United States Department of the Interior

FISH AND WILDLIFE SERVICE

August 1, 2018

In Reply Refer To:
FWS/AES/DCC/BLPS/067231
FOIA #FWS-2018-00306

Margaret E. Townsend
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Center for Biological Diversity
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Ms. Townsend:

The United States Fish and Wildlife Service (FWS) received your Freedom of Information Act (FOIA) request, dated December 19, 2017, and assigned it control number FWS-2018-00306. Please cite this number in any future communications with our office regarding your request. You requested the following:

> *"...from January 20, 2017 to the date of this search: all records mentioning, including, referencing, and/or related to "Revision of the Regulations for Listing Species and Designating Critical Habitat" as described in the Unified Agenda RIN #: 1018-BC88."*

On May 9, 2018, we sent you a letter enclosing a CD containing 65 documents as a partial response to your FOIA request. We are writing to inform you that the Service has discovered that it inadvertently included 11 documents that contain privileged attorney client communications and/or deliberate process communications that are exempt from release in part under Exemption 5 of the FOIA. Because the release of this privileged information was inadvertent, the Service has not waived the privilege as to this information. The eleven documents on the CD that contain inadvertently released privileged information are:

<u>Privileged in Part – Deliberative Process Privilege Only</u>

- 20171206_1042_15_TAB 11-2007 draft regs combined preamble 6-22-07.pdf
- 20171206_1042_16_TAB 12-2007 draft regs combined regulatory text 9_26_07 (Feb 11 2011)

Privileged in Part – Attorney Client Communications and Deliberative Process Privilege

- 20171128_1241_1_Compiled Reg Review Comments Re ESA as of 11.27.2017.pdf
- 20180111_1555_1_draft proposed 424 rule_011918.pdf
- 20180111_1555_2_FF preamble and reg text_011118.pdf
- 20180111_1555_3_Delisting Clarification_011118.pdf
- 20180111_1555_4_CH sequencing_01118.pdf
- 20180111_1555_5_Not Prudent_revised_011118.pdf
- 20180118_1331_1_20180112_draft proposed 424 rule SOL_DCC_RO.odf
- 20180118_1348_1_Not-Prudent Options_ral.pdf *(title has been updated)*
- 20180206_1700_1_20180129_proposed 424 rule_clean_edits.pdf

Having notified you of the privileged nature of these documents, we ask that you honor our invocation of the privilege by promptly returning, sequestering, or destroying the documents identified above and any and all copies of these documents in your organization's possession or control. In addition, if you have disseminated the documents, or any of the referenced information derived from these documents, to anyone outside of your organization, we ask that you please notify us immediately and provide us with their contact information so that we can notify them of the privileged nature of these documents and include them in our claw back effort.

As noted above, the responsive privileged documents inadvertently released on the CD are only privileged in part. Accordingly, we will produce a copy of these documents that have been redacted pursuant to FOIA Exemption 5 to withhold the privileged information they contain in our next incremental release. For your convenience, we have included a copy of the documents as redacted with this letter.

If you have any questions about our response to your request, you may contact Eileen Harke by phone at 703-358-2096 or by email at eileen_harke@fws.gov.

Sincerely,

CAREY GALST Digitally signed by CAREY GALST Date: 2018.08.01 16:31:52 -04'00'

Carey Galst
Chief, Branch of Listing Policy and Support
Ecological Services Program

Enclosures