Exhibit C

NRDC

October 29, 2017

Via online submission

Department of Commerce
FOIA Officer

Re: FOIA Request for Records Relating to Meetings Relating to National Marine Sanctuaries and Monuments

Dear FOIA Officer:

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

I. Description of Records Sought

Please produce any and all records in the possession, custody, or control of the Department of Commerce ("the Department") that pertain to meetings on or after January 20, 2017, attended by Secretary Wilbur Ross and/or Earl Comstock, relating to any national marine sanctuary or marine national monument and/or to the Department's review of national marine sanctuaries and monuments under Executive Order No. 13795, including:

- Any calendar entries, invitations, itineraries, or communications referencing such meetings;
- Any agendas, minutes, attendee lists, or presentations relating to such meetings;
- Any records of individuals who attended these meetings or accompanied Secretary Ross or Mr. Comstock on any of these occasions, excluding current career federal employees;
- Any briefings, summaries, or materials prepared or transmitted in relation to such meeting, whether before, during, or after the meeting itself; and
- Any notes taken by any federal employee, including Secretary Ross or Mr. Comstock.

For purposes of this request, the term "records" is consistent with the meaning of the term under FOIA. This includes, but is not limited to,

documents of any kind, including electronic as well as paper documents, e-mails, memoranda, letters, writings (handwritten, typed, electronic or otherwise produced, reproduced, or stored), reports, summaries, notes, meeting notes or minutes, text messages, and any other compilations of data from which information can be obtained.

Under FOIA, you are obligated to provide records in a readily-accessible electronic format and in the format requested. *See, e.g.*, 5 U.S.C. § 552(a)(3)(B) ("In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format."). We request that you provide the responsive records in electronic .pdf format without "profiles" or "embedded files." Please do not provide the records in a single or "batched" .pdf file. To the extent that a subset of the requested records is readily available, please provide that subset immediately while you continue to search for additional records to complete your response.

If you decide to invoke any FOIA exemptions in response to this request, please include in your response sufficient information for us to assess the basis for the exemption(s), including any interest(s) that would be harmed by release. Please include a detailed ledger which includes (1) basic factual material about each withheld record, including the originator, date, length, general subject matter, and location of each item; and (2) complete explanations and justifications for the withholding, including the specific exemption(s) under which the record (or portion thereof) was withheld and a full explanation of how each exemption applies to the withheld material. Such statements will be helpful in deciding whether to appeal an adverse determination. Your written justification may help to avoid litigation.

If you determine that portions of any requested records are exempt from disclosure, the FOIA requires that you produce any reasonably segregable non-exempt portions within the statutory time limit. *See* 5 U.S.C. § 552(b). *See, e.g.*, *Gatore v. U.S. Dep't of Homeland Sec.*, 177 F. Supp. 3d 46, 53 (D.D.C. 2016); *Gosen v. U.S. Citizenship & Immigration Servs.*, 118 F. Supp. 3d 232, 243-44 (D.D.C. 2015).

Please produce the records on a rolling basis. The Department's search for or deliberations concerning certain records should not delay the production of others that the Department has already retrieved and elected to produce. *See generally* 15 C.F.R. § 4.7. If the Department takes the position that any of these records are publicly available, please indicate where each of them may be found.

II. Request for a Fee Waiver

NRDC asks that the Department waive any fee it would otherwise charge for the search and production of the records described above. FOIA provides that a requester is entitled to a fee waiver when "disclosure of the information is in the public interest because it [A] is likely to contribute significantly to public understanding of the operations or activities of the government and [B] is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 15 C.F.R. § 4.11(*l*). The disclosure NRDC seeks here meets both these requirements.

A. Disclosure is likely to contribute significantly to public understanding of the operations or activities of the government

First, the disclosure requested here is "likely to contribute significantly to public understanding of the operations or activities of the government," 5 U.S.C. § 552(a)(4)(A)(iii), based on the following factors. *See* 15 C.F.R. § 4.11(*l*)(2)(i)-(iv) (describing factors to be considered).

1. Subject of the request (15 C.F.R. § 4.11(*l*)(2)(i))

The requested records directly concern "the operations or activities of the Government." 15 C.F.R. § 4.11(*l*)(2)(i). The records pertain to the Department's "review of all designations and expansions of National Marine Sanctuaries, and of all designations and expansions of Marine National Monuments under the Antiquities Act of 1906 . . . designated or expanded within the 10-year period prior to the date of this order" and the Department's resulting report. Executive Order No. 13795, section 4(b)(i)-(ii). Disclosure of the records will provide context for the Department's report and help the public to evaluate the Department's recommendations and whatever actions the President, Congress, or other federal government officials take with respect to the affected sanctuaries and monuments.

2. Informative value of the information to be disclosed (15 C.F.R. § 4.11(*l*)(2)(ii))

Disclosure of the requested records is "'likely to contribute' to an understanding of Government operations or activities." 15 C.F.R. § 4.11(*l*)(2)(ii). The records are relevant to the Department's review of national marine sanctuaries and monuments, and therefore they are likely to be "meaningfully informative" in providing context for the Department's report and for any actions the Administration may take with respect to those sanctuaries or monuments. *Id*. Because the Department's review has

attracted broad public attention (as explained below), and because the requested records have not previously been made available, disclosure will "'contribute' to an increased public understanding of those operations or activities." *Id*.

3. Contribution to public understanding of the subject (15 C.F.R. § 4.11(*l*)(2)(iii))

Because NRDC is a "representative of the news media," as explained in Part III below, the Department must presume that this disclosure is likely to contribute to public understanding of the subject of the disclosure. 15 C.F.R. § 4.11(*l*)(2)(iii). However, even if NRDC were not a media requester, NRDC satisfies the requirement that disclosure will "contribute to the understanding of a reasonably broad audience of persons interested in the subject." *Id*.

NRDC does not seek the requested records for its own benefit. Rather, it seeks the records to provide new information to the public about the Department's review process and its resulting report and recommendations. Disclosure of this information will make possible a more complete public understanding of the federal government's decision-making process and intentions regarding the national marine sanctuaries and monuments at issue. *See* 15 C.F.R. § 4.11(*l*)(2)(iii) (requiring requester to show that disclosure will "contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester"). There is more than a reasonable likelihood that disclosure of the requested records will significantly increase public understanding of the government's review process and actions among a broad audience of interested people. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep't of Health & Human Servs*., 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

NRDC has both the ability and the intent to disseminate the information obtained through this request "in a manner that will be informative to the understanding of a reasonably broad audience of persons interested in the subject." 43 C.F.R. § 2.48(a)(2)(iv); *see also id.* § 2.48(a)(2)(v) (considering requester's "ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject"). NRDC has more than two million members and online activists, tens of thousands of whom have responded to action alerts relating to the Department's monument review in particular. And, as detailed below, NRDC has extensive communications capabilities and a proven history of disseminating information of public interest, including information obtained from FOIA requests. NRDC has both the capability and the intent to broadly disseminate the information it seeks here to its members and to the

general public, thereby contributing to a better general understanding of the Department's review process and its ultimate findings.

NRDC uses numerous modes of communication to disseminate information to its members and to the public at large. These include:

(1) NRDC's website (http://www.nrdc.org), which is updated daily and draws approximately 1.7 million page views and 1.5 million unique page views per month, and which features NRDC staff blogs, original reporting on environmental news stories, and in-depth analyses on topics of public interest;

(2) NRDC's Activist email list, which includes more than 2.4 million subscribers who receive regular communications on urgent environmental issues;

(3) *NRDC Insider* (http://www.nrdc.org/newsletter), a monthly electronic environmental newsletter distributed by email to more than 1.47 million subscribers;

(4) NRDC's Facebook page, with 909,921 likes and 872,632 followers;

(5) NRDC's Twitter handle, with 274,922 followers;

(6) NRDC's Instagram feed, with 111,024 followers;

(7) NRDC's YouTube channel (https://www.youtube.com/user/NRDCflix), with 21,050 subscribers; and

(8) online media outlets like Medium (https://medium.com/natural-resources-defense-council) and Huffington Post (http://www.huffingtonpost.com/topic/natural-resources-defense-council).

NRDC also publishes legal and scientific analyses, policy documents, and reports; issues press releases; and directs and produces movies (including *Sonic Sea*, *Stories from the Gulf*, and *Acid Test*). NRDC has more than fifty staff members dedicated to communications work.

In addition, NRDC employees and representatives are widely quoted in the news media; participate in interviews on television, radio, and web broadcasts; appear at conferences; provide congressional testimony; and contribute articles and op-eds to numerous national newspapers, magazines, academic journals, and books. *See, e.g.*, Zoe Carpenter, *After Promising a "Fair Hearing" on Monuments, Secretary Zinke Shuts Out the Public*, THE NATION (May 18, 2017) (quoting NRDC Land and Wildlife Program Director

Sharon Buccino); Op-Ed, *Don't Take Bears Ears Away from Us*, SALT LAKE TRIBUNE (May 6, 2017) (contributed by NRDC trustee Robert Redford); Research Article, *The Requirement To Rebuild U.S. Fish Stocks: Is It Working?* MARINE POLICY (July 2014) (co-authored by NRDC Oceans Program Senior Scientist Lisa Suatoni and Senior Attorney Brad Sewell); Transcript, *Conservationists Call for Quiet: The Ocean Is Too Loud,* ALL THINGS CONSIDERED (July 28, 2013) (featuring NRDC Marine Mammal Protection Program Director Michael Jasny); Testimony of Johanna Wald, NRDC Senior Attorney, before the U.S. Senate Committee on Energy and Natural Resources, Hearing on the California Desert Protection Act of 2010 (May 20, 2010).

NRDC's legal and scientific experts routinely analyze information obtained through FOIA and use it to inform the public about a variety of environmental issues. *See, e.g.*, Theo Spencer, *The Fight to Stop a Strip Mine Near Bryce Canyon: A History*, NRDC Blog (June 5, 2017) (analyzing documents obtained through partner organization's FOIA request regarding a proposed expansion of an open pit strip mine in Utah); Kevin Bogardus *et al.*, *"Homework Assignment": How Pebble Lobbied Trump's EPA*, E&E NEWS (June 8, 2017) (quoting NRDC staff discussing results of a FOIA seeking communications between EPA and Pebble Mine developers); Tom Neltner et al., *Generally Recognized as Secret: Chemicals Added to Food in the United States*, NRDC Report (2014) (analyzing FOIA documents relating to potentially unsafe chemicals added to food); Carmen Cordova, *Playing Chicken with Antibiotics*, NRDC Issue Brief (2014) (describing FDA records, obtained through FOIA, which show widespread violations of the agency's safety standards for antibiotic feed additives); Dan Flynn, *NRDC Releases FSIS Inspection Reports on Foster Farms*, FOOD SAFETY NEWS (Sept. 12, 2014) (reporting on documents NRDC obtained through FOIA relating to safety violations by poultry company, and linking to the documents); Mae Wu et al., *Still Poisoning the Well: Atrazine Continues to Contaminate Surface Water and Drinking Water in the United States*, NRDC Report (2010) (analyzing White House documents obtained through FOIA and from other sources to inform the public about EPA's decision not to protect wildlife and workers from the pesticide atrazine).

In sum, NRDC has a proven ability to digest, synthesize, and disseminate information obtained through FOIA to a broad audience of interested persons. NRDC's more than two million members and activists, when combined with the members of the general public who read NRDC's communications online and in the news media, clearly constitute "a reasonably broad audience of persons interested in the subject." 15 C.F.R. § 4.11(*l*)(2)(iii). NRDC intends to disseminate any newsworthy information in the released records to this large audience in a manner that will

meaningfully enhance the public's understanding of the federal government's decision-making process. NRDC does not seek records that have been previously disclosed to the public. *See id*. Disclosure may therefore confirm, clarify, or contradict documents or statements in the public domain or actions taken by the federal government, and it will enable the public to better evaluate the federal government's actions.

4. Significance of the contribution to public understanding (15 C.F.R. § 4.11(*l*)(2)(iv))

Finally, the records requested will shed significant light on a matter of considerable public interest and concern. *See* 15 C.F.R. § 4.11(*l*)(2)(iv).

The American public has demonstrated a strong interest in the Department's review of national marine sanctuaries and monuments. According to the Regulations.gov website, nearly 100,000 non-duplicative public comments relating to the Department's review of national marine sanctuaries and monuments were submitted online. *See* https://www.regulations.gov/docket?D=NOAA-NOS-2017-0066 (last visited Sept. 29, 2017). The Department's review has also prompted many letters to the editor and op-eds, widespread social media activism, and numerous media reports in local and national publications. *See, e.g.*, Guy Kovner, *Marine Sanctuaries that Protect California Coast Get Strong Public Support, Conservationists Say*, THE PRESS-DEMOCRAT (Aug. 17, 2017); Zack Klyver, *Op-Ed: Marine Monument Vital for a Healthy, Bountiful Ocean*, BANGOR DAILY NEWS (Aug. 3, 2017); David Helvarg, *Op-Ed: Time Is Running Out to Stop Trump From Opening California Marine Sanctuaries to Oil Drilling*, LOS ANGELES TIMES (July 7, 2017); Marine Conservation Institute, *Blog: Analysis Shows Overwhelming Public Support for Marine Monuments and Sanctuaries* (Aug. 15, 2017), at https://blog.marine-conservation.org/2017/08/overwhelming-support-for-marine-monuments-and-sanctuaries.html.

Despite this strong showing of public interest and concern, very little information is publicly available about the Department's information-gathering and review process. Disclosure of the requested records concerning the Department's meetings with outside individuals and groups will significantly contribute to public understanding of the Department's review process. Disclosure will also provide valuable context for understanding the Department's report, and will enable the public more effectively to evaluate the legal and factual bases for the Department's assertions and recommendations.

For these reasons, NRDC has met the first prerequisite for a fee waiver request under the FOIA.

B. Disclosure is not primarily in NRDC's commercial interest

Second, NRDC has no commercial interests that would be furthered by the requested disclosure. *See* 5 U.S.C. § 552(a)(4)(A)(iii); 15 C.F.R. § 4.11(*l*)(1)(ii). Therefore, it satisfies the second prerequisite for a fee waiver request under the FOIA.

NRDC is a not-for-profit organization. It does not act as a middleman to resell information obtained under FOIA. "Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requesters.'" *Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (internal citation omitted); *see also Better Gov't Ass'n v. Dep't of State*, 780 F.2d 86, 88-89 (D.C. Cir. 1986) (recognizing that "[the fee waiver] provision was added to FOIA in an attempt to prevent government agencies from using high fees to discourage certain types of requesters and requests, in particular those from journalists, scholars and nonprofit public interest groups." (internal quotation marks omitted)). Requesters wish to serve the public by reviewing, analyzing, and disseminating newsworthy and presently non-public information about the federal government's decision-making process with respect to national marine sanctuaries and monuments, and this is precisely the sort of "investigation[]" of "governmental choices and highlighting [of] possible abuses" for which the fee waiver was enacted. *Better Gov't Ass'n*, 780 F.2d at 93.

Access to government records, disclosure forms, and similar materials through FOIA requests is essential to NRDC's role of educating its members, activists, and the general public. NRDC has no commercial interest in the disclosure of the records, and it will realize no commercial benefit or profit from the disclosure of the requested records. For these reasons, NRDC is entitled to a fee waiver under the FOIA.

III. Request for a Reduction of Fees

In the alternative, even if the Department denies NRDC's fee waiver request, NRDC qualifies as a "representative of the news media" that is entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and applicable regulations, 15 C.F.R. § 4.11(c), (d); *see also id.* § 4.11(b)(6) (defining "[r]epresentative of the news media").

A representative of the news media is "any person or entity that gathers information of potential interest to a segment of the public, uses its

editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii); *see also Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a "non-profit public interest organization" qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep't of Energy, to Joshua Berman, NRDC (Feb. 10, 2011) (granting NRDC media requester status).

NRDC is in part organized and operated to gather and publish or transmit news to the public. As described in detail in Section II above, NRDC publishes original reports and analyses on conservation-related topics on its website, in its newsletter, and in blog posts; it contributes articles and op-eds to a variety of online and print platforms; and it maintains free online libraries of documents, publications, and other information of interest to the general public. These types of publications and media sources constitute news media outlets for purposes of FOIA. *See* OPEN Government Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that "as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities"); *see also* 15 C.F.R. § 4.11(b)(6) ("Examples of news-media entities are . . . publishers of periodicals . . . including news organizations that disseminate solely on the Internet.").

Public interest organizations performing these sorts of public communication functions "are regularly granted news representative status." *Serv. Women's Action Network v. Dep't of Def.*, 888 F. Supp. 2d 282, 287-89 (D. Conn. 2012) (according media requester status to the American Civil Liberties Union); *see also Cause of Action v. Fed. Trade Comm'n*, 961 F. Supp. 2d 142, 164 (D.D.C. 2013) (explaining that an organization can qualify for media-requester status if it "distributes work to an audience and is especially organized around doing so").

NRDC intends to review the records it obtains through this FOIA request and, if the information is appropriately newsworthy, to analyze them, synthesize them with information from other sources, and create and disseminate unique articles, reports, analyses, blogs, tweets, emails, and/or other distinct informational works through one or more of its publications or other suitable media channels. NRDC will not resell the information obtained through this FOIA request to other media organizations. For these reasons, even if the Department denies NRDC's fee waiver request, it should grant a fee reduction consistent with 5 U.S.C. § 552(a)(4)(A)(ii).

IV. Willingness to Pay Fees Under Protest

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

V. Conclusion

Please email the requested records or, if it is not possible to email, mail a CD of electronic copies of the requested records to me at the address listed below. Please call or email me with any questions. Thank you for your time.

Sincerely,

/s/ Katherine Desormeau

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