and practice of violating these time limits, see Payne
19 Entertainment v. United States, 837 F.2d 486 (D.C. Cir. 1988), or
20 when the agency has violated the time limits in responding to a
21 particular set of requests, the agency's violations are consistent,
22 and they may recur. See S. Yuba River, 2008 WL 2523819, at *6.

23 The Fisheries Service does not dispute that it did not provide
24 a "determination" for Plaintiffs' FOIA requests or internal appeals
25 within either the twenty or thirty working day timeline provided in
26 the statute, nor could it. See Gov't Reply at 12 ("[The Fisheries
27 Service] does not dispute that it did not provide a full and final
28 'determination' on Plaintiffs' FOIA requests within 20 working

1 days."). On the contrary, the record is clear, undisputed, and
2 troubling. The Fisheries Service's determination on Plaintiffs'
3 first through fourth requests were, respectively, 295, 43, eight,
4 and 99 days overdue. Malabanan Decl. ¶¶ 23, 33, 39-40; ECF No. 44
5 ("Schumacher Decl.") ¶ 5, 8. Similarly, the Fisheries Service
6 responded to Plaintiffs' first internal appeal 24 days late, second
7 appeal 80 days late, and third appeal 82 days late. Malabanan
8 Decl. ¶¶ 25, 34, 41, Exs. 2, 3. As Congress recognized in enacting
9 the FOIA:

10 [i]nformation is often useful only if it is timely.
11 Thus, excessive delay by the agency in its response is
12 often tantamount to denial. It is the intent of this
13 bill that the affected agencies be required to respond to
inquiries and administrative appeals within specific time
limits.

14 Gilmore, 33 F. Supp. 2d at 1187 (quoting H. Rep. No. 876, 93d
15 Cong., 2d Sess. (1974)). In short, even though the Fisheries
16 Service does not take the FOIA's deadlines seriously, "[t]here can
17 be no doubt that Congress [did]." See id.

18 Nevertheless, the Fisheries Service argues, based on a recent
19 D.C. Circuit decision, CREW, that the only consequence that flows
20 from the agency's failure to respond within the statutory deadlines
21 is that a FOIA requester may file suit without being subject to the
22 ordinary requirement that he exhaust his administrative remedies.
23 See CREW, 711 F.3d at 189; Elec. Privacy Info. Ctr. v. Dep't of
24 Justice, 15 F. Supp. 3d 32, 41 (D.D.C. 2014) (finding that CREW
25 "makes clear that the impact of blowing the 20-day deadline relates
26 only to the requester's ability to get into court.'"). The Court
27 concurs with the CREW court's persuasive interpretation of the
28 statute. As a matter of statutory interpretation it is clear that

1 the only legal consequence that flows directly from an agency's
2 failure to provide a determination within the statutory time limits
3 is the waiver of the administrative exhaustion requirement.

4 However, that says nothing about whether or not, once a FOIA
5 requester is in court, the district court cannot exercise its
6 discretionary authority to issue a judgment declaring that the
7 agency has, in fact, violated the statutory timeline. See Payne,
8 837 F.2d at 494 ("The FOIA imposes no limits on courts' equitable
9 powers in enforcing its terms" and "unreasonable delays in
10 disclosing non-exempt documents violate the intent and purpose of
11 the FOIA, and the courts have a duty to prevent [such] abuses.").

12 The Court finds declaratory judgment is appropriate here. As
13 the Fisheries Service repeatedly reminds the court, issuing a
14 declaratory judgment is discretionary. See Olagues v. Russoniello,
15 770 F.2d 791, 803 (9th Cir. 1985). However, as the Ninth Circuit
16 has explained, "[a] court declaration delineates important rights
17 and responsibilities and can be 'a message not only to the parties
18 but also to the public and has significant educational and lasting
19 importance.'" Natural Res. Def. Council, Inc. v. EPA, 966 F.2d
20 1292, 1299 (9th Cir. 1992) (quoting Bilbrey ex rel. Bilbrey v.
21 Brown, 738 F.2d 1462, 1471 (9th Cir. 1984)). Here, both the
22 statutory deadlines and their violation are clear, and the
23 repeated, routine violation of these deadlines by agencies has been
24 a continual source of concern for Congress. As one report put it,
25 "many agencies have failed process FOIA requests within the
26 deadlines required by law. These delays in responding to FOIA
27 requests continue as one of the most significant FOIA problems."
28 Gilmore, 33 F. Supp. 2d at 1187 (quoting H. Rep. No. 794, 104th

1 Cong., 2d Sess. (1996)). Although the Court and many others have
2 recognized that agencies' resources are heavily taxed by the
3 quantity and depth of FOIA requests, that does not grant the agency
4 carte blanche to repeatedly violate congressionally mandated
5 deadlines. On the contrary, "[the Fisheries Service and Fish and
6 Wildlife Service's] failure to comply with the FOIA's time limits
7 is, by itself, a violation of the FOIA" Id.; see also
8 CREW, 711 F.3d at 189 ("We are intimately familiar with the
9 difficulty that FOIA requests pose for executive and independent
10 agencies.").

11 This is not to say that a declaratory judgment should always
12 issue when the agency violates these time limits. On the contrary,
13 the issuance of declaratory judgments must always be guided by
14 "whether a judgment will clarify and settle the legal relations at
15 issue and whether it will afford relief from the uncertainty and
16 controversy giving rise to the proceedings." Nat'l Resources Def.
17 Council, 966 F.2d at 1299. However under these and similar
18 circumstances, where the agency has repeatedly and substantially
19 violated the time limits, and it is possible the violations will
20 recur with respect to the same requesters, declaratory judgment is
21 appropriate. See S. Yuba River, 2008 WL 2523819, at *6.

22 As a result, Plaintiffs' request for declaratory judgment that
23 the Fisheries Service failed to respond to Plaintiffs' FOIA
24 requests and internal appeals within the statutory time limits is
25 GRANTED.

26 **D. Claims Against FWS**

27 The only claim Plaintiffs appear to press against FWS is that,
28 after receiving a referral of potentially relevant documents from

1 the Fisheries Service, FWS failed to process the referred documents
2 within the statutory time limits.

3 The Fisheries Service's referral of documents to FWS is
4 governed by the Department of Commerce's regulations for FOIA
5 referrals. In the relevant part, the regulations state that "[i]f
6 a component receives a request for a record in its possession in
7 which another Federal agency subject to the FOIA has the primary
8 interest, the component shall refer the record to that agency for
9 direct response to the requester." 15 C.F.R. § 4.5(b). The FOIA
10 provides that the need for consultation is an "unusual
11 circumstance," and states that "consultation . . . shall be
12 conducted with all practicable speed" 5 U.S.C.
13 552(a)(6)(B)(iii).

14 Based on the reference to "all practicable speed," FWS argues
15 that the FOIA's statutory timelines do not apply to referrals for
16 consultation. This appears to be a novel argument, and the Court
17 need not decide it. Instead, regardless of whether the referral is
18 governed by the general provision that no notice citing unusual
19 circumstances "shall specify a date that would result in an
20 extension for more than ten working days . . . ," 5 U.S.C. §
21 552(a)(6)(B)(i), or the specific term that agency consultations
22 shall be conducted with "all practicable speed," declaratory
23 judgment against FWS would be inappropriate under these
24 circumstances.

25 Unlike the Fisheries Service, there is no allegation that FWS
26 repeatedly violated the FOIA's time limits with respect to
27 Plaintiffs' requests. Furthermore, FWS is not named as a defendant
28 in the related case, and there is no indication that Plaintiffs

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1 have made repeated FOIA requests to FWS (or that Plaintiffs'
2 requests have been repeatedly referred to FWS) or that any
3 violations of the FOIA's time limits are likely to recur with
4 respect to Plaintiffs. As a result, the Court finds that issuing a
5 declaratory judgment against FWS would neither "clarify and settle
6 the legal relations at issue [nor] . . . afford relief from the
7 uncertainty and controversy giving rise to the proceedings." See
8 Nat'l Resources Def. Council, 966 F.2d at 1299.

9 As a result, Plaintiffs' request for declaratory judgment
10 against the Fish and Wildlife Service is DENIED. Furthermore,
11 because Plaintiffs do not appear to challenge any of the Fish and
12 Wildlife Service's withholdings or redactions under the FOIA,
13 summary judgment is GRANTED in the Service's favor on those issues.

14
15 **V. CONCLUSION**

16 For the reasons set forth above, the cross-motions for summary
17 judgment are GRANTED IN PART and DENIED IN PART. The Court will
18 HOLD IN ABEYANCE the motions regarding the Fisheries Service's
19 exemption claims pending the supplementation of the record ordered
20 within thirty (30) days of the signature date of this order.

21
22 IT IS SO ORDERED

23
24 Dated: March 30, 2015


UNITED STATES DISTRICT JUDGE

25
26
27
28

Exhibit C



Neutral

As of: March 28, 2017 1:01 PM EDT

[Our Children's Earth Found. v. Nat'l Marine Fisheries Serv.](#)

United States District Court for the Northern District of California

March 1, 2017, Decided; March 1, 2017, Filed

Case No. 14-cv-01130-WHO

Reporter

2017 U.S. Dist. LEXIS 29130 *

OUR CHILDREN'S EARTH FOUNDATION, et al.,
Plaintiffs, v. NATIONAL MARINE FISHERIES
SERVICE, et al., Defendants.

Prior History: [Our Children's Earth Found. v. Nat'l Marine Fisheries Serv.](#), 85 F. Supp. 3d 1074, 2015 U.S. Dist. LEXIS 40748 (N.D. Cal., 2015)

Core Terms

requests, plaintiffs', documents, declarations, responses, summary judgment, time spent, withholding, cases, attorney's fees, lawsuit, Reply, rates, compensable, billed, injunctive relief, hourly rate, supplemental briefing, searches, records, costs, prevailing, reduction, withheld, argues, deadlines, adequacy, drafting, eligible, cut-off

Counsel: [*1] For **Our Children's Earth Foundation**, a non-profit corporation, Ecological Rights Foundation, a non-profit corporation, Plaintiffs: Jodene Louise Isaacs, LEAD ATTORNEY, Christopher Alan Sproul, Environmental Advocates, San Francisco, CA; Michael A. Costa, Our Children's Earth Foundation, San Francisco, CA; Patricia Lynn Weisselberg, Law Office of Patricia Weisselberg, Mill Valley, CA.

For National Marine Fisheries Service, Penny Pritzker, in official capacity as Secretary of Commerce, Rodney McInnes, in official capacity as Regional Administrator, NMFS Southwest Region, United States Fish And Wildlife Service, Sally Jewell, as Secretary of the Interior, Defendants: Coby Healy Howell, LEAD ATTORNEY, U.S. Dept. of Justice, Environment and Natural Resources Division, Portland, Or; Robin Michael Wall, LEAD ATTORNEY, U.S. Attorney's Office, Northern District of California, San Francisco, CA.

For The Board of Trustees of the Leland Stanford Junior University, Intervenor Dft: Sarah G. Flanagan, LEAD ATTORNEY, Erica Turcios, Pillsbury Winthrop Shaw Pittman LLP, San Francisco, CA.

Judges: William H. Orrick, United States District Judge.

Opinion by: William H. Orrick

Opinion

ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR [*2] ATTORNEY'S FEES

Re: Dkt. No. 82

Plaintiffs seek an award of \$723,202.74 in attorney's fees and \$3,190.39 in costs for succeeding in part on their consolidated lawsuits filed under the *Freedom of Information Act* (FOIA) against the federal agency defendants. Dkt. 94. I conclude that plaintiffs are eligible and entitled to an award of attorney's fees, but at a significantly reduced amount in light of requested hourly rates that are not adequately supported and unnecessary or excessive time billed.

BACKGROUND

Plaintiffs **Our Children's Earth Foundation** and Ecological Rights Foundation are Bay Area non-profits dedicated to protecting the environment.¹ Plaintiffs sent a series of nine FOIA requests to National Marine Fisheries Service (NMFS) starting in May 2013. The requests concerned NMFS's oversight of activities by

¹ See Declaration of Annaliese Beaman (Dkt. No. 83) ¶ 2. Plaintiffs are referred to collectively as OCE.

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Stanford University and the impact of those activities on the Central California Coast steelhead. Plaintiffs were concerned with Stanford University's operation of Searsville Lake and Dam, which were built in 1892, and other related water diversions and infrastructure that Stanford uses to provide non-potable water for its campus. Plaintiffs believe that "Lake Water System" adversely [*3] affects the steelhead by reducing water flows in San Francisquito Creek and its tributaries and cutting the steelhead off from access to upstream spawning habitat. See Judge Conti's March 30, 2015 Order [Dkt. No. 59] at 3-4. Plaintiffs attempted to enjoin Stanford's activities in a separate lawsuit, *Our Children's Earth Foundation v. Stanford Univ.*, No. 13-cv-00402-JSW (N.D. Cal.).²

In response to what OCE contends were deficient responses to its first four FOIA requests, plaintiffs filed their first lawsuit (*OCE I*) in April 2014. In that lawsuit, OCE challenged whether NMFS's responses to plaintiffs' FOIA requests were adequate, whether NMFS had a pattern and practice of tardy and incomplete responses, and whether FWS failed to meet its internal deadline to respond to NMFS.³ Plaintiffs filed their second lawsuit (*OCE II*) in September 2014, based on the tardy or otherwise deficient responses to their second set of FOIA Requests (FOIA requests 5 - 8). In *OCE II* plaintiffs alleged that NMFS failed to adequately respond to their additional FOIA requests, and reiterated their argument that NMFS had a pattern and practice of tardy and incomplete responses to FOIA requests.⁴ The lawsuits [*4] were related by Judge Conti.⁵

² The government contends that plaintiffs' first FOIA request was filed "as discovery" for the Stanford lawsuit. Oppo. 6.

³ A second defendant in *OCE I*, Fisheries and Wildlife Service (FWS) was alleged to have failed to respond to NMFS's request that FWS review and release under the FOIA portions of FWS's documents that NMFS had in its possession.

⁴ The Army Corps of Engineers (Corps) was also named as a defendant in *OCE II*, as having failed to appropriately respond to plaintiffs' FOIA requests.

⁵ Plaintiffs filed a third lawsuit (*OCE III*) in June 2015, which was also related to 14-1130. In *OCE III*, plaintiffs asserted that NMFS had failed to provide a timely final decision in response to OCE's ninth FOIA request (from April 2015) regarding more "up-to-date information" on the same subject matter. Judge Conti, on plaintiffs' request and without opposition from NMFS, dismissed *OCE III* as "prudentially moot." October 2015 SJ Order at 17-18. Plaintiffs are not seeking fees or costs related to that lawsuit. Mot. 4, n.1.

In *OCE I*, the parties moved for summary judgment. Plaintiffs argued that: (1) NMFS failed to adequately describe its searches or conducted an inadequate search and withheld documents without sufficient justification; (ii) they were entitled to a declaratory judgment that NMFS violated FOIA's deadlines in responding to their four requests and in three related internal appeals, and FWS violated FOIA's deadlines in responding to a referral of documents from NMFS; and (iii) the alleged violations of the FOIA are a part of a pattern and practice of non-compliance with the FOIA's mandates, so the Court should enjoin NMFS and order it to comply with its FOIA obligations. March 30, 2015 Order at 6-7. The government opposed those arguments.

In an Order dated March 30, 2015 [Dkt. No. 59, Case No. 14-1130], Judge Conti: (i) ruled that NMFS failed to conduct adequate searches in response to OCE's first and third FOIA requests;⁶ (ii) held in abeyance the determination as to whether NMFS adequately invoked *FOIA Exemption (b)(6)* to withhold names and contact information from responsive documents pending further supplementation of the factual [*5] record by NMFS (concerning the privacy concerns that would be implicated by release of that information); (iii) affirmed in part the withholding of some attorney-client documents, but concluded that NMFS had not met its burden to explain why certain portions of documents did not contain segregable and releasable information or why one specific document was withheld as attorney-client privileged and, therefore, held in abeyance the determination as to NMFS's withholding of those documents was appropriate; and (iv) granted plaintiffs' request for a declaratory judgment that NMFS failed to comply with the statutorily mandated response and appeal deadlines with respect to the four FOIA requests at issue. *Id.* at 8-26.⁷ Judge Conti denied plaintiffs' motion and granted defendants' motion regarding

⁶ Judge Conti granted plaintiffs' motion on the adequacy of the search as to the first and third FOIA requests, and granted defendants' motion as to the adequacy of the searches in response to the second and fourth requests. *Id.* at 12.

⁷ Judge Conti, however, expressly did not reach the question of whether plaintiffs had proven that NMFS had a pattern and practice of untimely responses, because "[t]he pattern and practice and cutoff date allegations are repeated, with a fuller evidentiary record, in cross-motions for summary judgment pending in" *OCE II*, and the Judge intended to address them in a subsequent order. *Id.* at 22.

withholdings, redactions, and timeliness. *Id.* at 28.⁸

NMFS then provided additional information to the Court concerning its withholdings and redactions, and plaintiffs submitted responses regarding the same.⁹ In an Order dated July 20, 2015, Judge Conti addressed the issues remaining from *OCE I*, as well as the cross-motions filed in *OCE II*. Judge Conti characterized the remaining arguments made by plaintiffs [*6] as: (i) NMFS failed to adequately search for records responsive to two of its requests; (ii) NMFS improperly withheld or overly redacted responsive records under two FOIA exemptions; (iii) NMFS was defying Department of Commerce (of which NMFS is a part) regulations by cutting off their search for responsive records at the date the FOIA request is received rather than the date the search begins; and (iv) the request for a declaratory judgment that NMFS's and the Corps' responses to plaintiffs' requests were untimely, and grant declaratory and injunctive relief to remedy NMFS's alleged pattern and practice of FOIA violations. July 20, 2015 Order [Dkt. No. 70, Case No. 14-1130] at 3-4. NMFS and the Corps cross-moved for summary judgment, arguing that their responses were adequate and declaratory and injunctive relief were unwarranted. *Id.* at 4.¹⁰

As to the substance of the adequacy of NMFS's responses, Judge Conti found that: (i) NMFS had failed to provide sufficient information for the court to determine whether NMFS conducted an adequate search, ordered NMFS to supplement the factual record, and held in abeyance the issue of summary judgment on NMFS's search; (ii) NMFS had properly [*7] withheld draft biological opinions under FOIA Exemption (b)(5), but did not adequately justify its withholding or non-redaction of an email under (b)(5), and as such NMFS was required to supplement the factual record to justify

⁸ Plaintiffs point out that in preparing its cross-motion for summary judgment in *OCE I*, NMFS uncovered two additional responsive documents and disclosed them in full. See Declaration of Gary Stern [Dkt. No. 41, 14-1130] ¶ 17.

⁹ As part of its supplemental briefing, NMFS decided to release two previously withheld in full documents and to release three redacted documents that had previously been withheld in full. It also stated it was conducting a supplemental search for documents responsive to OCE's first and third FOIA requests. Dkt. No. 60 at 4-5; see also Dkt. No. 59 at 19, 21.

¹⁰ In its cross-motion pleadings in *OCE II*, NMFS decided "upon additional review" to release an additional eleven documents in part and one in full. Dkt. No. 19 (14-4365) ¶ 28; Dkt. No. 18-1 (14-4365) ¶ 5.

its withholding and non-redaction, and the court held in abeyance summary judgment on the withholding of that document; and (iii) granted summary judgment to NMFS withholding under FOIA Exemption (b)(7) of names in a report. *Id.* 5-17.

As to the issue of untimely responses and pattern and practice of delay and improper cutoff dates, Judge Conti: (i) granted plaintiffs' request for declaratory relief that NMFS violated its statutory duties with respect to the timeliness of its responses and appeals, but declined to enter declaratory relief against the Corps; (ii) determined that further facts were needed to address plaintiffs' contention that NMFS was using an improper cutoff date when beginning its search for documents and ordered supplemental briefing; and (iii) ordered plaintiffs to submit supplemental briefing on the status of their pending FOIA requests as to the pattern and practice of delay claim. *Id.* at 17-25. Finally, as to plaintiffs' request for injunctive relief, the Judge [*8] ordered NMFS "to comply with FOIA and its deadlines, due to the Court's finding that the Fisheries Service has failed to do so previously and the potential that these offenses might continue. Yet the Court, having so ordered and having GRANTED declaratory relief, DENIES WITHOUT PREJUDICE further injunctive relief at this time," in part because of "the fact that Plaintiffs appear to be repeatedly making large requests in sufficiently rapid succession that the Fisheries Service is unable to complete its response to one request before receiving a second" and recognizing evidence of good faith and efforts on the part of NMFS to comply with its deadlines and significantly improve its future performance. *Id.* at 26-27. The Court held in abeyance the motions regarding NMFS's exemption claims, adequacy challenge, cutoff dates, and pattern and practice allegations pending the supplementation of the record. *Id.* at 29-30.¹¹

Following that round of supplementation, in an October 21, 2015 Order, Judge Conti addressed the remaining issues and ruled that: (i) NMFS's declarants had addressed the concerns over the adequacy of the search and granted NMFS summary judgment on that issue; (ii) determined that one record had been [*9]

¹¹ As part of its supplemental briefing, NMFS decided to release a redacted document that had been withheld in full. Dkt. No. 27 (14-4365) at 2. NMFS also explained its search cut-off policy (which OCE contends was "new"), requiring that if one or more subject-matter expert are required to search for documents, the date each expert starts his/her search establishes the cut-off date. Dkt. No. 27-4 (14-4365), ¶18(b).

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appropriately withheld under (b)(5) based on a supplemental *Vaughn* index and granted NMFS summary judgment on its withholdings under (b)(5); (iii) found that NMFS cured its showing of non-segregability of withheld information based on its supplemental *Vaughn* index, except as to one document,¹² and granted NMFS summary judgment on segregability as to all documents except that one; and (iv) granted summary judgment to NMFS based on additional information as to the cutoff dates used for searches. October 21, 2015 Order [Dkt. No 72, 14-1130] at 4-17.

As to the pattern and practice of delay claim, Judge Conti reviewed the evidence and found that NMFS was curing its processing and response problems and backlog, and therefore denied injunctive relief. However, in light of the "unmistakable history" of untimeliness and delay, Judge Conti granted declaratory relief to plaintiffs, concluding that: "(1) that the Fisheries Service has previously been engaged in a pattern-and-practice of failure to meet FOIA deadlines; (2) that the Fisheries Service has previously provided responses that were frequently and unreasonably delayed; (3) that due to these delays the Fisheries Service effectively provided [*10] no ability to FOIA requestors to anticipate when data might be provided; and (4) that due to these delays information was often provided after a long enough period of time that the data could be out-of-date, effectively negating its value and effectuating a complete denial of information." *Id.* at 20-21. He also granted "limited" injunctive relief to plaintiffs, requiring NMFS to provide any outstanding production in response to certain of plaintiffs' requests within 30 days. *Id.* at 21. Any further injunctive relief was denied without prejudice, but he required NMFS to show cause as to how it was curing its prior violations and intended to continue its response-time improvements going forward. *Id.* at 22.

After the case was reassigned to me in November 2015, I addressed whether any issues remained to be decided following Judge Conti's October and November 2015 Orders as well as the supplemental briefing filed by the parties regarding NMFS's efforts to cure its past timeliness violations and ensure those would not occur in the future. In an order dated January 20, 2016, I determined that Judge Conti had resolved all pending issues, and concluded that the evidence regarding NMFS's substantial reduction of its FOIA-response [*11]

backlog and the "technical, administrative, and staffing improvements" NMFS had implemented to ensure timely processing of FOIA requests on a forward-going basis meant that continuing injunctive relief was not warranted. January 20, 2016 Order [Dkt. No. 75]. A stipulated judgment was entered on February 16, 2016. Plaintiffs now seek over \$700,000 in attorney's fees for the hours they spent litigating *OCE I* and *OCE II*, as well as costs. Defendants oppose plaintiffs' entitlement to any fees, and challenge the reasonableness of the amount sought.

LEGAL STANDARD

FOIA authorizes courts to "assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed." 5 U.S.C. § 552(a)(4)(E). This provision "has as its fundamental purpose the facilitation of citizen access to the courts to vindicate the public's statutory rights," as the fees and costs of bringing suit could otherwise "present a virtually insurmountable barrier which [would] ba[r] the average person from forcing governmental compliance with the law." *Exner v. F.B.I.*, 443 F. Supp. 1349, 1352 (S.D. Cal. 1978).

A court may grant an award of attorney's fees under 5 U.S.C. § 552(a)(4)(E) where the plaintiff establishes that [*12] it is both eligible for and entitled to an award. See *Church of Scientology of California v. U.S. Postal Serv.*, 700 F.2d 486, 489 (9th Cir. 1983); *Rosenfeld v. U.S. Dep't of Justice*, 903 F. Supp. 2d 859, 865 (N.D. Cal. 2012). To be eligible for an award, the plaintiff must show that "(1) the filing of the action could reasonably have been regarded as *necessary* to obtain the information; and (2) the filing of the action had a *substantial causative* effect on the delivery of the information." *Church of Scientology*, 700 F.2d at 489 (emphasis in original).

If the court determines that the plaintiff is eligible for attorney's fees, the court may then, "in the exercise of its discretion, determine that [it] is *entitled* to an award of attorney's fees." *Id.* at 492 (emphasis in original). In making this determination, courts consider "(1) the benefit to the public, if any, deriving from the case; (2) the commercial benefit to the complainant; (3) the nature of the complainant's interest in the records sought; and (4) whether the government's withholding of the records sought had a reasonable basis in law." *Id.*; accord *Long v. U.S. I.R.S.*, 932 F.2d 1309, 1313 (9th Cir. 1991). "These four criteria are not exhaustive,

¹² The Court ordered NMFS to produce the document at issue, or explain further why it should be withheld. October 21 2015 Order at 15. NMFS decided to produce the document.

however, and the court may take into consideration whatever factors it deems relevant in determining whether an award of attorney's fees is appropriate." [Long, 932 F.2d at 1313](#) (internal quotation marks omitted). Once eligibility is established, "[t]he decision to award attorney's [*13] fees is left to the sound discretion of the trial court." [Church of Scientology, 700 F.2d at 492](#).

DISCUSSION

I. WHETHER PLAINTIFFS SUBSTANTIALLY PREVAILED AND ARE ELIGIBLE FOR ATTORNEY'S FEES

The government does not contest that plaintiffs substantially prevailed in *OCE I*, but argues that plaintiffs were not successful in *OCE II*, and therefore are not eligible for fees for that portion of the litigation. As noted above, in his July and October 2015 orders, Judge Conti addressed the claims asserted in *OCE II* (as well as issues asserted in *OCE I*). In the July Order, Judge Conti granted plaintiffs' request for a declaratory judgment that NMFS's responses to plaintiffs' FOIA requests 5-8 were untimely. July 2015 Order at 20-21. That by itself constitutes "success," albeit on a discrete issue. See [Hajro v. United States Citizenship & Immigration Servs., 900 F. Supp. 2d 1034, 1045 \(N.D. Cal. 2012\)](#) (prevailing on summary judgment and obtaining injunctive relief on claim that defendant's responses were untimely constitutes substantial success), *reversed on other grounds by 811 F.3d 1086, 1092 (9th Cir. 2016)*; [Or. Nat. Desert Ass'n v. Gutierrez, 442 F. Supp. 2d 1096, 1098 \(D. Or. 2006\)](#) (determination that agency failed to provide a timely response sufficient to create entitlement to fees), *aff'd in pertinent part, rev'd in part on other grounds by Or. Nat. Desert Ass'n v. Locke, 572 F.3d 610 (9th Cir. 2009)*.

After initially finding that NMFS provided insufficient information in its declarations and [*14] *Vaughn* index to demonstrate the adequacy of some of its searches and withholdings, when NMFS provided supplemental briefing and declarations Judge Conti concluded that the searches were adequate and the withholdings justified (except as to one document under Exemption (b)(5), which NMFS decided to release). In addition, after receiving plaintiffs' summary judgment motion and while preparing its cross-motion pleadings in *OCE II*, NMFS decided "upon additional review" to release an additional eleven documents in part and one in full. Dkt. No. 19 (14-4365) ¶ 28; Dkt. No. 18-1 (14-4365) ¶ 5. Following the next round of supplemental briefing,

NMFS decided to release in part yet another document that had been withheld. Dkt. No. 27 (14-4365) at 2. The evidentiary record supports plaintiffs' contention that these documents were produced as a result of *OCE II*.¹³ Plaintiffs, therefore, prevailed, on another discrete portion of their litigation in securing these supplemental productions under a catalyst theory. See, e.g., [Dorsen v. United States SEC, 15 F. Supp. 3d 112, 120 \(D.D.C. 2014\)](#) (plaintiff prevailed where FOIA suit prompted additional or speedier release of documents); [Judicial Watch, Inc. v. United States DOJ, 878 F. Supp. 2d 225, 232 \(D.D.C. 2012\)](#) (catalyst theory satisfied where after a final agency response and commencement of [*15] lawsuit, additional documents were produced).

More importantly, in light of the "unmistakable history" of "unreasonable" untimeliness and delay, Judge Conti granted plaintiffs' request for a declaratory judgment that NMFS failed to provide them with timely responses and had a past pattern and practice of untimely responses. That judgment, along with the limited injunctive relief (requiring NMFS to respond to plaintiffs' then-pending FOIA requests by a date certain), confers prevailing party status on plaintiffs as well. The government — in an attempt to avoid fees for *OCE II* — argues that plaintiffs did not secure any relief in *OCE II* beyond what they would have been entitled to given the claims asserted in *OCE I*. Oppo. 7-8. However, Judge Conti specifically held the pattern and practice claim in abeyance in *OCE I* to determine it on the more complete evidentiary record presented in *OCE II*. *OCE II*, therefore, was a necessary part to the Court's eventual determination.

Similarly, the fact that further, more wide-spread injunctive relief was not granted in response to the allegations raised in both *OCE I* and *OCE II* in the October 2015 or January 2016 Orders was due to the strong [*16] showing NMFS made on the steps the agency had taken and was continuing to take to extinguish its backlog and implement policies and practices to ensure timely responses in the future. The government spends much time in its brief and declarations attempting to show that the new policies

¹³ NMFS argues that its responses to Requests 5 through 8 were not produced as a result of the litigation, and cites testimony showing that NMFS began work processing and responding to these requests before the *OCE II* complaint was filed. See Hornof Decl. ¶ 7. NMFS also argues that the three FOIA requests subject to Judge Conti's limited order of injunctive relief, were also being processed and responses "underway" before the October 21, 2015 Order. *Id.* ¶¶ 10-11.

and practices NMFS implemented in order to reduce the backlog discussed by Judge Conti and myself in the October 2015 and January 2016 Orders were not conceived in order to respond to, or spurred on by, plaintiffs' litigation but were underway prior to the filing of *OCE I* and *OCE II*. See, e.g., Oppo. 9-10. Plaintiffs counter that argument by citing to notes and other documents produced by NMFS staff showing that efforts to reduce the backlog were just being formulated in June 2015 and were implemented in part to avoid litigation, like the suits at issue which were the only ones pending at the relevant time. See, e.g., Reply 3-4.

However, in order to determine that plaintiffs are eligible for an award of attorney's fees, I need not resolve this factual dispute. That plaintiffs secured additional documents from NMFS after *OCE II* was filed and after NMFS took a closer look at its searches and withholdings [*17] and, more importantly, secured another declaratory judgment recognizing that the agency failed to provide timely responses, had engaged in a pattern and practice of tardy responses, and secured limited injunctive relief as to then-pending but not sued upon FOIA requests, is success significant enough to establish plaintiffs' eligibility for fees.¹⁴

In sum, plaintiffs were the prevailing parties on significant portions of both *OCE I* and *OCE II* and are eligible for an award of attorney's fees and costs.¹⁵ The

¹⁴ That said, the evidence on the whole indicates that NMFS took more concrete, specific, and immediate steps following Judge Conti's Orders to extinguish its backlog and commit additional resources to speeding up its response times than the agency might have taken but-for plaintiffs' suits.

¹⁵ Plaintiffs repeatedly imply that they were successful on their improper cut-off date challenges, arguing that their lawsuits were the catalyst for NMFS's new cut-off date policy. Mot. at 8, 10. The improper cut-off date issue was raised but not decided by Judge Conti in his March 30 Order, because the issue was also raised but supported by a fuller factual record in the *OCE II* summary judgment briefing that was pending. In his July Order, Judge Conti determined that, at most, a factual dispute existed, and again held the issue in abeyance for supplemental responses. In his October Order, Judge Conti found that plaintiffs had not established that NMFS used improper cut-off dates, and instead granted summary judgment to NMFS on plaintiffs' improper search cut-off date claim as to plaintiffs' own FOIA requests. October Order at 17. Later in the October Order, Judge Conti recognized that the "NMFS West Coast Region appears to have an updated process in place, using modern software, additional personnel, and policy changes (e.g., how the cut-off date changes where there are multiple SMEs assigned) to speed up its process.

next step is to determine if they are entitled to them.

II. WHETHER PLAINTIFFS ARE ENTITLED TO ATTORNEY'S FEES

The factors courts consider in determining whether a plaintiff is entitled to attorney's fees include "(1) the benefit to the public, if any, deriving from the case; (2) the commercial benefit to the complainant; (3) the nature of the complainant's interest in the records sought; and (4) whether the government's withholding of the records sought had a reasonable basis in law." [Church of Scientology, 700 F.2d at 489](#). I will discuss each in turn.

A. Benefit to the Public

In considering the public benefit factor, courts consider "the degree of dissemination and the likely public impact that might result [*18] from disclosure." [Church of Scientology, 700 F.2d at 493](#). The factor generally weighs in favor of an award where the information is broadly disseminated to the public. See, e.g., [Electronic Frontier Foundation v. Office of Dir. of Nat. Intelligence, No. 07-cv-05278-SI, 2008 U.S. Dist. LEXIS 44050, 2008 WL 2331959, at *3 \(N.D. Cal. June 4, 2008\)](#) (finding that the public benefit factor was satisfied where the plaintiff "immediately posted the requested information on its website" and "created press releases for public access"). Even where the degree of dissemination is limited, or where the level of public interest in the requested information itself is minimal, the public benefit factor may still favor an award "as long as there is a public benefit from the fact of . . . disclosure." [O'Neill, Lysaght & Sun v. D.E.A., 951 F. Supp. 1413, 1423 \(C.D. Cal. 1996\)](#).

Courts in this circuit have found a public benefit favoring an award, despite an absence of broad dissemination or a significant level of public interest in the requested information, where (1) the case "establishe[d] that the government may not withhold certain information pursuant to a particular FOIA exemption," [Church of Scientology, 700 F.2d at 493](#); (2) the plaintiffs were environmental nonprofits whose purpose was "to oversee and enforce compliance with the [Clean Air Act]" and the requested information was "being used to inform [the plaintiffs'] ongoing oversight [*19] and

See Supp. Malaban Decl. ¶¶ 15-18." *Id.* at 18. Judge Conti, however, never reached the issue of whether these lawsuits were the catalyst for NMFS's new, updated, or clarified policy with respect to search cut-off dates.

enforcement efforts," [The Sierra Club v. United States Env'tl. Prot. Agency, 75 F. Supp. 3d 1125, 1143-44 \(N.D. Cal. 2014\)](#); and (3) the requested documents revealed a "long history of abuse" by a paid DEA informant and "expos[ed] the implications of the government dealing with untrustworthy paid informants." [O'Neill, 951 F. Supp. at 1423-24](#).

Plaintiffs argue that — just like the plaintiffs in *Sierra Club* - they "utilized the documents to advance their efforts to promote compliance with environmental laws intended to broadly benefit the public interest environmental protection. Specifically, they utilized the documents to organize public support for measures designed to persuade Stanford and NMFS to do more to protect a threatened fish species and to develop ESA citizen suits claims aiming to help the survival and recovery of this threatened species." Beaman Decl. ¶¶ 6-8; Mot. 15. Plaintiffs also disseminated the information they secured to their members, the press, and the public through messages, website postings, press releases, and interviews. Beaman Decl. ¶¶ 6-8.

As NMFS points out, it is unclear what role in that public outreach (if any) the information actually secured by OCE as a direct result of the filing of these lawsuits or Judge Conti's Orders played. Beaman's declaration is not specific on that point. See, [*20] e.g., [Cotton v. Heyman, 63 F.3d 1115, 1120, 314 U.S. App. D.C. 161](#) (when evaluating the public benefit prong, the court must "evaluate the specific documents at issue in the case at hand"). NMFS does not argue (or show by declaration) that the information produced to OCE after the inception of the suits or Judge Conti's Orders issued was so ministerial or obscure that it could not have supported plaintiffs' public interest and public disclosure goals. The Beaman declaration, while not specifically focused on documents produced as a result of this litigation, persuasively explains how the documents OCE received through its FOIA requests and its litigation play a significant role in OCE's mission to inform the public about the activities of Stanford and the Central California Coast steelhead. Dkt. Nos. 83, 96.

In addition, this lawsuit effectively and publicly disclosed NMFS's history of untimely responses and significant backlog — as well as the steps NMFS was undertaking to cure those issues. That shed important light about the agency's non-compliance with its duty under FOIA, a situation Judge Conti repeatedly referred to as "clear, undisputed, and troubling." March 30, 2015 Order at 24; see also July 20, 2015 Order at 19 ("In short, even though [*21] the Fisheries Service does not take the

FOIA's deadlines seriously, "[t]here can be no doubt that Congress [did]"). Finally, plaintiffs secured a significant, contested legal ruling from Judge Conti: that FOIA allows both declaratory judgment and injunctive relief as remedies for untimely responses. NMFS vigorously argued that the only available remedy for a violation under FOIA was an order requiring production of withheld documents; a position that was soundly rejected by Judge Conti. March 30, 2015 Order at 24-26; July 20, 2015 Order at 19-21.

On this record, plaintiffs have shown that this litigation — through the information released and the legal principles established — conferred a significant benefit on the public.

B. Commercial Benefit to the Complainant/Nature of Plaintiffs' Interests

The second and third factors are "the commercial benefit to the complainant" and "the nature of the complainant's interest in the records sought." [Church of Scientology, 700 F.2d at 492](#). Courts regularly consider these factors together. See, e.g., [id. at 494](#); [Am. Small Bus. League v. U.S. Small Bus. Admin., No. 08-cv-00829-MHP, 2009 U.S. Dist. LEXIS 31897, 2009 WL 1011632, at *3 \(N.D. Cal. Apr. 15, 2009\)](#); [Electronic Frontier Foundation, 2008 U.S. Dist. LEXIS 44050, 2008 WL 2331959, at *3](#).

As a general matter, if a "commercial benefit will inure to the plaintiff from the information," or if the plaintiff "intends [*22] to protect a private interest" through the FOIA litigation, then "an award of attorney's fees is not recoverable." [Church of Scientology, 700 F.2d at 494](#). On the other hand, where the plaintiff "is indigent or a nonprofit public interest group, an award of attorney's fees furthers the FOIA policy of expanding access to government information." *Id.* The Ninth Circuit has instructed that, pursuant to the second and third factors, a court "should generally award fees if the complainant's interest in the information sought was scholarly or journalistic or public-oriented," but should not do so "if his interest was of a frivolous or purely commercial nature." [Long, 932 F.2d at 1316](#).

Plaintiffs argue that their non-profit status combined with the lack of any private commercial interest in the information they secured, strongly favors an award under these factors. See Beaman Decl. ¶¶ 1, 6-8. The government counters that contrary to plaintiffs' current assertion that their goal in *OCE I* and *OCE II* was to force NMFS to provide more timely and fulsome

responses to their and others' FOIA requests, the real purpose of these lawsuits was to force NMFS to produce documents that plaintiffs could and did use in their suit against Stanford University. Declaration [*23] of Robin M. Wall [Dkt. No. 92-1], Ex. L ("Stanford Summary Judgment Papers," noting that some of the FOIA production was used on a motion to compel and on a motion for summary judgment in the Stanford case). That purpose, according to the government, is a private one that does not make plaintiffs entitled to fees. Oppo. 11-13.

The cases relied on by NMFS considered private litigants who used FOIA to secure evidence in support of their private lawsuits. See [Hersh & Hersh v. U.S. Dept. of Health and Human Services, No. 06-04234-PJH, 2008 U.S. Dist. LEXIS 110977, at *7 \(N.D. Cal. July 9, 2008\)](#) (denying an award of attorney's fees where "plaintiff undertook this FOIA request for decidedly commercial purposes" when plaintiff was litigating private lawsuit against a defendant regarding defective medical devices and plaintiff failed to secure disclosure of the "vast majority" of documents it sought); [Ellis v. United States, 941 F. Supp. 1068, 1078 \(D. Utah 1996\)](#) (denying fees where documents sought for assistance in private tort suit, because while documents produced under FOIA created "some slight public benefit in bringing the government into compliance with FOIA and providing information of general interest to the public, the disclosure of the records did not add to the fund of information necessary to make important [*24] political choices").¹⁶ They do not address the situation here, where non-profit environmental advocacy organizations bring suit under FOIA as part of their ongoing efforts to shed light on how an agency is (or is not) protecting the environment, albeit with respect to a specific project.

Moreover, while plaintiffs were undoubtedly motivated in some part to secure documents from NMFS in order to assist their litigation against Stanford, there was a significant and separate public benefit sought and secured by plaintiffs — shedding light on the actions of

¹⁶ I recognize that the court in [Sierra Club v. United States EPA, 75 F. Supp. 3d 1125, 1144 \(N.D. Cal. 2014\)](#) rejected an agency's argument that a non-profit environmental group plaintiff had a commercial interest in the FOIA litigation because they intended to bring environmental litigation, in part because "Plaintiffs were not pursuing a separate private lawsuit against Luminant at the time they initiated the FOIA request." The court, therefore, did not directly reach the issue raised here.

NMFS (as opposed to the actions of Stanford) in carrying out its agency duties and on its handling of plaintiffs' and others' FOIA requests.¹⁷

These factors weigh in favor of plaintiffs' entitlement to fees.

C. Reasonable Basis in Law

The fourth factor is "whether the government's withholding had a reasonable basis in law"; in other words, whether the government's actions appeared to have "a colorable basis in law" or instead appeared to be carried out "merely to avoid embarrassment or to frustrate the requester." [Church of Scientology, 700 F.2d at 492, 492 n.6](#); see also [Rosenfeld, 903 F. Supp. 2d at 870](#); [Am. Small Bus. League, 2009 U.S. Dist. LEXIS 31897, 2009 WL 1011632, at *4](#). This factor "is not dispositive" and can be outweighed where the other relevant factors favor an award. [*25] [Rosenfeld, 903 F. Supp. 2d at 870](#) (internal quotation marks omitted); see also [O'Neill, 951 F. Supp. at 1425](#) (noting that the reasonable basis in law factor "in particular should not be considered dispositive"). The burden is on the government to demonstrate that its withholding was reasonable. [Sierra Club, 75 F. Supp. 3d at 1145](#).

Here, Judge Conti repeatedly found in no uncertain terms that NMFS failed to provide timely responses under FOIA. See, e.g., March 30, 2015 Order at 24 (with respect to NMFS's violation of FOIA deadlines "the record is clear, undisputed, and troubling In short, even though the Fisheries Service does not take the FOIA's deadlines seriously, '[t]here can be no doubt that Congress [did].'""); July 20, 2015 Order at 19 ("The records in both this and the related case show a clear and undisputed breach of this [FOIA response deadline]

¹⁷ NMFS's other cases are inapposite, as they do not address whether use of documents secured through FOIA in other litigation equals a "commercial" interest in the FOIA litigation, but stand for the proposition that having a personal interest in the records sought does not increase the access to those records under FOIA. See, e.g., [NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 143 n.10, 95 S. Ct. 1504, 44 L. Ed. 2d 29 \(1975\)](#) ("Sears' rights under the Act are neither increased nor decreased by reason of the fact that it claims an interest in the Advice and Appeals Memoranda greater than that shared by the average member of the public. The Act is fundamentally designed to inform the public about agency action and not to benefit private litigants."); [Shannahan v. IRS, 672 F.3d 1142, 1151 \(9th Cir. 2012\)](#) (requestors' interest in IRS documents about themselves to use in their civil tax suit does not negate applicability of FOIA exemptions preventing disclosure).

requirement."); October 21, 2015 Order at 18-19 ("the Court has received showing [of] an unmistakable history that the Fisheries Service fails to meet its statutory deadlines under FOIA and causes Plaintiffs (and likely others similarly situated) to suffer unpredictable, unreasonable delays.").¹⁸

Judge Conti also found that in litigating this case, NMFS repeatedly failed to explain with sufficient detail the adequacy of its searches and [*26] the reasons for its withholdings — thereby necessitating additional rounds of briefing by the parties and orders by the court.¹⁹ As such, I conclude that neither NMFS's general responses to the FOIA requests nor its litigation position before this Court had a reasonable basis in law.

In sum, plaintiffs are entitled to an award of attorney's fees. The next step is to determine the amount owed.

III. REASONABLE AMOUNT OF ATTORNEY'S FEES AND COSTS

"[O]nce the court has determined that the plaintiff is both eligible for and entitled to recover fees, the award must be given and the only room for discretion concerns the reasonableness of the amount requested." Long, 932 F.2d at 1314. In making this determination, the court must scrutinize the reasonableness of (i) the hourly rates and (ii) the number of hours claimed. Id. at 1313-14. "If these two figures are reasonable, then there is a strong presumption that their product, the lodestar figure, represents a reasonable award." Id. at 1314 (internal quotation marks omitted). Nevertheless, a court "may authorize an upward or downward adjustment from the lodestar figure if certain factors relating to the nature and difficulty of the case overcome this strong presumption and indicate that such [*27] an adjustment is necessary." Id.

A. Hourly Rate

¹⁸ Judge Conti's repeated use of strong adjectives like "troubling" and "unreasonable" separates this case from those relied on by NMFS where fees were denied because delayed responses were caused by confusion or "bureaucratic difficulty" in handling requests. Oppo. at 14.

¹⁹ I recognize that Judge Conti ultimately found that NMFS had conducted adequate searches and appropriately withheld all documents except one. But those conclusions were reached only after multiple rounds of briefing and decision, necessitated by NMFS's initially deficient declarations and *Vaughn* indexes.

NMFS argues plaintiffs' hourly rates are excessively high, and that the Court should apply the hourly rates set forth in the *Laffey* matrix plus locality adjustments, which would result in a decrease of 22.9% in the requested lodestar. Oppo. at 20-22. As I recognized in Public.Resource.org v. United States Internal Revenue Serv., No. 13-CV-02789-WHO, 2015 U.S. Dist. LEXIS 175943, 2015 WL 9987018, at *6 (N.D. Cal. Nov. 20, 2015), "[a]bsent some showing that the rates stated in the matrix are in line with those prevailing in this community . . . I agree [that] that the matrix is not persuasive evidence of the reasonableness of its requested rates." As in Public.Resource.org, I will not bind plaintiffs to the *Laffey* matrix, especially as statutory fee awards from this District do not establish that the *Laffey* matrix rates are in line with prevailing rates for statutory fee cases in the Bay Area legal community. See, e.g., Public.Resource.org (awarding rates from \$205 for paralegals up to \$645 for senior/lead counsel); Sierra Club, 75 F. Supp. 3d at 1152-53 (approving hourly rates of \$350 to \$650 in FOIA action); Rosenfeld, 904 F. Supp. 2d at 1001, 1004 (approving hourly rates of \$460, \$550, and \$700 in FOIA action); Hajro v. U.S. Citizenship & Immigration Servs., 900 F. Supp. 2d 1034, 1054 (N.D. Cal. 2012) (approving hourly rates of \$450 to \$625 in FOIA action) *vacated and remanded on other grounds*, 807 F.3d 1054, 2015 WL 6405473 (9th Cir. 2015); see also [*28] Hiken v. Dep't of Def., 836 F.3d 1037, 1039 (9th Cir. 2016) (reversing district court order awarding fees at matrix rate).

The rates sought by counsel in this case are, generally, higher than the rates approved in other recent FOIA cases in this District. They are also, more importantly, significantly higher than rates that were requested and approved by these *same* counsel in recent cases in this District for environmental litigation. See, e.g., OCE v. EPA, 13-cv-02857 (Dkt. Nos. 82, 99) (awarding fees from \$435 to \$655/hr for work through early 2015); San Francisco Baykeeper v. West Bay Sanitary Dist., No. 09-5676, 2011 U.S. Dist. LEXIS 138093, 2011 WL 6012936 (N.D. Cal. Dec. 1, 2011) (approving \$585/hr for Sproul). Plaintiffs argue this upward departure is warranted because in the past they have relied on the *Laffey* matrix with locality adjustments, but recent cases confirm those rates under-compensate them. See, e.g., Declaration of Christopher Sproul [Dkt. No. 88] ¶ 15; Declaration of Patricia Weisselberg [Dkt. No. 86] ¶ 9.

Plaintiffs undertook a "market rate" analysis and seek compensation for that research from *this* case. The analysis was performed primarily by billing attorney Christopher Hudak. Hudak reviewed fee awards in a

number of different types of cases from the Northern District, including class action litigation (antitrust, wage and hour, consumer protection, [*29] and securities) as well as one anti-SLAPP case and one FOIA case. See, e.g., Declaration of Christopher Hudak [Dkt. No. 84] ¶¶ 11-32. The market rate analysis did not consider more than one FOIA case (despite there being a number of cases on point) nor did it directly consider cases awarding statutory fees for environmental litigation.²⁰

Plaintiffs have not demonstrated that the rates they seek here are reasonable for FOIA litigation (or environmental fee-shifting litigation). They seek to downplay the fact that in cases from 2014 and 2015 *these same attorneys* requested significantly lower attorney's fee rates. I do not believe the case law supports limiting plaintiffs to their prior requested rates, but I do believe that any *significant* upward departure should be justified, for example, by declarations explaining the increases in light of increased expenses from doing business and practicing in certain markets or other factors. I also do not find plaintiffs' focus — as support for their requested hourly rates in these cases — on large scale, complex class action cases to be persuasive. That is not to say that FOIA [*30] cases cannot be complex. But the high rates awarded for complex class action cases can be explained in large part by the necessity in those cases for plaintiffs' counsel to incur significant cost outlays (for experts, document review systems, travel, depositions, etc.) as well as attorney time (to review hundreds of thousands of documents, numerous depositions, etc.) which are not typically required in FOIA cases and were not required in these cases.

Accordingly, I find that the hourly rates plaintiffs request here are not adequately supported and are not reasonable. This conclusion is consistent with [Hiken v. Dep't of Def., 836 F.3d 1037, 1044-46 \(9th Cir. 2016\)](#), where the Ninth Circuit confirmed that a "reasonable rate" is the rate prevailing "in the community" for "similar work" performed by attorneys of comparable skill and experience and based on record evidence of prevailing

²⁰ The OCE attorneys did rely for "data points" on the Declaration of Richard M. Pearl from a state court case, *Citizens Committee To Complete The Refuge, Inc. v. City of Newark*, Case No. RG10530015, (CA Superior Ct. County of Alameda). The Pearl declaration focused on attorney's fees rates through 2014, and did review some statutory fee-shifting awards, as opposed to the class action attorney's fee awards focused on by the plaintiffs here. See, e.g., Weisselberg Decl. ¶¶ 11-16; Sproul Decl., Ex. 32; Hudak Decl. ¶ 34.

historical rates. I do not find that plaintiffs' survey is based on the performance of "similar work" by attorneys of comparable skill and experience.

Plaintiffs shall recalculate their lodestar based on hourly rates that are consistent with the rates they requested in prior FOIA or environmental cases for the same time periods. For example, time spent on these cases [*31] in 2015 should be sought at the same rate previously sought and/or awarded by a court for time spent in 2015. For time in 2016 - as to which plaintiffs may have not had an hourly rate approved by another court — plaintiffs are entitled to a 10% increase over their 2015 approved-rates, absent specific justification supported by a declaration explaining why a particular attorney or paralegal should be granted a higher percentage increase.²¹

B. Hours Expended

NMFS also argues that the hours sought by plaintiffs cover time and tasks that were neither necessary nor reasonable for the prosecution of these suits and asks me to reduce the requested fee amount for the following:

- A \$188,381.47 reduction for plaintiffs' work on the claims they lost;
- A \$26,686.22 reduction for work on pleadings and other papers that were never filed;
- A \$89,442.20 reduction for work performed at the administrative stage and review of documents produced;
- A reduction for work unrelated to *OCE I* and *OCE II*; and
- A 30 - 50% reduction generally for excessive, redundant, and unnecessary work.²²

1. Claims Lost

NMFS argues that plaintiffs are not entitled to \$188,381.47 in fees (calculated at the hourly rates that

²¹ For any biller in these cases who has not had a prior-court-submitted or approved billing rate, plaintiffs shall use a prior-court-approved billing rate for an attorney or paralegal of comparable experience.

²² Plaintiffs explain that before submitting their request, most billers took 10% of the time billed "off the top" to account for any potential inefficiencies or redundancies in their work. Sproul Decl. ¶¶ 92, 97; Weisselberg Decl. ¶ 41; Isaacs Decl. ¶¶ 6-7; Costa Decl. ¶ 6; Hudak Decl. ¶ 35 (worked over 100 hours, but seeking payment for approximately 30 hours).

NMFS objects [*32] to) for "distinct" claims they lost: (i) claims against FWS and the Corps; (ii) claims regarding the adequacy of the searches in *OCE II* (based on a frivolous argument that NMFS's declarant's testimony was "hearsay"); (iii) unsuccessful challenges to NMFS's withholdings; (iv) claims regarding actual and pattern and practice search cut-off dates; and (v) plaintiffs' response to the October 21 2015 Order to Show Cause as to whether further injunctive relief was necessary.²³

With respect to the \$3,506.18 incurred with *OCE III*, plaintiffs admit they do not seek to recover for that time. So there is no longer a dispute as to that time/amount. The only other unsuccessful legal theory/claim NMFS "breaks out" time for is the \$23,032.40 plaintiffs charge for 37.1 hours spent responding to NMFS's showing in response to Judge Conti's Order to Show Cause. *Oppo.* 17. However, I find that that time was reasonable and necessary. Judge Conti's OSC raised significant questions regarding the steps NMFS was taking to address its FOIA backlog, and NMFS filed a detailed response, supported by declarations. Plaintiffs filed a brief to contest some of the assertions made by NMFS, but that pleading was [*33] helpful and relied on by me in determining whether any live issues remained in the litigation, even though I denied plaintiffs' request for further injunctive relief as to the backlog.

NMFS does not break out the time spent on the other "unsuccessful" issues because plaintiffs' billing records do not allow them to. NMFS instead argues the 595.6 hours/\$323,685.79 plaintiffs billed to pleadings for the summary judgment, supplemental briefing, and the joint submission required by the October 2015 Order should be reduced by 50% to account for plaintiffs' other losing claims/theories. *Oppo.* 17-18; *Wall Decl.*, Ex. B (Summary Fee Analysis). I disagree.

As to claims against FWS and the Corps for their alleged part in causing repeated delays in NMFS's FOIA responses, while plaintiffs were not ultimately successful in their claims against those entities, the claims made were part and parcel of the impermissible and excessive delay claims against NMFS. This time is compensable.

²³ NMFS breaks down the \$188,381.47 (or more accurately \$188,381.48) as follows: \$23,032.40 for 37.1 hours spent on the opposition to NMFS's showing in response to Judge Conti's OSC; \$161,842.90 as a 50% reduction from the \$323,685.79 plaintiffs billed for pleadings, summary judgment, supplemental briefing and the joint submission; and \$3,506.18 incurred with *OCE III*.

As to claims regarding the adequacy of the searches in *OCE II* (based in part on the argument that NMFS's declarant's testimony was hearsay), while plaintiffs eventually lost this claim, Judge Conti forced NMFS to submit supplemental [*34] briefing explaining the adequacy of its searches. NMFS's initial explanations, therefore, were deficient and plaintiffs' successfully argued that deficiency to Judge Conti in their initial and supplemental briefing. This time is compensable.

As to the unsuccessful challenges to NMFS's withholdings, plaintiffs eventually lost all but one of these claims. But in the process of the initial and supplemental rounds of briefing, NMFS agreed to produce more documents and NMFS had to explain its actions in greater detail due to deficiencies in their initial briefing and declarations. This time is compensable.

And as to the eventually unsuccessful claim regarding NMFS's pattern and practice of applying improper search cut-off dates, while plaintiffs did not secure an order from Judge Conti finding that NMFS had an illegal pattern or practice, the record supports at least an inference that during this litigation NMFS implemented a new or clarified policy. Even assuming it was simply a clarified policy, that clarification produced a public benefit for future FOIA requestors. This time is compensable.

2. Pleadings and Papers Never Filed

NMFS argues that plaintiffs should not be compensated for 49.1 [*35] hours/\$26,686.22 for work on pleadings that were never filed, including draft amended complaints in *OCE I* and *OCE II*, a motion for reconsideration, and a motion for relief. *Wall Decl.*, Ex. G (Unfiled Papers).

In reply, Sproul explains: (i) the work done on the unfiled SAC in May 2014 in *OCE I* was used on the motion for summary judgment in *OCE I* and is therefore compensable (Sproul Reply Decl. ¶ 5); (ii) the 3.16 hours billed in February 2015 for a "motion for relief" was in fact work done for the Notice Regarding Submitted Matter and Request For Ruling filed on March 2, 2015 (*id.* ¶ 6); (iii) 13.19 hours of work in October 2014 was for a pleading filed in *OCE II*, Dkt. 58 (*id.* ¶ 7); (iv) 1.32 hours of time billed in May 2015, was cut from the request on plaintiffs' Reply (and not currently sought); and (v) the remaining hours that were spent on the unfiled motion for reconsideration in January 2016 are compensable because that unfiled motion was used as leverage to get NMFS to agree to a form of judgment and produce additional documents. *Id.*

¶ 8. Weisselberg also, on review, cut 0.56 of time from her entries challenged in Wall's Ex. G, because those entries represented work on what was [*36] to become *OCE III*. Weisselberg. Reply Decl. ¶ 11.

Considering the declarations, I find that all of the challenged time except the time spent on the unfiled motion for reconsideration is compensable. Plaintiffs have adequately identified how the time identified by NMFS was spent or used for pleadings actually filed in this action. However, the time spent on the unfiled motion for reconsideration in January 2016 was created voluntarily by plaintiffs and used for "leverage" but was never necessary or useful for any contested decision made by me.

3. Administrative Efforts

NMFS wants a further reduction for 157.7 hours/\$89,442.20 that plaintiffs spent drafting FOIA requests, working on the agency administrative appeals, and reviewing the documents produced. Wall Decl., Ex. I. Generally, "work performed during the pre-litigation administrative phase of a FOIA request is not recoverable under FOIA." [Elec. Privacy Info. Ctr. v. United States Dep't of Homeland Sec., 811 F. Supp. 2d 216, 237 \(D.D.C. 2011\)](#); but see [Public.Resource.org, 2015 U.S. Dist. LEXIS 175943, 2015 WL 9987018, at *8](#) (allowing recovery for two time entries on letters seeking agency reconsideration "given the clear overlap in subject matter between the letter and this litigation, the letter's explicit contemplation of a lawsuit, and the proximity in time between the letter and the filing of" the complaint). [*37]

In their Reply and supporting declarations, plaintiffs cut some of the contested time for work on the FOIA requests and administrative appeals, but kept the time spent on two specific FOIA requests in. As explained by lead counsel Sproul:

I and my co-counsel have been mindful that we are not entitled to recover for drafting all our FOIA requests and reviewing all the documents obtained for the purpose of learning the substantive content of those documents for the Plaintiffs' citizen suit litigation against Stanford or larger public advocacy campaign related to Stanford and the San Francisquito Creek watershed. However, we have concluded that we may recover for time spent drafting FOIA requests specifically intended to garner information for use in this litigation and reviewing documents for such litigation purposes. I and my co-counsel have carefully segregated the time spent drafting FOIA requests reviewing

documents such that we are seeking recovery only for the latter time. With respect to drafting FOIA requests, we are seeking to recover for time spent drafting (or appealing responses concerning) only two of the multiple FOIA requests at issue in this proceeding that Plaintiffs specifically [*38] used to gather information used as evidence against NMFS in this case: FOIA requests sent on April 3, 2014 and November 24, 2015. (the latter is Exhibit M to the Wall Declaration, (OCE I, Dkt. 92-1). The April 3, 2014 FOIA sought documents concerning the searches done by NMFS and the responses provided by NMFS to Plaintiffs in response to their FOIA requests with the aim of developing evidence that NMFS's searches have not complied with FOIA. Plaintiffs' November 24, 2015 FOIA request sought documents with the specific intent of trying to garner evidence that Plaintiffs' litigation had catalyzed NMFS to respond more promptly to Plaintiffs' FOIA requests. The aim was to develop evidence in support of catalyst theory arguments for purposes of attorney fees recovery in settlement and, if necessary, a fees motion. Plaintiffs' November 24, 2015 FOIA Request sought documents related to NMFS's assertions that it had instituted several FOIA reforms also with the specific intent of trying to garner evidence that Plaintiffs' litigation had catalyzed NMFS to institute these reforms. Again, our aim was to develop evidence in support of catalyst theory arguments for purposes of attorney fees recovery [*39] in settlement and, if necessary, a fees motion. As discussed in the Reply Declaration of Patricia Weisselberg, Plaintiffs have in fact used documents obtained in response to their FOIA requests as exhibits supporting the catalyst theory arguments they are advancing in their Fees Motion and plaintiffs agree to reduce some of their time spent on drafting the FOIA requests and the administrative appeals.

Sproul Reply Decl. ¶ 10.

Accordingly, Michael Costa cut 11.91 hours/\$6,148.98 for drafting FOIA requests and appeals, except for the work he did on the April 3, 2014 and November 24, 2015 FOIA requests that were aimed at gathering information for this lawsuit. Costa Reply Decl. ¶ 3. Jodene Isaacs cut 11.21 hours/\$5,599.40 for drafting FOIA requests and appeals. Isaacs Reply Decl. ¶ 2. Weisselberg cut 8.74 hours spent on FOIA appeals, included in Wall's Ex. I. Weisselberg Reply Decl. ¶ 13.

The bulk of the remaining time appears to be for

document review conducted primarily by Costa and Isaacs. NMFS argues that document review is simply not compensable. See, e.g., [Sierra Club v. United States EPA](#), 75 F. Supp. 3d 1125, 1149 (N.D. Cal. 2014) ("As Plaintiffs received, at least in part, the relief they sought when the EPA produced the documents, the time they expended [*40] reviewing the documents was is properly characterized as post-relief activity, separate from the litigation."); [Citizens for Responsibility & Ethics v. United States DOJ](#), 825 F. Supp. 2d 226, 231 (D.D.C. 2011) ("Plaintiff would have had to expend this time had DOJ timely produced the documents without litigation; the cost of reviewing documents produced in response to a FOIA request is simply the price of making such a request.").

Plaintiffs respond that in this case, where the adequacy of NMFS's searches and withholdings were central claims, plaintiffs needed to spend significant amounts of time reviewing the documents to support those claims in litigation. That might be true — but plaintiffs' withholding claims were almost totally rejected (except for one document) and plaintiffs' inadequate search claims were likewise mostly unsuccessful (except for two narrow wins in *OCE I*). Plaintiffs also do not cite any case law allowing for recovery of time spent reviewing document productions where that review is necessary for a plaintiff to be able to challenge the adequacy of an agency's search or the propriety of withholdings.

Based on the declarations, I find that the Costa time spent on the two identified FOIA requests is compensable, given the overlap in subject matter between requests [*41] and this litigation as well as the proximity in time between those requests and the filing of pleadings in this case. The time spent reviewing the documents produced is not compensable.

4. Work Unrelated to *OCE I* and *OCE II*

NMFS argues that plaintiffs should not be compensated for 8.9 hours/\$4,461.23 billed by Sproul, Weisselberg, Isaacs, and Costa that it contends is unrelated to *OCE I* and *OCE II*, including litigation with Stanford and entries related to FWS and the Corps. Wall Decl., Ex. H (Unrelated Matters). In Reply, Weisselberg explains the relevance of her entries listed on Exhibit H to *OCE I* and *OCE II*. Weisselberg Reply Decl. ¶ 12. Sproul also addresses the 8.9 hours listed in Exhibit H, and other than two mistakes accounting for 0.35/hours (which were cut in the Reply) adequately explains that those hours billed were necessary for *OCE I* and *OCE II*. Sproul Reply Decl. ¶ 9; see also Costa Reply Decl. ¶ 16. This time is compensable.

NMFS also argues that plaintiffs have (perhaps inadvertently) claimed time for work on *OCE III*, despite their claim that they are not seeking that time. In its Opposition and supporting declaration, NMFS identified 5.9 hours/\$3,506.18 it contends was [*42] incurred on *OCE III*. See Wall Decl., Ex. D. As noted above, this time is not compensable.

5. Reduction for Excessive or Redundant Work

NMFS asks the Court to reduce by 30-50% any fee award to account for excessive, cumulative, and inefficient billing. Oppo. at 24. NMFS specifically challenges: (i) the 158 hours spent on the opening attorney's fees motion and declarations; (ii) 249 hours on summary judgment and supplemental briefing in *OCE I*; (iii) 263.8 hours on summary judgment and supplemental briefing in *OCE II*; (iv) 157.7 hours on the "administrative phase" including record review; and (v) the fact that five attorneys worked on the case, which NMFS contends is excessive given the nature of these cases and is demonstrated by the 173.7 hours/\$107,885.73 billed for telephone calls and email correspondence between counsel for "coordination" purposes. Wall Decl., Ex. F (Coordination Activities).

In their Reply declarations, two of the billing attorneys exercised "more" billing judgment to cut hours in light of potential redundancy. See Costa Reply Decl. ¶ 4 (cutting 4.05 hours/\$2,136.38); Isaacs Reply Decl. ¶ 3 (cutting just over 14 hours/\$7,087.91). No other reductions for excessive or redundant [*43] work appear to have been made, other than the 10% "off the top" that each of the billing attorneys took off their time initially.

The time spent on the opening attorney's fees motion and declarations is excessive and unreasonable. In particular, plaintiffs should not be compensated for the time Hudak spent (unsuccessfully as addressed above) surveying cases in order to determine what billing rates should be used for plaintiffs in this fee motion. Moreover, the time spent in drafting the fee motion — which itself does not raise any unique issues or issues of first impression — is excessive. Plaintiffs purport to be experienced FOIA and environmental litigators; submission of fee petitions is a regular part of that work. I recognize that reviewing the time records, exercising billing judgment, and creating supporting declarations will take significant time in each case no matter how experienced counsel is. But the time spent on the *brief* appears to be excessive in and of itself. A 25% reduction in the time spent on the opening attorney's fees motion is appropriate, as is elimination of the time Hudak spent on his inapposite attorney's fees survey.

Our Children's Earth Found. v. Nat'l Marine Fisheries Serv.

As to time spent on the Reply brief and [*44] declarations (which NMFS did not have the opportunity to attack), I conclude that the time spent on the brief itself is reasonable, but not the time spent reviewing the time slips and submitting supplemental declarations, because much of *that* time was spent accounting for errors pointed out by NMFS and then making additional reductions for improper or otherwise redundant billing. Only 50% of the time spent on the declarations in support of the Reply is compensable.

As to the 249 hours spent on summary judgment and supplemental briefing in *OCE I* as well as the 263.8 hours spent on summary judgment and supplemental briefing in *OCE II*, I find that the time is reasonable and compensable. The summary judgment briefing was extensive, detailed and addressed a number of issues where there was little precedent. In these circumstances I cannot say the time spent was unreasonable.

As to the 157.7 hours on the "administrative phase" including record review, as noted above, plaintiffs have voluntarily cut all time on drafting the FOIA requests, except for time Costa spent on two, and I have already found that time spent reviewing the documents produced is not compensable.

Finally, as to the time spent [*45] on coordination between counsel, I find that 173.7 hours is excessive. While this case was complex in the sense that there were a large number of FOIA requests at issue, at least three lawsuits filed, and multiple rounds of summary judgment and additional briefing required, the sheer number of attorneys involved — many of whom it appears were involved in part because of the Stanford litigation — meant that there was an excessive amount of "coordination." A 25% reduction in the amount of time spent on coordination is appropriate.

C. Costs

Plaintiffs seek \$3,190.39 in costs. Dkt. No. 94. NMFS does not oppose the amount of costs, but argues instead that in light of the limited nature of plaintiffs' success and the agency's good faith, costs are not warranted. *Oppo.* at 24-25. Having concluded that plaintiffs are substantially prevailing and that the agency's defenses were without a reasonable basis in law, an award of costs is appropriate. Plaintiffs are awarded \$3,190.39 in costs.

CONCLUSION

For the foregoing reasons, plaintiffs will be awarded

attorney's fees, but at a significantly reduced amount, and are awarded \$3,190.39 in costs.

Within twenty days of the date of this Order, plaintiffs shall, after [*46] meeting and conferring with defense counsel, submit a *joint* supplemental brief and proposed judgment containing a revised request for attorney's fees that excludes all of the time I have identified above as not being compensable. The parties shall make all reasonable efforts to reach agreement on the time to be included in light of the time that has been excluded by this Order. If the parties cannot agree, any remaining disputes shall be explained in no more than two pages.

Plaintiffs must also recalculate their lodestar, using hourly rates that were approved for them in past years and using a rate for 2016 that is no more than 10% above their 2015 rates, unless otherwise justified. At the time the joint supplemental brief and proposed judgment is filed, plaintiffs shall submit a declaration explaining and identifying: (i) the rates for each biller for each year billed; (ii) the case(s) for which each biller's rates have been requested and approved; (iii) the basis for the 2016 hourly rates sought; and (iv) the basis for any hourly rate sought for a biller who has not had her or his time approved by a prior court order.

IT IS SO ORDERED.

Dated: March 1, 2017

/s/ William H. Orrick

William [*47] H. Orrick

United States District Judge

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Exhibit D

Ecological Rights Found. v. Fed. Emergency Mgmt. Agency

United States District Court for the Northern District of California

January 3, 2017, Decided; January 3, 2017, Filed

Case No. 15-cv-04068-DMR

Reporter

2017 U.S. Dist. LEXIS 1054 *

ECOLOGICAL RIGHTS FOUNDATION, Plaintiff, v.
FEDERAL EMERGENCY MANAGEMENT AGENCY, et
al., Defendants.

Core Terms

documents, email, chain, inadvertent, deliberative process, disclosure, endangered species, attorney-client, Exemption, discovery, consultation, clawback, asserts, work product doctrine, communications, privileged, parties, agencies, Wildlife, letters, reasonable steps, proposed rule, waived, attachment, promptly, copies, played, legal advice, court order, predecisional

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For Federal Emergency Management Agency, USA, Defendants: Neill Tai Tseng, United States Attorney's Office, San Francisco, CA.

Judges: Donna M. Ryu, United States Magistrate Judge.

Opinion by: Donna M. Ryu

Opinion

ORDER ON JOINT DISCOVERY LETTER

Re: Dkt. No. 34

The parties filed a joint discovery letter in which Defendant Federal Emergency Management Agency

("FEMA") seeks clawback of three documents inadvertently produced to Plaintiff Ecological Rights Foundation in response to a Freedom of Information Act ("FOIA") request. [Docket No. 34 (Jt. Letter).] This matter is appropriate for resolution without a hearing pursuant to Civil Local Rule 7-1(b). For the following reasons, Defendant's motion is denied.

I. BACKGROUND

Plaintiff filed this action on September 5, 2015, seeking declaratory and injunctive relief under FOIA, 5 U.S.C. § 552(a)(4)(B). Plaintiff challenged FEMA's response to its June 8, 2015 request for

all documents addressing Endangered Species Act ("ESA") section 7 consultations (16 U.S.C. § 1536) that have been initiated or proposed pertaining [*2] to the implementation of the National Flood Insurance Program ("NFIP") in California; all documents concerning any ESA section 10 permits or habitat conservation plans (16 U.S.C. § 1539) that have been initiated or proposed, pertaining to the implementation of the NFIP in California; and all documents submitted to FEMA by [the National Marine Fisheries Service], [U.S. Fish and Wildlife Service], the [California Department of Fish and Wildlife], or any other State or Federal agency or department pertaining to the ESA and the implementation of the NFIP in California.

Compl. ¶ 15.

By way of background, section 7(a)(2) of the Endangered Species Act, 16 U.S.C. § 1536(a)(2), which the Ninth Circuit has described as "[t]he heart" of the Act, requires all federal agencies to "'insure that any action authorized, funded, or carried out' by the agency 'is not likely to jeopardize the continued existence of any endangered species or threatened species or result in

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the destruction or adverse modification of habitat of such species." *W. Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 495 (9th Cir. 2010) (quoting [16 U.S.C. § 1536\(a\)\(2\)](#)); *Nat. Res. Def. Council v. Houston*, 146 F.3d 1118, 1125 (9th Cir. 1998). "To carry out this substantive mandate, agencies must engage in a consultation process with the appropriate expert wildlife agency on the effects of any federal action to listed species." *Cal. ex. rel. Lockyer v. U.S. Dep't of Agric.*, 575 F.3d 999, 1018 (9th Cir. 2009). "After the formal consultation is [*3] completed, the relevant Service will issue a Biological Opinion evaluating the nature and extent of effect on the threatened or endangered species. If the Biological Opinion concludes that the proposed action is likely to jeopardize a protected species, the agency must modify its proposal." *Nat. Res. Def. Council*, 146 F.3d at 1125.

Plaintiff is a public interest environmental organization. According to Plaintiff, the requested documents "are of vital importance to the public to understand how the National Flood Insurance Program, which can have an enormous impact on development in floodplains and on wildlife habitat, is fulfilling its obligations under the [Endangered Species Act]." Compl. ¶ 15. Plaintiff alleges that it "is concerned that since a number of federal courts have already held that FEMA had failed to properly consult with National Marine Fisheries Service ("NMFS") or [U.S. Fish and Wildlife Service] over the [National Flood Insurance Program], that FEMA has not fulfilled its requirements under the [Endangered Species Act] in California." *Id.* Plaintiff made its FOIA request "to learn more about whether the required consultations between FEMA and the National Marine Fisheries Service and/or U.S. Fish and Wildlife [*4] Service have occurred over the [National Flood Insurance Program]." [Docket No. 19 (Dec. 9, 2015 Jt. CMC Statement at 2).] In its complaint, Plaintiff alleges that FEMA failed to provide a final determination concerning the June 8, 2015 request within statutory or regulatory time limits and failed to promptly release documents that are responsive to the request. Compl. ¶¶ 17, 37, 38.

On October 19, 2015, Defendant sent its first interim FOIA response and release of documents to Plaintiff. Jt. Letter at 1. It reviewed 445 pages and determined that 213 pages were "entirely releasable," and that portions of 204 pages were exempt from disclosure. *Id.* In this discovery dispute, Defendant states that it "inadvertently" produced the following three documents to Plaintiff: 1) a letter dated July 6, 2015; 2) a letter dated August 25, 2016; and 3) a June 2015 email chain. *Id.* Defendant does not state when it produced the three

documents to Plaintiff, but asserts that it first learned of the inadvertent production on March 11, 2016. Defendant requested clawback nine business days later. *Id.* Ex. 1 (Mar. 24, 2016 letter to Plaintiff seeking clawback). According to Defendant, the three documents are protected from release [*5] by FOIA Exemption 5. It asks the court to order Plaintiff to destroy all copies of the documents in its possession and refrain from using any information contained therein, as well as "take reasonable steps to retrieve" all copies of the documents that Plaintiff has disseminated to third parties. Jt. Letter at 3.¹

The parties jointly lodged the three documents for in camera review pursuant to court order. [Docket No. 32.] Plaintiff also filed an administrative motion for leave to file four additional exhibits in support of its position, which Defendant does not oppose. [Docket Nos. 35, 36.] On November 22, 2016, the court ordered the parties to submit supplemental briefing addressing whether the attorney-client privilege and/or the attorney work product doctrine applies to the June 2015 email chain. [Docket No. 45.] The parties timely filed the requested briefing. [Docket Nos. 46 (Def.'s Brief), 51 (Pl.'s Brief).]

II. DISCUSSION

A. Whether the Court Has Authority to Order Plaintiff to Return the Documents

As a threshold issue, the parties dispute whether the court may order the requested relief. Defendant argues that the court has the inherent authority to order the requested relief to prevent Plaintiff [*6] "from irresponsibly retaining documents that are exempt, were produced inadvertently, and that FEMA acted promptly to claw back." Jt. Letter 2. It notes that *Federal Rule of Civil Procedure 26(b)(5)(B)*² provides for the return of

¹ After filing the instant letter, the parties settled the action and stipulated to dismissal of all claims except for this dispute. [Docket No. 42.]

² Under *Rule 26(b)(5)(B)*, "[i]f information produced in discovery is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal

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privileged or attorney work product produced in discovery, and asks the court to apply the same in these circumstances. Plaintiff argues that clawback is not available in these circumstances. Since the documents at issue were released under FOIA rather than produced in discovery, Plaintiff argues that FOIA governs this matter, not the Federal Rules of Civil Procedure.

In support of its position, Defendant cites three cases in which courts ordered a receiving party to destroy or return copies of documents inadvertently produced in response to a FOIA request. In *Hersh & Hersh v. U.S. Department of Health & Human Services*, No. C 06-4234 PJH, 2008 WL 901539, at *9 (N.D. Cal. Mar. 31, 2008), the court ordered the plaintiff to return two FOIA productions that were later superseded and which contained inadvertently produced documents. In *ACLU v. Department of Defense*, No. 09 Civ. 08071 (BSJ) (FM), slip. op. at 13-15 (S.D.N.Y. Mar. 20, 2012), the court, citing its inherent authority and *Hersh*, ordered the plaintiffs to return a classified document that had [*7] been inadvertently produced by the producing agency. The document had been part of a production made in accordance with a court-supervised FOIA response. Finally, in *Kielty v. FEMA*, No. 14-CV-3269 (PGS)(LHG), slip. op. (D.N.J. Dec. 8, 2014), the court ordered the plaintiff to destroy or return all copies of information that was inadvertently produced in response to his FOIA request and enjoined his use of the information for any purpose unless it was disclosed under FOIA or by court order. Plaintiff attempts to distinguish these cases, arguing that *Hersh* and *Kielty* are conclusory, and that *ACLU* is distinguishable because the production occurred pursuant to a court-ordered process. However, all three cases support the conclusion that the court may exercise its inherent powers to order the return of the documents if they are protected from release under an applicable FOIA exemption. See also *Long v. U.S. IRS*, 693 F.2d 907, 909 (9th Cir. 1982) (describing courts as the "enforcement arm of the FOIA"). Accordingly, the court will analyze whether the documents are exempted from disclosure under FOIA.

B. Exemption 5

Defendant contends that the three documents are protected from release by FOIA Exemption 5. Exemption 5 protects "inter-agency [*8] or intra-agency memorandums or letters that would not be available by

for a determination of the claim. The producing party must preserve the information until the claim is resolved."

law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5). "The exemption is 'cast in terms of discovery law,'" and thus covers the deliberative process privilege, the attorney-client privilege, and the attorney work product doctrine. *Maricopa Audubon Soc'y v. U.S. Forest Serv.*, 108 F.3d 1089, 1092 (9th Cir. 1997) (citations omitted).

Defendant argues that all three documents are protected by the deliberative process privilege. It also asserts that parts of the third document, the June 2015 email chain, are protected by the attorney-client privilege and attorney work product doctrine.

1. Deliberative Process Privilege

a. Legal Standard

The deliberative process privilege "permits the government to withhold documents that reflect advisory opinions, recommendations and deliberations comprising part of a process by which government decisions and policies are formulated." *FTC v. Warner Commc'ns Inc.*, 742 F.2d 1156, 1161 (9th Cir. 1984).

The privilege is designed to "promote frank and independent discussion among those responsible for making governmental decisions," *id.*, and the "ultimate purpose" of the privilege is to "prevent injury to the quality of agency decisions." *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 151 (1975).

For a document to qualify for exemption 5 under the deliberative process privilege, [*9] it must be both "predecisional" and "deliberative." *Nat'l Wildlife Fed'n v. U.S. Forest Serv.*, 861 F.2d 1114, 1117 (9th Cir. 1988). Predecisional means that the document was "antecedent to the adoption of agency policy." *Id.* Deliberative means that the document "must actually be related to the process by which policies are formulated." *Nat'l Wildlife Fed'n*, 861 F.2d at 1117. This dual requirement reflects the privilege's purpose of protecting the deliberative process leading up to decisions. *Id.* "Purely factual material that does not reflect deliberative processes is not protected." *FTC*, 742 F.2d at 1161.

Because the deliberative process is "so dependent upon the individual document and the role it plays in the administrative process[,] [t]he agency must establish what deliberative process is involved, and the role played by the documents in issue in the course of that process." *Elec. Frontier Found. v. CIA*, No. C 09-3351 SBA, 2013 WL 5443048, at *12 (N.D. Cal. Sept. 30, 2013) (quoting *Animal Legal Def. Fund, Inc. v. Dep't of*

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[Air Force, 44 F. Supp. 2d 295, 299 \(D.D.C. 1999\)](#) (quotation omitted) and [Senate of Puerto Rico v. U.S. Dep't of Justice, 823 F.2d 574, 585-86 \(D.C. Cir. 1987\)](#)). The agency must also "describe the nature of the decision making authority vested in the office or person issuing the disputed documents, and the positions in the chain of command of the parties to the documents." *Id.* (citing [Arthur Andersen & Co. v. IRS, 679 F.2d 254, 258 \(D.C. Cir. 1982\)](#)).

The burden of establishing application of the privilege is on the party asserting it. [North Pacifica, LLC v. City of Pacifica, 274 F. Supp. 2d 1118, 1122 \(N.D. Cal. 2003\)](#). [*10] "Because FOIA's purpose is to encourage disclosure, its exemptions are to be narrowly construed." *Carter*, 307 F.3d at 1088.

b. Analysis

The first document is a two-page letter dated July 6, 2015 with an attachment from Donna S. Wieting, Director, Office of Protected Resources, NMFS, to Michael Grimm, Acting Assistant Administrator for Mitigation with FEMA (the "NMFS letter"). NMFS Letter, 149-153. In the letter, on behalf of NMFS, Wieting objects to a FEMA draft rule for the National Flood Insurance Program, expressing the concern that the proposed rule fails to protect endangered species critical habitat. She states NMFS's position that it is "premature to concur on this draft rule" until NMFS is able to review FEMA's biological evaluation and complete its own "biological opinion pursuant to Section 7 of the Endangered Species Act." *Id.* at 149. She also states that the NMFS had previously identified necessary changes to the proposed rule which had not been incorporated into the draft rule, and encloses a three-page attachment containing additional comments on the draft rule. *Id.* at 151-53. In the attachment, the NMFS asserts its position that "FEMA . . . must consult with NMFS under Section 7(a)(2)" regarding the National Flood Insurance Program. *Id.* at 151 ("NMFS [*11] should conduct an [Endangered Species Act] [section 7(a)(2)] consultation for this project . . .").

The second document is an August 25, 2015 letter with an attachment from FEMA's Grimm to Wieting in response to Wieting's July 6, 2015 letter (the "FEMA letter"). FEMA Letter, 175-184. In response to Wieting's statement that it would be premature for NMFS to concur on the draft rule, Grimm states, "FEMA wishes to clarify that it is not seeking to undertake consultation on the proposed rule per se." *Id.* at 175. He also informs Wieting that FEMA has concluded that it lacks authority

to enact the NMFS's requested changes to the proposed rule. *Id.* at 177-179. The five-page attachment to Grimm's letter is entitled, "Limitations on FEMA's Legal Authority and the Scope of the Proposed Action: Supporting Law and Analysis." *Id.* at 180-84.

The third and final document is a June 2015 email chain consisting of nine emails between several FEMA employees. Email chain, 212-215. Plaintiff asserts that the emails "discuss FEMA's position that it lacks authority to enforce the Endangered Species Act (ESA) and that, while due to certain 'litigation outcomes and settlements' it must ensure its National Flood Insurance Program (NFIP) complies with the Endangered [*12] Species Act in some areas, its position remains that it is not otherwise required to engage in ESA § 7 consultations and will not with respect to a proposed rule modifying the NFIP." *Jt. Letter* at 3. Defendant does not dispute this characterization of the email chain.

According to Defendant, all three documents are protected by the deliberative process privilege. It does not address how each individual document falls within the privilege, instead arguing that all three documents are "predecisional, in that they involve FEMA's ongoing, unresolved deliberations with NMFS and internally over the development of a *proposed* rule." *Jt. Letter* at 2 (emphasis in original). Defendant further asserts that the documents are "deliberative, as they are part of the consultation process by which FEMA externally and internally deliberates and seeks guidance regarding its interpretation of and compliance with the Endangered Species Act." *Id.* It provides no additional context for the communications at issue.

Defendant's showing is insufficiently specific to establish the deliberative process privilege as to any of the three documents. As noted, "[b]ecause the deliberative process is "so dependent upon the individual document and the role it plays [*13] in the administrative process[,] [t]he agency must establish what deliberative process is involved, and the role played by the documents in issue in the course of that process." [Elec. Frontier Foundation, 2013 WL 5443048](#). Further, Defendant must "describe the nature of the decision making authority vested in the office or person issuing the disputed documents, and the positions in the chain of command of the parties to the documents." *Id.* While Defendant identifies the deliberative process at issue—the development of a proposed FEMA rule for the National Flood Insurance Program—it does not provide basic context and information about the documents at issue, such as a description of the individuals involved in authoring the documents and emails, their roles within their respective agencies, or their roles in the rulemaking process.

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Defendant also does not explain the relationship between the two agencies communicating about FEMA's draft rule nor does it describe how these documents played a role in the deliberative process it has identified. FEMA operates under the Department of Homeland Security, while NMFS operates under the Department of Commerce. It is entirely unclear whether NMFS has any official role in FEMA's rulemaking process. [*14]

Without the benefit of necessary context, the court is left to guess about the nature of the correspondence between NMFS and FEMA. On their faces, the letters seem to stake out each agency's official position on a controversial issue: namely, whether FEMA is legally obligated to engage in a section 7(a)(2) consultation with NMFS pursuant to the Endangered Species Act as part of FEMA's rulemaking process regarding the National Flood Insurance Program. FEMA says it is not legally obligated to do so; NMFS says that FEMA is. This does not appear to be predecisional, because the letters convey each agency's official policy to the other agency. A document is predecisional if it was "prepared in order to assist an agency decisionmaker in arriving at his decision," and includes "recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency." *Maricopa Audubon Soc'y*, 108 F.3d at 1093. "Exemption 5 does not protect . . . communications that promulgate or implement an established policy of an agency." *Brinton v. Dep't of State*, 636 F.2d 600, 605 (D.C. Cir. 1980).

The letters also do not appear to be deliberative. A document is deemed "deliberative" if "it reflects the give-and-take of the consultative [*15] process," *Judicial Watch, Inc. v. Food & Drug Admin.*, 449 F.3d 141, 151 (D.C. Cir. 2006) (citation omitted), and is "part of the 'deliberative process,' if 'the disclosure of [the] materials would expose an agency's decisionmaking process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions.'" *Maricopa Audubon Soc'y*, 108 F.3d at 1093 (quotation omitted). Defendant does not explain how the NMFS and FEMA letters reflect the "give-and-take" of the consultative process or reflect FEMA's decisionmaking process in a way that would undermine the agency.³

³The court also notes that the FEMA and NMFS letters were apparently published online by NMFS, (Jt. Letter at 4), indicating that NMFS was not concerned that the

As to the June 2015 email chain, the emails reflect an internal FEMA discussion about whether FEMA must engage in Endangered Species Act section 7 consultations. It is not clear whether this discussion relates to the proposed rule discussed in the NMFS and FEMA letters, and Defendant does not "pinpoint an agency decision or policy to which the document contributed," or identify a decisionmaking process" to which the email chain contributed. See *Judicial Watch, Inc. v. U.S. Postal Service*, 297 F. Supp. 2d 252, 259 (D.D.C. 2004) (citations omitted). The Ninth Circuit has held that "an agency may not satisfy its burden of proof simply by producing the withheld materials for *in camera* review." *Maricopa Audubon Soc'y*, 108 F.3d at 1093, 1093 n.1 ("the district court's inspection prerogative is not a substitute for the government's [*16] burden of proof." (quotation omitted)). By failing to provide basic information about the deliberative process at issue, and the role played by the specific documents, Defendant cannot meet its burden of establishing that the deliberative process privilege protects any of the three documents.

2. Attorney Client Privilege and Work Product Doctrine

Defendant also asserts that the bulk of the June 2015 email chain is protected by the attorney-client privilege and attorney work product doctrine. The email chain consists of nine emails between FEMA employees, with the first email in the chain sent on June 11, 2015 at 1:45 pm and the last, most recent email sent on June 12, 2015 at 2:38 pm. In supplemental briefing, FEMA clarifies its position that the attorney-client privilege and work product doctrine apply to only the seven most recent emails in the chain (the third through ninth emails). It no longer contends that the first two emails in the chain (sent June 11, 2015 at 1:45 pm and June 11, 2015 at 4:51 pm) are protected by the attorney-client privilege and work product doctrine.⁴

a. Legal Standards

The attorney-client privilege protects from discovery

disseminating the communications would undermine the goal of promoting "frank and independent discussion" between the two agencies.

⁴ Defendant also apparently abandoned its claim that the first two emails in the chain are protected by the deliberative process privilege. See Def.'s Brief at 2 ("Defendant would not object to producing the first two emails in the chain (i.e., the last two emails on Page 215).

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"confidential communications between [*17] attorneys and clients, which are made for the purpose of giving legal advice." [United States v. Richey, 632 F.3d 559, 566 \(9th Cir. 2011\)](#) (citation omitted). The privilege, which is narrowly construed, [In re Pac. Pictures Corp., 679 F.3d 1121, 1126 \(9th Cir. 2012\)](#), attaches when:

- (1) legal advice of any kind is sought
- (2) from a professional legal adviser in his capacity as such,
- (3) the communications relating to that purpose, (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal adviser, (8) unless the protection be waived.

[Richey, 632 F.3d at 566](#) (brackets and citation omitted).

The fact "[t]hat a person is a lawyer does not, *ipso facto*, make all communications with that person privileged." [United States v. Chen, 99 F.3d 1495, 1501 \(9th Cir. 1996\)](#). "The privilege does not allow an agency to withhold a document or portions thereof merely because it is a communication between the agency and its lawyers." [Elec. Frontier Found., 2013 WL 5443048, at *16](#). Rather, "the agency must show that it supplied information to its lawyers with the expectation of secrecy and the information was not known by or disclosed to any third party." *Id.*

The work product doctrine shields from discovery "documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative." [Fed. R. Civ. P. 26\(b\)\(3\)\(A\)](#). The doctrine aims to balance the "promotion [*18] of an attorney's preparation in representing a client" and "society's general interest in revealing all true and material facts to the resolution of a dispute." [In re Seagate Tech., LLC, 497 F.3d 1360, 1375 \(Fed. Cir. 2007\)](#) (citation and quotation marks omitted).

b. Analysis

i. The Privileged Status of the June 2015 Email Chain

In response to the court's order for supplemental briefing, Defendant submitted a declaration by Amy Weinhouse, an "Attorney-Advisor" in the Flood Insurance and Mitigation Legal Division of FEMA's Office of Chief Counsel ("OCC"). [Docket No. 47 (Weinhouse Decl., Dec. 5, 2016) ¶ 1.] She explains that in the second email in the chain, a FEMA employee named G. Morgan Griffin seeks clarification about his role in an internal process. In the third email in the

chain, dated June 11, 2015 at 1:54 pm, FEMA's Michael Nakagaki responded to Griffin's question by stating "[w]e will coordinate our conversation with OCC here" and copying Weinhouse. Weinhouse asserts that starting with Nakagaki's 1:54 pm email, legal advice was being sought from the OCC. Weinhouse Decl. ¶¶ 3, 4. What follows includes an email from Weinhouse that she states includes legal advice and an ensuing email "conversation" between Griffin, Nakagaki, Weinhouse and others. [*19] *Id.* at ¶ 4. Weinhouse states that the information discussed "was not known by or disclosed to any third party until the email chain was inadvertently produced to Plaintiff." *Id.* at ¶ 6.

Upon careful review of the email chain and the Weinhouse declaration, the court finds that Defendant has satisfied its burden to demonstrate that the most recent seven emails in the June 2015 email chain are attorney-client privileged communications. The chain involves communications sent between FEMA employees, including an OCC attorney, which were made for the purpose of obtaining legal advice about FEMA's Endangered Species Act section 7 consultations. See [Richey, 632 F.3d at 566](#).

ii. Waiver

Notwithstanding the court's conclusion that the most recent seven emails in the June 2015 email chain contain privileged communications, the court must determine whether FEMA waived its claim of privilege. Plaintiff argues that FEMA waived privilege for the June 2015 email chain (as well as for the NMFS and FEMA letters), because it produced the document in October 2015 but did not request clawback until March 2016, over five months later.

"As with all evidentiary privileges, the burden of proving that the attorney-client privilege applies rests [*20] not with the party contesting the privilege, but with the party asserting it. One of the elements that the asserting party must prove is that it has not waived the privilege." [Weil v. Inv./Indicators, Research & Mgmt., Inc., 647 F.2d 18, 25 \(9th Cir. 1981\)](#) (internal citations omitted).

"[I]nadvertence' of disclosure does not as a matter of law prevent the occurrence of waiver." *Id.* at 24. However, inadvertent disclosure does not constitute a waiver of the attorney-client privilege or work product doctrine if:

- (1) the disclosure is inadvertent;
- (2) the holder of the privilege or protection took reasonable steps to prevent disclosure; and

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(3) the holder promptly took reasonable steps to rectify the error, including (if applicable) following Federal Rule of Civil Procedure 26(b)(5)(B).

Fed. R. Evid. 502(b).⁵

Here, Plaintiff does not dispute that the disclosure of the June 2015 email chain in Defendant's October 19, 2015 FOIA production was inadvertent, satisfying the first factor of the test. As to the remaining factors, Defendant states only that it discovered the inadvertent production on March 11, 2016 and requested clawback on March 24, 2016, nine business days later. Jt. Letter at 1, Ex. 1. Defendant is silent as to whether it took any "reasonable steps to prevent disclosure" of privileged information and does not identify any precautions it took to prevent such [*21] disclosure. It provides no information about the initial inadvertent production or its discovery thereof, such as a description of any time constraints it faced in responding to Plaintiff's FOIA request or the number of documents it reviewed in order to respond to the request. See Fed. R. Evid. 502 Advisory Comm. Notes (describing factors a court may consider in evaluating whether an inadvertent disclosure waives privilege or protection, including "the reasonableness of precautions taken" and "the number of documents to be reviewed and the time constraints for production."). In the absence of any information at all about Defendant's efforts to identify and protect privileged materials, Defendant has not demonstrated that it took reasonable steps in order to prevent inadvertent disclosure.

As to the third factor, Defendant asserts that it acted "promptly" to request clawback of the documents, notifying Plaintiff nine business days after discovering its inadvertent production. In light of Defendant's failure to establish that it "took reasonable steps to prevent disclosure" of privileged or protected information, the

court need not decide whether Defendant's nine-day delay before requesting clawback was [*22] reasonable. However, the court notes that numerous courts have held that "once a party realizes a document has been accidentally produced, it must assert privilege with virtual immediacy." Sikorsky Aircraft Corp. v. United States, 106 Fed. Cl. 571, 585 (Fed. Cl. 2012) (citing cases in which failure to assert privilege within periods ranging from six days to six months weighed in favor of waiver); see also Mycone Dental Supply Co. Inc. v. Creative Nail Design Inc., No. C-12-00747-RS (DMR), 2013 WL 4758053, at *3 (N.D. Cal. Sept. 4, 2013) (collecting cases). Since Defendant has failed to establish that its production of the June 2015 email chain did not constitute a waiver of the attorney-client privilege, the June 2015 email chain is not protected by the attorney-client privilege.⁶

In sum, the court concludes that Defendant has failed to establish that the three documents inadvertently produced to Plaintiff fall within the protections of the deliberative process privilege. Further, Defendant waived the attorney-client privilege as to emails in the June 2015 email chain for which it claimed privilege. Defendant's motion for clawback is therefore denied.⁷

III. CONCLUSION

For the foregoing reasons, Defendant's motion for clawback is denied.

IT IS SO ORDERED.

Dated: January 3, 2017

/s/ Donna M. Ryu

Donna M. Ryu

United States Magistrate [*23] Judge

⁵ Federal Rule of Evidence 502(b) applies to inadvertent disclosures "made in a federal proceeding or to a federal office or agency." Fed. R. Evid. 502(b). The parties did not brief the waiver standard applicable in this context, where Defendant inadvertently disclosed documents in connection with a FOIA release, outside the usual discovery process. However, since Defendant contends that all of the documents at issue are protected from release by FOIA Exemption 5, which "is 'cast in terms of discovery law,'" Maricopa Audubon Soc'y, 108 F.3d at 1092, the court finds it appropriate to analyze the issue of waiver under Rule 502(b). Moreover, in its March 24, 2016 letter advising Plaintiff of the inadvertent production, Defendant sought clawback of the documents pursuant to Rule 502(b). Jt. Letter Ex. 1.

End of Document

⁶ Based on the court's finding of waiver, it need not address whether the June 2015 email chain is also protected by the work product doctrine, since any such protection was also waived by Defendant's disclosure of the emails to Plaintiff.

⁷ Because the court did not rely on any of the exhibits submitted with Plaintiff's administrative motion to supplement the record, the administrative motion is denied as moot.

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Monday, August 7, 2017 8:57 AM
To: Lola Stith - NOAA Affiliate
Subject: Re: ACTION REQUIRED: Task for DOC-OS-2017-001273 (REVIEW/SIGN)
Attachments: NOAA RESPONSE_2017-0001273 Fee Estimate - All Other 6-13-2017 mhg.pdf

No Issues--

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, Aug 7, 2017 at 8:41 AM, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:
Hi Mark - AGO has responded to the subject request with a No Records Found outcome.

I have attached a draft of the tasker for your review/signature. Please sign and return to me.

Thanks!

Lola

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

From: foia@regulations.gov <foia@regulations.gov>

Date: Fri, Aug 4, 2017 at 3:28 PM

Subject: FOIA Task Completed for DOC-OS-2017-001273

To: "JD@doc.gov" <JD@doc.gov>, "lola.m.stith@noaa.gov" <lola.m.stith@noaa.gov>

The FOIA Task for DOC-OS-2017-001273 was completed. Additional details for this task are as follows:

Task Details:

- Tracking Number: DOC-OS-2017-001273
 - Task Type: Request Detail
 - Outcome: No Records Found
 - Task Description: Please see attached tasker found under submission and correspondence tab for instruction
-

- Task Comments: No records found. Therefore, NOAA AGO submits a \$0.00 fee estimate.
- Assigned To: Shem Yusuf
- Assigned By: Shem Yusuf
- Date Sent: 06/15/2017
- Due Date: 06/19/2017
- Closed Date: 08/04/2017

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Lola Stith

Contractor - The Ambit Group, LLC

NOAA Office of the Chief Information Officer (OCIO)

(c (b)(6)

lola.m.stith@noaa.gov



UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

June 13, 2017

MEMORANDUM FOR: Bobbie Parson, IOS Vernon Curry, Census
 Dondi Staunton, BEA Steven Kong, EDA
 Pam Moulder, ESA Jennifer Kuo, BIS
 Victor Powers, ITA Josephine Arnold, MBDA
 Catherine Fletcher, NIST Wayne Strickland, NTIS
 Stacy Cheney, NTIA **Mark Graff, NOAA**
 Ricou Heaton, USPTO Jennifer Piel, OIG

FROM: Michael Toland, Ph.D.
 Departmental FOIA Officer
 Office of Privacy & Open Government

SUBJECT: Fee Estimate for FOIA Amended Request for Luke Nathan–
 DOC-OS-2017-001273

This memo is seeking a fee estimate for the above captioned request. The request as amended is for: “Any and all records that refer or relate to SUNY Polytechnic Institute, the SUNY Institute of Technology, the School of Nanosciences and Nanoengineering at the University at Albany, Fort Schuyler Management Corporation, Fuller Road Management Corporation, and/or the Albany Nanotech Complex, including but not limited to awarded contracts, agreements, memoranda of understanding, invoices, determinations, reports, and correspondence. [The search range is January 1, 2015 to June 9, 2017.] The requested documents will be made available to the general public, and this request is not being made for commercial purposes.”

The FOIA requester is in the “All Other Requesters” category. The chargeable services for “All Other Requesters” are search and duplication.

Please determine the search and duplication estimate with respect to responsive documents located within your office. **DO NOT SEARCH YET.** Rather, we need an **ESTIMATE** from you as to how many hours/pages you may locate for this request. **This is only a good faith estimate; you should not search in order to come up with the estimate.** Also, a search need not actually find documents in order to be chargeable, so long as, at the outset, there is a reasonable likelihood that there may be responsive documents, and the search is conducted with due diligence.

Please fill in the following information and return this sheet by C.O.B. June 19, 2017 to: Michael Toland, Departmental Freedom of Information Officer, Office of Privacy and Open Government, Room 52010FB, Washington, D.C. 20230, Telephone – 202-482-3842, e-mail – mtoland1@doc.gov.

For documents responsive under the Freedom of Information Act:

Computer Search (if applicable)

Total estimated cost for duplication in electronic version (cost of disc or CD). 0

Total estimated hours of time to provide electronic version. 0

Total estimated dollar amount for time to provide electronic version. 0

Manual Search (if applicable)

Total estimated number of pages of documents. 0

Total estimated hours for search. 0

Total estimated dollar amount for search. 0

This information is needed to compute a total "OS" fee estimate for the requester.

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: 2017.08.07 08:56:19 -04'00'	NOAA	8/7/17
Signature (Senior Official)	Bureau	Date	

**Per AGO, NOAA does not have responsive records for this FOIA request.*

Mark Graff - NOAA Federal

From: Mark Graff - NOAA Federal
Sent: Tuesday, August 8, 2017 11:21 AM
To: Nkolika Ndubisi - NOAA Federal
Subject: Re: FOIA Reassignment - FOIA DOC-NOAA-2017-000204
Attachments: FAL no records response.pdf

Got it--thanks Nikki (b)(5)

[REDACTED]

[REDACTED]

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

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On Tue, Aug 8, 2017 at 10:48 AM, Nkolika Ndubisi - NOAA Federal <nkolika.ndubisi@noaa.gov> wrote:

Hi Mark,

(b)(5)

[REDACTED]

[REDACTED]

Thanks,

Nkolika Ndubisi (Nikki)
Administration Division
Management and Budget
National Ocean Service
[\(240\) 533-0937](tel:(240)533-0937)

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

From: **Nkolika Ndubisi - NOAA Federal** <nkolika.ndubisi@noaa.gov>
Date: Thu, Dec 15, 2016 at 7:00 PM
Subject: Re: FOIA Reassignment - FOIA DOC-NOAA-2017-000204
To: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>

Hi Lola,

I uploaded the Signed Tasker and Doc. of Search.

Nkolika Ndubisi (Nikki)
Administration Division
Management and Budget
National Ocean Service
[\(240\) 533-0937](tel:(240)533-0937)

On Thu, Dec 15, 2016 at 11:03 AM, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:

Hi Nikki - Pleas (b)(5)

Thanks!

Lola

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

From: **Mark Graff - NOAA Federal** <mark.graff@noaa.gov>
Date: Thu, Dec 15, 2016 at 10:59 AM
Subject: Re: FOIA Reassignment - FOIA DOC-NOAA-2017-000204
To: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>

As long as the search logs are in the correspondence yes.

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

On Thu, Dec 15, 2016 at 10:13 AM, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:

Good morning Mark (b)(5)

?

Lola

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

From: **Nkolika Ndubisi - NOAA Federal** <nkolika.ndubisi@noaa.gov>
Date: Wed, Dec 14, 2016 at 2:57 PM
Subject: Fwd: FOIA Reassignment - FOIA DOC-NOAA-2017-000204
To: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>
Cc: FOIA Office <foia@noaa.gov>

Hi Lola

(b)(5)

Nikki

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

From: **Jeri Dockett - NOAA Affiliate** <jeri.dockett@noaa.gov>
Date: Wednesday, December 14, 2016
Subject: FOIA Reassignment - FOIA DOC-NOAA-2017-000204
To: Nkolika Ndubisi - NOAA Federal <nkolika.ndubisi@noaa.gov>

Nikki,

(b)(5)

~Jeri

On Thu, Dec 8, 2016 at 2:48 PM, Nkolika Ndubisi - NOAA Federal <nkolika.ndubisi@noaa.gov> wrote:
Jeri

(b)(5)

Nkolika Ndubisi (Nikki)
Administration Division
Management and Budget
National Ocean Service
[\(240\) 533-0937](tel:(240)533-0937)

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

From: **Lola Stith - NOAA Affiliate** <lola.m.stith@noaa.gov>
Date: Thu, Dec 8, 2016 at 12:56 PM
Subject: FOIA Reassignment - FOIA DOC-NOAA-2017-000204
To: Zachary Cress - NOAA Federal <zachary.cress@noaa.gov>, Nkolika Ndubisi <nkolika.ndubisi@noaa.gov>

Good afternoon all (b)(5)

Thanks,

Lola

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

From: **foia@regulations.gov** <foia@regulations.gov>
Date: Thu, Dec 1, 2016 at 4:17 PM
Subject: FOIA Assignment for DOC-NOAA-2017-000204
To: "nmfs.sero.foia1@noaa.gov" <nmfs.sero.foia1@noaa.gov>

You have been assigned to the FOIA request DOC-NOAA-2017-000204. Additional details for this request are as follows:

- Assigned By: Samuel B. Dixon
- Request Tracking Number: DOC-NOAA-2017-000204
- Due Date: 12/30/2016
- Requester: Belinda Brannon
- Request Track: Simple
- Short Description: N/A
- Long Description: Fishing Trawler Lady Julie Documentation No. : 1089342 Incident: All documentation related to this incident report and documentation to confirm whether or if this vessel sank.
-

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Lola Stith

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

(c (b)(6)

lola.m.stith@noaa.gov

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Very respectfully,

Jeri Dockett

FOIA/Records Manager

National Oceanic Atmospheric Administration

Office of Response and Restoration

1305 East West Highway

SSMC4 RM 10124

Silver Spring, MD 20910

(O)240.533.0395

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Nkolika Ndubisi (Nikki)

Administration Division

Management and Budget

National Ocean Service

[\(240\) 533-0937](tel:2405330937)

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Lola Stith

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

(c (b)(6)

lola.m.stith@noaa.gov

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Lola Stith

Contractor - The Ambit Group, LLC

NOAA Office of the Chief Information Officer (OCIO)

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

lola.m.stith@noaa.gov