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				Final, Refer to FWS0000716
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				Final, Refer to FWS0000065
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				Final, Refer to FWS0000221
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				Final, Refer to FWS0000540
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				Final, Refer to FWS0000032
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				<p>Final, Refer to FWS0000004</p>
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				Final, Refer to FWS0000479
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kelly_hornaday@fws.gov	ben_thatcher@fws.gov;ellen_vangelder@fws.gov;jenifer_kohout@fws.gov;jessica_hogrefe@fws.gov;kit_hershey@fws.gov;Marta Nammack <marta.nammack@noaa.gov>;ruthann.lowery@noaa.gov;seth_willey@fws.gov;susan_jacobsen@fws.gov	4		Final, Refer to FWS0000283
				Final, Refer to FWS0000258

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benjamin.jesup@sol.doi.gov;Marta Nammack <marta.nammack@noaa.gov>;ruthann.lowery@noaa.gov		6	SPR workgroup notes 11-04-09.doc;SPR white paper - draft outline 11-09-09.doc	Final, Refer to FWS0000178
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				Final, Refer to FWS0000181
Robin Waples <robin.waples@noaa.gov>		3		Final, Refer to FWS0000522

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Marta Nammack <marta.nammack@noaa.gov>				Final, Refer to FWS0000622
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susan_jacobsen@fws.gov	anne_hecht@fws.gov;ben_thatcher@fws.gov;ellen_vangelder@fws.gov;jenifer_kohout@fws.gov;jessica_hogrefe@fws.gov;kelly_hornaday@fws.gov;kit_hershey@fws.gov;Marta Nammack <marta.nammack@noaa.gov>;ruthann.lowery@noaa.gov;seth_willey@fws.gov	4		Final, Refer to FWS0000251
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Marta Nammack <marta.nammack@noaa.gov>				Final, Refer to FWS0000453
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				<p>Final, Refer to FWS0000427</p>
<p>Marta Nammack <marta.nammack@noaa.gov></p>	<p>Mark Hodor <mark.hodor@noaa.gov>;Pam lawrence <pamela.lawrence@noaa.gov></p>	3	<p>PKline analysis of SPR options.docx;12-1-09 email on MBean SPR options.pdf;MBean SPR options.doc</p>	<p>Final, Refer to FWS0000300</p>
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				<p>Final, Refer to FWS0000308</p>

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Marta Nammack <marta.nammack@noaa.gov>	Ruth Ann Lowery <ruthann.lowery@noaa.gov>	7	SPR_M_Opinion[draft][FINAL].wpd;SPR M Opinion Issue Chart.docx;2006 draft SPR guidance memorandum clarification 7-19-2006.doc	Final, Refer to FWS0000073
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				Final, Refer to FWS0000162
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<p>Rod.Vieira (NOAA GC) <rod.vieira@noaa.gov></p>	<p>Adam Issenberg <adam.issenberg@noaa.gov></p>	<p>1</p>	<p>SPR timeline 10-24- 13.docx</p>	<p>Final, Refer to FWS0001565</p>

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Mark Hodor <mark.hodor@noaa.gov>	Pamela.Lawrence@noaa.gov <pamela.lawrence@noaa.gov>	2	Draft options white paper timeline.doc;SPR Contingency plan timeline.doc	Final, Refer to FWS0001432
				Final, Refer to FWS0001434
				Final, Refer to FWS0001435

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				<p>Final, Refer to FWS0001491</p>
				<p>Final, Refer to FWS0001526</p>
<p>Lowery, Ruth Ann <ruthann.lowery@noaa.gov>;Smith, Odin <osmith@doc.gov></p>	<p>Hodor, Mark <mark.hodor@noaa.gov></p>			<p>Final, Refer to FWS0001430</p>

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<p>Ruth Ann Lowery <ruthann.lowery@noaa.gov></p>				<p>Final, Refer to FWS0001529</p>

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Final, Refer to FWS0001337	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001144	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001146	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001149	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'

Final, Refer to FWS0001158	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001160	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001195	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001243	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001248	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'

<p>Final, Refer to FWS0001249</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS/DOIF or full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0001255</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0001306</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0001312</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0001268</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0001274</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>

Final, Refer to FWS0000833	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000836	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000694	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001380	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001386	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001392	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'

<p>Final, Refer to FWS0001417</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0001046</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS/DOIF or full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0001052</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0001420</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='fwsFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>

Final, Refer to FWS0001168	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001342	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000862	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000877	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'

<p>Final, Refer to FWS0000769</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS/DOIF or full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000770</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0001116</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0001117</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0001161</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0001121</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>

Final, Refer to FWS0001393	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001400	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000872	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000873	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001062	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001068	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'

Final, Refer to FWS0000989	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000986	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001024	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001028	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000712	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001023	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'

<p>Final, Refer to FWS0000777</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000779</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0001242</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000865</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000871</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS/DOIF or full referral--no GC review needed='YesGC Reviewed='Yes'</p>

<p>Final, Refer to FWS0000988</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000641</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='fwsFor full referral--no GC review needed='YesGC Reviewed='Yes';#ReviewCom ment='(Item note) Duplicate'</p>
<p>Final, Refer to FWS0000719</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000720</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000721</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000722</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>

Final, Refer to FWS0001118	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001119	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001015	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001018	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001191	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'

<p>Final, Refer to FWS0001112</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0001115</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0001193</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0001265</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0001070</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>

Final, Refer to FWS0001076	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000649	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='fwsFor full referral--no GC review needed='YesGC Reviewed='Yes';#ReviewCom ment='(Item note) duplicates part of chain'
Final, Refer to FWS0000671	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001299	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001305	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000669	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes';#ReviewCom ment='(Item note) Duplicate'

Final, Refer to FWS0000684	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000652	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000728	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000731	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000724	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000725	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000841	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'

Final, Refer to FWS0000844	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000847	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000850	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001035	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001036	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001042	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'

<p>Final, Refer to FWS0001294</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS/DOIF or full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0001423</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0001429</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000745</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS/DOIF or full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000760</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS/DOIF or full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0001021</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>

<p>Final, Refer to FWS0001285</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS/DOIF or full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000983</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000705</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000915</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0001344</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0001378</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>

Final, Refer to FWS0000644	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000715	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000716	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000717	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000815	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS/DOIF or full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000819	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS/DOIF or full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001031	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'

Final, Refer to FWS0001033	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001411	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='fwsFor full referral--no GC review needed='YesGC Reviewed='Yes';#ReviewCom ment='(Item note) Duplicate'
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Final, Refer to FWS0000665	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001313	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS/DOIF or full referral--no GC review needed='YesGC Reviewed='Yes'

Final, Refer to FWS0001320	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001001	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001007	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001289	Non-Responsive='Yes Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001202	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS/DOIF or full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001204	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'

Final, Refer to FWS0000919	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000922	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000952	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000982	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001123	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001132	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001135	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'

Final, Refer to FWS0001136	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000823	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000824	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000826	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000827	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001222	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001231	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001232	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'

Final, Refer to FWS0001237	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001239	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000879	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000909	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001208	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes';#ReviewCom ment='(Item note) having trouble displaying in redaction mode but it is full referral'

Final, Refer to FWS0001210	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes';#ReviewCom ment='(Item note) having trouble displaying but should just be an NOI'
Final, Refer to FWS0000468	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSGC Reviewed='Yes'
Final, Refer to FWS0000237	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='fwsFor full referral--no GC review needed='YesGC Reviewed='Yes';#ReviewCom ment='(Item note) duplicate'
Final, Refer to FWS0000639	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSGC Reviewed='Yes'
Final, Refer to FWS0000559	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSGC Reviewed='Yes'
Final, Refer to FWS0000350	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000545	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSGC Reviewed='Yes'

<p>Final, Refer to FWS0000068</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS';NMF S FOIA Tags\Redacted='YesPartially Redacted='Yes(b)(5) Inter/Intra-Agency Communications='Yes(b)(5) Inter/Intra-Agency Communications\What type of communication justifies redaction?'P&D comm. on substantive issuesDeliberative Process='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000325</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes';#ReviewCom ment='(Item note) Duplicate'</p>
<p>Final, Refer to FWS0000483</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes';#ReviewCom ment='(Item note) Duplicate'</p>
<p>Final, Refer to FWS0000486</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes';#ReviewCom ment='(Item note) Duplicate RAL: I don't know that the attachment is a duplicate.'</p>
<p>Final, Refer to FWS0000489</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSGC Reviewed='Yes'</p>

Final, Refer to FWS0000064	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000065	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000220	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000224	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
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Final, Refer to FWS0000412	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSGC Reviewed='Yes'
Final, Refer to FWS0000436	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS/DOIF or full referral--no GC review needed='YesGC Reviewed='Yes'

<p>Final, Refer to FWS0000443</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000267</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000552</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000553</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000379</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS';NMF S FOIA Tags\Redacted='YesPartially Redacted='Yes(b)(5) Inter/Intra-Agency Communications='Yes(b)(5) Inter/Intra-Agency Communications\What type of communication justifies redaction?='P&d comms among agency staff and attyACP (Attorney Client Privilege)='YesDeliberative Process='YesGC Reviewed='Yes'</p>

<p>Final, Refer to FWS0000547</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000531</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000532</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000490</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes';#ReviewCom ment='(Item note) Duplicate'</p>
<p>Final, Refer to FWS0000491</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000260</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>

Final, Refer to FWS0000261	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000539	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000541	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000031	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSGC Reviewed='Yes'
Final, Refer to FWS0000054	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000059	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS/DOIF or full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000366	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes';#ReviewCom ment='(Item note) Duplicate'

<p>Final, Refer to FWS0000637</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='DOIFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000174</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS';NMF S FOIA Tags\Redacted='YesPartially Redacted='Yes(b)(5) Inter/Intra-Agency Communications='Yes(b)(5) Inter/Intra-Agency Communications\What type of communication justifies redaction?='P&D comm. on substantive issues, involving attorneyACP (Attorney Client Privilege)='YesDeliberative Process='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000175</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes';#ReviewCom ment='(Item note) duplicate'</p>
<p>Final, Refer to FWS0000396</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000403</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>

<p>Final, Refer to FWS0000335</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS';NMF S FOIA Tags\Redacted='YesPartially Redacted='Yes(b)(5) Inter/Intra-Agency Communications='Yes(b)(5) Inter/Intra-Agency Communications\What type of communication justifies redaction?='P&d comms among team including attysACP (Attorney Client Privilege)='YesDeliberative Process='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000536</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000321</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS';NMF S FOIA Tags\Redacted='YesPartially Redacted='Yes(b)(5) Inter/Intra-Agency Communications='Yes(b)(5) Inter/Intra-Agency Communications\What type of communication justifies redaction?='p&d discussions involving attyACP (Attorney Client Privilege)='YesDeliberative Process='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000188</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSGC Reviewed='Yes';#ReviewCom ment='(Item note) Duplicate'</p>
<p>Final, Refer to FWS0000295</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSGC Reviewed='Yes'</p>

Final, Refer to FWS0000176	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes';#ReviewCom ment='(Item note) Duplicate'
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<p>Final, Refer to FWS0000581</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000616</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='fwsFor full referral--no GC review needed='YesGC Reviewed='Yes';#ReviewCom ment='(Item note) if we are referring the transmittal in full, we can just refer the attachments with it instead of redacting, especially since the edits are FWS staff edits'</p>
<p>Final, Refer to FWS0000617</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000562</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSGC Reviewed='Yes'</p>

<p>Final, Refer to FWS0000577</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS';NMF S FOIA Tags\Redacted='YesPartially Redacted='Yes(b)(5) Inter/Intra-Agency Communications='Yes(b)(5) Inter/Intra-Agency Communications\What type of communication justifies redaction?='P&D comm. on substantive issues; atty involved.ACP (Attorney Client Privilege)='YesDeliberative Process='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000384</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000391</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes';#ReviewCom ment='(Item note) Duplicate'</p>
<p>Final, Refer to FWS0000451</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS';NMF S FOIA Tags\Redacted='YesPartially Redacted='Yes(b)(5) Inter/Intra-Agency Communications='Yes(b)(5) Inter/Intra-Agency Communications\What type of communication justifies redaction?='P&D comm. on substantive issues including attysACP (Attorney Client Privilege)='YesDeliberative Process='YesGC Reviewed='Yes'</p>

Final, Refer to FWS0000563	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000564	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000014	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSGC Reviewed='Yes';#ReviewCom ment='(Item note) Duplicate RAL: not sure the attachments are not unique'
Final, Refer to FWS0000016	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000025	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000630	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='fwsFor full referral--no GC review needed='YesGC Reviewed='Yes';#ReviewCom ment='(Item note) Duplicate email'

<p>Final, Refer to FWS0000417</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000542</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000634</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS';NMF S FOIA Tags\Redacted='YesPartially Redacted='Yes(b)(5) Inter/Intra-Agency Communications='Yes(b)(5) Inter/Intra-Agency Communications\What type of communication justifies redaction?='P&D comm. on substantive issues, atty. involvedACP (Attorney Client Privilege)='YesDeliberative Process='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000217</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes';#ReviewCom ment='(Item note) Duplicate RAL: not certain attachment is duplicate'</p>
<p>Final, Refer to FWS0000218</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes';#ReviewCom ment='(Item note) Duplicate'</p>

Final, Refer to FWS0000629	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSGC Reviewed='Yes'
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Final, Refer to FWS0000230	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSGC Reviewed='Yes'
Final, Refer to FWS0000557	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000533	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSGC Reviewed='Yes'

<p>Final, Refer to FWS0000368</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000632</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS';NMF S FOIA Tags\Redacted='YesPartially Redacted='Yes(b)(5) Inter/Intra-Agency Communications='Yes(b)(5) Inter/Intra-Agency Communications\What type of communication justifies redaction?='P&D comm. on substantive issues; atty. involvedACP (Attorney Client Privilege)='YesDeliberative Process='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000376</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS';NMF S FOIA Tags\Redacted='YesPartially Redacted='Yes(b)(5) Inter/Intra-Agency Communications='Yes(b)(5) Inter/Intra-Agency Communications\What type of communication justifies redaction?='P&D comm. on substantive issues, attorney involvedACP (Attorney Client Privilege)='YesDeliberative Process='YesGC Reviewed='Yes'</p>

<p>Final, Refer to FWS0000494</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000495</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000003</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes';#ReviewCom ment='(Item note) Duplicate'</p>
<p>Final, Refer to FWS0000007</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes';#ReviewCom ment='(Item note) Duplicate'</p>
<p>Final, Refer to FWS0000009</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000011</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>

<p>Final, Refer to FWS0000358</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000558</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000352</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes';#ReviewCom ment='(Item note) Duplicate'</p>
<p>Final, Refer to FWS0000471</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>

Final, Refer to FWS0000478	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS/doiF or full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000482	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS/DOIF or full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000235	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000322	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes';#ReviewCom ment='(Item note) Duplicate'
Final, Refer to FWS0000283	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='fwsFor full referral--no GC review needed='YesGC Reviewed='Yes';#ReviewCom ment='(Item note) duplicate'
Final, Refer to FWS0000258	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'

<p>Final, Refer to FWS0000289</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000178</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes';#ReviewCom ment='(Item note) Duplicate'</p>
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<p>Final, Refer to FWS0000527</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='fws';NMF S FOIA Tags\Redacted='YesPartially Redacted='Yes(b)(5) Inter/Intra-Agency Communications='Yes(b)(5) Inter/Intra-Agency Communications\What type of communication justifies redaction?='P&d comms among agency staff and attysACP (Attorney Client Privilege)='YesDeliberative Process='YesGC Reviewed='Yes'</p>

<p>Final, Refer to FWS0000239</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000555</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS';NMF S FOIA Tags\Redacted='YesPartially Redacted='Yes(b)(5) Inter/Intra-Agency Communications='Yes(b)(5) Inter/Intra-Agency Communications\What type of communication justifies redaction?='P&D comm. on substantive issues, involving atty.ACP (Attorney Client Privilege)='YesDeliberative Process='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000622</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000456</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>

<p>Final, Refer to FWS0000463</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS/DOIF or full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000467</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS/DOIF or full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000414</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes';#ReviewCom ment='(Item note) Duplicate'</p>
<p>Final, Refer to FWS0000359</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000252</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS/DOIF or full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000343</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>

Final, Refer to FWS0000338	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
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Final, Refer to FWS0000364	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
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Final, Refer to FWS0000246	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0000250	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'

<p>Final, Refer to FWS0000271</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS';NMF S FOIA Tags\Redacted='YesPartially Redacted='Yes(b)(5) Inter/Intra-Agency Communications='Yes(b)(5) Inter/Intra-Agency Communications\What type of communication justifies redaction?='P&D comm. on substantive issues, attorney involved.ACP (Attorney Client Privilege)='YesDeliberative Process='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000503</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS';NMF S FOIA Tags\Redacted='YesPartially Redacted='Yes(b)(5) Inter/Intra-Agency Communications='Yes(b)(5) Inter/Intra-Agency Communications\What type of communication justifies redaction?='P&D comm. on substantive issues, involving attorneysACP (Attorney Client Privilege)='YesDeliberative Process='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000571</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS';NMF S FOIA Tags\Redacted='YesPartially Redacted='Yes(b)(5) Inter/Intra-Agency Communications='Yes(b)(5) Inter/Intra-Agency Communications\What type of communication justifies redaction?='P&D comm. on substantive issues; atty involved.ACP (Attorney Client Privilege)='YesDeliberative Process='YesGC Reviewed='Yes'</p>

<p>Final, Refer to FWS0000419</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000426</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS/DOIF or full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000430</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS/DOIF or full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000300</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS';NMF S FOIA Tags\Redacted='YesPartially Redacted='Yes(b)(5) Inter/Intra-Agency Communications='Yes(b)(5) Inter/Intra-Agency Communications\What type of communication justifies redaction?='P&d comms among agency staff and attyACP (Attorney Client Privilege)='YesDeliberative Process='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000307</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='DOIFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000310</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS/DOIF or full referral--no GC review needed='YesGC Reviewed='Yes'</p>

<p>Final, Refer to FWS0000318</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS/DOIF or full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000074</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS';NMF S FOIA Tags\Redacted='YesPartially Redacted='Yes(b)(5) Inter/Intra-Agency Communications='Yes(b)(5) Inter/Intra-Agency Communications\What type of communication justifies redaction?='P&d coms among team including attysACP (Attorney Client Privilege)='YesDeliberative Process='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000161</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000165</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000169</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>

<p>Final, Refer to FWS0000623</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS';NMF S FOIA Tags\Redacted='YesPartially Redacted='Yes(b)(5) Inter/Intra-Agency Communications='Yes(b)(5) Inter/Intra-Agency Communications\What type of communication justifies redaction?'P&D comm. on substantive issuesDeliberative Process='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0000002</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0001564</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='USFWSGC Reviewed='Yes';#ReviewCom ment='(Item note) We can release the NOAA portion but will refer the FWS portion. Need to select other agency" tag at left.'"</p>
<p>Final, Refer to FWS0001566</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSGC Reviewed='Yes';#ReviewCom ment='(Item note) Email and attachment discuss only the timeline; no substantive material. We can release the NOAA material. But since some material originated from DOI we will refer. So we have redacted out their portion. '</p>

Final, Refer to FWS0001567	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='Originated at FWSFor full referral--no GC review needed='YesGC Reviewed='Yes';#ReviewComment='(Item note) Discusses only the timeline. But since this document originates from DOI we will refer. '
Final, Refer to FWS0001532	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001563	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='USFWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001535	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='USFWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001537	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='USFWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001556	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='USFWSFor full referral--no GC review needed='YesGC Reviewed='Yes';#ReviewComment='(Item note) Since this originated from DOI without NMFS comments we should just refer.'
Final, Refer to FWS0001557	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='USFWSFor full referral--no GC review needed='YesGC Reviewed='Yes'

Final, Refer to FWS0001558	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='USFWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001562	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='USFWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001433	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS';NMF S FOIA Tags\Redacted='YesPartially Redacted='Yes(b)(5) Inter/Intra-Agency Communications='Yes(b)(5) Inter/Intra-Agency Communications\What type of communication justifies redaction?='P&D comm. among agency attysDeliberative Process='YesGC Reviewed='Yes'
Final, Refer to FWS0001434	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'
Final, Refer to FWS0001435	Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='fwsFor full referral--no GC review needed='YesGC Reviewed='Yes'

<p>Final, Refer to FWS0001490</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0001525</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0001528</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0001431</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWS';NMF S FOIA Tags\Redacted='YesPartially Redacted='Yes(b)(5) Inter/Intra-Agency Communications='Yes(b)(5) Inter/Intra-Agency Communications\What type of communication justifies redaction?='P&D comm. among agency attysACP (Attorney Client Privilege)='YesDeliberative Process='YesGC Reviewed='Yes'</p>

<p>Final, Refer to FWS0001449</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0001483</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0001489</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0001447</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='FWSFor full referral--no GC review needed='YesGC Reviewed='Yes'</p>
<p>Final, Refer to FWS0001530</p>	<p>Consult/Refer='Yes Consult/Refer\Which Agency/Agencies?='USFWS';N MFS FOIA Tags\Redacted='YesPartially Redacted='Yes(b)(5) Inter/Intra-Agency Communications='Yes(b)(5) Inter/Intra-Agency Communications\What type of communication justifies redaction?='P&d comms among agency staff and attysACP (Attorney Client Privilege)='YesDeliberative Process='YesGC Reviewed='Yes'</p>

From: Maria Williams - NOAA Federal <maria.williams@noaa.gov>
Sent: Wednesday, April 19, 2017 3:13 PM
To: Ruth Ann Lowery - NOAA Federal
Cc: Mark Graff - NOAA Federal; Stacey Nathanson - NOAA Federal; Roxie Allison-Holman - NOAA Federal
Subject: Re: DRAFT REVISED 580 2D interim letter
Attachments: Second IR_580.msw.ral.v2.docx

Version 2 attached.

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 Wed, Apr 19, 2017 at 2:54 PM, Ruth Ann Lowery - NOAA Federal <ruthann.lowery@noaa.gov> wrote:

Thanks, Mark (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)

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From: Mark Graff - NOAA Federal [mailto:mark.graff@noaa.gov]
Sent: Wednesday, April 19, 2017 2:51 PM
To: Ruth Ann Lowery - NOAA Federal
Cc: Maria Williams - NOAA Federal; Stacey Nathanson - NOAA Federal; Roxie Allison-Holman - NOAA Federal

Subject: Re: DRAFT REVISED 580 2D interim letter

(b)(5) [Redacted]

[Redacted] --

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) [Redacted] (C)

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On Wed, Apr 19, 2017 at 2:37 PM, Ruth Ann Lowery - NOAA Federal <ruthann.lowery@noaa.gov> wrote:

Thanks so much, Maria. (b)(5)

[REDACTED]
[REDACTED] ? Are there any other comments?

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

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><(((o>`.,.,.~.,.><(((o>.,.,.~.,.><(((o>

From: Maria Williams - NOAA Federal [mailto:maria.williams@noaa.gov]
Sent: Wednesday, April 19, 2017 2:31 PM

To: Ruth Ann Lowery - NOAA Federal

Cc: Mark Graff - NOAA Federal; Stacey Nathanson - NOAA Federal; Roxie Allison-Holman - NOAA Federal

Subject: Re: DRAFT REVISED 580 2D interim letter

Here ya go! (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](tel:202-308-4959)

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"Talent wins games, but teamwork and intelligence wins championship"

On Wed, Apr 19, 2017 at 2:23 PM, Ruth Ann Lowery - NOAA Federal <ruthann.lowery@noaa.gov> wrote:

(b)(5)

If you have a clean copy of that one, can you send it to this list?

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

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><(((^>`.,.,.~.,.><(((^>.,.,.~.,.><(((^>

From: Maria Williams - NOAA Federal [mailto:maria.williams@noaa.gov]
Sent: Wednesday, April 19, 2017 1:07 PM
To: Ruth Ann Lowery - NOAA Federal
Cc: Mark Graff - NOAA Federal; Nathanson Stacey; Roxie Allison-Holman - NOAA Federal
Subject: Re: DRAFT REVISED 580 2D interim letter

Ruth Ann,

(b)(5)
[Redacted]

Respectfully,

Maria S. Williams

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National Oceanic and Atmospheric Administration

Satellite and Information Service

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"Talent wins games, but teamwork and intelligence wins championship"

On Wed, Apr 19, 2017 at 11:45 AM, Ruth Ann Lowery - NOAA Federal <ruthann.lowery@noaa.gov> wrote:

Hi, Mark and Maria,

(b)(5) [Redacted]

[Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

(b)(5)

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

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(b) (5)

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(b) (5)

From: Maria Williams - NOAA Federal <maria.williams@noaa.gov>
Sent: Wednesday, April 19, 2017 2:31 PM
To: Ruth Ann Lowery - NOAA Federal
Cc: Mark Graff - NOAA Federal; Stacey Nathanson - NOAA Federal; Roxie Allison-Holman - NOAA Federal
Subject: Re: DRAFT REVISED 580 2D interim letter
Attachments: Second IR_580.msw.ral.docx

Here ya go! (b)(5)

Respectfully,

Maria S. Williams

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National Oceanic and Atmospheric Administration
Satellite and Information Service
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On Wed, Apr 19, 2017 at 2:23 PM, Ruth Ann Lowery - NOAA Federal <ruthann.lowery@noaa.gov> wrote:

(b)(5)

(b)(5) ?

Thanks,

Ruth Ann

Ruth Ann Lowery, Attorney-Advisor

NOAA Office of General Counsel

Fisheries & Protected Resources Section

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Sent: Wednesday, April 19, 2017 1:07 PM
To: Ruth Ann Lowery - NOAA Federal
Cc: Mark Graff - NOAA Federal; Nathanson Stacey; Roxie Allison-Holman - NOAA Federal
Subject: Re: DRAFT REVISED 580 2D interim letter

Ruth Ann,

(b)(5)
[Redacted]

Respectfully,

Maria S. Williams

National Oceanic and Atmospheric Administration

Satellite and Information Service

Office of the Assistant Chief Information Officer

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On Wed, Apr 19, 2017 at 11:45 AM, Ruth Ann Lowery - NOAA Federal <ruthann.lowery@noaa.gov> wrote:

Hi, Mark and Maria,

(b)(5) [Redacted]

[Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

(b)(5)

██████████?
██████████

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

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(b) (5)

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Sent: Wednesday, April 19, 2017 3:23 PM
To: Maria Williams - NOAA Federal
Cc: Mark Graff - NOAA Federal; Stacey Nathanson - NOAA Federal; Roxie Allison-Holman - NOAA Federal
Subject: RE: DRAFT REVISED 580 2D interim letter
Attachments: Second IR_580.msw.ral.v2.ral.docx

Thanks, Maria. (b)(5)

[REDACTED]

[REDACTED]

[REDACTED]

[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
Fax: (301) 713-0658

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Sent: Wednesday, April 19, 2017 3:13 PM
To: Ruth Ann Lowery - NOAA Federal
Cc: Mark Graff - NOAA Federal; Stacey Nathanson - NOAA Federal; Roxie Allison-Holman - NOAA Federal
Subject: Re: DRAFT REVISED 580 2D interim letter

Version 2 attached.

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 Wed, Apr 19, 2017 at 2:54 PM, Ruth Ann Lowery - NOAA Federal <ruthann.lowery@noaa.gov> wrote:

Thanks, Mark. (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

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From: Mark Graff - NOAA Federal [mailto:mark.graff@noaa.gov]
Sent: Wednesday, April 19, 2017 2:51 PM
To: Ruth Ann Lowery - NOAA Federal
Cc: Maria Williams - NOAA Federal; Stacey Nathanson - NOAA Federal; Roxie Allison-Holman - NOAA Federal

Subject: Re: DRAFT REVISED 580 2D interim letter

(b)(5)

No other issues that I can see--

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, Apr 19, 2017 at 2:37 PM, Ruth Ann Lowery - NOAA Federal <ruthann.lowery@noaa.gov> wrote:

(b)(5)

? Are there any other comments?

Ruth Ann

Ruth Ann Lowery, Attorney-Advisor

NOAA Office of General Counsel

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(b)(5) [Redacted]

(b)(5) [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

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Sent: Wednesday, April 19, 2017 1:07 PM
To: Ruth Ann Lowery - NOAA Federal
Cc: Mark Graff - NOAA Federal; Nathanson Stacey; Roxie Allison-Holman - NOAA Federal
Subject: Re: DRAFT REVISED 580 2D interim letter

Ruth Ann,

(b)(5)

Respectfully,

Maria S. Williams

Property\NESDIS FOIA Liaison \Admin Officer\FAC-COR II
National Oceanic and Atmospheric Administration
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Office of the Assistant Chief Information Officer
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On Wed, Apr 19, 2017 at 11:45 AM, Ruth Ann Lowery - NOAA Federal <ruthann.lowery@noaa.gov> wrote:

Hi, Mark and Maria,

(b)(5) [Redacted]

[Redacted]

- [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](tel:(301)713-9671)

Fax: [\(301\) 713-0658](tel:(301)713-0658)

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(b) (5)

(b) (5)

(b) (5)

From: Ruth Ann Lowery - NOAA Federal <ruthann.lowery@noaa.gov>
Sent: Wednesday, April 19, 2017 5:48 PM
To: Mark Graff - NOAA Federal; Maria Williams - NOAA Federal
Cc: Bogomolny, Michael (Federal)
Subject: FW: Judicial Watch v. Ross
Attachments: Second IR_580 DRAFT clean.docx

(b)(5)

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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-----Original Message-----

From: Campbell, Rhonda (USADC) [mailto:Rhonda.Campbell@usdoj.gov]
Sent: Wednesday, April 19, 2017 5:21 PM
To: Ruth Ann Lowery - NOAA Federal
Cc: Bogomolny, Michael (Federal); Roxie Allison-Holman - NOAA Federal
Subject: Re: Judicial Watch v. Ross

(b)(5) Please send the final letter to me when it goes out. Thanks Rhonda

Sent from my iPhone

On Apr 19, 2017, at 3:37 PM, Ruth Ann Lowery - NOAA Federal
<ruthann.lowery@noaa.gov<mailto:ruthann.lowery@noaa.gov>> wrote:

Rhonda and Michael,

(b)(5)
[Redacted text block]

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
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><(((?>`*.,,. *??`*.,>(((?>,,. *??`* ...,>(((?>

<Second IR_580 DRAFT clean.docx>

(b) (5)

(b) (5)

(b) (5)

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, April 19, 2017 3:51 PM
To: Glenn Tallia - NOAA Federal; Heather Book - NOAA Federal; Hillary Davidson; Kristen Gustafson - NOAA Federal; Matthew Womble - NOAA Affiliate; Rodney Vieira - NOAA Federal; Rose Stanley - NOAA Federal; Russell Vose - NOAA Federal; Ruth Ann Lowery - NOAA Federal; Tim Owen - NOAA Federal
Cc: Lola Stith - NOAA Affiliate; Robert Swisher - NOAA Federal; Dennis Morgan - NOAA Federal
Subject: Karl-related FOIA requests
Attachments: Karl-related requests extraction 4.19.xls

Good Afternoon,

Here is the updated spreadsheet for the discussion today.

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

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(b) (5)

From: Robert Hembrook - NOAA Federal <robert.hembrook@noaa.gov>
Sent: Wednesday, April 19, 2017 6:04 PM
To: Chi Kang - NOAA Federal; Mark Graff - NOAA Federal; Lola Stith - NOAA Affiliate
Subject: Re: DOC FOIA TASK: Joseph Cox DOC-OS-2017-000628 Fee Estimate Needed

I'll bite:

(b)(5)

Help me understand why we would do this?

Thanks

--
Robert C. Hembrook, CISSP, CEH
Director of Cyber Security
National Oceanic & Atmospheric Administration
[1315 East West Highway](#), SSMC3, Rm 9805
Silver Spring, MD 20910
[\(301\) 628-5778](tel:3016285778) (Office)
[\(301\) 452-5927](tel:3014525927) (Mobile)
robert.hembrook@noaa.gov

On Apr 19, 2017, at 2:27 PM, Chi Kang - NOAA Federal <chi.y.kang@noaa.gov> wrote:

(b)(5)

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

----- Forwarded message -----
From: Chi Kang - NOAA Federal <chi.y.kang@noaa.gov>
Date: Wed, Apr 19, 2017 at 2:25 PM
Subject: Re: DOC FOIA TASK: Joseph Cox DOC-OS-2017-000628 Fee Estimate Needed
To: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>
Cc: Jerome McNamara <jerome.mcnamara@noaa.gov>, Eric D Williams <Eric.D.Williams@noaa.gov>, Mark Graff - NOAA Federal <mark.graff@noaa.gov>

Thanks Lola. When do need to have this completed by?

On Wed, Apr 19, 2017 at 1:34 PM, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:

Hi Chi (b)(5) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Lola

On Tue, Apr 18, 2017 at 3:51 PM, Chi Kang - NOAA Federal <chi.y.kang@noaa.gov> wrote:

Good afternoon,

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

(b)(5)

Mark H. Graff

FOIA Officer/Bureau Chief Privacy Officer
(BCPO)

National Oceanic and Atmospheric Administration
(301) 628-5658 (O)

(b)(6) (C)

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

From: Robert Swisher - NOAA Federal
<robert.swisher@noaa.gov>

Date: Tue, Mar 28, 2017 at 2:01 PM
Subject: Fwd: Joseph Cox DOC-OS-2017-000628
Fee Estimate Status Check
To: Mark Graff - NOAA Affiliate
<mark.graff@noaa.gov>, Lola Stith - NOAA
Affiliate <lola.m.stith@noaa.gov>

FYI/A,

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

From: Crawford, Ayana (Contractor)
<ACrawford@doc.gov>
Date: Tue, Mar 28, 2017 at 12:17 PM
Subject: Joseph Cox DOC-OS-2017-000628 Fee
Estimate Status Check
To:
Cc: "Toland, Michael (Federal)"
<MToland@doc.gov>

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

[Redacted]

[Redacted]
[Redacted]
[Redacted]

Please let me know if
you
have any questions or concerns.

Ayana Crawford

FOIA Specialist

US Department of Commerce

Office of Privacy and Open Government

Email: ACrawford@doc.gov

--

Rob Swisher

Director, Governance and Portfolio Division

NOAA OCIO

301-628-5755

240-723-5284

--

Lola Stith

Contractor - The Ambit Group, LLC

NOAA Office of the Chief Information Officer
(OCIO)

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

lola.m.stith@noaa.gov

--

Jerome.McNamara@noaa.gov

NOAA, Office of the Chief Information Officer

Governance and Portfolio Division

(301) 628-5752

"The NOAA CIO Council's mission is to improve practices related to the design, acquisition, development, modernization, use, sharing, and performance of NOAA's information resources."

--

Chi Y Kang, CISSP

Deputy Director for Operations (Acting), Cyber Security Division

DOC/NOAA/OCIO

(301) 628-5738, Chi.Y.Kang@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

--

Chi Y Kang, CISSP

Deputy Director for Operations (Acting), Cyber Security Division

DOC/NOAA/OCIO

(301) 628-5738, Chi.Y.Kang@noaa.gov

--

Chi Y Kang, CISSP

Deputy Director for Operations (Acting), Cyber Security Division

DOC/NOAA/OCIO

(301) 628-5738, Chi.Y.Kang@noaa.gov

<NOAA OCIO DOC-OS-2017-000628 Fee Estimate Tasker.docx>

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Thursday, April 20, 2017 7:33 AM
To: Robert Hembrook - NOAA Federal
Cc: Chi Kang - NOAA Federal; Lola Stith - NOAA Affiliate
Subject: Re: DOC FOIA TASK: Joseph Cox DOC-OS-2017-000628 Fee Estimate Needed

(b)(5) [Redacted]

[Redacted]

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

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On Wed, Apr 19, 2017 at 6:03 PM, Robert Hembrook - NOAA Federal <robert.hembrook@noaa.gov> wrote:
I'll bite:

(b)(5) [Redacted]

[Redacted]

[Redacted]

Help me understand why we would do this?

Thanks

--

Robert C. Hembrook, CISSP, CEH
Director of Cyber Security
National Oceanic & Atmospheric Administration
1315 East West Highway, SSMC3, Rm 9805
Silver Spring, MD 20910
[\(301\) 628-5778](tel:3016285778) (Office)
[\(301\) 452-5927](tel:3014525927) (Mobile)
robert.hembrook@noaa.gov

On Apr 19, 2017, at 2:27 PM, Chi Kang - NOAA Federal <chi.y.kang@noaa.gov> wrote:

(b)(5)

[Redacted]

[Redacted]

[Redacted]

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

From: Chi Kang - NOAA Federal <chi.y.kang@noaa.gov>
Date: Wed, Apr 19, 2017 at 2:25 PM
Subject: Re: DOC FOIA TASK: Joseph Cox DOC-OS-2017-000628 Fee Estimate Needed
To: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>
Cc: Jerome McNamara <jerome.mcnamara@noaa.gov>, Eric D Williams <Eric.D.Williams@noaa.gov>, Mark Graff - NOAA Federal <mark.graff@noaa.gov>

Thanks Lola. When do need to have this completed by?

On Wed, Apr 19, 2017 at 1:34 PM, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:

Hi Chi (b)(5) [Redacted]

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

Lola

On Tue, Apr 18, 2017 at 3:51 PM, Chi Kang - NOAA Federal
<chi.y.kang@noaa.gov> wrote:

Good afternoon,

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

On Tue, Apr 18, 2017 at 2:53 PM, Jerome McNamara - NOAA
Federal
<jerome.mcnamara@noaa.gov> wrote:

----- Forwarded message -----
From: Lola Stith - NOAA Affiliate
<lola.m.stith@noaa.gov>
Date: Tue, Apr 18, 2017 at 1:09 PM
Subject: DOC FOIA TASK: Joseph Cox DOC-OS-
2017-000628 Fee Estimate
Needed
To: Jerome McNamara - NOAA Federal
<Jerome.McNamara@noaa.gov>
Cc: Eric Williams - NOAA Affiliate
<eric.d.williams@noaa.gov>, Mark
Graff -

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

[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
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[Redacted]
[Redacted]
[Redacted]
[Redacted]

[Redacted]
[Redacted]
[Redacted]
[Redacted]

Please let me know if you have any questions.

R/
Lola

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

From: Mark Graff - NOAA Federal

<mark.graff@noaa.gov>

Date: Thu, Mar 30, 2017 at 4:37 PM

Subject: Fwd: Joseph Cox DOC-OS-2017-000628
Fee Estimate Status Check

To: Lola Stith - NOAA Affiliate

<lola.m.stith@noaa.gov>

Hey Lola--

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

Mark H. Graff

FOIA Officer/Bureau Chief Privacy Officer
(BCPO)

National Oceanic and Atmospheric Administration

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

(b)(6) [REDACTED] (C)

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----- Forwarded message -----
From: Robert Swisher - NOAA Federal
<robert.swisher@noaa.gov>
Date: Tue, Mar 28, 2017 at 2:01 PM
Subject: Fwd: Joseph Cox DOC-OS-2017-000628
Fee Estimate Status Check
To: Mark Graff - NOAA Affiliate
<mark.graff@noaa.gov>, Lola Stith - NOAA
Affiliate <lola.m.stith@noaa.gov>

FYI/A,

----- Forwarded message -----
From: Crawford, Ayana (Contractor)
<ACrawford@doc.gov>
Date: Tue, Mar 28, 2017 at 12:17 PM
Subject: Joseph Cox DOC-OS-2017-000628 Fee
Estimate Status Check
To:
Cc: "Toland, Michael (Federal)"
<MToland@doc.gov>

(b)(5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]:

(b)(5) [Redacted]

[Redacted]
[Redacted]
[Redacted]

Please let me know if
you
have any questions or concerns.

Ayana Crawford

FOIA Specialist

US Department of Commerce

Office of Privacy and Open Government

Email: ACrawford@doc.gov

--

Rob Swisher

Director, Governance and Portfolio Division

NOAA OCIO

[301-628-5755](tel:301-628-5755)

[240-723-5284](tel:240-723-5284)

--

Lola Stith

Contractor - The Ambit Group, LLC

NOAA Office of the Chief Information Officer
(OCIO)

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

lola.m.stith@noaa.gov

--

Jerome.McNamara@noaa.gov

NOAA, Office of the Chief Information Officer

Governance and Portfolio Division

[\(301\) 628-5752](tel:(301)628-5752)

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Chi Y Kang, CISSP
Deputy Director for Operations (Acting), Cyber Security Division
DOC/NOAA/OCIO
[\(301\) 628-5738](tel:3016285738), Chi.Y.Kang@noaa.gov

--

Lola Stith
Contractor - The Ambit Group, LLC
NOAA Office of the Chief Information Officer (OCIO)
(c (b)(6))
lola.m.stith@noaa.gov

--

Chi Y Kang, CISSP
Deputy Director for Operations (Acting), Cyber Security Division
DOC/NOAA/OCIO
[\(301\) 628-5738](tel:3016285738), Chi.Y.Kang@noaa.gov

--

Chi Y Kang, CISSP
Deputy Director for Operations (Acting), Cyber Security Division
DOC/NOAA/OCIO
[\(301\) 628-5738](tel:3016285738), Chi.Y.Kang@noaa.gov

<NOAA OCIO DOC-OS-2017-000628 Fee Estimate Tasker.docx>

From: Robert Hembrook - NOAA Federal <robert.hembrook@noaa.gov>
Sent: Thursday, April 20, 2017 11:15 AM
To: Mark Graff - NOAA Federal
Cc: Chi Kang - NOAA Federal; Lola Stith - NOAA Affiliate
Subject: Re: DOC FOIA TASK: Joseph Cox DOC-OS-2017-000628 Fee Estimate Needed

Got it. (b)(5)

--
Robert C. Hembrook, CISSP, CEH
Director of Cyber Security
National Oceanic & Atmospheric Administration
1315 East West Highway, SSMC3, Rm 9805
Silver Spring, MD 20910
(301) 628-5778 (Office)
(301) 452-5927 (Mobile)
robert.hembrook@noaa.gov
rhembrook@commerce.sgov.gov
rhembrook@doc.ic.gov

On Thu, Apr 20, 2017 at 11:33 AM, 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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I'll bite:

(b)(5)

[Redacted]

Help me understand why we would do this?

Thanks

--
Robert C. Hembrook, CISSP, CEH
Director of Cyber Security
National Oceanic & Atmospheric Administration
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robert.hembrook@noaa.gov

On Apr 19, 2017, at 2:27 PM, Chi Kang - NOAA Federal <chi.y.kang@noaa.gov> wrote:

(b)(5)

[Redacted]

[Redacted]

[Redacted]

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Cc: Jerome McNamara <jerome.mcnamara@noaa.gov>, Eric D Williams <Eric.D.Williams@noaa.gov>, Mark Graff - NOAA Federal <mark.graff@noaa.gov>

Thanks Lola. When do need to have this completed by?

On Wed, Apr 19, 2017 at 1:34 PM, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:

Hi Chi (b)(5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

Lola

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Good afternoon,

(b)(5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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[REDACTED]?

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

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Date: Tue, Apr 18, 2017 at 1:09 PM

Subject: DOC FOIA TASK: Joseph Cox DOC-OS-2017-000628 Fee Estimate

Needed

To: Jerome McNamara - NOAA Federal
<Jerome.McNamara@noaa.gov>

Cc: Eric Williams - NOAA Affiliate
<eric.d.williams@noaa.gov>, Mark

Graff -

NOAA Affiliate <mark.graff@noaa.gov>

Good afternoon - (b)(5) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b)(5)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Please let me know if you have any questions.

R/
Lola

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To: Lola Stith - NOAA Affiliate
<lola.m.stith@noaa.gov>

Hey Lola--

(b)(5)
[Redacted]

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

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

(b)(6) (C)

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Subject: Fwd: Joseph Cox DOC-OS-2017-000628
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To: Mark Graff - NOAA Affiliate
<mark.graff@noaa.gov>, Lola Stith - NOAA

Affiliate <lola.m.stith@noaa.gov>

FYI/A,

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

From: Crawford, Ayana (Contractor)
<ACrawford@doc.gov>

Date: Tue, Mar 28, 2017 at 12:17 PM

Subject: Joseph Cox DOC-OS-2017-000628 Fee
Estimate Status Check

To:

Cc: "Toland, Michael (Federal)"
<MToland@doc.gov>

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

[Redacted]

[Redacted]
[Redacted]
[Redacted].

Please let me know if
you
have any questions or concerns.

Ayana Crawford

FOIA Specialist

US Department of Commerce

Office of Privacy and Open Government

Email: ACrawford@doc.gov

--

Rob Swisher

Director, Governance and Portfolio Division

NOAA OCIO

[301-628-5755](tel:301-628-5755)

[240-723-5284](tel:240-723-5284)

--

Lola Stith

Contractor - The Ambit Group, LLC

NOAA Office of the Chief Information Officer
(OCIO)

(c) (b)(6)

lola.m.stith@noaa.gov

--

Jerome.McNamara@noaa.gov

NOAA, Office of the Chief Information Officer

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Chi Y Kang, CISSP

Deputy Director for Operations (Acting), Cyber Security Division

DOC/NOAA/OCIO

[\(301\) 628-5738](tel:(301)628-5738), Chi.Y.Kang@noaa.gov

--

Lola Stith

Contractor - The Ambit Group, LLC

NOAA Office of the Chief Information Officer (OCIO)

(c (b)(6)

lola.m.stith@noaa.gov

--

Chi Y Kang, CISSP
Deputy Director for Operations (Acting), Cyber Security Division
DOC/NOAA/OCIO
[\(301\) 628-5738](tel:(301)628-5738), Chi.Y.Kang@noaa.gov

--

Chi Y Kang, CISSP
Deputy Director for Operations (Acting), Cyber Security Division
DOC/NOAA/OCIO
[\(301\) 628-5738](tel:(301)628-5738), Chi.Y.Kang@noaa.gov

<NOAA OCIO DOC-OS-2017-000628 Fee Estimate Tasker.docx>

From: Ellen Sebastian - NOAA Federal <ellen.sebastian@noaa.gov>
Sent: Thursday, April 20, 2017 1:38 PM
To: Graff, Mark; Lola Stith - NOAA Affiliate
Cc: Samuel Dixon - NOAA Affiliate
Subject: Fwd: Coastal Villages FOIA Request
Attachments: 170331 FOIA Request to NOAA.pdf

Mark, Lola, and Sam, please be advise (b)(5)

Hope this is useful info.

~ Ellen

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

From: Sally Bibb - NOAA Federal <sally.bibb@noaa.gov>
Date: Thu, Apr 20, 2017 at 9:04 AM
Subject: Fwd: Coastal Villages FOIA Request
To: Ellen Sebastian <Ellen.Sebastian@noaa.gov>, Lauren Smoker <Lauren.Smoker@noaa.gov>

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

From: Arthur A. Severance <Arthur_S@coastalvillages.org>
Date: Thu, Apr 20, 2017 at 9:01 AM
Subject: Coastal Villages FOIA Request
To: Sally Bibb - NOAA Federal <sally.bibb@noaa.gov>

Dear Sally:

I cannot thank you enough for your assistance on this project.

(b)(5)

(b)(5) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

If you need anything further, please do not hesitate to ask!

Very truly yours,

Art Severance

Arthur Severance, Esq.

Corporate Counsel

Coastal Villages Region Fund

711 H Street, Suite 200

Anchorage, AK 99501

Tel. No.: [\(907\) 644-6551](tel:(907)644-6551)

Cell No. (b)(6) [Redacted]

Fax No.: [\(907\) 278-5150](tel:(907)278-5150)

Email: arthur_s@coastalvillages.org

<http://www.coastalvillages.org>



**Certified as a Specialist in Admiralty and Maritime Law
by the State Bar of California Board of Legal Specialization**

=====
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=====

--
Ellen Sebastian
FOIA & Records Coordinator
Information Services Division
NOAA Fisheries, Alaska Region
(907) 586-7152

*the goal is to create records that have authenticity, integrity, reliability, and usability." NARA



Coastal Villages Region Fund

711 H Street, Suite 200 • Anchorage, Alaska 99501 • Phone 907.278.5151 • Fax 907.278-5150

April 20, 2017

National Oceanic and Atmospheric Administration
Public Reference Facility (SOU1000)
1315 East-West Highway (33MC3)
Room 9719
Silver Spring, MD 20910

Re: Freedom of Information Act Request

Dear NOAA:

This is a request under the Alaska Open Records Law. Alaska Statutes §§ 40-25-110 *et seq.* I request the opportunity to inspect or obtain copies of the following public records **from November 1992:**

- The recommendations that Alaska Governor Wally Hickel made to the North Pacific Fishery Management Council (“NPFMC”) on or about November 25, 1992, regarding Community Development Programs (“CDPs”) and the percentages of the Community Development Quota (“CDQ”) reserve to be allocated to each CDP (the “NPFMC Recommendations”);
- Any materials that Governor Hickel or the State of Alaska submitted to the NPFMC regarding the NPFMC Recommendations;
- The recommendations that Governor Hickel submitted to the U.S. Secretary of Commerce on or about November 26 or 27, 1992, regarding the CDPs and the percentages of the CDQ to be allocated to each CDP (the “Commerce Recommendations”);
- Any materials that Governor Hickel, the State of Alaska, the NPFMC, any member of the NPFMC, or National Marine Fisheries Service (“NMFS”) submitted to the Secretary regarding the Commerce Recommendations;
- Any materials submitted by the prospective CDP Aleutian Pribilof Islands Community Development Association in its application to be approved as a CDP;
- Any materials submitted by the prospective CDP Bristol Bay Economic Development Corporation in its application to be approved as a CDP;
- Any materials submitted by the prospective CDP Central Bering Sea Fishermen’s Association in its application to be approved as a CDP;

- Any materials submitted by the prospective CDP Coastal Villages Fishing Corporation in its application to be approved as a CDP;
- Any materials submitted by the prospective CDP Norton Sound Fisheries Development Association in its application to be approved as a CDP;
- Any materials submitted by the prospective CDP Yukon Delta Fisheries Development Association in its application to be approved as a CDP;
- Any notes Governor Hickel or his staff may have made regarding the CDP applications;
- Any correspondence between Governor Hickel or his staff with the prospective CDP applicants;
- Any notes Governor Hickle or his staff may have made regarding the NPFMC Recommendations or the Commerce Recommendations; and
- Any correspondence between Governor Hickel, his staff, the NPFMC, NMFS, or the U.S. Secretary of Commerce regarding the NPFMC Recommendations or the Commerce Recommendations.

For your reference, the National Marine Fisheries Service (“NMFS”) memorialized the exchange of the aforementioned recommendations between Governor Hickel, the NPFMC, and the Secretary at 47 Fed. Reg. 58,157, 58,158 (Dec. 9, 1992).

I am affiliated with Coastal Villages Region Fund, an Alaska nonprofit 501(c)(4) corporation and am seeking the information for use in its business.

I am willing to pay fees for this request up to a maximum of \$250.00. If you estimate that the fees will exceed this limit, please inform me first.

Please respond to this request in a reasonable time period. If access to the records I am requesting will take longer, please contact me with information about when I might expect copies or the ability to inspect the requested records.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Thank you very much for considering this request. If you have any questions or need any further information, please do not hesitate to ask.

Very truly yours,

Arthur A. Severance, Esq.
Corporate Counsel

Phone (direct): (907) 644-6551
Email: arthur_s@coastalvillages.org





From: Ruth Ann Lowery - NOAA Federal <ruthann.lowery@noaa.gov>
Sent: Thursday, April 20, 2017 1:52 PM
To: aTorczon@doc.gov
Cc: Nathanson Stacey; Jerenda Burroughs - NOAA Affiliate; NMFS HQ PR FOIA Requests - NOAA Service Account; Mark Graff - NOAA Federal
Subject: FOIA DOC-NOAA-2016-000605 - Update
Attachments: 2016-000605 Supplemental Final Resp Ltr.for DOC.Revised.docx

Hi, Andrea,

As I mentioned in my phone mail (b)(5) [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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

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(b) (5)

From: Boyd, Harriette (Federal) <hBoyd1@doc.gov>
Sent: Monday, April 24, 2017 4:24 PM
To: Graff, Mark (Federal)
Cc: Stith, Lola (Contractor); Abello, Isabel; Parsons, Bobbie (Federal); Strickland, Wayne; Graff, Mark (Federal); Toland, Michael (Federal)
Subject: RE: DOC-OS-2017-000329
Attachments: 2017-000329 email from requester 12-16-2016.pdf

Hi Mark, fyi I am attaching the emails to the requester. (b)(5)

. Harriette

From: Mark Graff - NOAA Federal [mailto:mark.graff@noaa.gov]
Sent: Monday, April 24, 2017 4:12 PM
To: Boyd, Harriette (Federal) <hBoyd1@doc.gov>
Cc: Stith, Lola (Contractor) <Lola.M.Stith@noaa.gov>; Abello, Isabel <Isabel.Abello@trade.gov>; Parsons, Bobbie (Federal) <bParsons@doc.gov>; Strickland, Wayne <WayneS@ntis.gov>; Graff, Mark (Federal) <Mark.Graff@noaa.gov>
Subject: Fwd: DOC-OS-2017-000329

Hi Harriette,

Sorry, left the cc folks off on this. Below is the latest update from NOAA on DOC-OS-2017-000329. Thanks--

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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From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Date: Mon, Apr 24, 2017 at 4:10 PM
Subject: Fwd: DOC-OS-2017-000329
To: "Boyd, Harriette" <hBoyd1@doc.gov>
Cc: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>

Hi Harriette,

This was my last update in DOC-NOAA-2017-000329 below. (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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From: **Mark Graff - NOAA Federal** <mark.graff@noaa.gov>
Date: Tue, Apr 18, 2017 at 7:29 AM
Subject: DOC-OS-2017-000329
To: "Toland, Michael" <mtoland@doc.gov>
Cc: "Boyd, Harriette" <hBoyd1@doc.gov>, "Parsons, Bobbie" <bParsons@doc.gov>, Corinne Brown - NOAA Federal <corinne.brown@noaa.gov>, James LeDuc - NOAA Federal <james.leduc@noaa.gov>, Robert Swisher - NOAA Federal <robert.swisher@noaa.gov>

Good Morning Mike,

(b)(5)
[Redacted text block]

Thanks, Mike--

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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From: 30904-01111736@requests.muckrock.com
To: [FOIA, Electronic](#)
Subject: RE: Freedom of Information Request: Wilbur Ross Commerce
Date: Friday, December 16, 2016 3:47:20 PM

December 16, 2016
Department of Commerce
U.S. Department of Commerce
14th and Constitution Avenue N.W.
Mail Stop H5327
Washington, D.C. 20230

This is a follow up to a previous request:

Other, larger agencies have not interpreted the request as being too large and broad. I give specific terms and items to search for, with the most inclusive ones being for electronic searches which can and should be automated. The only other elements are limited to a single individual/subject and a limited time period. Additionally, National Security Counselors v. CIA, Nos. 11-443, 11-444, 11-445, 2012 WL 4903377 (D.D.C. Oct. 17, 2012) establishes you may not categorically refuse to process requests using language similar to mine.

If there is no response to this letter within 30 days, I will take that as your agreement that the search is neither too broad nor unreasonable and that you will proceed with the search required by statute and case law.

On Dec. 16, 2016:
12/16/2016 03:27 PM FOIA Request: DOC-OS-2017-000329

Dear Mr. Best:

This letter acknowledges receipt of your request for “Records from 2015 and 2016 relating to or mentioning Wilbur Ross, including communications received from or sent to Mr. Ross, as well as emails mentioning him.”

As written your request is vague, broad, and includes the entire Department of Commerce. This request is considered burdensome, as many of the requested records are in paper format and would require a hand search for responsive records. Please consider amending your request by narrowing the scope of your request, or specifying the Bureau of interest, topics or subject matter and reducing the time frame.

The Department of Commerce is decentralized and has fourteen (14) Bureaus with a FOIA Officer in each Bureau. To assist you with determining which Bureau within the Department you believe would provide the documents you are seeking, please visit our website:

<http://www.doc@gov> . (<http://www.doc@gov>)

The following is a list of Bureaus within the Department of Commerce:

Immediate Office of the Secretary (OS) Bureau of Economic Analysis (BEA)

Bureau of Industry and Security (BIS)

U.S. Census Bureau (Cen)

Economic Development Administration (EDA)

Economics and Statistics Administration (ESA)

International Trade Administration (ITA)

Minority Business Development Agency (MBDA)
National Oceanic and Atmospheric Administration (NOAA)
National Telecommunications and Information Administration (NTIA)
National Institute of Standards and Technology (NIST)
National Technical Information Service (NTIS)
U.S. Patent and Trademark Office (USPTO)
Office of Inspector General (OIG)

If there is no response to this letter within 30 days, we will close your request.

Harriette Boyd FOIA Specialist

DOC/OS/OPOG

202-482-1485

hboyd1@doc.gov

On Dec. 16, 2016:

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=090004d2810a429c>)

* Tracking Number: DOC-OS-2017-000329

* Requester Name: Michael Best

* Date Submitted: 12/16/2016

* Request Status: Submitted

* Description: Records from 2015 and 2016 relating to or mentioning Wilbur Ross, including communications received from or sent to Mr. Ross, as well as emails mentioning him.

On Dec. 16, 2016:

To Whom It May Concern:

This is a request under the Freedom of Information Act. I hereby request the following records:

Records from 2015 and 2016 relating to or mentioning Wilbur Ross, including communications received from or sent to Mr. Ross, as well as emails mentioning him.

I am a member of the news media and request classification as such. I have previously written about the government and its activities for AND Magazine, MuckRock and Glomar Disclosure and have an open arrangement with each. My articles have been widely read, with some reaching over 100,000 readers. As such, as I have a reasonable expectation of publication and my editorial and writing skills are well established. In addition, I discuss and comment on the files online and make them available through the non-profit Internet Archive, disseminating them to a large audience. While my research is not limited to this, a great deal of it, including this, focuses on the activities and attitudes of the government itself. As such, it is not necessary for me to demonstrate the relevance of this particular subject in advance.

Additionally, case law states that "proof of the ability to disseminate the released information to a broad cross-section of the public is not required." *Judicial Watch, Inc. v. Dep't of Justice*, 365 F.3d 1108, 1126 (D.C. Cir. 2004); see *Carney v. U.S. Dep't of Justice*, 19 F.3d 807, 814-15 (2d Cir. 1994). Further, courts have held that "qualified because it also had "firm" plans to

“publish a number of . . . ‘document sets’” concerning United States foreign and national security policy." Under this criteria, as well, I qualify as a member of the news media. Additionally, courts have held that the news media status "focuses on the nature of the requester, not its request. The provision requires that the request be “made by” a representative of the news media. Id. § 552(a)(4)(A)(ii)(II). A newspaper reporter, for example, is a representative of the news media regardless of how much interest there is in the story for which he or she is requesting information." As such, the details of the request itself are moot for the purposes of determining the appropriate fee category.

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

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. 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,

Michael Best

Filed via MuckRock.com

E-mail (Preferred): 30904-01111736@requests.muckrock.com

For mailed responses, please address (see note):

MuckRock

DEPT MR 30904

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.

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Monday, April 24, 2017 5:23 PM
To: Robert Swisher - NOAA Federal; Dennis Morgan - NOAA Federal
Cc: Lola Stith - NOAA Affiliate
Subject: Fwd: Judicial Watch v. DOC
Attachments: Doc 7 - Notice of dismissal.pdf; 17cv541 docket.pdf

Like I'd mentioned (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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From: **Bogomolny, Michael (Federal)** <MBogomolny@doc.gov>
Date: Mon, Apr 24, 2017 at 2:58 PM
Subject: Judicial Watch v. DOC
To: "Graff, Mark (Federal)" <Mark.Graff@noaa.gov>
Cc: "Lowery, Ruth Ann (Federal)" <RuthAnn.Lowery@noaa.gov>

Mark,

I'm not sure what you keep in the way of litigation records, but attached is a copy of the Notice of Dismissal and a printout of the docket showing the minute order dismissing the case without prejudice and closing the case.

(b)(5)

Sincerely,
bogo

Michael Bogomolny
Acting Chief, Information Law Division
mbogomolny@doc.gov (202) 482-0703

United States Department of Commerce
Office of the General Counsel

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US District Court Civil Docket

U.S. District - District of Columbia
(Washington, DC)

1:17cv541

Judicial Watch, Inc. v. U.S. Department of Commerce

This case was retrieved from the court on Monday, April 24, 2017

Date Filed: 03/24/2017
Assigned To: Judge Reggie B. Walton
Referred To:
Nature of suit: FOIA (895)
Cause: Freedom of Information Act
Lead Docket: None
Other Docket: None
Jurisdiction: U.S. Government Defendant

Class Code: CLOSED
Closed: 04/24/2017
Statute: 05:552
Jury Demand: None
Demand Amount: \$0
NOS Description: Foia

Litigants

Judicial Watch, Inc.
Plaintiff

U.S. Department of Commerce
Defendant

Attorneys

[Chris Fedeli](#)
ATTORNEY TO BE NOTICED
[JUDICIAL WATCH, INC.](#)
425 Third Street, Sw Suite 800
Washington , DC 20024
USA
(202) 646-5172
Fax: (202) 646-5185
Email:Cfedeli@judicialwatch.Org

[Rhonda Lisa Campbell](#)
LEAD ATTORNEY;ATTORNEY TO BE NOTICED
[U.S. ATTORNEY'S OFFICE](#)
Civil Division 555 Fourth Street, Nw
Washington , DC 20530
USA
(202) 252-2559
Fax: (202) 514-8780
Email:Rhonda.Campbell@usdoj.Gov

Date	#	Proceeding Text	Source
04/24/2017		MINUTE ORDER. In light of the plaintiff's 7 Notice of Dismissal, it is hereby ORDERED that this case is DISMISSED WITHOUT PREJUDICE. It is further ORDERED that this case is CLOSED. Signed by Judge Reggie B. Walton on April 24, 2017. (lcrbw1) (Entered: 04/24/2017)	
04/24/2017	7	NOTICE of Voluntary Dismissal by JUDICIAL WATCH, INC. (Fedeli, Chris) (Entered: 04/24/2017)	
04/20/2017	6	NOTICE of Appearance by Rhonda Lisa Campbell on behalf of U.S. DEPARTMENT OF COMMERCE (Campbell, Rhonda) (Entered: 04/20/2017)	
04/07/2017	5	GENERAL ORDER. Signed by Judge Reggie B. Walton on April 7, 2017. (lcrbw1) (Entered: 04/07/2017)	
04/03/2017	4	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the United States Attorney. Date of Service Upon United States Attorney on 3/31/2017. (Answer due for ALL FEDERAL DEFENDANTS by 4/30/2017.), RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on United States Attorney General. Date of Service Upon United States Attorney General 3/30/2017., RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. U.S. DEPARTMENT OF COMMERCE served on 3/30/2017 (Attachments:	

1 Declaration of Cristina Rotaru)(Fedeli, Chris) (Entered: 04/03/2017)

- 03/27/2017 3 SUMMONS (3) Issued Electronically as to U.S. DEPARTMENT OF COMMERCE, U.S. Attorney and U.S. Attorney General (Attachments: # 1 Summons, # 2 Summons, # 3 Summons)(sth) (Entered: 03/27/2017)
- 03/24/2017 Case Assigned to Judge Reggie B. Walton. (sth) (Entered: 03/27/2017)
- 03/24/2017 2 LCvR 7.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by JUDICIAL WATCH, INC. (Fedeli, Chris) (Entered: 03/24/2017)
- 03/24/2017 1 COMPLAINT against U.S. DEPARTMENT OF COMMERCE (Filing fee \$ 400 receipt number 0090-4888493) filed by JUDICIAL WATCH, INC.. (Attachments: # 1 Civil Cover Sheet, # 2 Summons U.S. Attorney for the District of Columbia, # 3 Summons U.S. Attorney General, # 4 Summons Department of Commerce)(Fedeli, Chris) (Main Document 1 replaced on 3/27/2017) (jd). Modified on 3/27/2017 to correct filing error, summons were filed in place of complaint (jd). (Entered: 03/24/2017)

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,)
)
Plaintiff,)
)
v.)
)
U.S. DEPARTMENT OF COMMERCE)
)
Defendant.)
_____)

Case No. 17-541-RBW

NOTICE OF DISMISSAL

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i), Plaintiff Judicial Watch, Inc. hereby dismisses this action.

Dated: April 24, 2017

Respectfully submitted,

s/ Chris Fedeli
Chris Fedeli
DC Bar 472919
JUDICIAL WATCH, INC.
425 Third Street SW, Suite 800
Washington, DC 20024
(202) 646-5185
cfedeli@judicialwatch.org

Attorney for Plaintiff

From: Maria Williams - NOAA Federal <maria.williams@noaa.gov>
Sent: Tuesday, April 25, 2017 9:46 AM
To: Mark Graff - NOAA Federal
Cc: Lola Stith - NOAA Affiliate
Subject: Fwd: New FOIA Request - Climate Sensorship - 1066
Attachments: 2017.03.30 FOIA request to NOAA re Climate Sensorship.pdf

Mark and Lola,

(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 NOAA Satellites on Social Media: [Facebook](#), [Twitter](#), [YouTube](#)

"Talent wins games, but teamwork and intelligence wins championship"

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

From: Maria Williams - NOAA Federal <maria.williams@noaa.gov>
Date: Mon, Apr 24, 2017 at 9:43 AM
Subject: New FOIA Request - Climate Sensorship
To: Mark Paese <mark.paese@noaa.gov>
Cc: Irene Parker <irene.parker@noaa.gov>, Terrance Tielking - NOAA Federal <Terry.Tielking@noaa.gov>, Michele Newlin - NOAA Federal <michele.newlin@noaa.gov>, Janice Owens-Cobblah <janice.owens-cobblah@noaa.gov>

Mark,

I received this FOIA request that is asking for "all agency directives, instructions, and/or other communications, including communications with the Trump administration transition team, instructing agency and/or department staff to not use, or to remove from formal agency communications, any climate change-related or energy-related words or phrases, including but not

limited to “climate change,” “global warming,” “climate disruption,” “greenhouse gas emissions,” “emissions reductions,” and/or “Paris agreement,” and any related words or phrases”.

(b)(5)

I have attached the request.

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"



March 30, 2017

VIA ELECTRONIC MAIL

FOIA Officer
Public Reference Facility (SOU1000)
1305 East-West Highway, Room 9719 (SSMC3)
Silver Spring, MD 20910
FOIA@noaa.gov

Re: Freedom of Information Act Request: Climate Censorship

Dear FOIA Officer:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552, *as amended* (“FOIA”), from the Center for Biological Diversity (“Center”), a non-profit organization that works to secure a future for all species hovering on the brink of extinction through science, law, and creative media, and to fulfill the continuing educational goals of its membership and the general public in the process.

REQUESTED RECORDS

The Center requests from the National Oceanic and Atmospheric Administration (“NOAA”) all agency directives, instructions, and/or other communications, including communications with the Trump administration transition team, instructing agency and/or department staff to not use, or to remove from formal agency communications, any climate change-related or energy-related words or phrases, including but not limited to “climate change,” “global warming,” “climate disruption,” “greenhouse gas emissions,” “emissions reductions,” and/or “Paris agreement,” and any related words or phrases.

For purposes of this request, “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, writings (handwritten, typed, electronic or otherwise produced, reproduced or stored), correspondence, letters, memoranda, reports, consultations, papers, studies, notes, field notes, recordings, telephone conversation recordings, voice mails, telephone logs, messages, instant messages, G-chats, text messages, chats, telefaxes, data, data bases, drawings, surveys, graphs, charts, photographs, videos, meeting notes or minutes, electronic and magnetic recordings of meetings, maps, GIS layers, GPS, UTM, LiDAR, CDs, and any other compilations of data from which information can be obtained. All of the foregoing is included in this request if it is in NOAA’s possession and control. If such records are no longer under the control of

NOAA but were at any time, please refer this request to the relevant federal agency or agencies. This request is being sent to the headquarters for NOAA with the understanding that it will be forwarded to any other agency offices where responsive records may be located.

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).

If you decide to invoke a FOIA exemption, please include sufficient information for us to assess the basis for the exemption, 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.

In addition, if you determine that portions of the records requested are exempt from disclosure, we request that you segregate the exempt portions and mail the non-exempt portions of such records to my attention at the address below within the statutory time limit. 5 U.S.C. § 552(b).

The Center is willing to receive records on a rolling basis.

FORMAT OF REQUESTED RECORDS

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.”). “Readily-accessible” means text-searchable and OCR-formatted. *See* 5 U.S.C. § 552(a)(3)(B). Please provide all records in a readily-accessible, electronic .pdf format. Additionally, please provide the records either in (1) load-ready format with a CSV file index or excel spreadsheet, or if that is not possible; (2) in .pdf format, without any “portfolios” or “embedded files.” Portfolios and embedded files within files are not readily-accessible. Please do not provide the records in a single, or “batched,” .pdf file. We appreciate the inclusion of an index.

RECORD DELIVERY

We appreciate your help in expeditiously obtaining a determination on the requested records. As mandated in FOIA, we anticipate a reply within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i). Failure to comply within the statutory timeframe may result in the Center taking additional steps to ensure timely receipt of the requested materials. Please provide a complete reply as expeditiously as possible. You may email or mail copies of the requested records to:

Margaret E. Townsend
Center for Biological Diversity
P.O. Box 11374
Portland, OR 97211
mtownsend@biologicaldiversity.org

If you find that this request is unclear, or if the responsive records are voluminous, please call me at (971) 717-6409 to discuss the scope of this request.

REQUEST FOR FEE WAIVER

FOIA was designed to provide citizens a broad right to access government records. FOIA's basic purpose is to "open agency action to the light of public scrutiny," with a focus on the public's "right to be informed about what their government is up to." *U.S. Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773-74 (1989) (internal quotation and citations omitted). In order to provide public access to this information, FOIA's fee waiver provision requires that "[d]ocuments shall be furnished without any charge or at a [reduced] charge," if the request satisfies the standard. 5 U.S.C. § 552(a)(4)(A)(iii). FOIA's fee waiver requirement is "liberally construed." *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1310 (D.C. Cir. 2003); *Forest Guardians v. U.S. Dept. of Interior*, 416 F.3d 1173, 1178 (10th Cir. 2005).

The 1986 fee waiver amendments were designed specifically to provide non-profit organizations such as the Center access to government records without the payment of fees. Indeed, FOIA's fee waiver provision was intended "to prevent government agencies from using high fees to discourage certain types of requesters and requests," which are "consistently associated with requests from journalists, scholars, and *non-profit public interest groups*." *Ettlinger v. FBI*, 596 F.Supp. 867, 872 (D. Mass. 1984) (emphasis added). As one Senator stated, "[a]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information" 132 Cong. Rec. S. 14298 (statement of Senator Leahy).

I. The Center Qualifies for a Fee Waiver.

Under FOIA, a party is entitled to a fee waiver when "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 [Federal] government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). The Department of Commerce FOIA regulations at 15 C.F.R. § 4.11(l) establish the same standard.

Thus, the NOAA must consider four factors to determine whether a request is in the public interest: (1) whether the subject of the requested records concerns “the operations or activities of the Federal government,” (2) whether the disclosure is “likely to contribute” to an understanding of government operations or activities, (3) whether the disclosure “will contribute to public understanding” of a reasonably-broad audience of persons interested in the subject, and (4) whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities. 40 C.F.R. § 2.107(1)(2). As shown below, the Center meets each of these factors.

A. The Subject of This Request Concerns “The Operations and Activities of the Government.”

The subject matter of this request concerns the operations and activities of the NOAA. This request asks for all agency directives, instructions, and/or other communications, including communications with the Trump administration transition team, instructing agency and/or department staff to not use, or to remove from formal agency communications, any climate change-related or energy-related words or phrases, including but not limited to “climate change,” “global warming,” “climate disruption,” “greenhouse gas emissions,” “emissions reductions,” and/or “Paris agreement,” and any related words or phrases.

This FOIA will provide the Center and the public with crucial insight into government activities by making public any directives, instructions, or other communications instructing agency or department staff to not use, or to remove from formal agency communications, any climate- or energy-related words or phrases. It is clear that the NOAA’s communications policies involve a specific and identifiable activity of the government, in this case the executive branch agency, the NOAA. *Judicial Watch*, 326 F.3d at 1313 (“[R]easonable specificity is all that FOIA requires with regard to this factor”) (internal quotations omitted). Thus, the Center meets this factor.

B. Disclosure is “Likely to Contribute” to an Understanding of Government Operations or Activities.

The requested records are meaningfully informative about government operations or activities and will contribute to an increased understanding of those operations and activities by the public.

Disclosure of the requested records will allow the Center to convey to the public information about the factors and motives underlying department or agency communications relating to climate change, as they may bear on agency or department abilities to accurately communicate information about climate change impacts, science, policy, or government information previously developed that may affect public’s understanding of government activity as it relates to the quality of the human environment. Once the information is made available, the Center will analyze it and present it to its 1.2 million members and online activists and the general public in a manner that will meaningfully enhance the public’s understanding of government activities by making public any directives, instructions, or other communications instructing agency or department staff to not use, or to remove from formal agency communications, any climate- or energy-related words or phrases.

Thus, the requested records are likely to contribute to an understanding of NOAA operations and activities.

C. Disclosure of the Requested Records Will Contribute to a Reasonably Broad Audience of Interested Persons' Understanding of Any Federal Directive to Remove References to "Climate Change" in Government Materials.

The requested records will contribute to public understanding of how public directives, instructions, or other communications instructing agency or department staff to not use, or to remove from formal agency communications, any climate- or energy-related words or phrases are consistent with the goals and purposes of the agency, as well as whether they are aligned with federal environmental laws and regulations. Whether there are directives to remove references to "climate change" in government records generally, and specifically whether the NOAA has received a directive to remove references to "climate change" or ban the use of the phrase and other related phrases, are areas of interest to a reasonably-broad segment of the public. The Center will use the information it obtains from the disclosed records to educate the public at large about factors and motives underlying department or agency communications relating to climate change, as they may bear on agency or department abilities to accurately communicate information about climate change impacts, science, policy, or government information previously developed that may affect public's understanding of government activity as it relates to the quality of the human environment. *See W. Watersheds Proj. v. Brown*, 318 F.Supp.2d 1036, 1040 (D. Idaho 2004) ("... find[ing] that WWP adequately specified the public interest to be served, that is, educating the public about the ecological conditions of the land managed by the BLM and also how ... management strategies employed by the BLM may adversely affect the environment.").

Through the Center's synthesis and dissemination (by means discussed in Section II, below), disclosure of information contained in and gleaned from the requested records will contribute to a broad audience of persons who are interested in the subject matter. *Ettlinger v. FBI*, 596 F.Supp. at 876 (benefit to a population group of some size distinct from the requester alone is sufficient); *Carney v. Dep't of Justice*, 19 F.3d 807, 815 (2d Cir. 1994), *cert. denied*, 513 U.S. 823 (1994) (applying "public" to require a sufficient "breadth of benefit" beyond the requester's own interests); *Cnty. Legal Servs. v. Dep't of Hous. & Urban Dev.*, 405 F.Supp.2d 553, 557 (E.D. Pa. 2005) (in granting fee waiver to community legal group, court noted that while the requester's "work by its nature is unlikely to reach a very general audience," "there is a segment of the public that is interested in its work").

Indeed, the public does not currently have an ability to easily evaluate the requested records, which concern factors and motives underlying department or agency communications relating to climate change, as they may bear on agency or department abilities to accurately communicate information about climate change impacts, science, policy, or government information previously developed that may affect public's understanding of government activity as it relates to the quality of the human environment that are not currently in the public domain. *See Cnty. Legal Servs. v. HUD*, 405 F.Supp.2d 553, 560 (D. Pa. 2005) (because requested records "clarify important facts" about agency policy, "the CLS request would likely shed light on information that is new to the interested public."). As the Ninth Circuit observed in *McClellan Ecological*

Seepage Situation v. Carlucci, 835 F.2d 1282, 1286 (9th Cir. 1987), “[FOIA] legislative history suggests that information [has more potential to contribute to public understanding] to the degree that the information is new and supports public oversight of agency operations... .”¹

Disclosure of these records is not only “likely to contribute,” but is certain to contribute, to public understanding of government activities by making public any directives, instructions, or other communications instructing agency or department staff to not use, or to remove from formal agency communications, any climate- or energy-related words or phrases. The public is always well served when it knows how the government conducts its activities, particularly matters touching on legal questions. Hence, there can be no dispute that disclosure of the requested records to the public will educate the public about factors and motives underlying department or agency communications relating to climate change, as they may bear on agency or department abilities to accurately communicate information about climate change impacts, science, policy, or government information previously developed that may affect public’s understanding of government activity as it relates to the quality of the human environment.

D. Disclosure is Likely to Contribute Significantly to Public Understanding of Government Operations or Activities.

The Center is not requesting these records merely for their intrinsic informational value. Disclosure of the requested records will significantly enhance the public’s understanding of government activities by making public any directives, instructions, or other communications instructing agency or department staff to not use, or to remove from formal agency communications, any climate- or energy-related words or phrases, as compared to the level of public understanding that exists prior to the disclosure. Indeed, public understanding will be *significantly* increased as a result of disclosure because the requested records will help reveal the factors and motives underlying department or agency communications relating to climate change, as they may bear on agency or department abilities to accurately communicate information about climate change impacts, science, policy, or government information previously developed that may affect public’s understanding of government activity as it relates to the quality of the human environment.

The records are also certain to shed light on NOAA’s compliance with its own purpose and goals, as well as federal environmental laws and regulations. Such public oversight of agency action is vital to our democratic system and clearly envisioned by the drafters of the FOIA. Thus, the Center meets this factor as well.

II. The Center has a Demonstrated Ability to Disseminate the Requested Information Broadly.

The Center is a non-profit organization that informs, educates, and counsels the public regarding environmental issues, policies, and laws relating to environmental issues. The Center has been

¹ In this connection, it is immaterial whether any portion of the Center’s request may currently be in the public domain because the Center requests considerably more than any piece of information that may currently be available to other individuals. *See Judicial Watch*, 326 F.3d at 1315.

substantially involved in the activities of numerous government agencies for over 25 years, and has consistently displayed its ability to disseminate information granted to it through FOIA. In consistently granting the Center's fee-waivers, agencies have recognized: (1) that the information requested by the Center contributes significantly to the public's understanding of the government's operations or activities; (2) that the information enhances the public's understanding to a greater degree than currently exists; (3) that the Center possesses the expertise to explain the requested information to the public; (4) that the Center possesses the ability to disseminate the requested information to the general public; (5) and that the news media recognizes the Center as an established expert in the field of imperiled species, biodiversity, and impacts on protected species. The Center's track record of active participation in oversight of governmental activities and decision-making, and its consistent contribution to the public's understanding of those activities as compared to the level of public understanding prior to disclosure are well established.

The Center intends to use the records requested here similarly. The Center's work appears in more than 2,500 news stories online and in print, radio and TV per month, including regular reporting in such important outlets as *The New York Times*, *Washington Post*, and *Los Angeles Times*. Many media outlets have reported on government agencies removing references to climate change from communications, utilizing information obtained by the Center from federal agencies including NOAA. In 2016, more than 2 million people visited the Center's extensive website, viewing a total of more than 5.2 million pages. The Center sends out more than 277 email newsletters and action alerts per year to more than 1.2 million members and supporters. Three times a year, the Center sends printed newsletters to more than 52,343 members. More than 199,000 people have "liked" the Center on Facebook, and there are regular postings regarding the removal of terms related to climate change from federal government materials. The Center also regularly tweets to more than 49,700 followers on Twitter. The Center intends to use any or all of these far-reaching media outlets to share with the public information obtained as a result of this request.

Public oversight and enhanced understanding of the NOAA's duties is absolutely necessary. In determining whether disclosure of requested information will contribute significantly to public understanding, a guiding test is whether the requester will disseminate the information to a reasonably-broad audience of persons interested in the subject. *Carney v U.S. Dept. of Justice*, 19 F.3d 807 (2nd Cir. 1994). The Center need not show how it intends to distribute the information, because "[n]othing in FOIA, the [agency] regulation, or our case law require[s] such pointless specificity." *Judicial Watch*, 326 F.3d at 1314. It is sufficient for the Center to show how it distributes information to the public generally. *Id.*

III. Obtaining the Requested Records is of No Commercial Interest to the Center.

Access to government records, disclosure forms, and similar materials through FOIA requests is essential to the Center's role of educating the general public. Founded in 1994, the Center is a 501(c)(3) nonprofit conservation organization (EIN: 27-3943866) with more than 1.2 million members and online activists dedicated to the protection of endangered and threatened species and wild places. The Center has no commercial interest and will realize no commercial benefit from the release of the requested records.

IV. Conclusion

For all of the foregoing reasons, the Center qualifies for a full fee-waiver. We hope that the NOAA will immediately grant this fee waiver request and begin to search and disclose the requested records without any unnecessary delays.

If you have any questions, please contact me at (971) 717-6409 or foia@biologicaldiversity.org. All records and any related correspondence should be sent to my attention at the address below.

Sincerely,

A handwritten signature in black ink that reads "Margaret E. Townsend". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Margaret E. Townsend
Open Government Staff Attorney
CENTER FOR BIOLOGICAL DIVERSITY
P.O. Box 11374
Portland, OR 97211-0374
foia@biologicaldiversity.org

From: Seeley, Sue (US - Parsippany) <sseeley@deloitte.com>
Sent: Wednesday, April 26, 2017 11:59 AM
To: Mark Graff - NOAA Federal; Stewart, Korrina (US - Arlington)
Cc: Knox, Christopher S (US - Austin); Devine, Eamon (US - Arlington)
Subject: RE: Meeting recap

Mark,

Hope all is well with you. Do you have a few minutes this week or next to catch up on your disclosure approach? We do have a few potential vehicles.

Also, I'm sure you saw the announcement last week from OIP about the new FOIA Portal, but I thought I'd drop you a note since I noticed that the deadline to register and submit feedback is this Friday, April 28th.

<https://www.justice.gov/oip/blog/oip-seeks-your-participation-development-national-foia-portal>

Best regards,

Sue.

Sue Seeley

Deloitte Transactions and Business Analytics
Tel/Mobile: +1 (b)(6)
www.deloitte.com

From: Seeley, Sue (US - Parsippany)
Sent: Monday, March 13, 2017 11:17 AM
To: 'Mark Graff - NOAA Federal' <mark.graff@noaa.gov>; Stewart, Korrina (US - Arlington) <kostewart@deloitte.com>
Cc: Knox, Christopher S (US - Austin) <csknox@deloitte.com>; Devine, Eamon (US - Arlington) <eadevine@DELOITTE.com>
Subject: RE: Meeting recap

Mark,

It was a pleasure speaking with you again the other week. As we discussed, Deloitte is providing follow-ups to our conversation in two areas – (1) sample descriptions of direct gap support and diagnostic services we have provided to other agencies and (2) information regarding potential vehicles with Deloitte.

Immediate Gap Support

Faced with increasing internal and external requests to identify and disclose information, NOAA may need immediate support to prevent delays in responding from occurring or growing. Deloitte can provide professionals with experience in assisting agencies in identifying, collecting, and reviewing requested information. As described below, this direct support will provide valuable insight for any diagnostic services as well.

Sample Diagnostic Services

In seeking to improve and streamline information disclosure procedures, whether from agency or Congressional request, pursuant to the Freedom of Information Act (FOIA), or litigation discovery requirements, an agency

should first perform a diagnosis of their current program to identify current efficiencies, potential gaps, and better define requirements for improvement. This diagnostic should include three (3) steps:

Step 1: Define and Map Existing Process.

Combining direct support for the agency's data request process (using Deloitte staff to perform all steps in the current workflow) with interviews of key stakeholders in the existing process, Deloitte will identify all elements of the current approach. In addition, Deloitte will evaluate all workflow and technologies used throughout the lifecycle of responding to a data request.

Step 2: Gap Analysis – evaluation of existing people, process, and technology.

Based on the direct support and interviews conducted in Step 1, Deloitte will identify:

- People: how best to leverage current agency staff and subject matter expertise as well as needs for staff growth and augmentation (e.g. contractor support).
- Process: the impact of gaps in process and workflow. For example, the impact of gaps between data response and business teams that may lead to under- or over-collection of potentially responsive material.
- Technology: how best to leverage current technologies in use at the agency and identification of additional technology options available in the marketplace, including how best to utilize technology within an optimized workflow.

Step 3: Prepare Report and Recommendations.

Based on Steps 1 and 2, Deloitte will prepare a summary report of existing process, gap analysis, and recommendations, including a range of workflow optimization, staffing recommendations, and technology options.

Potential Contract Vehicles:

We are in on-going conversations with our colleagues to determine if there are any active contract vehicles between both NOAA and Commerce that would be applicable for you in this situation. I will follow-up with you again later this week with more information.

In addition, Deloitte has GSA schedule that matches the scope of the diagnostic services described above – GSA Schedule 36, 51-508. This schedule has the advantage of a select population of contractors allowing for a shorter timeline for procurement.

Perhaps it might make sense to chat again once I have additional information on contract vehicles later this week?

Best Regards,

Sue.

Sue Seeley

Deloitte Transactions and Business Analytics

Tel/Mobile: +1 (b)(6)

www.deloitte.com

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

Sent: Wednesday, March 1, 2017 1:29 PM

To: Stewart, Korrina (US - Arlington) <kostewart@deloitte.com>

Cc: Knox, Christopher S (US - Austin) <csknox@deloitte.com>; Seeley, Sue (US - Parsippany) <sseeley@deloitte.com>;

Devine, Eamon (US - Arlington) <eadevine@DELOITTE.com>

Subject: Re: Meeting recap

Outstanding--thank you Korrina. I appreciate the follow up. I'll also circle back after I have a chance to speak with the Director of our Cyber Security Division (Robert Hembrook) to get a read on the extent of their burden with data calls. 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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On Wed, Mar 1, 2017 at 1:12 PM, Stewart, Korrina (US - Arlington) <kostewart@deloitte.com> wrote:

Hey Mark,

Thanks again for coordinating today. Very nice to meet Rob and Dennis!

So as our team shared, we have seen similar problems facing other agencies and have worked with them on solutions, but while we understand you need more robust workflow management and reporting from your solution, the collaborative and real-time nature of your current solution is far ahead of others facing similar challenges.

As discussed, we have found that the most effective way to identify sources for efficiency, innovation, and improvement is a combination of “boots-on-the-ground” support and diagnostic interviews to elicit stakeholder perspectives. In instances where we haven’t been able to place an individual with an agency to learn “on the job,” we have used limited shadowing instead, but we agree with you that hands on experience is the best approach. That being said...

By next Friday, March 10th, our team will get back to you with the following:

- (1) Sample scopes/statements of work for where we have done this in the past
- (2) Information about potential vehicles for working with Deloitte

Copied on the email are Chris, Sue and Eamon so that you have all of our email addresses and can pass them on.

In the meantime, please feel free to reach out if any questions come up.

Talk to you soon,

Korrina

This message (including any attachments) contains confidential information intended for a specific individual and purpose, and is protected by law. If you are not the intended recipient, you should delete this message and any disclosure, copying, or distribution of this message, or the taking of any action based on it, by you is strictly prohibited.

v.E.1

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, April 26, 2017 12:56 PM
To: Seeley, Sue (US - Parsippany)
Cc: Stewart, Korrina (US - Arlington); Knox, Christopher S (US - Austin); Devine, Eamon (US - Arlington)
Subject: Re: Meeting recap

Hi Sue--

My first availability would likely be on Monday, May 1. Does that work on your end to touch base?

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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Sue Seeley
Deloitte Transactions and Business Analytics

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Sent: Wednesday, March 1, 2017 1:29 PM
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[\(301\) 628-5658](tel:(301)628-5658) (O)

(b)(6) [REDACTED] (C)

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Talk to you soon,

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v.E.1

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, April 26, 2017 3:30 PM
To: Seeley, Sue (US - Parsippany)
Subject: Re: Meeting recap

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Thanks again for coordinating today. Very nice to meet Rob and Dennis!

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As discussed, we have found that the most effective way to identify sources for efficiency, innovation, and improvement is a combination of “boots-on-the-ground” support and diagnostic interviews to elicit stakeholder perspectives. In instances where we haven’t been able to place an individual with an agency to learn “on the job,” we have used limited shadowing instead, but we agree with you that hands on experience is the best approach. That being said...

By next Friday, March 10th, our team will get back to you with the following:

- (1) Sample scopes/statements of work for where we have done this in the past
- (2) Information about potential vehicles for working with Deloitte

Copied on the email are Chris, Sue and Eamon so that you have all of our email addresses and can pass them on.

In the meantime, please feel free to reach out if any questions come up.

Talk to you soon,

Korrina

This message (including any attachments) contains confidential information intended for a specific individual and purpose, and is protected by law. If you are not the intended recipient, you should delete this message and any disclosure, copying, or distribution of this message, or the taking of any action based on it, by you is strictly prohibited.

v.E.1

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, April 26, 2017 4:05 PM
To: Glenn Tallia - NOAA Federal; Heather Book - NOAA Federal; Hillary Davidson; Kristen Gustafson - NOAA Federal; Matthew Womble - NOAA Affiliate; Rodney Vieira - NOAA Federal; Rose Stanley - NOAA Federal; Russell Vose - NOAA Federal; Ruth Ann Lowery - NOAA Federal; Tim Owen - NOAA Federal
Cc: Lola Stith - NOAA Affiliate; Robert Swisher - NOAA Federal; Dennis Morgan - NOAA Federal
Subject: Karl-related FOIA requests
Attachments: Karl-related requests extraction 4.26.xls

Good Afternoon,

Attached please find the updated spreadsheet for 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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From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, April 26, 2017 4:44 PM
To: Bogomolny, Michael (Federal)
Subject: Re: Judicial Watch standing conference call
Attachments: Karl-related requests extraction 4.26.xls

(b)(5)
[Redacted]

Attached is the updated spreadsheet for a snapshot view.

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, Apr 26, 2017 at 4:31 PM, Bogomolny, Michael (Federal) <MBogomolny@doc.gov> wrote:
I'm sorry, I was in a meeting that went over, and missed the call today. Is there anything I missed or action items for me?

Thanks,
bogo

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From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Thursday, April 27, 2017 10:33 AM
To: Stephen Lipps - NOAA Federal; John Almeida - NOAA Federal; Holmes, Colin; Robert Moller - NOAA Federal; Scott Smullen - NOAA Federal; Jeff Dillen - NOAA Federal; Kristen Gustafson - NOAA Federal
Cc: Tom Taylor; Kimberly Katzenbarger - NOAA FEDERAL; Charles; Dennis Morgan - NOAA Federal; Stacey Nathanson - NOAA Federal; Robert Swisher - NOAA Federal; Steven Goodman - NOAA Federal; Samuel Dixon - NOAA Affiliate; Lola Stith - NOAA Affiliate; Zachary Goldstein - NOAA Federal; Douglas Perry - NOAA Federal; Nkolika Ndubisi - NOAA Federal; Jeri Dockett - NOAA Affiliate; Cc: OCIO/OPPA; Troy Wilds - NOAA Federal; Lawrence Charters - NOAA Federal; Allison Soussi-Tanani - NOAA Federal; Bogomolny, Michael (Federal)
Subject: Weekly FOIA Incoming and High Visibility Requests
Attachments: Weekly FOIA Incoming and High Visibility Requests 04.19.17 - 04.26.17.xls; Friends of Animals Voluntary Dismissal.pdf

Good Morning,

Attached is the weekly report. Please note the four requests that were submitted by Environmental Advocates. Three of them seek records on different ESA Section 7 Biological Opinions, consultations, and related records issued in California. (DOC-NOAA-2017-001070, DOC-NOAA-2017-001072, DOC-NOAA-2017-001073). One of them seeks records on the extent to which the National Flood Insurance Program leads development in Special Flood Hazard areas. (DOC-NOAA-2017-001071). Also, NOAA received a consultation from the US Army Corps of Engineers, where the underlying requester (The Southern Environmental Law Center), is seeking records on ESA consultations, adjustments to ESA take limits, or take records of threatened or endangered species with the Savannah Harbor Expansion Project. (DOC-NOAA-2017-1081). Lastly, NOAA received a request from American Oversight seeking records on restrictions or guidance from the White House to NOAA, governing Employee communications with the media following January 20, 2017. (DOC-NOAA-2017-1079).

In litigation, NOAA also obtained the voluntary dismissal of the Friends of Animals lawsuit. In this instance, the Plaintiffs agreed to a continued production of records by NOAA, which will continue after the dismissal. Plaintiffs filed the voluntary dismissal of their Complaint yesterday. A copy of the dismissal 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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**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA**

FRIENDS OF ANIMALS,)
777 Post Road, Suite 205)
Darien, CT 06820; and)

WILDEARTH GUARDIANS,)
2590 Walnut Street)
Denver, CO 80205)

Plaintiffs,)

v.)

WILBUR ROSS, in his official capacity as)
the Secretary of Commerce, U.S.)
Department of Commerce)
1401 Constitution Ave., NW)
Washington, D.C. 20230; and)

NATIONAL OCEANIC AND)
ATMOSPHERIC ADMINISTRATION, an)
agency of the United States)
1401 Constitution Avenue, NW)
Washington, DC 20230)

Defendants.)

CASE NO. 17-cv-00569-RC

**NOTICE OF VOLUNTARY DISMISSAL
(FED. R. CIV. P. 41(a)(1)(A)(i))**

Pursuant to Fed. R. Civ. P 41(a)(1)(A)(i), the Plaintiffs, by and through their
counsel(s), hereby give notice that the above captioned action is voluntarily dismissed,
without prejudice, as to all Defendants.

Dated: April 25, 2017

Respectfully Submitted,
/s/ Michael Harris
Michael Ray Harris (DC Bar # CO0049)
Director, Wildlife Law Program
Friends of Animals
7500 E. Arapahoe Road, Suite 385
Centennial, CO 80112
720-949-7791

CERTIFICATE OF SERVICE

I hereby certify that an electronic copy of the foregoing documents was served upon all counsel of record on April 26, 2017 via the ECF Filing System.

/s/ Michael Harris

Michael Ray Harris (DC Bar #C00049)

Friends of Animals

Wildlife Law Program

7500 E. Arapahoe Rd., Suite 385

Centennial, CO 80112

Tel: 720.949.7791

Fax: 888.236.3303

michaelharris@friendsofanimals.org

Tracking Number	Type	Requester
DOC-NOAA-2017-001085	Request	Philip J. Wuest
DOC-NOAA-2017-001079	Request	Austin R. Evers
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-2017-001065	Consultation	Louisiana Oil Spill Coordinator's Office
DOC-NOAA-2017-001081	Referral	Daniel L. Timmons

Custom Report -

Requester Organization	Submitted	Received	Assigned To	Case File Assigned To
Black Helterline LLP	04/25/2017	04/26/2017	NOAA	NOAA
American Oversight	04/24/2017	04/25/2017	NOAA	NOAA
Environmental Advocates	04/21/2017	04/21/2017	NOAA	NOAA
Environmental Advocates	04/21/2017	04/21/2017	NOAA	NOAA
Environmental Advocates	04/21/2017	04/21/2017	NOAA	NOAA
Environmental Advocates	04/21/2017	04/21/2017	NOAA	NOAA
	04/21/2017	04/21/2017	NOAA	NOAA
	04/21/2017	04/21/2017	NOS	NOS
SOUTHERN ENVIRONMENTAL LAW CEN	04/21/2017	04/21/2017	NOAA	NOAA

04/26/2017 08:17:09

Perfected?	Due	Closed Date	Status	Dispositions
No	TBD	TBD	Submitted	
No	TBD	TBD	Submitted	
No	TBD	TBD	Submitted	
No	TBD	TBD	Submitted	
No	TBD	TBD	Submitted	
No	TBD	TBD	Submitted	
No	TBD	TBD	Submitted	
No	05/01/2017	TBD	Assignment Determination	
No	TBD	TBD	Initial Evaluation	

Detail

This request is for National Marine Fisheries Service for offices in Oregon. 1) All correspondence, notes, logs, mer
Please see attached. COMM-NOAA-17-0109.

Please see attached FOIA Request and Fee Waiver Request (one document).

Please see attached FOIA Request and Fee Waiver Request (one document).

Please see attached FOIA Request and Fee Waiver Request (one document).

Please see attached FOIA request and Fee Waiver Request (one document).

Under the Freedom of Information Act I would like to request the following: All communications inter office (within 1
LOSCO has received a public records request for any records that LOSCO has related to the Bay Long Incident, N
REFERRAL FROM USACE: • All records regarding documented take (lethal or non-lethal) of threatened or endang

nos, minutes, appointment and meeting records, voicemails, files, papers and other records that include

NOAA) and intra office (between NOAA and external sources/entities) where the following message from IRC#1158189 & 1158193. A number of LOSCO's responsive records also involve NOAA employees. Listed species associated with the Savannah Harbor Expansion Project, including but not limited to dredg

the following terms: Baker Rock, Grand Island, Harney Site. 2) All correspondence, notes, logs, memo:

Marjorie Zoll is included, from 1st March 2015 until present: 1. "Hi David, I just sent the webpage
DSCO does not have an exception under the Louisiana public records law that would exempt us from pr
ging activities; • All communications or other records regarding potential adjustments to Endangered Sp

s, minutes, appointment and meeting records, files, relating to "Baker Rock", "Grand Island", "Harney Si

» (<http://himonkseal.wix.com/himonkseal>) the following message..." 2 "I will attempt to contac
oducing the responsive records. LOSCO wanted to provide notice to NOAA that it intends to produce th
pecies Act (ESA) take limits for the Savannah Harbor Expansion Project (excluding all records dated prior

te”, “Skeeter Creek”, or “Willamette River”, and “Waters of the State”, “Ordinary High Water”, “OHW”, “C

st Ms. Mian in person to resolve the situation amicably"
ie records. A collection of DVDs containing the responsive records has been sent to Jeri Dockett via Fe
r to September 24, 2013); • All communications or other records regarding potential re-initiation of Enda

HWL”, “annual high water event”, “flooding” or “flood event”, “wetland”, “wetland delineation”, “wetland r

Ex. Please find attached a copy of the cover letter that accompanies those DVDs. Please let me know
regarding Species Act consultation with NOAA Fisheries for the Savannah Harbor Expansion Project (excl

mitigation” and “wetland banking” that were created by, received by, sent to or that reference any of the i

w if these records are protected from disclosure under federal law by Monday, May 1, 2017.
uding all records dated prior to September 24, 2013).

following individuals or organizations between the dates of January 1, 2015 and the present. a. Mark Ba

uer b. Chris Lidstone c. Martin Schott d. Jake Miller e. Greg Apke f. Tom Murtaugh g. Pete Olmstead h.

Janine Castro i. Joy Vaughn j. Jeff Boechler k. Mark Liverman l. Lori Warner-Dic

From: Ruth Ann Lowery - NOAA Federal <ruthann.lowery@noaa.gov>
Sent: Thursday, April 27, 2017 2:59 PM
To: Mark Graff - NOAA Federal; John Almeida - NOAA Federal
Cc: Nathanson Stacey; NMFS HQ PR FOIA Requests - NOAA Service Account; Jerenda Burroughs - NOAA Affiliate; Peaches Hodge-Tonic - NOAA Federal
Subject: FW: NOTICE OF DEADLINE VIOLATION / OFFER TO ASSIST for FOIA Request re DOC-NOAA-2016-000603
Attachments: 2017.04.25 NOAA Notice of Violation - Offer to Assist DOC-NOAA-2016-000603.pdf

Good afternoon,

(b)(5)
[Redacted]

- [Redacted]
- [Redacted]
 - [Redacted]
 - [Redacted]

[Redacted]

Please let us know if you have thoughts on the above and whether you have other specific ideas for the response.

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: NMFS HQ PR FOIA Requests - NOAA Service Account [mailto:nmfs.hq.pr.foia@noaa.gov]
Sent: Wednesday, April 26, 2017 8:34 AM
To: Ruth Ann Lowery - NOAA Federal
Cc: Peaches Hodge-Tonic - NOAA Federal
Subject: Fwd: NOTICE OF DEADLINE VIOLATION / OFFER TO ASSIST for FOIA Request re DOC-NOAA-2016-000603

Good Morning Ruth Ann,

(b)(5) [Redacted]

[Redacted]

I await your guidance.
Jerenda

----- Forwarded message -----
From: <foia@biologicaldiversity.org>
Date: Tue, Apr 25, 2017 at 5:42 PM
Subject: NOTICE OF DEADLINE VIOLATION / OFFER TO ASSIST for FOIA Request re DOC-NOAA-2016-000603
To: nmfs.hq.pr.foia@noaa.gov, lamar.turner@noaa.gov
Cc: foia@biologicaldiversity.org

Dear FOIA Coordinator,

Please see the attached letter from the Center for Biological Diversity providing a notice of deadline violation, request for determination, and offer to assist. If you could please acknowledge that you have received this letter, I would appreciate it.

If you have any questions, please feel free to contact me. We look forward to your response.

Sincerely,

Virginia Vu, Filing Clerk

Endangered Species Program

Center for Biological Diversity

P.O. Box 11374

Portland, OR 97211

vvu@endangereearth.org

--

**NOAA / National Marine Fisheries Service
FREEDOM OF INFORMATION OFFICE (FOIA)**

Office of Protected Resources

Tawand Tonic, acting PR FOIA Coordinator

Phone: 301 - 427 - 8482



April 25, 2017

VIA ELECTRONIC MAIL

Lamar Turner
FOIA Coordinator
NOAA Fisheries
1315 East West Highway
Bldg. SSMC3, Room 13733
Silver Spring, Maryland 20910
lamar.turner@noaa.gov

RE: Notice of Deadline Violation and Request for Estimated Date of Completion for NOAA FOIA Request DOC-NOAA-2016-000603/Offer to Assist.

Dear FOIA Officer:

I am writing regarding the above-referenced request by the Center for Biological Diversity (“Center”) pursuant to the Freedom of Information Act, 5 U.S.C. § 552, *as amended* (“FOIA”).

On February 9, 2016, the Center sent via email a request pursuant to FOIA, to the National Oceanic and Atmospheric Administration (“NOAA”). The Center requested:

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.

On February 10, 2016, NOAA sent an email requesting that the FOIA request be submitted via FOIAOnline. The Center resubmitted the FOIA request via FOIAOnline the same day, and NOAA responded with an email acknowledging receipt of the request and assigning it FOIA tracking number DOC-NOAA-2016-000603.

On February 16, 2016, the Center received from NOAA via FOIAonline a letter granting the fee waiver for the FOIA request. On February 17, 2016, the Center received from NOAA a letter acknowledging receipt of the request.

On March 9, 2016, the Center received a letter from NOAA via email stating that the FOIA request would require additional 10 day extension as allowed under 15 C.F.R. § 4.6(c). The letter provided an estimated completion date of March 29, 2016.

On March 11, 2016, the Center received an email from NOAA detailing the contents of a phone call that took place earlier that day concerning updating the estimated time of completion and narrowing the scope of the FOIA request. You estimated that only the first release of records would be ready by the March 29, 2016 due date, rather than the entire release. The Center responded confirming that the proposed limits to the scope of the FOIA request were acceptable, with the caveat that it may need to be broadened again once the initial releases have been reviewed.

On March 30, 2016, the Center received two emails explaining NOAA would need more time to process the FOIA request due to the complex nature of the request and a system upgrade at NOAA that made systems unavailable for a time. No updated estimated date of completion was provided in either email.

On June 3, 2016, the Center received the initial interim response via email and a link to FOIAonline. No estimated date was given for the next release of records.

On July 21, 2016, the Center received a second interim response.

On August 3, 2016, the Center received an email from foia@noaa.gov with a link to the second release of records on FOIAOnline. No updated timeline or deadline was provided.

On August 11, 2016, Samuel Dixon with NOAA sent an email requesting to combine FOIA requests DOC-NOAA-2016-00603, DOC-NOAA-2016-00603, and DOC-NOAA-2016-00603. The Center replied with a request for clarification regarding reasoning and process for the combination of the multiple FOIA requests.

On August 30, 2016, the Center sent a notice of violation and offer to assist to NOAA following the lack of correspondence for 34 workdays.

On November 14, 2016, the Center called NOAA and received notice that records were ready to be sent at the end of October, but were not uploaded to FOIAonline.

On January 17, 2017, the Center received a series of emails resending past correspondences.

On February 16, 2017, the Center received a third interim response. No updated timeline or deadline was provided.

Since that time, 47 workdays have passed with no further response from the NOAA.

Pursuant to FOIA, 5 U.S.C. § 552(a)(6)(A)(i), a determination on this request was due 20 business days after your receipt of the request. Furthermore, FOIA allows an agency to extend the decision deadline beyond the 20 workdays only with “written notice to the person making

such request setting forth unusual circumstances for the requested extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days ..." 5 U.S.C. § 552(a)(6)(B)(i). As described above, the NOAA provided a specific assertion of an "unusual circumstance" that would delay a decision on this request, but failed to meet its listed determination date. Moreover, we are now well past the limited extension of ten working days that 5 U.S.C. § 552(a)(6)(B)(i) allows. Indeed, your February 16, 2017 third interim release was itself sent long after the expiration of that extended deadline.

At this time, the Center is not exercising our legal option under FOIA to file suit to compel the NOAA's compliance with FOIA's time limits. 5 U.S.C. § 552(a)(6)(C). However, be informed that time is of the essence in this matter and our patience is not without limits. As the Center informed you in its request letter, the requested information is for use to better understand NOAA Fisheries' rulemaking and policy for the designation of critical habitat for species that are listed as endangered or threatened under the ESA, and to educate the public on these matters. The rationale driving this request is to inform the public about these present issues and the Center's need to access the requested records is therefore very time sensitive.

Nevertheless, the Center does not wish to initiate litigation at this time because it believes that a cooperative approach is a more productive way to manage and resolve the NOAA's delay. Therefore, I am offering to assist your office in any way that I can in order to facilitate NOAA's prompt release of the requested records.

Additionally, beyond the estimated decision date mandate that 5 U.S.C. § 552(a)(6)(B)(i) imposes, as noted above, for any response taking longer than ten days, the NOAA must inform the requester "(i) the date on which the agency originally received the request; and (ii) an estimated date on which the agency will complete action on the request." *Id.* at § 552(a)(7)(B). Therefore, as required by 5 U.S.C. § 552(a)(7)(B)(ii), we request that NOAA immediately provide an estimated date by which we can expect completion of the agency's unlawfully delayed response to our FOIA request. The Center is mindful that we have legal options available if [AGENCY] fails to respond. *See, e.g., Muttitt v. U.S. Central Command*, 813 F.Supp.2d 221 (D.D.C. 2011) (requester permitted to bring free-standing FOIA claim for agency's failure to provide ECD).

As we evaluate the need to seek judicial review of this matter, it would be useful if you could let us know whether you have implemented a "first-in/first-out" system for processing a backlog of FOIA requests and, if so, the number of requests in line ahead of this one.

Although the Center is not pursuing litigation at this time, because of the time-sensitive nature of the requested data, legal action will be required if the NOAA fails to make a prompt determination.

If you have any questions, please contact me at (971) 717-6409 or foia@biologicaldiversity.org. All records and any related correspondence should be sent to my attention at the address below. We look forward to your timely response.

Sincerely,

A handwritten signature in black ink that reads "Margaret E. Townsend". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Margaret E. Townsend
Open Government Staff Attorney
CENTER FOR BIOLOGICAL DIVERSITY
P.O. Box 11374
Portland, OR 97211-0374
foia@biologicaldiversity.org

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Monday, May 1, 2017 7:23 AM
To: Karen Robin - NOAA Federal
Subject: Re: FOIA DOC-OS-2017-000330 (John Burks & OLE backgrd ck)

Hi Karen,

(b)(5) [Redacted]

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

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On Thu, Apr 27, 2017 at 4:34 PM, Karen Robin - NOAA Federal <karen.robin@noaa.gov> wrote:

Hi Mark,

Please share your thoughts on my question below (b)(5) [Redacted]
[Redacted]?

Thanks!
Karen

—

Karen Robin, writer-editor
NOAA Workforce Management Office
Silver Spring, MD • [\(301\) 713-6361](tel:3017136361)

From: Karen Robin - NOAA Federal [mailto:karen.robin@noaa.gov]
Sent: Wednesday, April 26, 2017 5:43 PM
To: Mark Graff - NOAA Federal
Subject: FOIA DOC-OS-2017-000330 (John Burks & OLE backgrd ck)

Hi Mark,

Please see email chain below (b)(5)

[REDACTED]

[REDACTED]

[REDACTED] ?

Thanks,
Karen

—

Karen Robin

FOIA Liaison

NOAA's Workforce Management Office

Silver Spring, MD • [\(301\) 713-6361](tel:3017136361)

From: Renee Desrosiers - NOAA Federal [mailto:renee.desrosiers@noaa.gov]
Sent: Wednesday, April 26, 2017 5:16 PM
To: Karen Robin - NOAA Federal
Subject: Re: FW: ACTION: FOIA DOC-OS-2017-000330 (John Burks & OLE backgrd ck)

Karen,

(b)(5)

[REDACTED]

[REDACTED] . (b)(5)

[REDACTED] ... I don't want to hold you up.

~ Renee

On Wed, Apr 26, 2017 at 3:33 PM, Karen Robin - NOAA Federal <karen.robin@noaa.gov> wrote:

Hi Renee,

This is a follow-up request directly to you: Please remind Lara that FOIA can't be delayed, and rearrange her priorities, if necessary. I appreciate everyone's busy, but timely responses are required by law.

Thank you,
Karen

—

Karen Robin

FOIA Liaison

NOAA's Workforce Management Office

Silver Spring, MD • [\(301\) 713-6361](tel:3017136361)

From: Karen Robin - NOAA Federal [mailto:karen.robin@noaa.gov]

Sent: Wednesday, April 26, 2017 3:30 PM

To: Lara Gaston - NOAA Federal

Cc: Renee Desrosiers - NOAA Federal

Subject: RE: ACTION: FOIA DOC-OS-2017-000330 (John Burks & OLE backgrd ck)

Hi Lara,

I know I come across as a pest, but this assignment is due to DOC.

(b)(5)

Thanks,
Karen

—

Karen Robin

FOIA Liaison

NOAA's Workforce Management Office

Silver Spring, MD • [\(301\) 713-6361](tel:3017136361)

From: Lara Gaston - NOAA Federal [mailto:lara.gaston@noaa.gov]

Sent: Monday, April 17, 2017 2:00 PM

To: Karen Robin - NOAA Federal

Cc: Renee Desrosiers - NOAA Federal

Subject: Re: ACTION: FOIA DOC-OS-2017-000330 (John Burks & OLE backgrd ck)

Karen-

I'm on leave this week and won't be in the office until Monday, April 24 (b)(5)

[Redacted]

r/Lara M. Gaston
Employee & Labor Relations Division
NOAA Workforce Management Office
538 Front Street
Norfolk VA 23510-1027

[757.441.5474](tel:757.441.5474) (comm)
[757.664.3572](tel:757.664.3572) (direct fax line)

In the office every M; Telework - Tu through first F of the PP; RDO - second F of the PP

FIND YOUR ER/LR SPECIALIST HERE
<http://www.wfm.noaa.gov/pdfs/Contact_ELRD.pdf>
WFMO ALL Contacts <http://www.wfm.noaa.gov/contact_lists.html>
WFMO Main Web Page <<http://www.wfm.noaa.gov/>>

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On Mon, Apr 17, 2017 at 11:53 AM, Karen Robin - NOAA Federal <karen.robin@noaa.gov> wrote:

Hi Lara,

(b)(5)
[Redacted]

[Redacted]

[Redacted]

[Redacted]:

FREEDOM OF INFORMATION ACT REQUEST

(b)(6)
[Redacted]

[Redacted]

(b)(6)

(b)(5)

Thank you very much,
Karen

Karen Robin

FOIA Liaison

NOAA's Workforce Management Office

Silver Spring, MD • [\(301\) 713-6361](tel:3017136361)

--

Renee Desrosiers

Employee and Labor Relations Division (ELRD), Director

National Oceanic and Atmospheric Administration

Workforce Management Office (WFMO)

Silver Spring, MD

Phone: [\(301\) 713-6331](tel:3017136331)

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Please contact me directly if you are unsure on how to send your documents securely. If sending a fax, please notify me.

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Monday, May 1, 2017 9:08 AM
To: Kimberly Katzenbarger - NOAA Federal
Subject: Re: Two FOIA questions...

Hi Kim,

(b)(5) [Redacted]

Do you agree?

(b)(5) [Redacted]

[Redacted]

[Redacted]. Am I missing a portion of the analysis, or does that sound about right?

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

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On Fri, Apr 28, 2017 at 12:13 PM, Kimberly Katzenbarger - NOAA Federal

<kimberly.katzenbarger@noaa.gov> wrote:

Hi Mark, two issues have come up recently that I would like to learn more about...

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

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

Your advice would be much appreciated. Kim

--
Kimberly Katzenbarger, Attorney
National Oceanic and Atmospheric Administration
Office of General Counsel, Natural Resources Section
1315 East West Hwy, Suite 15104
Silver Spring, MD 20910-3282
Desk: [301-713-7448](tel:301-713-7448)
Cell (b)(6) [Redacted]

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From: Kimberly Katzenbarger - NOAA Federal <kimberly.katzenbarger@noaa.gov>
Sent: Monday, May 1, 2017 10:15 AM
To: Mark Graff - NOAA Federal; John Almeida
Subject: Re: Two FOIA questions...

Thanks Mark!

John/Mark, if you have room on the agenda, I think that it would be a good idea to discuss these two issues on the next Legal Experts call (since the questions came from attorneys).

Kim

On Mon, May 1, 2017 at 9:07 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:
Hi Kim,

(b)(5)
[Redacted text block]

[Redacted text block]

(b)(5)
[Redacted text block]

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 Fri, Apr 28, 2017 at 12:13 PM, Kimberly Katzenbarger - NOAA Federal
<kimberly.katzenbarger@noaa.gov> wrote:

Hi Mark, two issues have come up recently that I would like to learn more about...

(b)(5)
[Redacted text block]

Your advice would be much appreciated. Kim

--
Kimberly Katzenbarger, Attorney
National Oceanic and Atmospheric Administration
Office of General Counsel, Natural Resources Section
1315 East West Hwy, Suite 15104
Silver Spring, MD 20910-3282
Desk: [301-713-7448](tel:3017137448)
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--
Kimberly Katzenbarger, Attorney

National Oceanic and Atmospheric Administration
Office of General Counsel, Natural Resources Section
1315 East West Hwy, Suite 15104
Silver Spring, MD 20910-3282
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From: Karen Robin - NOAA Federal <karen.robins@noaa.gov>
Sent: Monday, May 1, 2017 1:12 PM
To: Mark Graff - NOAA Federal
Subject: RE: FOIA DOC-OS-2017-000330 (John Burks & OLE backgrd ck)

Mark,

This doesn't make sense (b)(5) [REDACTED]

—
Karen Robin

FOIA Liaison
NOAA's Workforce Management Office
Silver Spring, MD • (301) 713-6361

From: Mark Graff - NOAA Federal [mailto:mark.graff@noaa.gov]
Sent: Monday, May 01, 2017 7:23 AM
To: Karen Robin - NOAA Federal
Subject: Re: FOIA DOC-OS-2017-000330 (John Burks & OLE backgrd ck)

Hi Karen,

(b)(5) [REDACTED]

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

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On Thu, Apr 27, 2017 at 4:34 PM, Karen Robin - NOAA Federal <karen.robins@noaa.gov> wrote:

Hi Mark,

(b)(5)

?

Thanks!
Karen

—

Karen Robin, writer-editor
NOAA Workforce Management Office
Silver Spring, MD • [\(301\) 713-6361](tel:3017136361)

From: Karen Robin - NOAA Federal [mailto:karen.robin@noaa.gov]
Sent: Wednesday, April 26, 2017 5:43 PM
To: Mark Graff - NOAA Federal
Subject: FOIA DOC-OS-2017-000330 (John Burks & OLE backgrd ck)

Hi Mark,

Please see email chain below (b)(5)

[Redacted]

[Redacted]

[Redacted]?

Thanks,
Karen

—

Karen Robin
FOIA Liaison
NOAA's Workforce Management Office
Silver Spring, MD • [\(301\) 713-6361](tel:3017136361)

From: Renee Desrosiers - NOAA Federal [mailto:renee.desrosiers@noaa.gov]
Sent: Wednesday, April 26, 2017 5:16 PM
To: Karen Robin - NOAA Federal
Subject: Re: FW: ACTION: FOIA DOC-OS-2017-000330 (John Burks & OLE backgrd ck)

Karen,

(b)(5)

(b)(5) ... I don't want to hold you up.

~ Renee

On Wed, Apr 26, 2017 at 3:33 PM, Karen Robin - NOAA Federal <karen.robin@noaa.gov> wrote:

Hi Renee,

This is a follow-up request directly to you: Please remind Lara that FOIA can't be delayed, and rearrange her priorities, if necessary. I appreciate everyone's busy, but timely responses are required by law.

Thank you,
Karen

—

Karen Robin

FOIA Liaison
NOAA's Workforce Management Office
Silver Spring, MD • [\(301\) 713-6361](tel:3017136361)

From: Karen Robin - NOAA Federal [mailto:karen.robin@noaa.gov]
Sent: Wednesday, April 26, 2017 3:30 PM
To: Lara Gaston - NOAA Federal
Cc: Renee Desrosiers - NOAA Federal
Subject: RE: ACTION: FOIA DOC-OS-2017-000330 (John Burks & OLE backgrd ck)

Hi Lara,

(b)(5)

Thanks,
Karen

—

Karen Robin

FOIA Liaison
NOAA's Workforce Management Office
Silver Spring, MD • [\(301\) 713-6361](tel:3017136361)

From: Lara Gaston - NOAA Federal [<mailto:lara.gaston@noaa.gov>]
Sent: Monday, April 17, 2017 2:00 PM
To: Karen Robin - NOAA Federal
Cc: Renee Desrosiers - NOAA Federal
Subject: Re: ACTION: FOIA DOC-OS-2017-000330 (John Burks & OLE backgrd ck)

Karen-

I'm on leave this week and won't be in the office until Monday, April 24 (b)(5)

r/Lara M. Gaston
Employee & Labor Relations Division
NOAA Workforce Management Office
538 Front Street
Norfolk VA 23510-1027

[757.441.5474](tel:7574415474) (comm)
[757.664.3572](tel:7576643572) (direct fax line)

In the office every M; Telework - Tu through first F of the PP; RDO - second F of the PP

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<http://www.wfm.noaa.gov/pdfs/Contact_ELRD.pdf>
WFMO ALL Contacts <http://www.wfm.noaa.gov/contact_lists.html>
WFMO Main Web Page <<http://www.wfm.noaa.gov/>>

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<https://sft2.doc.gov/courier/web/1000@/wmLogin.html> Passwords must be sent in a separate email message. Please contact me directly if you are unsure on how to send your documents securely. If sending a fax, please notify me.

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On Mon, Apr 17, 2017 at 11:53 AM, Karen Robin - NOAA Federal <karen.robin@noaa.gov> wrote:

Hi Lara,

(b)(5)

(b)(5) [Redacted]

[Redacted]

FYI, here is the full FOIA request (if you have any other documents requested, please send those too):

FREEDOM OF INFORMATION ACT REQUEST

(b)(6) [Redacted]

[Redacted]

[Redacted]

(b)(5) [Redacted]

Thank you very much,
Karen

—
Karen Robin
FOIA Liaison
NOAA's Workforce Management Office
Silver Spring, MD • [\(301\) 713-6361](tel:3017136361)

--

Renee Desrosiers

Employee and Labor Relations Division (ELRD), Director

National Oceanic and Atmospheric Administration

Workforce Management Office (WFMO)

Silver Spring, MD

Phone: [**\(301\) 713-6331**](tel:3017136331)

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[NOAA HR \(WFMO\)](#)

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Please contact me directly if you are unsure on how to send your documents securely. If sending a fax, please notify me.

From: John Almeida - NOAA Federal <john.almeida@noaa.gov>
Sent: Monday, May 1, 2017 1:36 PM
To: Kimberly Katzenbarger - NOAA Federal
Cc: Mark Graff - NOAA Federal
Subject: Re: Two FOIA questions...

Sounds good!

On Mon, May 1, 2017 at 10:15 AM, Kimberly Katzenbarger - NOAA Federal <kimberly.katzenbarger@noaa.gov> wrote:

Thanks Mark!

John/Mark, if you have room on the agenda, I think that it would be a good idea to discuss these two issues on the next Legal Experts call (since the questions came from attorneys).

Kim

On Mon, May 1, 2017 at 9:07 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

Hi Kim,

(b)(5)
[Redacted text block]

[Redacted text block]

(b)(5)
[Redacted text block]

(b)(5)

Am I

missing a portion of the analysis, or does that sound about right?

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 Fri, Apr 28, 2017 at 12:13 PM, Kimberly Katzenbarger - NOAA Federal
<kimberly.katzenbarger@noaa.gov> wrote:

Hi Mark, two issues have come up recently that I would like to learn more about...

(b)(5)

[Redacted]

Your advice would be much appreciated. Kim

--
Kimberly Katzenbarger, Attorney
National Oceanic and Atmospheric Administration
Office of General Counsel, Natural Resources Section
1315 East West Hwy, Suite 15104
Silver Spring, MD 20910-3282
Desk: [301-713-7448](tel:3017137448)
Cel (b)(6)

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National Oceanic and Atmospheric Administration
Office of General Counsel, Natural Resources Section
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Silver Spring, MD 20910-3282
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From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Monday, May 1, 2017 2:00 PM
To: Karen Robin - NOAA Federal
Subject: Re: FOIA DOC-OS-2017-000330 (John Burks & OLE backgrd ck)

Hi Karen--

(b)(5)

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

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On Mon, May 1, 2017 at 1:11 PM, Karen Robin - NOAA Federal <karen.robin@noaa.gov> wrote:

Mark,

This doesn't make sense (b)(5)

—
Karen Robin
FOIA Liaison
NOAA's Workforce Management Office
Silver Spring, MD • [\(301\) 713-6361](tel:3017136361)

From: Mark Graff - NOAA Federal [mailto:mark.graff@noaa.gov]
Sent: Monday, May 01, 2017 7:23 AM
To: Karen Robin - NOAA Federal
Subject: Re: FOIA DOC-OS-2017-000330 (John Burks & OLE backgrd ck)

Hi Karen,

(b)(5)
[Redacted text block]

Mark H. Graff

FOIA Officer/Bureau Chief Privacy Officer (BCPO)

National Oceanic and Atmospheric Administration

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

(b)(6) (C)

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On Thu, Apr 27, 2017 at 4:34 PM, Karen Robin - NOAA Federal <karen.robin@noaa.gov> wrote:

Hi Mark,

Please share your thoughts on my question below (b)(5)
[Redacted text block]?

Thanks!
Karen

—
Karen Robin, writer-editor
NOAA Workforce Management Office
Silver Spring, MD • [\(301\) 713-6361](tel:3017136361)

From: Karen Robin - NOAA Federal [mailto:karen.robin@noaa.gov]
Sent: Wednesday, April 26, 2017 5:43 PM
To: Mark Graff - NOAA Federal
Subject: FOIA DOC-OS-2017-000330 (John Burks & OLE backgrd ck)

Hi Mark,

Please see email chain below (b)(5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]?

Thanks,
Karen

—
Karen Robin
FOIA Liaison
NOAA's Workforce Management Office
Silver Spring, MD • [\(301\) 713-6361](tel:3017136361)

From: Renee Desrosiers - NOAA Federal [mailto:renee.desrosiers@noaa.gov]
Sent: Wednesday, April 26, 2017 5:16 PM
To: Karen Robin - NOAA Federal
Subject: Re: FW: ACTION: FOIA DOC-OS-2017-000330 (John Burks & OLE backgrd ck)

Karen,

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

(b)(5)

I don't want to hold you up.

~ Renee

On Wed, Apr 26, 2017 at 3:33 PM, Karen Robin - NOAA Federal <karen.robin@noaa.gov> wrote:

Hi Renee,

This is a follow-up request directly to you: Please remind Lara that FOIA can't be delayed, and rearrange her priorities, if necessary. I appreciate everyone's busy, but timely responses are required by law.

Thank you,
Karen

—

Karen Robin

FOIA Liaison
NOAA's Workforce Management Office
Silver Spring, MD • [\(301\) 713-6361](tel:3017136361)

From: Karen Robin - NOAA Federal [mailto:karen.robin@noaa.gov]
Sent: Wednesday, April 26, 2017 3:30 PM
To: Lara Gaston - NOAA Federal
Cc: Renee Desrosiers - NOAA Federal
Subject: RE: ACTION: FOIA DOC-OS-2017-000330 (John Burks & OLE backgrd ck)

Hi Lara,

(b)(5)

[Redacted]

Thanks,
Karen

—

Karen Robin

FOIA Liaison
NOAA's Workforce Management Office
Silver Spring, MD • [\(301\) 713-6361](tel:3017136361)

From: Lara Gaston - NOAA Federal [<mailto:lara.gaston@noaa.gov>]
Sent: Monday, April 17, 2017 2:00 PM
To: Karen Robin - NOAA Federal
Cc: Renee Desrosiers - NOAA Federal
Subject: Re: ACTION: FOIA DOC-OS-2017-000330 (John Burks & OLE backgrd ck)

Karen-

I'm on leave this week and won't be in the office until Monday, April 24 (b)(5)

r/Lara M. Gaston
Employee & Labor Relations Division
NOAA Workforce Management Office
538 Front Street
Norfolk VA 23510-1027

[757.441.5474](tel:757.441.5474) (comm)
[757.664.3572](tel:757.664.3572) (direct fax line)

In the office every M; Telework - Tu through first F of the PP; RDO - second F of the PP

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<http://www.wfm.noaa.gov/pdfs/Contact_ELRD.pdf>
WFMO ALL Contacts <http://www.wfm.noaa.gov/contact_lists.html>
WFMO Main Web Page <<http://www.wfm.noaa.gov/>>

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On Mon, Apr 17, 2017 at 11:53 AM, Karen Robin - NOAA Federal <karen.robin@noaa.gov> wrote:

Hi Lara,

(b)(5)

FREEDOM OF INFORMATION ACT REQUEST

(b)(6) [Redacted]

[Redacted]

[Redacted]

(b)(5) [Redacted]

Thank you very much,
Karen

—
Karen Robin
FOIA Liaison
NOAA's Workforce Management Office
Silver Spring, MD • [\(301\) 713-6361](tel:3017136361)

--

Renee Desrosiers
Employee and Labor Relations Division (ELRD), Director
National Oceanic and Atmospheric Administration
Workforce Management Office (WFMO)
Silver Spring, MD

Phone: [\(301\) 713-6331](tel:3017136331)

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[NOAA HR \(WFMO\)](#)

[DOC HR \(OHRM\)](#)

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Please contact me directly if you are unsure on how to send your documents securely. If sending a fax, please notify me.

From: Karen Robin - NOAA Federal <karen.robin@noaa.gov>
Sent: Monday, May 1, 2017 2:20 PM
To: Mark Graff - NOAA Federal
Subject: RE: FOIA DOC-OS-2017-000330 (John Burks & OLE backgrd ck)

Thanks, Mark,

(b)(5)

Onward!
Karen

—
Karen Robin
FOIA Liaison
NOAA's Workforce Management Office
Silver Spring, MD • (301) 713-6361

From: Mark Graff - NOAA Federal [mailto:mark.graff@noaa.gov]
Sent: Monday, May 01, 2017 2:00 PM
To: Karen Robin - NOAA Federal
Subject: Re: FOIA DOC-OS-2017-000330 (John Burks & OLE backgrd ck)

Hi Karen--

(b)(5)

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

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On Mon, May 1, 2017 at 1:11 PM, Karen Robin - NOAA Federal <karen.robin@noaa.gov> wrote:

Mark,

This doesn't make sense (b)(5) [redacted]
[redacted]

[redacted]

[redacted]

Karen Robin
FOIA Liaison
NOAA's Workforce Management Office
Silver Spring, MD • [\(301\) 713-6361](tel:3017136361)

From: Mark Graff - NOAA Federal [mailto:mark.graff@noaa.gov]
Sent: Monday, May 01, 2017 7:23 AM
To: Karen Robin - NOAA Federal
Subject: Re: FOIA DOC-OS-2017-000330 (John Burks & OLE backgrd ck)

Hi Karen,

(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](tel:3016285658) (O)

(b)(6) [redacted] (C)

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On Thu, Apr 27, 2017 at 4:34 PM, Karen Robin - NOAA Federal <karen.robin@noaa.gov> wrote:

Hi Mark,

Please share your thoughts on my question below (b)(5)

[REDACTED]?

Thanks!

Karen

—

Karen Robin, writer-editor

NOAA Workforce Management Office
Silver Spring, MD • [\(301\) 713-6361](tel:3017136361)

From: Karen Robin - NOAA Federal [mailto:karen.robin@noaa.gov]
Sent: Wednesday, April 26, 2017 5:43 PM
To: Mark Graff - NOAA Federal
Subject: FOIA DOC-OS-2017-000330 (John Burks & OLE backgrd ck)

Hi Mark,

Please see email chain below (b)(5)

[REDACTED]

[REDACTED]

[REDACTED]?

Thanks,

Karen

—

Karen Robin

FOIA Liaison

NOAA's Workforce Management Office
Silver Spring, MD • [\(301\) 713-6361](tel:3017136361)

From: Renee Desrosiers - NOAA Federal [<mailto:renee.desrosiers@noaa.gov>]
Sent: Wednesday, April 26, 2017 5:16 PM
To: Karen Robin - NOAA Federal
Subject: Re: FW: ACTION: FOIA DOC-OS-2017-000330 (John Burks & OLE backgrd ck)

Karen,

(b)(5) [REDACTED]

(b)(5) [REDACTED] ... I don't want to hold you up.

~ Renee

On Wed, Apr 26, 2017 at 3:33 PM, Karen Robin - NOAA Federal <karen.robin@noaa.gov> wrote:

Hi Renee,

This is a follow-up request directly to you: Please remind Lara that FOIA can't be delayed, and rearrange her priorities, if necessary. I appreciate everyone's busy, but timely responses are required by law.

Thank you,
Karen

—

Karen Robin
FOIA Liaison
NOAA's Workforce Management Office
Silver Spring, MD • [\(301\) 713-6361](tel:3017136361)

From: Karen Robin - NOAA Federal [mailto:karen.robin@noaa.gov]
Sent: Wednesday, April 26, 2017 3:30 PM
To: Lara Gaston - NOAA Federal
Cc: Renee Desrosiers - NOAA Federal
Subject: RE: ACTION: FOIA DOC-OS-2017-000330 (John Burks & OLE backgrd ck)

Hi Lara,

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

Thanks,
Karen

—

Karen Robin
FOIA Liaison
NOAA's Workforce Management Office
Silver Spring, MD • [\(301\) 713-6361](tel:3017136361)

From: Lara Gaston - NOAA Federal [mailto:lara.gaston@noaa.gov]
Sent: Monday, April 17, 2017 2:00 PM
To: Karen Robin - NOAA Federal
Cc: Renee Desrosiers - NOAA Federal
Subject: Re: ACTION: FOIA DOC-OS-2017-000330 (John Burks & OLE backgrd ck)

Karen-

I'm on leave this week and won't be in the office until Monday, April 24 (b)(5) [REDACTED]
[REDACTED]
[REDACTED].

r/Lara M. Gaston
Employee & Labor Relations Division
NOAA Workforce Management Office
538 Front Street
Norfolk VA 23510-1027

[757.441.5474](tel:7574415474) (comm)
[757.664.3572](tel:7576643572) (direct fax line)

In the office every M; Telework - Tu through first F of the PP; RDO - second F of the PP

FIND YOUR ER/LR SPECIALIST HERE
<http://www.wfm.noaa.gov/pdfs/Contact_ELRD.pdf>
WFMO ALL Contacts <http://www.wfm.noaa.gov/contact_lists.html>
WFMO Main Web Page <<http://www.wfm.noaa.gov/>>

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<https://sft2.doc.gov/courier/web/1000@/wmLogin.html> Passwords must be sent in a separate email message. Please contact me directly if you are unsure on how to send your documents securely. If

sending a fax, please notify me.

Notice: This message and any attachments, contain(s) information that may be confidential or protected by privilege from disclosure and is intended only for the individual or entity named above. No one else may disclose, copy, distribute or use the contents of this message for any purpose. Unauthorized use, dissemination or duplication is strictly prohibited and may be unlawful. If you receive this message in error, please immediately delete the message and any attachments and notify the sender.

On Mon, Apr 17, 2017 at 11:53 AM, Karen Robin - NOAA Federal <karen.robin@noaa.gov> wrote:

Hi Lara,

(b)(5) [Redacted]

[Redacted]

[Redacted]

FYI, here is the full FOIA request (if you have any other documents requested, please send those too):

(b)(6) [Redacted]

[Redacted]

[Redacted]

[Redacted]

(b)(5) [Redacted]

Thank you very much,
Karen

Karen Robin
FOIA Liaison
NOAA's Workforce Management Office
Silver Spring, MD • [\(301\) 713-6361](tel:3017136361)

--

Renee Desrosiers

Employee and Labor Relations Division (ELRD), Director

National Oceanic and Atmospheric Administration

Workforce Management Office (WFMO)

Silver Spring, MD

Phone: **[\(301\) 713-6331](tel:3017136331)**

FIND YOUR NOAA ER/LR Specialist [HERE](#)

[NOAA HR \(WFMO\)](#)

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Secure File Transfer: (If you are emailing privacy sensitive information (such as last four SS#, medical information etc.) please be sure that you have protected the document via DOC secure service called Accellion found at: <https://sft2.doc.gov/courier/web/1000@/wmLogin.html>)

Please contact me directly if you are unsure on how to send your documents securely. If sending a fax, please notify me.

From: Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov>
Sent: Monday, May 1, 2017 4:58 PM
To: Mark Graff - NOAA Federal
Cc: FOIA Office
Subject: Fwd: Conference Number WAS Re: Acknowledgment, Unusual Circumstances and Request for Clarification

Hi Mark,

Here is the latest on our scope discussions with requester. (b)(5)

Ana Liza

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

From: Sean Gross - NOAA Federal <sean.gross@noaa.gov>
Date: Fri, Apr 28, 2017 at 12:36 PM
Subject: Re: Conference Number WAS Re: Acknowledgment, Unusual Circumstances and Request for Clarification
To: Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov>
Cc: Bonnie Hossack - NOAA Affiliate <bonnie.hossack@noaa.gov>, Dale Bambrick - NOAA Federal <dale.bambrick@noaa.gov>, Ryan Couch - NOAA Federal <ryan.couch@noaa.gov>, Brittany Pugh - NOAA Federal <brittany.pugh@noaa.gov>

(b)(5)

On Fri, Apr 28, 2017 at 9:38 AM, Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov> wrote:

(b)(5)

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On Fri, Apr 28, 2017 at 9:35 AM, Bonnie Hossack - NOAA Affiliate <bonnie.hossack@noaa.gov> wrote:
Dale, I have attached a search log

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(b)(5)

On Fri, Apr 28, 2017 at 9:00 AM, Dale Bambrick - NOAA Federal <dale.bambrick@noaa.gov> wrote:

On Fri, Apr 28, 2017 at 7:32 AM, Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov> wrote:

Good morning,

Please see requester's message regarding the scope. What do you think?

Thanks!

Ana Liza

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

From: **Elizabeth Zultoski** <ezultoski@advocateswest.org>

Date: Thu, Apr 27, 2017 at 5:19 PM

Subject: Re: Conference Number WAS Re: Acknowledgment, Unusual Circumstances and Request for Clarification

To: Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov>

Ana,

Thank you for discussing these issues earlier this week. I appreciate the agency's efforts to provide the most efficient and accurate response to the FOIA request. To facilitate such a response, we are willing to accept, as an initial response for this FOIA request, a more limited subset of documents that fall under the FOIA request. These narrower categories are:

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4. Any internal NMFS correspondence about the actions discussed in item #2 of the FOIA request generated or received since January 1, 2010.

Once NMFS has produced these documents and we have had an opportunity to review them, I will let the agency know whether additional searches and production of documents described in the FOIA request are needed, or if the remainder of the FOIA request may be withdrawn. I request that the agency send documents in batches as they are available and preferably in this order; this will facilitate our ability to determine, in a timely manner, whether any further narrowing or suspension of the FOIA request is warranted.

Based on our conversations, these initial temporal and substantive limitations should address NMFS's concerns and facilitate a more efficient and rapid response while balancing the public interest in the requested documents. To that end, I look forward to your response to the fee waiver request.

I will be unavailable via phone until next Thursday, May 4, but will be periodically available via email if you have additional questions.

Again, thank you to your team for making the time to discuss these issues and facilitate an efficient resolution.

Sincerely,

Lizzy Zultoski, Staff Attorney



On Mon, Apr 17, 2017 at 9:20 AM, Ana Liza Malabanan - NOAA Federal
<ana.liza.malabanan@noaa.gov> wrote:

Oka, thank you.

Let's re-schedule for 2:30 pm next Monday, April 24, 2017.

Same conference number:

USA Toll Free Number : [877-601-4696](tel:877-601-4696)

Participant Passcode: 5294732

On Mon, Apr 17, 2017 at 9:16 AM, Elizabeth Zultoski <ezultoski@advocateswest.org> wrote:

Both of those times work for me.

Lizzy Zultoski
Staff Attorney
Advocates for the West
3115 NE Sandy Blvd. #223
Portland, OR 97232
[\(503\) 914-6388](tel:5039146388)
ezultoski@advocateswest.org
www.advocateswest.org

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Please let me know if 10:30 am - 11:30 am or 2:30 pm - 3:30 pm next Monday, April 24, 2017, would work for you.

Thank you.

Ana Liza

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Thanks!

Lizzy Zultoski
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3115 NE Sandy Blvd. #223
Portland, OR 97232
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ezultoski@advocateswest.org
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On Fri, Apr 14, 2017 at 9:08 AM, Ana Liza Malabanan - NOAA Federal
<ana.liza.malabanan@noaa.gov> wrote:

Good morning,

Per our discussion yesterday, I have scheduled a call for next Tuesday, April 18, 2017, with our Interior Columbia Basin Office (ICBO) to discuss the scope of your FOIA request.

Here are the conference details:

Meeting Date: 04/18/2017
Meeting Time: 2:00 PM PACIFIC TIME
USA Toll Free Number : [877-601-4696](tel:8776014696)
Participant Passcode: 5294732

Have a good weekend!

Ana Liza

On Thu, Apr 13, 2017 at 11:14 AM, Elizabeth Zultoski <ezultoski@advocateswest.org> wrote:
Ana,

Thank you for your letter dated April 12, 2017 confirming receipt of the FOIA request described within. The letter asserts you will set up a call with me to discuss the scope, but also states that you cannot process the FOIA further until you hear from me. Please advise as to what additional information you require at this time.

Thank you for your assistance in processing this request.

Sincerely,

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3115 NE Sandy Blvd. #223
Portland, OR 97232
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ezultoski@advocateswest.org
www.advocateswest.org

On Wed, Apr 12, 2017 at 4:00 PM, foia@noaa.gov <foia@noaa.gov> wrote:

04/12/2017 06:59 PM
FOIA Request: DOC-NOAA-2017-000940

Please see attached.

--

"Whose woods these are I think I know." - Frost

Dale Bambrick, Chief, Columbia Basin Branch
304 South Water Street # 200
Ellensburg, WA 98926

[\(509\) 962-8911, xt 802](tel:(509)962-8911)

cell (b)(6)

--

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)



--

Bonnie J. Hossack
Administrative Assistant
Leading Solutions, LLC contracted to
NOAA Fisheries
1201 NE Lloyd Blvd., Suite 1100
Portland Or 97232
[503-736-4741](tel:503-736-4741)

--
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--
Sean Gross
NOAA Fisheries - Columbia Basin Branch
304 S. Water St. #201
Ellensburg, WA 98926
[509-962-8911](tel:509-962-8911) x225

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Information Services and Management Branch
Operations, Management & Information Division
NOAA Fisheries West Coast Region
U.S. Department of Commerce
Office: 562-980-4008



From: Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov>
Sent: Monday, May 1, 2017 5:01 PM
To: Mark Graff - NOAA Federal
Cc: FOIA Office; Samuel Dixon - NOAA Affiliate; Shawn Martin; Doug Chow
Subject: Re: Conference Number WAS Re: Acknowledgment, Unusual Circumstances and Request for Clarification

This is for FOIA DOC-NOAA-2017-000940, Requester : Elizabeth Zultoski.

On Mon, May 1, 2017 at 1:58 PM, Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov> wrote:
Hi Mark,

(b)(5)

Ana Liza

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

From: Sean Gross - NOAA Federal <sean.gross@noaa.gov>
Date: Fri, Apr 28, 2017 at 12:36 PM
Subject: Re: Conference Number WAS Re: Acknowledgment, Unusual Circumstances and Request for Clarification
To: Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov>
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(b)(5)

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(b)(5)

(b)(5))?

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(b)(5) ?

(b)(5)

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(b)(5)

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Thanks!

Ana Liza

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Date: Thu, Apr 27, 2017 at 5:19 PM

Subject: Re: Conference Number WAS Re: Acknowledgment, Unusual Circumstances and Request for Clarification

To: Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov>

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NOAA Fisheries West Coast Region
U.S. Department of Commerce
Office: 562-980-4008



From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Monday, May 1, 2017 5:20 PM
To: Ana Liza Malabanan - NOAA Federal
Cc: FOIA Office
Subject: Re: Conference Number WAS Re: Acknowledgment, Unusual Circumstances and Request for Clarification

Thanks Ana Liza--appreciate the heads-up

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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4. Any internal NMFS correspondence about the actions discussed in item #2 of the FOIA request generated or received since January 1, 2010.

Once NMFS has produced these documents and we have had an opportunity to review them, I will let the agency know whether additional searches and production of documents described in the FOIA request are needed, or if the remainder of the FOIA request may be withdrawn. I request that the agency send documents in batches as they are available and preferably in this order; this will facilitate our ability to determine, in a timely manner, whether any further narrowing or suspension of the FOIA request is warranted.

Based on our conversations, these initial temporal and substantive limitations should address NMFS's concerns and facilitate a more efficient and rapid response while balancing the public interest in the requested documents. To that end, I look forward to your response to the fee waiver request.

I will be unavailable via phone until next Thursday, May 4, but will be periodically available via email if you have additional questions.

Again, thank you to your team for making the time to discuss these issues and facilitate an efficient resolution.

Sincerely,

Lizzy Zultoski, Staff Attorney



On Mon, Apr 17, 2017 at 9:20 AM, Ana Liza Malabanan - NOAA Federal <ana.liza.malabanan@noaa.gov> wrote:

Oka, thank you.

Let's re-schedule for 2:30 pm next Monday, April 24, 2017.

Same conference number:

USA Toll Free Number : [877-601-4696](tel:877-601-4696)

Participant Passcode: 5294732

On Mon, Apr 17, 2017 at 9:16 AM, Elizabeth Zultoski <ezultoski@advocateswest.org> wrote:
Both of those times work for me.

Lizzy Zultoski
Staff Attorney
Advocates for the West
3115 NE Sandy Blvd. #223
Portland, OR 97232
[\(503\) 914-6388](tel:5039146388)
ezultoski@advocateswest.org

www.advocateswest.org

On Mon, Apr 17, 2017 at 9:14 AM, Ana Liza Malabanan - NOAA Federal
<ana.liza.malabanan@noaa.gov> wrote:

Good morning,

Our Interior Columbia Basin Office (ICBO) has asked that I try to re-schedule our call to next Monday, April 24, 2017. The biologist who maintains the majority of the requested records is out this week.

Please let me know if 10:30 am - 11:30 am or 2:30 pm - 3:30 pm next Monday, April 24, 2017, would work for you.

Thank you.

Ana Liza

On Fri, Apr 14, 2017 at 9:58 AM, Elizabeth Zultoski <ezultoski@advocateswest.org> wrote:
Thanks!

Lizzy Zultoski
Staff Attorney
Advocates for the West
3115 NE Sandy Blvd. #223
Portland, OR 97232
[\(503\) 914-6388](tel:5039146388)
ezultoski@advocateswest.org
www.advocateswest.org

On Fri, Apr 14, 2017 at 9:08 AM, Ana Liza Malabanan - NOAA Federal
<ana.liza.malabanan@noaa.gov> wrote:

Good morning,

Per our discussion yesterday, I have scheduled a call for next Tuesday, April 18, 2017, with our Interior Columbia Basin Office (ICBO) to discuss the scope of your FOIA request.

Here are the conference details:

Meeting Date: 04/18/2017
Meeting Time: 2:00 PM PACIFIC TIME
USA Toll Free Number : [877-601-4696](tel:8776014696)
Participant Passcode: 5294732

Have a good weekend!

Ana Liza

On Thu, Apr 13, 2017 at 11:14 AM, Elizabeth Zultoski <ezultoski@advocateswest.org> wrote:
Ana,

Thank you for your letter dated April 12, 2017 confirming receipt of the FOIA request described within. The letter asserts you will set up a call with me to discuss the scope, but also states that you cannot process the FOIA further until you hear from me. Please advise as to what additional information you require at this time.

Thank you for your assistance in processing this request.

Sincerely,

Lizzy Zultoski
Staff Attorney
Advocates for the West
3115 NE Sandy Blvd. #223
Portland, OR 97232
[\(503\) 914-6388](tel:5039146388)
ezultoski@advocateswest.org
www.advocateswest.org

On Wed, Apr 12, 2017 at 4:00 PM, foia@noaa.gov <foia@noaa.gov> wrote:

04/12/2017 06:59 PM
FOIA Request: DOC-NOAA-2017-000940

Please see attached.

--

"Whose woods these are I think I know." - Frost

Dale Bambrick, Chief, Columbia Basin Branch
304 South Water Street # 200
Ellensburg, WA 98926

[\(509\) 962-8911, xt 802](tel:5099628911)

cell (b)(6)

--

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)



--

Bonnie J. Hossack
Administrative Assistant
Leading Solutions, LLC contracted to
NOAA Fisheries
1201 NE Lloyd Blvd., Suite 1100
Portland Or 97232
[503-736-4741](tel:503-736-4741)

--

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)



--

Sean Gross
NOAA Fisheries - Columbia Basin Branch
304 S. Water St. #201
Ellensburg, WA 98926
[509-962-8911](tel:509-962-8911) x225

--

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)



From: Dave Becker <davebeckerlaw@gmail.com>
Sent: Monday, May 1, 2017 6:20 PM
To: mark.graff@noaa.gov; steven.goodman@noaa.gov
Cc: David Moskowitz
Subject: FOIA request follow-up - request for tracking number and estimated completion date
Attachments: Letter to NMFS re Process Date 5-1-17.pdf

Mr. Graff and Mr. Goodman,

attached please find a letter requesting the tracking number and estimated completion date for a FOIA request my client The Conservation Angler submitted to NMFS on April 10th.

I've copied the group's Executive Director, David Moskowitz, on this email - please respond to us both, and please let us know if there is anything we can do to help expedite production of the requested documents.

Regards,

Dave Becker

Law Office of David H. Becker, LLC

Tel: (503) 388-9160 | email: davebeckerlaw@gmail.com

Mailing Address (U.S. Postal Service mail): 833 SE Main Street # 302, Portland OR 97214

Shipping Address (FedEx, UPS, other couriers): 833 SE Main Street Suite 325, Portland OR 97214

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Law Office of David H. Becker, LLC
833 SE Main Street # 302
Portland, OR 97214
Tel. (503) 388-9160
davebeckerlaw@gmail.com

May 1, 2017

National Oceanic and Atmospheric Administration
National Marine Fisheries Service (NOAA Fisheries) – Public Reference Facility (SOU1000)
1315 East-West Highway (SSMC3), Room 9719
Silver Spring, MD 20910-6556
Attn: Mark Graff, NOAA FOIA Officer & Steven Goodman, Acting NMFS FOIA Liaison

Re: The Conservation Angler FOIA Request Submitted April 10, 2017 – Request for Tracking Number and Estimated Date That Action on the Request Will be Completed

BY EMAIL TRANSMISSION TO mark.graff@noaa.gov and steven.goodman@noaa.gov

****PLEASE ACKNOWLEDGE RECEIPT OF THIS LETTER ****

Dear Mr. Graff and Mr. Goodman:

As I mentioned in my voicemails to you both today, on April 10, 2017, my client The Conservation Angler submitted a FOIA request to FOIA@noaa.gov for documents related to the rate of conversion of salmonids in the Columbia River. A copy of the request is attached.

Because these documents are relevant to NMFS's management of fish harvest in the Columbia River, and relate specifically to fish runs that will begin returning to the Columbia River later this month, time is of the essence to The Conservation Angler in obtaining this information. More than ten working days have passed since the FOIA request was submitted, but The Conservation Angler has not yet received a tracking number for the request nor been advised of the date on which the agency received the request or the estimated date on which NMFS will complete action on the request, as required by the FOIA, 5 U.S.C. § 552(a)(7)(A)-(B).

Please let us know the tracking number, the date that you received the request, and the estimated date on which NMFS will complete action on the request, and please let me or Mr. Markowitz know if there is anything we can do to assist in expediting production of the documents. You may contact me at the address, telephone number, and email address listed above, and Mr. Markowitz at the email and telephone number listed on the last page of the attachment.

Sincerely,



David H. Becker



3241 NE 73rd Avenue
Portland, OR 97213

April 10, 2017

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

VIA E-MAIL ATTACHMENT – CONFIRMATION REQUESTED

RE: Freedom of Information Act Request

To the FOIA Officer for the National Marine Fisheries Service (NOAA Fisheries):

The Conservation Angler (TCA) is a “doing business as” subsidiary of Wild Salmon Rivers, a 501(c)(3) nonprofit organization that works to protect and conserve wild steelhead and salmon and the wild river environments they depend upon. Consistent with this mission and pursuant to 15 C.F.R. Part 4 and the Freedom of Information Act (FOIA), 5 U.S.C. § 552, TCA respectfully requests the following:

All documents regarding the rate of conversion (*i.e.* passage loss, natural mortality, unaccounted for harvest, or other non-harvest sources of mortality) of Passive Integrated Transponder (PIT)-tagged adult salmon and steelhead between Bonneville and McNary dams on the Columbia River during the period from January 1, 2012 to the date of the agency’s search for documents responsive to this request, specifically including (but not limited to):

- **Emails, notes, and other correspondence between NOAA Fisheries staff and the NOAA Northwest Fisheries Science Center and the Technical Advisory Committee to the *United States v. Oregon* proceeding that relate to salmon and steelhead conversion;**
- **Reports, conclusions, analysis and studies of the rate of salmon and steelhead conversion.**

“All documents” includes, but is not limited to, all correspondence, permits, permit applications, agreements, contracts, minutes, memoranda, plans, e-mails, reports, databases, and notes. This request includes all documents that have ever been within the custody or control of the National Marine Fisheries Service (NOAA Fisheries), whether they exist in agency “working,” investigative, retired, electronic mail, or other files currently or at any other time.

TCA requests these records in light of the President’s “Memorandum for the Heads of Executive Departments and Agencies” dated January 21, 2009, which states,

[FOIA] should be administered with a clear presumption: In the face of doubt, openness prevails. . . . In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public. All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA. The presumption of disclosure also means that agencies should take affirmative steps to make information public.

74 Fed. Reg. 4683 (Jan. 21, 2009). This request is being sent to the NOAA Fisheries FOIA officer with the understanding that it will be forwarded to other officers, offices, or departments that have pertinent information.

REQUEST FOR FEE WAIVER

Pursuant to FOIA’s fee waiver provision, 5 U.S.C. § 552(a)(4)(A)(iii), and the Department of Commerce’s FOIA regulations at 15 C.F.R. Part 4, TCA requests that NOAA Fisheries waive all fees in connection with procurement of the requested records. As demonstrated below, the nature of this request meets FOIA’s test for fee waiver.

The factors NOAA Fisheries must consider in deciding a fee waiver request are laid out in 15 C.F.R. § 4.11(*l*), and those relating to a significant contribution to public understanding of the operations or activities of the government can be summarized as follows:

- (1) Whether the subject matter of the request involves issues that will significantly contribute to the public understanding of the operations or activities of the Agency.
- (2) Whether the contents of the records to be disclosed have an informative value.
- (3) Whether the disclosure of the information will likely contribute to an understanding of the subject by the general public.
- (4) Whether the contribution to public understanding is significant.

See 15 C.F.R. § 4.11(l)(2). These factors are to be balanced against one another; no one factor is determinative. See *Friends of the Coast Fork v. U.S. Dep't of Interior*, 110 F.3d 53, 55 (9th Cir. 1997).

The other requirements in the regulations—related to whether the requester has a commercial interest that outweighs a public interest motivation—are not applicable to TCA and this request. See 15 C.F.R. § 4.11(l)(3). Under FOIA, a commercial interest is one that furthers a commercial, trade, or profit interest as those terms are commonly understood. See, e.g., OMB Fee Guidelines, 52 Fed. Reg. 10017-18. Such interests are not present in this request. TCA does not seek information from NOAA Fisheries for commercial gain or interest. As a 501(c)(3) nonprofit organization, TCA has no commercial interest in NOAA Fisheries' activities or consultations with the Northwest Treaty Indian Tribes regarding fishery enforcement activities related to the federal Endangered Species Act (ESA) or with regard to NOAA Fishery communications or activities with other Columbia River Fishery Co-managers in Washington or Oregon State waters. The materials sought in this FOIA request will be disseminated by TCA to its members, through its website, and to the press and the general public at no cost.

In deciding whether the fee waiver criteria are satisfied, TCA respectfully reminds NOAA Fisheries that FOIA is inclined toward disclosure, and that the fee waiver amendments were enacted to allow further disclosure to nonprofit, public interest organizations to foster government transparency. See, e.g., 132 Cong. Rec. S. 14270-01 (statement of Sen. Leahy) (“[A]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information.”). Furthermore, courts, including the Ninth Circuit Court of Appeals, have interpreted the FOIA fee waiver broadly. See, e.g., *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (holding that the FOIA fee waiver “is to be liberally construed in favor of waivers for noncommercial requesters”).

I. The present disclosure is in the public interest because it is likely to significantly contribute to public understanding of the operations or activities of government. (15 C.F.R. § 4.11(l)(2))

The requested disclosure will significantly contribute 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).

A. The subject of the disclosure concerns “identifiable operations or activities of the Federal Government.” (15 C.F.R. § 4.11(l)(2)(i))

The requested information pertains to NOAA Fisheries' co-management activities with Washington State fish and wildlife managers as well as activities of the Columbia River Treaty Indian Tribes necessitated by NOAA Fisheries' responsibilities under the Endangered Species Act (ESA), regarding the potential effects of harvest and illegal harvest of ESA-listed populations of Columbia and Snake River steelhead and salmon species. NOAA Fisheries is a division of the National Oceanic and Atmospheric Administration and the United States Department of Commerce. NOAA Fisheries is responsible for the stewardship and management of the nation's living marine resources and their habitat within the United States' Exclusive Economic Zone, which extends seaward 200 nautical miles from the coastline. As part of that

responsibility, and pursuant to the ESA, NMFS consults with federal agencies about the potential adverse impacts of federal activities on threatened and endangered marine species. Such federal activities include, *inter alia*, ESA Take Permits issued to commercial and recreational fisheries in Washington State, conducted with Oregon and the Columbia River Treaty Tribes.

It is irrefutable that NOAA Fisheries' permitting and consultation guidance concerning commercial and recreational salmon and steelhead fisheries in both marine and freshwater environments under the ESA and the potential harm to listed marine species is a clearly identifiable operation of the government. As part of NOAA Fisheries' duty under the ESA, issuing permits to state and Tribal co-managers to conduct commercial and recreational fisheries that result in "take" as defined by the ESA necessarily results in enforcement activities related to these "take" prohibitions as well as ESA recovery activities and progress towards meeting Recovery Plan goals and objectives. Inter-agency consultation is a clearly identifiable operation and activity of the government. The requested information, which to TCA's knowledge is not available publicly at any NOAA website or public reading room, relates to NOAA Fisheries' management and oversight of its responsibility for the survival and recovery of anadromous fish species under the ESA because it will illuminate how NOAA Fisheries is evaluating the rate of salmon and steelhead conversion, communicating with other entities regarding such evaluations, and using its knowledge of conversion rates to inform other management activities, such as enforcing closures of fisheries or otherwise exercising its power under the ESA to ensure the survival of migrating salmon and steelhead. Consequently, the requested information concerns NOAA Fisheries' operations and activities.

B. The information requested is meaningfully informative about government operations or activities and disclosure is likely to contribute to an understanding of the subject by the public of government operations or activities. (15 C.F.R. §§ 4.11(l)(2)(ii) and (iii))

As discussed, the requested information relates to NOAA's evaluation of fish migration in the Columbia River and how it uses such information in its decisions how best to ensure the survival and recovery of ESA-listed anadromous fish species, and it will provide the public with a better understanding of the nature of NMFS's ESA enforcement and consultation guidance concerning commercial and recreational fisheries and harm to marine species such as steelhead and salmon, and specifically how activities permitted under ESA permits may impact native Washington or Oregon marine species. TCA is a non-profit organization that informs, educates and counsels the public—via legal action, our website, our direct communications to our members, by disseminating information to the press and other interested members of the public, and through participation in coalitions working on the same mission to protect wild steelhead and salmon, on the harm done to the environment by poorly regulated commercial and recreational fishing. Accordingly, TCA is an effective vehicle to disseminate information on commercial and recreational fishing that harms the species and their environment.

Simultaneously, the information sought through this FOIA request will help TCA fulfill its well-established function of public oversight of government action. Public oversight of agency action in particular is a vital component in our democratic system and is the bedrock upon which FOIA stands. Indeed, "FOIA is often explained as a means for citizens to know what

‘their Government is up to.’” *Nat’l Archives & Records Admin. v. Favish*, 541 U.S. 157, 171 (2004) (quoting *U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989)). TCA will use and disseminate the information obtained through this FOIA request to inform its members and the general public about NOAA Fisheries’ management and oversight of salmon and steelhead migration and loss in the Columbia River, thereby contributing to a better understanding for the public of how NOAA Fisheries incorporates information about conversion of salmon and steelhead into its decision-making processes and enforcement activities.

TCA is a public interest organization with over 700 members that works to protect and conserve wild steelhead and salmon and other wild anadromous fish species and the wild river environments upon which the fish depend. TCA also communicates with citizens and supporters through *The Osprey*, *The Journal of the Steelhead Committee of the Federation of Flyfishers*, with a circulation of over 2,500 individuals. Since 2003, TCA has been involved in scientific research and policymaking in the complex world of salmon and steelhead management. TCA has demonstrated its ability to take scientific and technical information provided by government agencies and distill it into a format that is accessible to the public and influence public policy, and disseminates information obtained under FOIA and its analyses of such information free of charge to ensure maximum access by the general public. TCA employs, contracts and works with science and policy experts who have analyzed NEPA, ESA and other environmental and scientific reports for many years. TCA has worked with NOAA Fisheries regarding steelhead and salmon conservation on numerous occasions, and our experience and expertise is well-recognized.

Federal courts have found that dissemination to 2,500 people through a newsletter and the intent to start a website is sufficient to meet the “reasonably broad audience” factor. *Forest Guardians v. U.S. Dep’t of Interior*, 416 F.3d 1173, 1180 (10th Cir. 2005). Moreover, they have found that the proven ability to digest and disseminate highly technical information, as demonstrated by past analysis and dissemination, merits giving nonprofit organizations fee waivers. See *W. Watersheds Project v. Brown*, 318 F. Supp. 2d 1036, 1040 (D. Idaho 2004). TCA’s activity in these respects reasonably outstrips any minimums established by judicial interpretation.

C. The information requested is likely to contribute significantly to the public’s understanding of Government operations or activities (15 C.F.R. § 4.11(D)(2)(iv))

As noted above, information regarding NOAA’s studies of conversion rates of migrating adult salmon or steelhead is essentially absent from publicly available websites or other publicly available sources, and NOAA Fisheries’ communications about conversion rates with other stakeholders or co-managers of anadromous fish in the Columbia River is opaque and inaccessible to the public. Accordingly, the public has almost no knowledge either of the data on fish conversion that NOAA Fisheries is collecting and analyzing, nor of how NOAA Fisheries uses such data to inform decision-making regarding appropriate levels of harvest in the Columbia River or how it exercises its power and responsibility for enforcing limitations on take of ESA-listed species and otherwise managing anadromous fish under the ESA to ensure their survival and recovery.

The very act of a local citizen group engaging in the review of agency records created or obtained during implementation of federal statutes is “in the public interest.” The *per se* significance of the “citizen watchdog” function carried out by Native Fish Society is evident from federal law interpreting the FOIA. The fee waiver provision was adopted to facilitate access to agency records by what the Court described as “citizen watchdog” organizations. *See Better Gov't Ass'n v. Dep't of State*, 780 F.2d 86, 88-89 (D.C. Cir.1987).

Here, significance flows also from timely public production of the requested agency records as the accepted means for the public to determine whether or not NOAA Fisheries has complied with its obligations in informing the management of fisheries in the Columbia River. These records, which will be shared with the general public and used to inform TCA’s advocacy of better protection of wild fish and better oversight by NOAA Fisheries, will allow the public to better understand and comment on how NOAA Fisheries evaluates the conversion of migrating adult fish in the Columbia River and what actions it takes to ensure that such conversion does not harm the species. TCA’s contribution to the public understanding of this issue based on review and synthesis of agency records has been, and will continue to be, significant.

II. Obtaining the information is of no commercial interest to The Conservation Angler. **(15 C.F.R. § 4.11(I)(3))**

As noted, TCA is a 501(c)(3) nonprofit environmental and conservation advocacy organization that works to protect and conserve wild steelhead and salmon and the wild river environments these species depend upon. TCA works to achieve its goals through grassroots campaigns, public education, media outreach, and litigation. In contrast, pursuant to FOIA, a commercial interest is one that furthers a commercial, trade, or profit interest, as those terms are commonly understood. *See, e.g.*, The Freedom of Information Reform Act of 1986; Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 Fed. Reg. 10012, 10017–18 (Mar. 27, 1987). Such interests are not present in this request. Specifically, in no manner does TCA seek information from NOAA Fisheries for commercial gain or interest. To the contrary, TCA respectfully files this FOIA request pursuant to its goal of educating the general public on the adverse effects of unregulated and illegal commercial and recreational harvest of ESA-listed steelhead and salmon and those effects on the recovery of these listed species in the Columbia and Snake Rivers in particular. TCA will analyze and provide members of the public with relevant information obtained from NOAA Fisheries without charge, and as part of its organizational mission and activities.

Based upon the foregoing, TCA requests that this FOIA be classified within NOAA Fisheries’ fee waiver category and that NOAA Fisheries send the requested information as required by law.

REPLYING TO THIS REQUEST

As this is a matter of extreme importance to TCA, we look forward to your reply within twenty working days, as required by FOIA. 5 U.S.C. § 552(a)(6)(A)(i). Please acknowledge receipt of this request, and provide a tracking number, as soon as possible, and please provide an

estimated completion date for processing the request as FOIA requires. If any exemption from FOIA's disclosure requirement is claimed, please describe in writing the general nature of the exempted document and the particular legal basis upon which the exemption is claimed, and please release all reasonably segregable portions that are not themselves exempt. *Id.* § 552(b). Further, even where a document potentially falls under an exemption, FOIA is not a mandatory bar to disclosure, *Chrysler Corp. v. Brown*, 441 U.S. 281, 293 (1979), but instead reflects a congressional preference for disclosure, so please use your discretionary release powers. If any part of a document is redacted, please indicate the location of that redaction through use of black ink.

TCA recognizes that it may appeal, both administratively, 5 U.S.C. § 552(a)(6), and judicially, *id.* § 552(a)(4)(B), an agency's choice to withhold or redact information. Should the need arise, TCA is fully prepared to appeal any withholding or redaction, and to seek reasonable attorney fees and other litigation costs. *Id.* § 552(a)(4)(B), (E).

Please send all materials to the following TCA office: The Conservation Angler, 3241 NE 73rd Avenue, Portland, OR 97213, or via e-mail to theconservationangler@gmail.com. Electronic documents are preferred when available. Please do not wait to assemble all documents that are responsive to our request before releasing information, but instead release them on a rolling basis. If the responsive records are voluminous, please contact me to discuss the proper scope of the response. Finally, please do not hesitate to e-mail or call me if you have questions about this request.

Thank you for your attention. Your consideration of our request is greatly appreciated and important to the achievement of our mission and to yours.

Sincerely,

David A. Moskowitz
Executive Director
theconservationangler@gmail.com
971-235-8953

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Tuesday, May 2, 2017 7:27 AM
To: Lola Stith - NOAA Affiliate
Subject: Fwd: FOIA request follow-up - request for tracking number and estimated completion date
Attachments: Letter to NMFS re Process Date 5-1-17.pdf

Hey Lola,

Do you have the tracking number for this one?

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

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From: Dave Becker <davebeckerlaw@gmail.com>
Date: Mon, May 1, 2017 at 6:20 PM
Subject: FOIA request follow-up - request for tracking number and estimated completion date
To: mark.graff@noaa.gov, steven.goodman@noaa.gov
Cc: David Moskowitz <theconservationangler@gmail.com>

Mr. Graff and Mr. Goodman,

attached please find a letter requesting the tracking number and estimated completion date for a FOIA request my client The Conservation Angler submitted to NMFS on April 10th.

I've copied the group's Executive Director, David Moskowitz, on this email - please respond to us both, and please let us know if there is anything we can do to help expedite production of the requested documents.

Regards,

Dave Becker

Law Office of David H. Becker, LLC
Tel: (503) 388-9160 | email: davebeckerlaw@gmail.com
Mailing Address (U.S. Postal Service mail): 833 SE Main Street # 302, Portland OR 97214

Shipping Address (FedEx, UPS, other couriers): 833 SE Main Street Suite 325, Portland OR 97214

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Law Office of David H. Becker, LLC
833 SE Main Street # 302
Portland, OR 97214
Tel. (503) 388-9160
davebeckerlaw@gmail.com

May 1, 2017

National Oceanic and Atmospheric Administration
National Marine Fisheries Service (NOAA Fisheries) – Public Reference Facility (SOU1000)
1315 East-West Highway (SSMC3), Room 9719
Silver Spring, MD 20910-6556
Attn: Mark Graff, NOAA FOIA Officer & Steven Goodman, Acting NMFS FOIA Liaison

Re: The Conservation Angler FOIA Request Submitted April 10, 2017 – Request for Tracking Number and Estimated Date That Action on the Request Will be Completed

BY EMAIL TRANSMISSION TO mark.graff@noaa.gov and steven.goodman@noaa.gov

****PLEASE ACKNOWLEDGE RECEIPT OF THIS LETTER ****

Dear Mr. Graff and Mr. Goodman:

As I mentioned in my voicemails to you both today, on April 10, 2017, my client The Conservation Angler submitted a FOIA request to FOIA@noaa.gov for documents related to the rate of conversion of salmonids in the Columbia River. A copy of the request is attached.

Because these documents are relevant to NMFS's management of fish harvest in the Columbia River, and relate specifically to fish runs that will begin returning to the Columbia River later this month, time is of the essence to The Conservation Angler in obtaining this information. More than ten working days have passed since the FOIA request was submitted, but The Conservation Angler has not yet received a tracking number for the request nor been advised of the date on which the agency received the request or the estimated date on which NMFS will complete action on the request, as required by the FOIA, 5 U.S.C. § 552(a)(7)(A)-(B).

Please let us know the tracking number, the date that you received the request, and the estimated date on which NMFS will complete action on the request, and please let me or Mr. Markowitz know if there is anything we can do to assist in expediting production of the documents. You may contact me at the address, telephone number, and email address listed above, and Mr. Markowitz at the email and telephone number listed on the last page of the attachment.

Sincerely,



David H. Becker



3241 NE 73rd Avenue
Portland, OR 97213

April 10, 2017

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

VIA E-MAIL ATTACHMENT – CONFIRMATION REQUESTED

RE: Freedom of Information Act Request

To the FOIA Officer for the National Marine Fisheries Service (NOAA Fisheries):

The Conservation Angler (TCA) is a “doing business as” subsidiary of Wild Salmon Rivers, a 501(c)(3) nonprofit organization that works to protect and conserve wild steelhead and salmon and the wild river environments they depend upon. Consistent with this mission and pursuant to 15 C.F.R. Part 4 and the Freedom of Information Act (FOIA), 5 U.S.C. § 552, TCA respectfully requests the following:

All documents regarding the rate of conversion (*i.e.* passage loss, natural mortality, unaccounted for harvest, or other non-harvest sources of mortality) of Passive Integrated Transponder (PIT)-tagged adult salmon and steelhead between Bonneville and McNary dams on the Columbia River during the period from January 1, 2012 to the date of the agency’s search for documents responsive to this request, specifically including (but not limited to):

- **Emails, notes, and other correspondence between NOAA Fisheries staff and the NOAA Northwest Fisheries Science Center and the Technical Advisory Committee to the *United States v. Oregon* proceeding that relate to salmon and steelhead conversion;**
- **Reports, conclusions, analysis and studies of the rate of salmon and steelhead conversion.**

“All documents” includes, but is not limited to, all correspondence, permits, permit applications, agreements, contracts, minutes, memoranda, plans, e-mails, reports, databases, and notes. This request includes all documents that have ever been within the custody or control of the National Marine Fisheries Service (NOAA Fisheries), whether they exist in agency “working,” investigative, retired, electronic mail, or other files currently or at any other time.

TCA requests these records in light of the President’s “Memorandum for the Heads of Executive Departments and Agencies” dated January 21, 2009, which states,

[FOIA] should be administered with a clear presumption: In the face of doubt, openness prevails. . . . In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public. All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA. The presumption of disclosure also means that agencies should take affirmative steps to make information public.

74 Fed. Reg. 4683 (Jan. 21, 2009). This request is being sent to the NOAA Fisheries FOIA officer with the understanding that it will be forwarded to other officers, offices, or departments that have pertinent information.

REQUEST FOR FEE WAIVER

Pursuant to FOIA’s fee waiver provision, 5 U.S.C. § 552(a)(4)(A)(iii), and the Department of Commerce’s FOIA regulations at 15 C.F.R. Part 4, TCA requests that NOAA Fisheries waive all fees in connection with procurement of the requested records. As demonstrated below, the nature of this request meets FOIA’s test for fee waiver.

The factors NOAA Fisheries must consider in deciding a fee waiver request are laid out in 15 C.F.R. § 4.11(*l*), and those relating to a significant contribution to public understanding of the operations or activities of the government can be summarized as follows:

- (1) Whether the subject matter of the request involves issues that will significantly contribute to the public understanding of the operations or activities of the Agency.
- (2) Whether the contents of the records to be disclosed have an informative value.
- (3) Whether the disclosure of the information will likely contribute to an understanding of the subject by the general public.
- (4) Whether the contribution to public understanding is significant.

See 15 C.F.R. § 4.11(l)(2). These factors are to be balanced against one another; no one factor is determinative. See *Friends of the Coast Fork v. U.S. Dep't of Interior*, 110 F.3d 53, 55 (9th Cir. 1997).

The other requirements in the regulations—related to whether the requester has a commercial interest that outweighs a public interest motivation—are not applicable to TCA and this request. See 15 C.F.R. § 4.11(l)(3). Under FOIA, a commercial interest is one that furthers a commercial, trade, or profit interest as those terms are commonly understood. See, e.g., OMB Fee Guidelines, 52 Fed. Reg. 10017-18. Such interests are not present in this request. TCA does not seek information from NOAA Fisheries for commercial gain or interest. As a 501(c)(3) nonprofit organization, TCA has no commercial interest in NOAA Fisheries' activities or consultations with the Northwest Treaty Indian Tribes regarding fishery enforcement activities related to the federal Endangered Species Act (ESA) or with regard to NOAA Fishery communications or activities with other Columbia River Fishery Co-managers in Washington or Oregon State waters. The materials sought in this FOIA request will be disseminated by TCA to its members, through its website, and to the press and the general public at no cost.

In deciding whether the fee waiver criteria are satisfied, TCA respectfully reminds NOAA Fisheries that FOIA is inclined toward disclosure, and that the fee waiver amendments were enacted to allow further disclosure to nonprofit, public interest organizations to foster government transparency. See, e.g., 132 Cong. Rec. S. 14270-01 (statement of Sen. Leahy) (“[A]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information.”). Furthermore, courts, including the Ninth Circuit Court of Appeals, have interpreted the FOIA fee waiver broadly. See, e.g., *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (holding that the FOIA fee waiver “is to be liberally construed in favor of waivers for noncommercial requesters”).

I. The present disclosure is in the public interest because it is likely to significantly contribute to public understanding of the operations or activities of government. (15 C.F.R. § 4.11(l)(2))

The requested disclosure will significantly contribute 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).

A. The subject of the disclosure concerns “identifiable operations or activities of the Federal Government.” (15 C.F.R. § 4.11(l)(2)(i))

The requested information pertains to NOAA Fisheries' co-management activities with Washington State fish and wildlife managers as well as activities of the Columbia River Treaty Indian Tribes necessitated by NOAA Fisheries' responsibilities under the Endangered Species Act (ESA), regarding the potential effects of harvest and illegal harvest of ESA-listed populations of Columbia and Snake River steelhead and salmon species. NOAA Fisheries is a division of the National Oceanic and Atmospheric Administration and the United States Department of Commerce. NOAA Fisheries is responsible for the stewardship and management of the nation's living marine resources and their habitat within the United States' Exclusive Economic Zone, which extends seaward 200 nautical miles from the coastline. As part of that

responsibility, and pursuant to the ESA, NMFS consults with federal agencies about the potential adverse impacts of federal activities on threatened and endangered marine species. Such federal activities include, *inter alia*, ESA Take Permits issued to commercial and recreational fisheries in Washington State, conducted with Oregon and the Columbia River Treaty Tribes.

It is irrefutable that NOAA Fisheries' permitting and consultation guidance concerning commercial and recreational salmon and steelhead fisheries in both marine and freshwater environments under the ESA and the potential harm to listed marine species is a clearly identifiable operation of the government. As part of NOAA Fisheries' duty under the ESA, issuing permits to state and Tribal co-managers to conduct commercial and recreational fisheries that result in "take" as defined by the ESA necessarily results in enforcement activities related to these "take" prohibitions as well as ESA recovery activities and progress towards meeting Recovery Plan goals and objectives. Inter-agency consultation is a clearly identifiable operation and activity of the government. The requested information, which to TCA's knowledge is not available publicly at any NOAA website or public reading room, relates to NOAA Fisheries' management and oversight of its responsibility for the survival and recovery of anadromous fish species under the ESA because it will illuminate how NOAA Fisheries is evaluating the rate of salmon and steelhead conversion, communicating with other entities regarding such evaluations, and using its knowledge of conversion rates to inform other management activities, such as enforcing closures of fisheries or otherwise exercising its power under the ESA to ensure the survival of migrating salmon and steelhead. Consequently, the requested information concerns NOAA Fisheries' operations and activities.

B. The information requested is meaningfully informative about government operations or activities and disclosure is likely to contribute to an understanding of the subject by the public of government operations or activities. (15 C.F.R. §§ 4.11(l)(2)(ii) and (iii))

As discussed, the requested information relates to NOAA's evaluation of fish migration in the Columbia River and how it uses such information in its decisions how best to ensure the survival and recovery of ESA-listed anadromous fish species, and it will provide the public with a better understanding of the nature of NMFS's ESA enforcement and consultation guidance concerning commercial and recreational fisheries and harm to marine species such as steelhead and salmon, and specifically how activities permitted under ESA permits may impact native Washington or Oregon marine species. TCA is a non-profit organization that informs, educates and counsels the public—via legal action, our website, our direct communications to our members, by disseminating information to the press and other interested members of the public, and through participation in coalitions working on the same mission to protect wild steelhead and salmon, on the harm done to the environment by poorly regulated commercial and recreational fishing. Accordingly, TCA is an effective vehicle to disseminate information on commercial and recreational fishing that harms the species and their environment.

Simultaneously, the information sought through this FOIA request will help TCA fulfill its well-established function of public oversight of government action. Public oversight of agency action in particular is a vital component in our democratic system and is the bedrock upon which FOIA stands. Indeed, "FOIA is often explained as a means for citizens to know what

‘their Government is up to.’” *Nat’l Archives & Records Admin. v. Favish*, 541 U.S. 157, 171 (2004) (quoting *U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989)). TCA will use and disseminate the information obtained through this FOIA request to inform its members and the general public about NOAA Fisheries’ management and oversight of salmon and steelhead migration and loss in the Columbia River, thereby contributing to a better understanding for the public of how NOAA Fisheries incorporates information about conversion of salmon and steelhead into its decision-making processes and enforcement activities.

TCA is a public interest organization with over 700 members that works to protect and conserve wild steelhead and salmon and other wild anadromous fish species and the wild river environments upon which the fish depend. TCA also communicates with citizens and supporters through *The Osprey*, *The Journal of the Steelhead Committee of the Federation of Flyfishers*, with a circulation of over 2,500 individuals. Since 2003, TCA has been involved in scientific research and policymaking in the complex world of salmon and steelhead management. TCA has demonstrated its ability to take scientific and technical information provided by government agencies and distill it into a format that is accessible to the public and influence public policy, and disseminates information obtained under FOIA and its analyses of such information free of charge to ensure maximum access by the general public. TCA employs, contracts and works with science and policy experts who have analyzed NEPA, ESA and other environmental and scientific reports for many years. TCA has worked with NOAA Fisheries regarding steelhead and salmon conservation on numerous occasions, and our experience and expertise is well-recognized.

Federal courts have found that dissemination to 2,500 people through a newsletter and the intent to start a website is sufficient to meet the “reasonably broad audience” factor. *Forest Guardians v. U.S. Dep’t of Interior*, 416 F.3d 1173, 1180 (10th Cir. 2005). Moreover, they have found that the proven ability to digest and disseminate highly technical information, as demonstrated by past analysis and dissemination, merits giving nonprofit organizations fee waivers. See *W. Watersheds Project v. Brown*, 318 F. Supp. 2d 1036, 1040 (D. Idaho 2004). TCA’s activity in these respects reasonably outstrips any minimums established by judicial interpretation.

C. The information requested is likely to contribute significantly to the public’s understanding of Government operations or activities (15 C.F.R. § 4.11(D)(2)(iv))

As noted above, information regarding NOAA’s studies of conversion rates of migrating adult salmon or steelhead is essentially absent from publicly available websites or other publicly available sources, and NOAA Fisheries’ communications about conversion rates with other stakeholders or co-managers of anadromous fish in the Columbia River is opaque and inaccessible to the public. Accordingly, the public has almost no knowledge either of the data on fish conversion that NOAA Fisheries is collecting and analyzing, nor of how NOAA Fisheries uses such data to inform decision-making regarding appropriate levels of harvest in the Columbia River or how it exercises its power and responsibility for enforcing limitations on take of ESA-listed species and otherwise managing anadromous fish under the ESA to ensure their survival and recovery.

The very act of a local citizen group engaging in the review of agency records created or obtained during implementation of federal statutes is “in the public interest.” The *per se* significance of the “citizen watchdog” function carried out by Native Fish Society is evident from federal law interpreting the FOIA. The fee waiver provision was adopted to facilitate access to agency records by what the Court described as “citizen watchdog” organizations. *See Better Gov't Ass'n v. Dep't of State*, 780 F.2d 86, 88-89 (D.C. Cir.1987).

Here, significance flows also from timely public production of the requested agency records as the accepted means for the public to determine whether or not NOAA Fisheries has complied with its obligations in informing the management of fisheries in the Columbia River. These records, which will be shared with the general public and used to inform TCA’s advocacy of better protection of wild fish and better oversight by NOAA Fisheries, will allow the public to better understand and comment on how NOAA Fisheries evaluates the conversion of migrating adult fish in the Columbia River and what actions it takes to ensure that such conversion does not harm the species. TCA’s contribution to the public understanding of this issue based on review and synthesis of agency records has been, and will continue to be, significant.

II. Obtaining the information is of no commercial interest to The Conservation Angler. **(15 C.F.R. § 4.11(I)(3))**

As noted, TCA is a 501(c)(3) nonprofit environmental and conservation advocacy organization that works to protect and conserve wild steelhead and salmon and the wild river environments these species depend upon. TCA works to achieve its goals through grassroots campaigns, public education, media outreach, and litigation. In contrast, pursuant to FOIA, a commercial interest is one that furthers a commercial, trade, or profit interest, as those terms are commonly understood. *See, e.g.*, The Freedom of Information Reform Act of 1986; Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 Fed. Reg. 10012, 10017–18 (Mar. 27, 1987). Such interests are not present in this request. Specifically, in no manner does TCA seek information from NOAA Fisheries for commercial gain or interest. To the contrary, TCA respectfully files this FOIA request pursuant to its goal of educating the general public on the adverse effects of unregulated and illegal commercial and recreational harvest of ESA-listed steelhead and salmon and those effects on the recovery of these listed species in the Columbia and Snake Rivers in particular. TCA will analyze and provide members of the public with relevant information obtained from NOAA Fisheries without charge, and as part of its organizational mission and activities.

Based upon the foregoing, TCA requests that this FOIA be classified within NOAA Fisheries’ fee waiver category and that NOAA Fisheries send the requested information as required by law.

REPLYING TO THIS REQUEST

As this is a matter of extreme importance to TCA, we look forward to your reply within twenty working days, as required by FOIA. 5 U.S.C. § 552(a)(6)(A)(i). Please acknowledge receipt of this request, and provide a tracking number, as soon as possible, and please provide an

estimated completion date for processing the request as FOIA requires. If any exemption from FOIA's disclosure requirement is claimed, please describe in writing the general nature of the exempted document and the particular legal basis upon which the exemption is claimed, and please release all reasonably segregable portions that are not themselves exempt. *Id.* § 552(b). Further, even where a document potentially falls under an exemption, FOIA is not a mandatory bar to disclosure, *Chrysler Corp. v. Brown*, 441 U.S. 281, 293 (1979), but instead reflects a congressional preference for disclosure, so please use your discretionary release powers. If any part of a document is redacted, please indicate the location of that redaction through use of black ink.

TCA recognizes that it may appeal, both administratively, 5 U.S.C. § 552(a)(6), and judicially, *id.* § 552(a)(4)(B), an agency's choice to withhold or redact information. Should the need arise, TCA is fully prepared to appeal any withholding or redaction, and to seek reasonable attorney fees and other litigation costs. *Id.* § 552(a)(4)(B), (E).

Please send all materials to the following TCA office: The Conservation Angler, 3241 NE 73rd Avenue, Portland, OR 97213, or via e-mail to theconservationangler@gmail.com. Electronic documents are preferred when available. Please do not wait to assemble all documents that are responsive to our request before releasing information, but instead release them on a rolling basis. If the responsive records are voluminous, please contact me to discuss the proper scope of the response. Finally, please do not hesitate to e-mail or call me if you have questions about this request.

Thank you for your attention. Your consideration of our request is greatly appreciated and important to the achievement of our mission and to yours.

Sincerely,

David A. Moskowitz
Executive Director
theconservationangler@gmail.com
971-235-8953

From: Samuel Dixon <samuel.dixon@noaa.gov>
Sent: Tuesday, May 2, 2017 1:04 PM
To: Mark Graff - NOAA Federal; Lola Stith - NOAA Affiliate; Steven Goodman - NOAA Federal
Subject: Fwd: FOIA request follow-up - request for tracking number and estimated completion date
Attachments: Letter to NMFS re Process Date 5-1-17.pdf

Hi Mark and Lola,

Have you seen this request come through or spoken with this requester?

Thanks,

Samuel Dixon
Contractor - IBSS Corp
NMFS Assistant FOIA Liaison
(301) 427-8739
samuel.dixon@noaa.gov

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

From: Steven Goodman - NOAA Federal <steven.goodman@noaa.gov>
Date: Mon, May 1, 2017 at 6:50 PM
Subject: Fwd: FOIA request follow-up - request for tracking number and estimated completion date
To: Samuel Dixon <samuel.dixon@noaa.gov>

Do you know what this about?

Sent from my iPhone

Begin forwarded message:

From: Dave Becker <davebeckerlaw@gmail.com>
To: "mark.graff@noaa.gov" <mark.graff@noaa.gov>, "steven.goodman@noaa.gov" <steven.goodman@noaa.gov>
Cc: David Moskowitz <theconservationangler@gmail.com>
Subject: FOIA request follow-up - request for tracking number and estimated completion date

Mr. Graff and Mr. Goodman,

attached please find a letter requesting the tracking number and estimated completion date for a FOIA request my client The Conservation Angler submitted to NMFS on April 10th.

I've copied the group's Executive Director, David Moskowitz, on this email - please respond to us both, and please let us know if there is anything we can do to help expedite production of the requested documents.

Regards,

Dave Becker

Law Office of David H. Becker, LLC

Tel: (503) 388-9160 | email: davebeckerlaw@gmail.com

Mailing Address (U.S. Postal Service mail): 833 SE Main Street # 302, Portland OR 97214

Shipping Address (FedEx, UPS, other couriers): 833 SE Main Street Suite 325, Portland OR 97214

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Law Office of David H. Becker, LLC
833 SE Main Street # 302
Portland, OR 97214
Tel. (503) 388-9160
davebeckerlaw@gmail.com

May 1, 2017

National Oceanic and Atmospheric Administration
National Marine Fisheries Service (NOAA Fisheries) – Public Reference Facility (SOU1000)
1315 East-West Highway (SSMC3), Room 9719
Silver Spring, MD 20910-6556
Attn: Mark Graff, NOAA FOIA Officer & Steven Goodman, Acting NMFS FOIA Liaison

Re: The Conservation Angler FOIA Request Submitted April 10, 2017 – Request for Tracking Number and Estimated Date That Action on the Request Will be Completed

BY EMAIL TRANSMISSION TO mark.graff@noaa.gov and steven.goodman@noaa.gov

****PLEASE ACKNOWLEDGE RECEIPT OF THIS LETTER ****

Dear Mr. Graff and Mr. Goodman:

As I mentioned in my voicemails to you both today, on April 10, 2017, my client The Conservation Angler submitted a FOIA request to FOIA@noaa.gov for documents related to the rate of conversion of salmonids in the Columbia River. A copy of the request is attached.

Because these documents are relevant to NMFS's management of fish harvest in the Columbia River, and relate specifically to fish runs that will begin returning to the Columbia River later this month, time is of the essence to The Conservation Angler in obtaining this information. More than ten working days have passed since the FOIA request was submitted, but The Conservation Angler has not yet received a tracking number for the request nor been advised of the date on which the agency received the request or the estimated date on which NMFS will complete action on the request, as required by the FOIA, 5 U.S.C. § 552(a)(7)(A)-(B).

Please let us know the tracking number, the date that you received the request, and the estimated date on which NMFS will complete action on the request, and please let me or Mr. Markowitz know if there is anything we can do to assist in expediting production of the documents. You may contact me at the address, telephone number, and email address listed above, and Mr. Markowitz at the email and telephone number listed on the last page of the attachment.

Sincerely,



David H. Becker



3241 NE 73rd Avenue
Portland, OR 97213

April 10, 2017

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National Marine Fisheries Service (NOAA Fisheries)
Public Reference Facility (SOU1000)
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All documents regarding the rate of conversion (*i.e.* passage loss, natural mortality, unaccounted for harvest, or other non-harvest sources of mortality) of Passive Integrated Transponder (PIT)-tagged adult salmon and steelhead between Bonneville and McNary dams on the Columbia River during the period from January 1, 2012 to the date of the agency’s search for documents responsive to this request, specifically including (but not limited to):

- **Emails, notes, and other correspondence between NOAA Fisheries staff and the NOAA Northwest Fisheries Science Center and the Technical Advisory Committee to the *United States v. Oregon* proceeding that relate to salmon and steelhead conversion;**
- **Reports, conclusions, analysis and studies of the rate of salmon and steelhead conversion.**

“All documents” includes, but is not limited to, all correspondence, permits, permit applications, agreements, contracts, minutes, memoranda, plans, e-mails, reports, databases, and notes. This request includes all documents that have ever been within the custody or control of the National Marine Fisheries Service (NOAA Fisheries), whether they exist in agency “working,” investigative, retired, electronic mail, or other files currently or at any other time.

TCA requests these records in light of the President’s “Memorandum for the Heads of Executive Departments and Agencies” dated January 21, 2009, which states,

[FOIA] should be administered with a clear presumption: In the face of doubt, openness prevails. . . . In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public. All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA. The presumption of disclosure also means that agencies should take affirmative steps to make information public.

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REQUEST FOR FEE WAIVER

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The factors NOAA Fisheries must consider in deciding a fee waiver request are laid out in 15 C.F.R. § 4.11(*l*), and those relating to a significant contribution to public understanding of the operations or activities of the government can be summarized as follows:

- (1) Whether the subject matter of the request involves issues that will significantly contribute to the public understanding of the operations or activities of the Agency.
- (2) Whether the contents of the records to be disclosed have an informative value.
- (3) Whether the disclosure of the information will likely contribute to an understanding of the subject by the general public.
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In deciding whether the fee waiver criteria are satisfied, TCA respectfully reminds NOAA Fisheries that FOIA is inclined toward disclosure, and that the fee waiver amendments were enacted to allow further disclosure to nonprofit, public interest organizations to foster government transparency. See, e.g., 132 Cong. Rec. S. 14270-01 (statement of Sen. Leahy) (“[A]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information.”). Furthermore, courts, including the Ninth Circuit Court of Appeals, have interpreted the FOIA fee waiver broadly. See, e.g., *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (holding that the FOIA fee waiver “is to be liberally construed in favor of waivers for noncommercial requesters”).

I. The present disclosure is in the public interest because it is likely to significantly contribute to public understanding of the operations or activities of government. (15 C.F.R. § 4.11(l)(2))

The requested disclosure will significantly contribute 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).

A. The subject of the disclosure concerns “identifiable operations or activities of the Federal Government.” (15 C.F.R. § 4.11(l)(2)(i))

The requested information pertains to NOAA Fisheries' co-management activities with Washington State fish and wildlife managers as well as activities of the Columbia River Treaty Indian Tribes necessitated by NOAA Fisheries' responsibilities under the Endangered Species Act (ESA), regarding the potential effects of harvest and illegal harvest of ESA-listed populations of Columbia and Snake River steelhead and salmon species. NOAA Fisheries is a division of the National Oceanic and Atmospheric Administration and the United States Department of Commerce. NOAA Fisheries is responsible for the stewardship and management of the nation's living marine resources and their habitat within the United States' Exclusive Economic Zone, which extends seaward 200 nautical miles from the coastline. As part of that

responsibility, and pursuant to the ESA, NMFS consults with federal agencies about the potential adverse impacts of federal activities on threatened and endangered marine species. Such federal activities include, *inter alia*, ESA Take Permits issued to commercial and recreational fisheries in Washington State, conducted with Oregon and the Columbia River Treaty Tribes.

It is irrefutable that NOAA Fisheries' permitting and consultation guidance concerning commercial and recreational salmon and steelhead fisheries in both marine and freshwater environments under the ESA and the potential harm to listed marine species is a clearly identifiable operation of the government. As part of NOAA Fisheries' duty under the ESA, issuing permits to state and Tribal co-managers to conduct commercial and recreational fisheries that result in "take" as defined by the ESA necessarily results in enforcement activities related to these "take" prohibitions as well as ESA recovery activities and progress towards meeting Recovery Plan goals and objectives. Inter-agency consultation is a clearly identifiable operation and activity of the government. The requested information, which to TCA's knowledge is not available publicly at any NOAA website or public reading room, relates to NOAA Fisheries' management and oversight of its responsibility for the survival and recovery of anadromous fish species under the ESA because it will illuminate how NOAA Fisheries is evaluating the rate of salmon and steelhead conversion, communicating with other entities regarding such evaluations, and using its knowledge of conversion rates to inform other management activities, such as enforcing closures of fisheries or otherwise exercising its power under the ESA to ensure the survival of migrating salmon and steelhead. Consequently, the requested information concerns NOAA Fisheries' operations and activities.

B. The information requested is meaningfully informative about government operations or activities and disclosure is likely to contribute to an understanding of the subject by the public of government operations or activities. (15 C.F.R. §§ 4.11(l)(2)(ii) and (iii))

As discussed, the requested information relates to NOAA's evaluation of fish migration in the Columbia River and how it uses such information in its decisions how best to ensure the survival and recovery of ESA-listed anadromous fish species, and it will provide the public with a better understanding of the nature of NMFS's ESA enforcement and consultation guidance concerning commercial and recreational fisheries and harm to marine species such as steelhead and salmon, and specifically how activities permitted under ESA permits may impact native Washington or Oregon marine species. TCA is a non-profit organization that informs, educates and counsels the public—via legal action, our website, our direct communications to our members, by disseminating information to the press and other interested members of the public, and through participation in coalitions working on the same mission to protect wild steelhead and salmon, on the harm done to the environment by poorly regulated commercial and recreational fishing. Accordingly, TCA is an effective vehicle to disseminate information on commercial and recreational fishing that harms the species and their environment.

Simultaneously, the information sought through this FOIA request will help TCA fulfill its well-established function of public oversight of government action. Public oversight of agency action in particular is a vital component in our democratic system and is the bedrock upon which FOIA stands. Indeed, "FOIA is often explained as a means for citizens to know what

‘their Government is up to.’” *Nat’l Archives & Records Admin. v. Favish*, 541 U.S. 157, 171 (2004) (quoting *U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989)). TCA will use and disseminate the information obtained through this FOIA request to inform its members and the general public about NOAA Fisheries’ management and oversight of salmon and steelhead migration and loss in the Columbia River, thereby contributing to a better understanding for the public of how NOAA Fisheries incorporates information about conversion of salmon and steelhead into its decision-making processes and enforcement activities.

TCA is a public interest organization with over 700 members that works to protect and conserve wild steelhead and salmon and other wild anadromous fish species and the wild river environments upon which the fish depend. TCA also communicates with citizens and supporters through *The Osprey*, *The Journal of the Steelhead Committee of the Federation of Flyfishers*, with a circulation of over 2,500 individuals. Since 2003, TCA has been involved in scientific research and policymaking in the complex world of salmon and steelhead management. TCA has demonstrated its ability to take scientific and technical information provided by government agencies and distill it into a format that is accessible to the public and influence public policy, and disseminates information obtained under FOIA and its analyses of such information free of charge to ensure maximum access by the general public. TCA employs, contracts and works with science and policy experts who have analyzed NEPA, ESA and other environmental and scientific reports for many years. TCA has worked with NOAA Fisheries regarding steelhead and salmon conservation on numerous occasions, and our experience and expertise is well-recognized.

Federal courts have found that dissemination to 2,500 people through a newsletter and the intent to start a website is sufficient to meet the “reasonably broad audience” factor. *Forest Guardians v. U.S. Dep’t of Interior*, 416 F.3d 1173, 1180 (10th Cir. 2005). Moreover, they have found that the proven ability to digest and disseminate highly technical information, as demonstrated by past analysis and dissemination, merits giving nonprofit organizations fee waivers. See *W. Watersheds Project v. Brown*, 318 F. Supp. 2d 1036, 1040 (D. Idaho 2004). TCA’s activity in these respects reasonably outstrips any minimums established by judicial interpretation.

C. The information requested is likely to contribute significantly to the public’s understanding of Government operations or activities (15 C.F.R. § 4.11(D)(2)(iv))

As noted above, information regarding NOAA’s studies of conversion rates of migrating adult salmon or steelhead is essentially absent from publicly available websites or other publicly available sources, and NOAA Fisheries’ communications about conversion rates with other stakeholders or co-managers of anadromous fish in the Columbia River is opaque and inaccessible to the public. Accordingly, the public has almost no knowledge either of the data on fish conversion that NOAA Fisheries is collecting and analyzing, nor of how NOAA Fisheries uses such data to inform decision-making regarding appropriate levels of harvest in the Columbia River or how it exercises its power and responsibility for enforcing limitations on take of ESA-listed species and otherwise managing anadromous fish under the ESA to ensure their survival and recovery.

The very act of a local citizen group engaging in the review of agency records created or obtained during implementation of federal statutes is “in the public interest.” The *per se* significance of the “citizen watchdog” function carried out by Native Fish Society is evident from federal law interpreting the FOIA. The fee waiver provision was adopted to facilitate access to agency records by what the Court described as “citizen watchdog” organizations. *See Better Gov't Ass'n v. Dep't of State*, 780 F.2d 86, 88-89 (D.C. Cir.1987).

Here, significance flows also from timely public production of the requested agency records as the accepted means for the public to determine whether or not NOAA Fisheries has complied with its obligations in informing the management of fisheries in the Columbia River. These records, which will be shared with the general public and used to inform TCA’s advocacy of better protection of wild fish and better oversight by NOAA Fisheries, will allow the public to better understand and comment on how NOAA Fisheries evaluates the conversion of migrating adult fish in the Columbia River and what actions it takes to ensure that such conversion does not harm the species. TCA’s contribution to the public understanding of this issue based on review and synthesis of agency records has been, and will continue to be, significant.

II. Obtaining the information is of no commercial interest to The Conservation Angler. **(15 C.F.R. § 4.11(I)(3))**

As noted, TCA is a 501(c)(3) nonprofit environmental and conservation advocacy organization that works to protect and conserve wild steelhead and salmon and the wild river environments these species depend upon. TCA works to achieve its goals through grassroots campaigns, public education, media outreach, and litigation. In contrast, pursuant to FOIA, a commercial interest is one that furthers a commercial, trade, or profit interest, as those terms are commonly understood. *See, e.g.*, The Freedom of Information Reform Act of 1986; Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 Fed. Reg. 10012, 10017–18 (Mar. 27, 1987). Such interests are not present in this request. Specifically, in no manner does TCA seek information from NOAA Fisheries for commercial gain or interest. To the contrary, TCA respectfully files this FOIA request pursuant to its goal of educating the general public on the adverse effects of unregulated and illegal commercial and recreational harvest of ESA-listed steelhead and salmon and those effects on the recovery of these listed species in the Columbia and Snake Rivers in particular. TCA will analyze and provide members of the public with relevant information obtained from NOAA Fisheries without charge, and as part of its organizational mission and activities.

Based upon the foregoing, TCA requests that this FOIA be classified within NOAA Fisheries’ fee waiver category and that NOAA Fisheries send the requested information as required by law.

REPLYING TO THIS REQUEST

As this is a matter of extreme importance to TCA, we look forward to your reply within twenty working days, as required by FOIA. 5 U.S.C. § 552(a)(6)(A)(i). Please acknowledge receipt of this request, and provide a tracking number, as soon as possible, and please provide an

estimated completion date for processing the request as FOIA requires. If any exemption from FOIA's disclosure requirement is claimed, please describe in writing the general nature of the exempted document and the particular legal basis upon which the exemption is claimed, and please release all reasonably segregable portions that are not themselves exempt. *Id.* § 552(b). Further, even where a document potentially falls under an exemption, FOIA is not a mandatory bar to disclosure, *Chrysler Corp. v. Brown*, 441 U.S. 281, 293 (1979), but instead reflects a congressional preference for disclosure, so please use your discretionary release powers. If any part of a document is redacted, please indicate the location of that redaction through use of black ink.

TCA recognizes that it may appeal, both administratively, 5 U.S.C. § 552(a)(6), and judicially, *id.* § 552(a)(4)(B), an agency's choice to withhold or redact information. Should the need arise, TCA is fully prepared to appeal any withholding or redaction, and to seek reasonable attorney fees and other litigation costs. *Id.* § 552(a)(4)(B), (E).

Please send all materials to the following TCA office: The Conservation Angler, 3241 NE 73rd Avenue, Portland, OR 97213, or via e-mail to theconservationangler@gmail.com. Electronic documents are preferred when available. Please do not wait to assemble all documents that are responsive to our request before releasing information, but instead release them on a rolling basis. If the responsive records are voluminous, please contact me to discuss the proper scope of the response. Finally, please do not hesitate to e-mail or call me if you have questions about this request.

Thank you for your attention. Your consideration of our request is greatly appreciated and important to the achievement of our mission and to yours.

Sincerely,

David A. Moskowitz
Executive Director
theconservationangler@gmail.com
971-235-8953

From: Maria Williams - NOAA Federal <maria.williams@noaa.gov>
Sent: Tuesday, May 2, 2017 10:05 AM
To: Mark Graff - NOAA Federal; Lola Stith - NOAA Affiliate
Subject: Fwd: FOIA request from Aviation Spectrum Resources Inc.
Attachments: 20170321-NOAA FOIA Request-FINAL.pdf

Mark and Lola,

Our RF Spectrum Branch Chief just forwarded this to me and asked if I have been assigned this request. Do you have this?

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 NOAA Satellites on Social Media: [Facebook](#), [Twitter](#), [YouTube](#)

"Talent wins games, but teamwork and intelligence wins championship"

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

From: **Al Wissman** <al.wissman@noaa.gov>
Date: Tue, May 2, 2017 at 9:25 AM
Subject: FOIA request from Aviation Spectrum Resources Inc.
To: Maria Williams - NOAA Federal <maria.williams@noaa.gov>

Maria,

Attached is the FOIA request.

Al Wissman



Aviation Spectrum Resources Inc. ♦ 180 Admiral Cochrane Drive ♦ Suite 300 ♦ Annapolis, MD 21401
Phone: 410-266-6030 ♦ Fax: 443-951-0349 ♦ <http://www.asri.aero>

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

21 March 2017

FREEDOM OF INFORMATION ACT REQUEST

Dear NOAA FOIA Office:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552.

On behalf of Aviation Spectrum Resources, Inc. (ASRI), the undersigned hereby requests that copies of the following documents, including letters or correspondence, or any other documents or recordings responsive to the requests listed below and/or containing the following information, be provided to the undersigned:

1. Any letters, written records, correspondence, documents and/or reports (whether written or recorded) from the Under Secretary of Commerce for Oceans and Atmospheres (former or acting) to the National Telecommunications and Information Administration (NTIA) from September 1, 2016 to the present, inclusive, regarding regulatory or operational considerations in the 1675 – 1680 MHz or 1675-1695 MHz radiofrequency bands, specifically those associated with potential spectrum repurposing of these bands from current and prospective federal government uses to commercial mobile operations or the sharing of these spectrum bands by federal government and commercial mobile operators.
2. Any letters, written records, correspondence, documents and/or reports (whether written or recorded) from the Assistant Secretary for Environmental Observation and Prediction (former or acting) to the National Telecommunications and Information Administration (NTIA) from September 1, 2016 to the present, inclusive, regarding regulatory or operational considerations in the 1675 – 1680 MHz or 1675-1695 MHz radiofrequency bands, specifically those associated with potential spectrum repurposing of these bands from current and prospective federal government uses to commercial mobile operations or the sharing of these spectrum bands by federal government and commercial mobile operators.
3. Any letters, written records, correspondence, documents and/or reports (whether written or recorded) from (1) the Assistant Administrator, National Environmental Satellite, Data & Information Service (NESDIS) (former or acting), or (2) the Deputy Assistant Administrator of NESDIS, to the National Telecommunications and Information Administration (NTIA) from September 1, 2016 to the present, inclusive, regarding regulatory or operational considerations in the 1675 – 1680 MHz or 1675-1695 MHz radiofrequency bands, specifically those associated

with potential spectrum repurposing of these bands from current and prospective federal government uses to commercial mobile operations or the sharing of these spectrum bands by federal government and commercial mobile operators.

4. Any letters, written records, correspondence, documents and/or reports (whether written or recorded) from (1) the NESDIS CIO, e.g., Assistant Chief Information Officer (ACIO/NESDIS) or (2) the NESDIS Deputy CIO, e.g., Deputy Assistant Chief Information Officer (DCIO/NESDIS) (former or acting) to the National Telecommunications and Information Administration (NTIA) from September 1, 2016 to the present, inclusive, regarding regulatory or operational considerations in the 1675 – 1680 MHz or 1675-1695 MHz radiofrequency bands, specifically those associated with potential spectrum repurposing of these bands from current and prospective federal government uses to commercial mobile operations or the sharing of these spectrum bands by federal government and commercial mobile operators.

ASRI requests a waiver of all fees for this request on the basis that disclosure of the requested information to ASRI would be in the public interest. *See* 15 C.F.R. § 4.11(l)(1)(i). In order to help you consider this request, you should know that ASRI is the communications company of the U.S. civilian air transport industry. Owned by the airlines and other airspace users, ASRI is operated on a cooperative basis to provide a non-discriminatory service to these entities. Additionally, ASRI's mission includes the defense of access to, and the use of, adequate radiofrequency spectrum resources to support aviation activities to ensure the safety of the flying public and the efficiency of airline operations.

Disclosure of the requested information to ASRI is in the public interest because it is likely to contribute significantly to public understanding of the activities of the government in connection with the foregoing radiofrequency spectrum bands and is not primarily in ASRI's commercial interest. *See* 15 C.F.R. § 4.11(l)(2)(ii) (the first fee waiver requirement is met when the disclosure is "likely to contribute" to an increased public understanding of government operations or activities); *see also* 15 C.F.R. § 4.11(l)(3)(ii) (finding that a fee waiver or reduction is justified when the public interest in disclosure is greater than any identified commercial interest).

More specifically, these bands are essential for the timely and reliable dissemination of hydrological and metrological information. Aviation operations are highly weather-sensitive. If proposed repurposing or spectrum sharing of 1675 – 1680 MHz or 1675-1695 MHz creates radio frequency interference that adversely impacts the receipt of hydrological and metrological information necessary for aviation operations, the safety of the travelling public could be affected. Thus, the 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 only the individual understanding of the requester. *See* 15 C.F.R. § 4.11(l)(2)(iii). The information requested will enable ASRI to conduct further analysis of the foregoing issues and contribute to its participation in the ongoing FCC proceedings¹ concerning the Geostationary Operational

¹ *See* FCC RM-11681. In this proceeding, Ligado Network LLC ("Ligado") asks the FCC to initiate a rulemaking to allocate the 1675-1680 MHz band for terrestrial mobile use on a

Environmental Satellite system, also known as GOES, which operates in these spectrum bands. ASRI's contributions to those proceedings will become available to the public through the FCC's website.

In the event that you do not waive fees, ASRI is willing to pay fees for this request up to a maximum of \$250. If you estimate that the fees will exceed this limit, please first provide notice to the point of contact listed below before proceeding and provide the point of contact with an estimate of the costs (and obtain approval to incur them). *See* 15 C.F.R. § 4.11(i)(2) ("A notice under this paragraph shall offer the requester an opportunity to discuss the matter with Departmental personnel in order to modify the request in an effort to meet the requester's needs at a lower cost."). If a waiver is granted or, alternatively, if the fees do not exceed the amount stated above, please supply the records without informing the point of contact of the cost.

If you deny all or any part of this request for information, please cite each specific exemption you think justifies your withholding of information. Please notify the point of contact of appeal procedures available under the law.

Thank you for your consideration of this request.

Please correspond with Mr. Andrew Roy, Director of Engineering, ASRI, with any questions in this matter. He may be reached at (443) 951-0340 or via email at acr@asri.aero

Sincerely,

By: /s/ Kris Hutchison

Kris Hutchison
President
Aviation Spectrum Resources, Inc.
180 Admiral Cochrane Drive, Suite 300
Annapolis, MD 21401

shared basis with federal use. The original petition in this proceeding was filed in 2012 by Ligado's predecessor in interest, LightSquared Subsidiary LLC.

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Tuesday, May 2, 2017 5:23 PM
To: John Almeida - NOAA Federal
Cc: Lola Stith - NOAA Affiliate
Subject: Litigation Summary
Attachments: Friends of Animals Voluntary Dismissal.pdf; FoA v NOAA - Stipulation of Settlement and Dismissal.pdf; Dkt. 24 - Reply iso Defs MSJ.pdf; Current Litigation Cases and Status.xlsx; CREW - stip of dismissal.pdf; CoA v NOAA - Dismissal.pdf; PEER Final 3.20 FAL in litigation mhg.pdf; OCE docket 108 - Judgment.pdf; Klamath Dismissal Order.pdf; JW - Notice of dismissal.pdf

Hey John,

Attached is a very rudimentary summary of the litigation cases. I also am attaching the latest filing in each case as an artifact. I haven't included any fields beyond the case name and status. Let me know if you need me to include jurisdiction, AUSA contact, lead GC Attorney, etc. I can go through and add that if this is meant to be distributed. Let me know what you need and I can flesh this out unless you just wanted this as a status 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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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITIZENS FOR RESPONSIBILITY AND)
 ETHICS IN WASHINGTON,)
)
 Plaintiff,)
)
 v.)
)
 U.S. DEPARTMENT OF COMMERCE,)
)
 Defendant.)
 _____)

Civil No. 1:17-cv-00135 (APM)

JOINT STIPULATION OF DISMISSAL

IT IS HEREBY STIPULATED AND AGREED by and between the parties, pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), that the above-captioned action shall be dismissed with prejudice, each party to bear its own attorney fees and costs.

March 8, 2017

Respectfully submitted,

/s/ Anne L. Weismann
 (D.C. Bar No. 298190)
 Stuart C. McPhail
 (D.C. Bar No. 1032529)
 Citizens for Responsibility and
 Ethics in Washington
 455 Massachusetts Ave., N.W.
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Attorneys for Defendant

CASE NAME

STATUS

Stein
PEER
OCE I & II
Klamath
Judicial Watch 1
Judicial Watch 2
Friends Of Anima
Friends of Animal
CREW
Cause of Action
Sierra Club

(b) (5)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

**DEFENDANT'S COMBINED OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT, AND
REPLY IN FURTHER SUPPORT OF DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

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INTRODUCTION

Plaintiff Judicial Watch's primary argument in its opposition to the U.S. Department of Commerce's Motion for Summary Judgment, as well as the basis for its Cross-Motion, is that the National Oceanic and Atmospheric Administration ("NOAA") could not withhold *any* of the withheld and redacted material here because the deliberative process privilege does not apply to deliberations resulting in the publication of a scientific study, *Possible Artifacts of Data Biases in the Recent Global Surface Warming Hiatus* ("Hiatus Paper" or "the Paper"). Plaintiff's extraordinarily broad legal theory is foreclosed by binding precedent and misapplies the deliberative process privilege. Thus, it must be rejected.

Plaintiff's remaining arguments fare no better. It argues that the Court should disallow the deliberative process privilege because the withholdings shield alleged government misconduct. But Plaintiff's attempt in a Freedom of Information Act ("FOIA") case to invoke this rare exception to the deliberative process privilege is entirely without merit. Plaintiff has not tied any alleged misconduct to the withheld and redacted material here and has failed to demonstrate any type of government misconduct, let alone the type of extreme wrongdoing necessary to invoke this exception. Plaintiff's argument that NOAA has not produced all reasonably segregable information fails because NOAA has undertaken conscientious efforts to release all non-exempt information, has shown with reasonable specificity why any withheld or redacted records cannot be further segregated, and nothing points to the contrary. Finally, Plaintiff's request for *in camera review* reflects nothing more than an unwarranted fishing expedition that would waste the Court's valuable resources.

The Court should enter summary judgment on the U.S. Department of Commerce's behalf.

ARGUMENT

THE DEPARTMENT OF COMMERCE IS ENTITLED TO SUMMARY JUDGMENT

In its opposition brief, Plaintiff does not dispute the adequacy of NOAA's search or its withholdings pursuant to Exemption 6 to shield individuals' privacy interests. *See* Pl.'s Mem. Law Supp. Pl.'s Opp'n to Def.'s Mot. Summ. J. & Supp. Cross-Mot. Summ. J. ("Pl.'s Opp'n") at 2 n.1, ECF Nos. 21 & 22.¹ With respect to NOAA's assertion of the deliberative process privilege, Plaintiff does not challenge that the withheld material is intra- and inter-agency materials, nor does it challenge NOAA's determination that any specific withholdings are both predecisional and deliberative. Indeed, Plaintiff does not address NOAA's *Vaughn* index, and makes no specific objection to its supporting affidavits. Instead, Plaintiff argues that the deliberative process privilege cannot apply to deliberations among scientists and thus is inapplicable to any withholding here. And even if it did apply, Plaintiff argues, alleged government misconduct vitiates its application. Both arguments fail, as does Plaintiff's assertions that NOAA did not produce reasonably segregable information and that *in camera* review is warranted. This Court should deny Plaintiff's cross-motion and grant summary judgment to the Department of Commerce.

I. NOAA Appropriately Applied the Deliberative Process Privilege

Plaintiff makes a blanket legal argument that *none* of the material identified as protected by the deliberative process was properly withheld because "science is not policy" and that "the

¹ Pursuant to this Court's January 24, 2017 Minute Order, Plaintiff's combined cross-motion for summary judgment and opposition to the U.S. Department of Commerce's motion was due February 20, 2017. But Plaintiff failed to make its filing until February 22, 2017. Although Plaintiff has not yet asked, the U.S. Department of Commerce would not oppose a motion for extension of time *nunc pro tunc* to have Plaintiff's combined response and cross-motion be considered timely filed.

purpose of these communications and deliberations was to adequately and accurately publish scientific findings in a peer-review journal, not to create agency policy.” Pl.’s Opp’n at 10, 12. But Plaintiff’s argument is foreclosed by binding precedent that permits the withholding of this type of material in such a situation.

The D.C. Circuit has already held that the sort of deliberations withheld here qualify for the deliberative process privilege. In *Formaldehyde v. Department of Health & Human Services*—which NOAA cited in its opening brief but Plaintiff entirely ignores—the court shielded peer review comments evaluating a scientific report about the effects of formaldehyde that were used by the agency in development of a document for potential publication in a peer-review journal. Such comments were held to be both “predecisional because [they] preceded the agency’s decision whether and in what form to publish” the paper and were part of the agency’s deliberative process “because the agency secured review commentary in order to make that decision.” 889 F.2d 1118, 1120, 1123-25 (D.C. Cir. 1989). Thus, “[t]he D.C. Circuit has found that where a plaintiff requests records of correspondence surrounding or leading up to an agency publication,” as Plaintiff did here, “the relevant agency decision for purposes of applying the deliberative process privilege is the decision to publish.” See *Hooker v. U.S. Dep’t of Health & Human Servs.*, 887 F. Supp. 2d 40, 57 (D.D.C. 2012), *aff’d*, No. 13-5280, 2014 WL 3014213 (D.C. Cir. May 13, 2014). As such, courts repeatedly protect deliberative material used to assist an agency in drafting a final publication or report. In *Hooker*, for example, where the plaintiff sought all correspondence among agency researchers regarding the publication of a study regarding vaccines and occurrences of autism in a nongovernmental journal, the court protected a draft manuscript and reviewer comments, as well as communications discussing a draft, the underlying analysis, a pending study, and potential publication. 887 F. Supp. 2d at 48, 57-59;

see also Cleary, Gottlieb, Steen & Hamilton v. Dep't of Health & Human Servs., 844 F. Supp. 770, 782-83 (D.D.C. 1993) (shielding draft manuscript of a statistical analysis of impurities of an amino acid that was created for the candid review and discussion among colleagues, as well software created in conjunction with study that was “designed to manipulate a set of data in a certain way”). That the final report is “factual” is immaterial; the give-and-take of the agency personnel in crafting such reports has long been protected. *See, e.g., Nat'l Sec. Archive v. CIA*, 752 F.3d 460, 465 (D.C. Cir. 2014) (protecting draft manuscript of history of Bay of Pigs operation); *Dudman Commc'ns Corp. v. Dep't of Air Force*, 815 F.2d 1565, 1568-59 (D.C. Cir. 1987) (protecting draft manuscript of history of Air Force in South Vietnam between 1961 and 1964); *Russell v. Dep't of Air Force*, 682 F.2d 1045, 1048 (D.C. Cir. 1982) (withholding draft manuscript concerning history of herbicide use in Vietnam conflict).

NOAA's withholdings here fall squarely in line with this precedent and are equally appropriate. NOAA's mission is, in part, “[t]o understand and predict changes in climate,” and “[t]o share that knowledge and information with others” “for use by public, private, and academic sectors.” National Oceanic and Atmospheric Administration, *Our Mission and Vision*, <http://www.noaa.gov/our-mission-and-vision>. To further this mission, NOAA's National Centers for Environmental Information (“NCEI”) acts as the “Nation's Scorekeeper” regarding climate trends, Graff Decl. ¶ 4, ECF No. 16-1, and NCEI scientists regularly interpret and analyze datasets for public use, often via publication in scientific journals. *See* Graff Decl. ¶ 7; *see also* National Centers for Environmental Information, *Current Publications*, <https://www.ncdc.noaa.gov/climate-information/science-papers-and-publications/current-publications> (listing recent NCEI papers and publications in third-party journals). The Hiatus Paper is one example of agency scientists advancing NOAA's mission by understanding the

most up-to-date climate science and publishing that information for the public’s benefit. *See* Graff Decl. ¶ 8; *see also* National Oceanic and Atmospheric Administration, *Science Publishes New NOAA Analysis: Data Show No Recent Slowdown in Global Warming*, <http://www.noaanews.noaa.gov/stories2015/noaa-analysis-journal-science-no-slowdown-in-global-warming-in-recent-years.html> (press release for the Hiatus Paper informing the public that “*Science* publishe[d] [a] new NOAA analysis”). The information withheld here clearly meets the requirements for the deliberative process privilege: it is intra- or inter-agency, predates the publishing of the Paper, and reflects agency officials’ give-and-take as to how best to further NOAA’s mission of understanding climatic events and conveying that knowledge to the public. *See* Mem. P. & A. Supp. Def’s Mot. Summ. J. at 8-20, ECF No. 16. And shielding this information will plainly serve the three policy bases for the privilege—protecting “creative debate and candid consideration of alternatives within an agency,” “the public from the confusion that would result from premature exposure,” and “the integrity of the decision-making process.” *Russell*, 682 F.2d at 1048; *see* Spinrad Decl. ¶¶ 20-26, ECF No. 16-4 (explaining necessity of confidentiality and risk of chilling candid discussions, which is “particularly high” in area of climate research and analysis, and the “risk that the public may become confused by preliminary or incomplete information” is “somewhat elevated” in climate science context); Graff Decl. ¶¶ 50-58, 64-65 (describing material and explaining that release risks “inhibit[ing] candid internal discussions” and “misconstruing or taking out of context” information). Courts have routinely recognized this. *See, e.g., Formaldehyde*, 889 F.2d at 1120 (“Releasing [requested] materials . . . could seriously hamper the efforts of CDC to fulfill its clear Congressional mandate to conduct and publish scientific research for the public benefit.”); *Hooker*, 887 F. Supp. 2d at 59 (finding release of internal discussions and recommendations of

employees and consultants “about which research findings and data to include would undermine the purposes to be served by the exemption.”); *Cleary*, 844 F. Supp. at 782 (“From a policy perspective . . . the disclosure of such draft documents would undercut the openness of decision-making embodied by Exemption 5.”).

Yet, according to Plaintiff, the agency’s determination as to whether and in what form to publish the Hiatus Paper was somehow not related to “policy” and thus the deliberative process privilege cannot apply. Of course, this argument is foreclosed by the precedent highlighted above that demonstrates that NOAA’s development of a scientific product to carry out its mission entails precisely the type of development of an agency position or “policy” encompassed by the privilege. In any event, Plaintiff’s cramped reading of “policy”—which it declines to define but appears to equate with an agency creating rules or law, *see* Pl.’s Opp’n at 9 (“Policy deliberations consider theoretical opinions and ideas molded into creating a rule or law.”)—hinges on a misunderstanding of the deliberative process privilege.

The deliberative process privilege applies to “decisionmaking of executive officials generally,” and protects documents containing deliberations that are part of the process by which government decisions are formulated. *In re Sealed Case*, 121 F.3d 729, 737, 745 (D.C. Cir. 1997). “Significantly . . . the privilege serves to protect the processes by which ‘governmental decisions’ as well as ‘policies’ are formulated.” *In re Apollo Grp., Inc. Sec. Litig.*, 251 F.R.D. 12, 29 (D.D.C. 2008). As the 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), “[t]he fact that the decision-making activity d[oes] not relate to a particular . . . policy decision does not remove the documents from the protection of [the deliberative process privilege],” *Shurtleff v. U.S. EPA*, 991 F. Supp. 2d 1, 14 (D.D.C. 2013). Courts therefore routinely apply the privilege to decisions that

do not create “rules or law,” *e.g.*, *Judicial Watch, Inc. v. Consumer Fin. Prot. Bureau* (“CFPB”), 60 F. Supp. 3d 1, 9 (D.D.C. 2014) (“Internal communications regarding how to respond to media and Congressional inquiries have repeatedly been held to be protected under the deliberative process privilege.”), and reject arguments like Plaintiff’s that documents are somehow not sufficiently tied to agency “policy,” *e.g.*, *Formaldehyde*, 889 F.2d at 1123 (rejecting argument “that HHS was unable to state any policy decision that is the subject of deliberation”); *Hinckley v. United States*, 140 F.3d 277, 284 (D.C. Cir. 1998) (“[T]his court has applied the deliberative process privilege to protect materials that concern individualized decisionmaking, rather than the development of generally applicable policy.”); *Russell*, 682 F.2d at 1049 n.2 (rejecting argument that “the deliberative process privilege is intended to protect decisionmaking concerning legal or policy matters in the context of an agency’s exercise of rulemaking, adjudication, awarding of contracts or grants, or decisions involving health, safety or foreign affairs” because “there is nothing in the case law or legislative history that indicates the privilege is so limited, and appellants fail to give a reason why it should be so confined”); *Mead Data Cent., Inc. v. U.S. Dep’t of Air Force*, 575 F.2d 932, 935 (D.C. Cir. 1978) (“While [plaintiff] correctly notes that the end product of these Air Force deliberations . . . is not a ‘broad policy’ decision, that deliberation is nonetheless a type of decisional process that [the deliberative process privilege] seeks to protect from undue public exposure.”); *Nat’l Wildlife Fed’n v. U.S. Forest Serv.*, 861 F.2d 1114, 1117–18 (9th Cir. 1988) (rejecting plaintiff’s argument that a document must contain recommendations on law or policy to qualify for privilege).

Plaintiff fails to cite a single decision holding that documents tied to only certain agency “rules or laws”—or other unspecified “policies”—qualify for the deliberative process privilege. The cases it cites for this purported requirement instead simply found the privilege inapplicable

for picayune factual material that do reflect the give-and-take of the deliberative process among agency personnel. See, e.g., *Petroleum Info. Corp. v. U.S. Dep't of Interior*, 976 F.2d 1433, 1437 (D.C. Cir. 1992) (“essentially technical and facilitative” task of “organiz[ing] public records in a more manageable form”);² *Playboy Enters., Inc. v. Dep't of Justice*, 677 F.2d 931, 935-36 (D.C. Cir. 1982) (factual material that did not reflect agency’s deliberative process and was not intertwined with the policymaking process of the decisionmaker); *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 868 (D.C. Cir. 1980) (“opinion about the applicability of existing policy to a certain state of facts, like examples in a manual”); *Hennessey v. U.S. Agency for Int'l Dev.*, No. 97-1133, 1997 WL 537998, at *4-*5 (4th Cir. Sept. 2, 1997) (per curiam) (a final report that was drafted with intent to be shared with plaintiff and was “almost entirely factual in nature” and used for “a garden variety construction scheduling dispute”—a “minor issue [that is] essentially technical and facilitative”); *Ethyl Corp. v. U.S. EPA*, 25 F.3d 1241, 1249 (4th Cir. 1994) (“summaries or graphical representations of purely statistical data” without

² Plaintiff’s citation to *Petroleum Information Corp.* only undermines its cause. That case recognized that “[t]h[e] privilege shelters ‘documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which *governmental decisions and policies* are formulated.’” (emphasis added) (quoting *NLRB*, 421 U.S. at 150). In explaining that factual information must generally be disclosed, it described the privilege as protecting the process by which “policy” is formulated, and went on explain that “[i]nquiring whether the requested materials can reasonably be said to embody an agency’s policy-informed or -informing judgmental process . . . helps us answer the ‘key question’ . . . : whether disclosure would tend to diminish candor within the agency,” as well as appropriately containing the exemption within its “proper scope” of protecting “agency judgments” and not, “for example, materials relating to standard or routine computations or measurements over which the agency has no significant discretion.” See 976 F.2d at 1435-36 (citation omitted). The un rebutted record here establishes that disclosure would inhibit candor within the agency, and the development, publication, and promotion of the Hiatus Paper cannot be considered on par with “routine computations” over which the agency lacks discretion. See *id.* at 1436 & n.8 (“To be protected under Exemption 5, the kind and scope of discretion involved must be of such significance that disclosure genuinely could be thought likely to diminish the candor of agency deliberations in the future.”).

explanation as to deliberative character). NOAA already explained that “[t]o the extent the redacted or withheld information contains some factual material, the authors’ selection and presentation of that factual material reflects the agency’s deliberative process.” Graff Decl. ¶ 65; *see also, e.g.*, Ex. 1 to Graff Decl. (“*Vaughn* index”) at part 1 Bates 37, ECF No. 16-2 (“NOAA scientist discussing *proposed* data analysis and *potential* research methods”) (emphases added). Thus, Plaintiff’s cited cases lack applicability here. *See, e.g., Hooker*, 887 F. Supp. 2d at 58 (“While the document here included some discussion of factual matters, such as test results and which tests should be run again, they involve deliberation and discussion about the data, not mere summaries.”); *Goodrich Corp. v. U.S. EPA*, 593 F. Supp. 2d 184, 189 (D.D.C. 2009) (shielding draft groundwater flow model because “evolving iterations” may not represent agency’s “ultimate opinion” and “even if the data plugged into the model is itself purely factual, the selection and calibration of data is part of the deliberative process to which Exemption 5 applies”).

Because Plaintiff’s argument is foreclosed by precedent, as well as the scope of the of the deliberative process privilege itself, the Court should deny Plaintiff’s cross-motion and hold that the withheld material is protected.³

³ NOAA previously explained how other items, such as drafts of the Paper and its supporting materials, as well as communications reflecting the development of a communications plan and press release in preparation for publication of the Paper fell within the deliberative process privilege, as did as communications among scientists regarding potential scientific inquiries. *See* Mem. P. & A. Supp. Def.’s Mot. Summ. J. at 11-14 & n.4, n.5. Plaintiff does not separately address this material. For the reasons stated in the U.S. Department of Commerce’s opening motion and supporting memorandum, as well as for the reasons stated herein, this information is also exempt from production.

II. No Misconduct Defeats the Privilege

Plaintiff next asserts that the privilege should nevertheless be defeated because of alleged government misconduct.⁴ Plaintiff's argument fails on at least two levels. First, as the *Vaughn* index and supporting declarations in this case amply demonstrate, there is no evidence that the withheld material here relates to or reflects any alleged misconduct, and the information withheld involves core predecisional and deliberative discussions. Indeed, Plaintiff makes *no* attempt to link a *single* withheld or redacted document to the misconduct it alleges. And second, the government-misconduct exception, to the extent it even applies to FOIA, is exceptionally rare and reserved for conduct bearing no resemblance to Plaintiff's allegations.

“Under the government-misconduct exception to the deliberative-process privilege, ‘where there is reason to believe the documents sought may shed light on government misconduct, the privilege is routinely denied, on the grounds that shielding internal government deliberations in this context does not serve the public’s interest in honest, effective government.’” *Nat’l Whistleblower Ctr. v. HHS*, 903 F. Supp. 2d 59, 66 (D.D.C. 2012) (quoting *In re Sealed Case*, 121 F.3d at 738). Although the D.C. Circuit has never recognized a misconduct exception to Exemption 5, certain courts in this district have found that FOIA plaintiffs may, in rare instances, invoke the government-misconduct exception to overcome Exemption 5. *See, e.g., id.* at 66-68 (summarizing district court cases); *ICM Registry, LLC v.*

⁴ Plaintiff is apparently shopping this argument around the courthouse, *see Judicial Watch v. U.S. Dep’t of State*, Civil Action No. 1:15-cv-692, ECF Nos. 43 & 46 (D.D.C.) (APM); *Judicial Watch v. Dep’t of State*, Civil Action No. 1:14-cv-1511, ECF Nos. 34 & 40 (D.D.C.) (ABJ), and thus far without success, *see Judicial Watch, Inc. v. United States Dep’t of State*, No. CV 15-687 (JEB), -- F. Supp. 3d -- 2017 WL 680371, at *3-4 (D.D.C. Feb. 21, 2017) (rejecting government-misconduct argument).

U.S. Dep't of Commerce, 538 F. Supp. 2d 130, 133 (D.D.C. 2008); *see also Hall & Associates v. U.S. EPA*, 14 F. Supp. 3d 1, 9 (D.D.C. 2014) (noting that “other courts have not been entirely consistent in applying the government-misconduct exception to FOIA cases” and declining to do so because “Plaintiff’s argument would not succeed even if the exception did apply”). But in doing so, these district courts have emphasized the narrowness of that exception, both in the FOIA and discovery contexts, limiting the exception to “extreme government wrongdoing.” *Nat’l Whistleblower Ctr.*, 903 F. Supp. 2d at 68 (quoting *ICM Registry*, 538 F. Supp. 2d at 133); *Thompson v. U.S. Dep’t of Justice*, 146 F. Supp. 3d 72, 87 (D.D.C. 2015) (government-misconduct exception applies “only in cases of extreme government wrongdoing”).

Courts must apply the exception narrowly, otherwise “the exception would swallow the rule.” *Nat’l Whistleblower Ctr.*, 903 F. Supp. 2d at 69. For this reason, Courts have applied the exception only in “rare cases” where the discussions for which protection was sought “were so out of bounds that merely discussing them was evidence of a serious breach of the responsibilities of representative government.” *ICM Registry*, 538 F. Supp. 2d at 133 (declining to apply misconduct exception where plaintiff alleged that agency’s deliberations concerned a policy outside the scope of the agency’s responsibility). Thus, it is only when “[t]he very discussion . . . was an act of government misconduct” that “the deliberative process privilege disappeared.” *Id.*⁵

⁵ The court in *ICM Registry*, cited two cases to explain what falls within “extreme government wrongdoing:” *Alexander v. FBI*, 186 F.R.D. 154, 164 (D.D.C. 1999), in which the court held the deliberative process privilege did not protect a document that suggested a cover-up regarding alleged misuse of a government personnel file; and *Tax Reform Research Group v. IRS*, 419 F. Supp. 415, 426 (D.D.C. 1976), where the court held the privilege did not apply to documents concerning government recommendations to improperly use the powers of the IRS against “enemies” of the Nixon administration.

Other courts have used the word “nefarious” to describe the kind of conduct giving rise to the exception. *ICM Registry*, 538 F. Supp. 2d at 134 (citing *In re Subpoena Duces Tecum Served on Office of Comptroller of Currency*, 145 F.3d 1422, 1425, n.2 (D.C. Cir. 1998); *Enviro Tech Int’l, Inc. v. U.S. EPA*, 371 F.3d 370, 376-77 (7th Cir. 2004) (refusing to apply misconduct exception to a case where the EPA was debating a worker exposure standard for a harmful chemical that was properly a matter for OSHA)). Indeed, even a showing that the government has violated a statute does not rise, on its own, to the level of “misconduct” necessary to create an exception. *In re Subpoena Duces Tecum*, 145 F.3d at 1425, n.2 (“misconduct” does not apply where an agency allegedly violated a statute where proving violation requires a showing of intent but not a showing of bad faith). Absent a showing that mere *consideration* of the policy at issue was outside an agency’s purview, or that an agency had “nefarious purposes,” the action is not misconduct within the meaning of the exception to the deliberative process privilege. *ICM Registry*, 538 F. Supp. 2d at 133.

Plaintiff bears the burden to provide a “discrete factual basis” for believing that information withheld under the deliberative process privilege could shed light on government misconduct. *Judicial Watch of Fla., Inc. v. U.S. Dep’t of Justice*, 102 F. Supp. 2d 6, 15-16 (D.D.C. 2000) (rejecting argument “that the burden is upon the government to prove a negative, i.e., to prove in the first instance that a document does *not* reveal any government misconduct”); *Nat’l Whistleblower*, 903 F. Supp. 2d at 67 (“[t]he party seeking release of withheld documents under this exception must ‘provide an adequate basis for believing that [the documents] would shed light upon government misconduct.’”) (alteration in original) (quoting *Judicial Watch of Fla., Inc.*, 102 F. Supp. 2d at 15). Plaintiff must show more than evidence of a “disagreement within the governmental entity at some point in the decisionmaking process” to invoke the

misconduct exception. *Hinckley*, 140 F.3d at 285-86 (finding that a review board’s overruling of a unanimous decision by a patient’s treatment team did not evince “improper motivations”); *see also Convertino v. U.S. Dep’t of Justice*, 674 F. Supp. 2d 97, 105 (D.D.C. 2009) (“Plaintiff must provide enough reason to believe misconduct took place.”). In fact, the deliberative process privilege exists precisely to permit the type of debate and inevitable disagreement that is crucial to ensuring informed decision making. *See Schell v. HHS*, 843 F.2d 933, 942 (6th Cir. 1988) (“It is the free flow of advice, rather than the value of any particular piece of information, that Exemption 5 seeks to protect.”).

Even though the burden rests with Plaintiff and “[t]here must be at least some connection between the government misconduct and the documents for the privilege to yield,” *Convertino*, 674 F. Supp. 2d at 104, Plaintiff does not even attempt to show a nexus between the withheld information and any alleged misconduct. Instead, Plaintiff parrots accusations made in a British website that NCEI datasets were “unverified” and “not subject to rigorous internal evaluation process.” Pl.’s Opp’n at 13.⁶ But the FOIA request—and the withheld material—do not cover the promulgation, development, and maintenance of the underlying datasets, but instead pertain to the development of the Hiatus Paper. Although some of those records involve analysis and interpretation of the underlying data, they do so in the context of drafting the Paper. *See Graff Decl.* ¶¶ 5, 7-8; *see also, e.g., Vaughn* index at part 1 Bates 6 (“NOAA scientist sharing draft

⁶ Plaintiff apparently incorrectly attributes to the cited article the accusation that the Hiatus Paper “was never subject to NOAA’s ‘rigorous internal evaluation process.’” *See* Pl.’s Opp’n at 13 (citing Plaintiff’s statement of facts). But that statement in the article alleges that the underlying data—not the Paper—was not subjected to NOAA’s internal evaluation process. *See* David Rose, *Exposed: How World Leaders Were Duped into Investing Billions over Manipulated Global Warming Data*, Daily Mail (Feb. 4, 2017 17:57 EDT), <http://www.dailymail.co.uk/sciencetech/article-4192182/World-leaders-duped-manipulated-global-warming-data.html>.

data analysis, based on scientist discussions, for development of the paper with other scientists.”). Plaintiff’s allegations are therefore outside of the scope of this FOIA request and the litigation. Indeed, Plaintiff does not identify a single document or *Vaughn* entry that purportedly reflects any impropriety with NOAA’s underlying datasets (or any other alleged misconduct). Thus, Plaintiff has plainly failed to carry its burden to show that the challenged documents would shed light on any alleged misconduct. See *Judicial Watch of Fla.*, 102 F. Supp. 2d at 15-16 (rejecting government-misconduct exception because plaintiff “ma[de] no attempt to provide evidence suggesting [that the withheld material] would reveal [the alleged] misconduct”); *Thompson*, 146 F. Supp. 3d at 87 (rejecting government-misconduct exception because handful of cases alleging that black individuals were wiretapped does not provide an adequate basis to believe that withheld information would shed light on alleged misconduct of conspiracy to conceal wiretapping of black individuals in certain district).⁷

Not only does Plaintiff fail to tie the withheld information to any misconduct, Plaintiff fails to allege any relevant government misconduct. It points to allegations of unverified datasets. But it is the *analysis* of those underlying datasets for developing the Hiatus Paper that is at issue here. Although analysis of allegedly unverified data may yield ineffective results, such analysis is not “misconduct.” And even if were, it would fail to reach the level of “nefarious” or “extreme” government wrongdoing to justify abandoning the deliberative process privilege. Although Plaintiff posits that “[t]he misconduct here is arguably more nefarious and extreme” than in *Tax Reform Research Group v. IRS*, there is no comparison. There, the court

⁷ Plaintiff also alleges that “NOAA refus[ed] to comply with Representative Smith’s congressional subpoena,” which purportedly supports applying the government-misconduct exception here. Pl.’s Opp’n at 14. This vague allegation is irrelevant and does nothing to show that the documents at issue here reflect government misconduct.

held the privilege did not apply to documents concerning government recommendations to improperly use the powers of the IRS against “enemies” of the Nixon administration. 419 F. Supp. 415, 426 (D.D.C. 1976). Here, Plaintiff cites an article alleging that the processing of NCEI datasets did not follow agency protocol. These allegations in no way amount to “the sort of ‘extreme government wrongdoing’ that would prevent Defendant from invoking the deliberative-process privilege here,” *Nat’l Whistleblower Ctr.*, 903 F. Supp. 2d at 68, and expanding the definition of misconduct in such a novel way would, if adopted, allow “the exception [to] swallow the rule,” destroying the deliberative process privilege, *id.*

Thus, Plaintiff’s government-misconduct argument fails and the deliberative process privilege applies.

III. NOAA Produced All Reasonably Segregable Information to Plaintiff

Plaintiff also asserts that NOAA’s declaration is too conclusory to support its assertion that the withheld information is not segregable. Pl.’s Opp’n at 15. As an initial matter, NOAA is “entitled to a presumption that [it] complied with the obligation to disclose reasonably segregable material.” *Sussman v. U.S. Marshals Serv.*, 494 F.3d 1106, 1117 (D.C. Cir. 2007). And Plaintiff’s contention lacks merit because NOAA has shown “with reasonable specificity” why any withheld or redacted records cannot be further segregated. *See Brown v. U.S. Dep’t of Justice*, 734 F. Supp. 2d 99, 110 (D.D.C. 2010).

NOAA’s declaration adequately avers that that all reasonably segregable material has been released. NOAA’s declarant explains that he read the *Vaughn* index, reviewed the documents referenced therein, and determined that the redacted material falls within the applicable FOIA exemption. Graff Decl. ¶ 45. He then describes the different categories of withheld deliberative material and what those categories encompassed, *id.* ¶¶ 51-55, and explains

that “[d]isclosure of any of this information that is pre-decisional and deliberative would inhibit candid internal discussions and expressions,” *id.* ¶ 64. NOAA’s detailed *Vaughn* index further accounts for all withheld and redacted information and illustrates how that information reflects predecisional and deliberative information. *See generally Vaughn* index. “To the extent the redacted or withheld information contains some factual material,” NOAA’s declarant explains that “the authors’ selection and presentation of that factual material reflects the agency’s deliberative process.” Graff Decl. ¶ 65. Thus, NOAA “reasonably concluded that there was no additional non-exempt, responsive information that could be reasonably segregated and released to the plaintiff.” *Id.* ¶ 67. *See Loving v. Dep’t of Def.*, 550 F.3d 32, 41 (D.C. Cir. 2008) (stating that “the description of the document set forth in the *Vaughn* index and the agency’s declaration that it released all segregable material” is “sufficient for [the segregability] determination”); *Brown*, 734 F. Supp. 2d at 110 (declaration was adequate that, *inter alia*, stated that “after extensive review of the documents at issue, I have determined that there is no further reasonably segregable information to be released”); *Blackwell v. FBI*, 680 F.Supp.2d 79, 96 (D.D.C. 2010) (holding agency satisfied segregability requirement where its declaration explained that “documents were processed to achieve maximum disclosure” and “further disclosure or attempt to describe information withheld would identify information protected by on[e] of the FOIA exemptions”).

NOAA’s conscientious efforts at segregation are further demonstrated by the multiple productions made to Plaintiff. On top of the 102 pages of material that NOAA initially released to Plaintiff without any redactions, Graff Decl. ¶ 29, “because of the further segregation and responsiveness review,” Graff Decl. ¶ 32, NOAA made a supplemental production in September of an additional 44 pages of material (7 of which were partially redacted), and another

production in December of 62 records, Graff Decl. ¶¶ 30-31. *See Mead Data Cent., Inc. v. U.S. Dep't of Air Force*, 566 F.2d 242, 262 n.59 (D.C. Cir. 1977) (agency had dealt with FOIA request “in a conscientious manner” where it disclosed much material, released additional material as the result of an administrative appeal, and came forward with newly discovered documents as located); *Citizens for Responsibility & Ethics in Wash. v. U.S. Dep't of Justice*, 160 F. Supp. 3d 226, 245 (D.D.C. 2016) (finding segregability adequate where agency “provided a detailed Vaughn index and an affidavit asserting that each responsive document was re-reviewed for segregability”); *Judicial Watch, Inc. v. U.S. Dep't of Justice*, No. 01-639, 2006 WL 2038513, at *5-7 (D.D.C. July 19, 2006) (rejecting plaintiff’s segregability claim where agency submitted a declaration which declared that “all reasonably segregable information has been disclosed” and released further information after a second review of withheld material). Moreover, NOAA’s efforts are exemplified by its disclosure to Plaintiff of over 100 records that were redacted only in part. *See Fischer v. U.S. Dep't of Justice*, 723 F. Supp. 2d 104, 114 (D.D.C. 2010) (“Defendant’s conscientious efforts at segregation are manifest by the agency’s disclosure to plaintiff of 1,108 partially redacted pages of records, compared with only 48 pages withheld in full.”).

To the extent that any doubt remains, NOAA’s declaration attached hereto removes it entirely. That declaration explains that NOAA carefully reviewed each document individually to identify non-exempt information that could be reasonably segregated from exempt information for release and has implemented segregation where possible. Second Graff Decl. ¶ 7 (attached hereto). Any remaining responsive material that was withheld was done so because it was intertwined with this information and segregating it would drain finite resources only to produce disjointed words, phrases, or sentences, that taken separately or together, would have minimal or

no informational content. *Id.* ¶¶ 8-9. Thus, all segregable information has been released to Plaintiff. *Id.* ¶ 7. *See DiBacco v. U.S. Dep't of Army*, 983 F. Supp. 2d 44, 65–66 (D.D.C. 2013) (finding that agency met segregability requirement when it performed document-by-document review and plaintiffs offered no evidence to rebut the assertion that it produced all reasonably segregable material), *aff'd in part, remanded in part sub nom. DiBacco v. U.S. Army*, 795 F.3d 178 (D.C. Cir. 2015).

There is no indication that NOAA has acted in bad faith in segregating and releasing nonexempt information in the records released to Plaintiff, and there is no reason to disregard NOAA's statement that all reasonably segregable non-exempt material has been released. *See Brown*, 734 F. Supp. 2d at 111 (finding “no indication that the [agency] has acted in bad faith in segregating and releasing nonexempt information” and “no reason to disregard [the agency's] statement that all reasonably segregable non-exempt material has been released”); *see also Mead Data Cent., Inc.*, 566 F.2d at 261 n.55 (An agency need not “commit significant time and resources to the separation of disjointed words, phrases, or even sentences which taken separately or together have minimal or no information content.”); *Schoenman v. FBI*, 841 F. Supp. 2d 69, 84 (D.D.C. 2012) (same). NOAA has therefore produced all non-exempt, “reasonably segregable portion[s]” of the responsive records. 5 U.S.C. § 552(b), and its segregability analysis should be upheld.⁸

⁸ As illustrated through its productions, declarations, and *Vaughn* index, NOAA has supported its segregability analysis with far more than the insufficient records before the courts in decisions highlighted by Plaintiff. For example, in *Dorsett v. U.S. Department of Treasury*, 307 F. Supp. 2d 28, 41 (D.D.C. 2004), the *Vaughn* was not sufficiently detailed and the affidavit simply stated that agency released all segregable material to plaintiff and further efforts at segregation would provide little information or would be unduly burdensome. And in *Animal Legal Defense Fund v. Department of Air Force*, 44 F. Supp. 2d 295, 301 (D.D.C. 1999), the court found the declarant's “unsophisticated parroting of FOIA's statutory language [to be] patently insufficient.”

IV. *In Camera* Review Is Not Warranted

Plaintiff argues that the Court should conduct an *in camera* review “to determine the appropriateness of Defendant[’s] asserted claims of deliberative process privilege.” Pl.’s Opp’n at 16. But “[i]n camera, ex parte review, though permitted under FOIA and sometimes necessary, is generally disfavored . . . ,” and “should be invoked only when the issue at hand could not be otherwise resolved.” *Schiller v. NLRB*, 964 F.2d 1205, 1209 (D.C. Cir. 1992) (citation omitted), *abrogated on other grounds by Milner v Dep’t of Navy*, 562 U.S. 562 (2011); *Ray v. Turner*, 587 F.2d 1187, 1195 (D.C. Cir. 1978) (“In camera inspection requires effort and resources and therefore a court should not resort to it routinely on the theory that ‘it can’t hurt.’”). The court can resolve the issues here by reviewing the parties’ briefs as well as NOAA’s *Vaughn* index and its supporting declarations. As such, *in camera* review is not warranted.

With respect to decisions to review documents in FOIA cases, courts “look to such factors as evidence of bad faith and the detail used in the *Vaughn* index and affidavit to describe the contents of the documents.” *Ctr. for Auto Safety v. EPA*, 731 F.2d 16, 21 (D.C. Cir. 1984). Here, no evidence shows bad faith, nor is there any indication that the agency intended to impede a probe into its practices, as Plaintiff suggests. *See* Pl.’s Opp’n at 16. And although Plaintiff broadly asserts the agency’s declarations are “insufficiently detailed,” Pl.’s Opp’n at 16, it fails to explain how so. *See generally* Pl.’s Opp’n. Plaintiff in no way meaningful way challenges the *Vaughn* index or declaration’s description of the withheld material, both of which provide as much detail about the content of the withheld information as possible without revealing the information itself, and those descriptions are sufficient to justify the claimed exemptions. *See Ctr. for Auto Safety*, 731 F.2d at 22. *In camera* review is therefore neither necessary nor

appropriate. *See Canning v. U.S. Dep't of State*, 134 F. Supp. 3d 490, 502 (D.D.C. 2015) (“*In camera* review is a last resort, not a fishing expedition.”) (citations omitted). Indeed, if the mere possibility “that some bits of non-exempt material may be found among exempt material even after a thorough agency evaluation” is “enough automatically to trigger an *in camera* investigation, one will be required in every FOIA case.” *See Ctr. for Auto Safety*, 731 F.2d at 21-22. “This is clearly not what Congress intended,” *id.*, nor is it necessary here.

CONCLUSION

For all the foregoing reasons, as well as the reasons set forth in the U.S. Department of Commerce’s Motion for Summary Judgment and accompanying Memorandum of Points and Authorities in Support, the U.S. Department of Commerce respectfully requests that summary judgment be entered in its favor, and that Plaintiff’s cross-motion be denied.⁹

Dated: March 17, 2017

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

ELIZABETH J. SHAPIRO
Deputy Director, Federal Programs Branch

/s/ Kevin M. Snell
KEVIN M. SNELL
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⁹ Plaintiff also mistakenly charges that the U.S. Department of Commerce’s Statement of Material Facts Not in Dispute “contains an improper mix of fact and legal conclusions.” Pl.’s Resp. Statement of Material Facts at 1-2. Plaintiff fails to point to any such assertion, and none exist. Moreover, the circumstances present in the cases it cites bear no resemblance to the material here.

Counsel for Defendant

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

**DEFENDANT’S RESPONSES TO PLAINTIFF’S STATEMENT OF MATERIAL
FACTS NOT IN DISPUTE**

Pursuant to Local Rule 7(h) of the Civil Rules of the U.S. District Court for the District of Columbia, Defendant U.S. Department of Commerce (“DOC”) responds, by and through undersigned counsel, as follows to Plaintiff’s Statement of Material Facts Not in Dispute.

Plaintiff’s numbered statements are reproduced below, each followed by Defendants’ response.

1. On February 4, 2016, counsel for NOAA contacted Plaintiff to discuss the request.

Response: Undisputed.

2. Following review of the draft *Vaughn* index, Plaintiff narrowed the issues and specific records it was challenging and informed Defendant it was challenging the documents withheld under Exemptions 5 and 6 and the adequacy of the search.

Response: Undisputed, except for any assertion that Plaintiff narrowed its challenges to DOC’s withholdings after receiving the draft *Vaughn* index.

3. On February 4, 2017, David Rose from Britain’s Mail on Sunday column on the DailyMail.com blog website published an article entitled: Exposed: How World Leaders Were

Duped Into Investing Billions Over Manipulated Global Warming Data. The article can be found on the DailyMail.com website at: <http://www.dailymail.co.uk/sciencetech/article-4192182/World-leaders-duped-manipulated-global-warming-data.html>.

Response: Plaintiff's statement consists of a description of an article on a website. DOC respectfully directs the Court to the referenced article for a complete and accurate statement of the article's contents and denies any description inconsistent with that article.

4. The article reported that a high level whistleblower from NOAA, Dr. John J. Bates, former NOAA scientist had evidence that the Karl Study "was based on misleading, 'unverified' data."

Response: Plaintiff's statement consists of a description of an article on a website. DOC respectfully directs the Court to the referenced article for a complete and accurate statement of the article's contents and denies any description inconsistent with that article.

5. The article reports the Karl Study was never subject to NOAA's "rigorous internal evaluation process."

Response: Plaintiff's statement consists of a description of an article on a website. DOC respectfully directs the Court to the referenced article for a complete and accurate statement of the article's contents and denies any description inconsistent with that article.

6. Dr. Bates accused Tom Karl of "insisting on decisions and scientific choices that maximized warming and minimized documentation...in an effort to discredit the notion of a global warming pause, rushed so that he could time publication to influence national and international deliberations on climate policy."

Response: Plaintiff’s statement consists of a description of an article on a website. DOC respectfully directs the Court to the referenced article for a complete and accurate statement of the article’s contents and denies any description inconsistent with that article.

7. The article reports it learnt [sic] “that NOAA has now decided that the sea dataset [used in the study] will have to be replaced and substantially revised just 18 months after it was issued, because it used unreliable methods which overstated the speed of warming.”

Response: Plaintiff’s statement consists of a description of an article on a website. DOC respectfully directs the Court to the referenced article for a complete and accurate statement of the article’s contents and denies any description inconsistent with that article.

8. Additionally, “The land temperature dataset used by the study was afflicted by devastating bugs in its software that rendered its findings ‘unstable.’”

Response: Plaintiff’s statement consists of a description of an article on a website. DOC respectfully directs the Court to the referenced article for a complete and accurate statement of the article’s contents and denies any description inconsistent with that article.

9. The article reports that the Karl Study specifically set out to investigate and formulate a conclusion regarding the “pause” or “slowdown” in global warming as reported by the Intergovernmental Panel on Climate Change (“IPCC”).

Response: Plaintiff’s statement consists of a description of an article on a website. DOC respectfully directs the Court to the referenced article for a complete and accurate statement of the article’s contents and denies any description inconsistent with that article.

10. The article reports that the Karl Study claimed that the ‘pause’ or ‘slowdown’ in global warming reported in the IPCC report never existed.

Response: Plaintiff’s statement consists of a description of an article on a website. DOC respectfully directs the Court to the referenced article for a complete and accurate statement of the article’s contents and denies any description inconsistent with that article.

11. Following publication of the Karl Study, Congressman Lamar Smith, Chairman of the House Committee on Science, Space, and Technology Committee, issued a subpoena requesting communications and documents related to the Karl Study.

Response: DOC is not required to respond to the statements in paragraph 11 of Plaintiff’s Statement of Material Facts because the alleged facts, regardless of whether true, are not material to the resolution of Plaintiff’s Motion for Summary Judgment in this Freedom of Information Act (“FOIA”) case. “Material facts” are those facts which, under the governing substantive law, “might affect the outcome of the suit.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); Fed. R. Evid. 401 (stating that “[e]vidence is relevant if . . . the fact is of consequence in determining the action”). None of the purported facts in this paragraph has any bearing on the outcome of this FOIA suit under applicable law. Since parties must identify genuine issues only with respect to “material” facts, Fed. R. Civ. P. 56(c), LRCiv 7.1(h), DOC is not required to respond to this paragraph.

12. NOAA officials did not comply with the congressional subpoenas and refused to turn over internal discussions among the scientists who authored the Karl Study claiming confidentiality.

Response: DOC is not required to respond to the statements in paragraph 12 of Plaintiff’s Statement of Material Facts because the alleged facts, regardless of whether true, are not material to the resolution of Plaintiff’s Motion for Summary Judgment in this FOIA case. “Material facts” are those facts which, under the governing substantive law, “might affect the outcome of the

suit.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); Fed. R. Evid. 401 (stating that “[e]vidence is relevant if . . . the fact is of consequence in determining the action”). None of the purported facts in this paragraph has any bearing on the outcome of this FOIA suit under applicable law. Since parties must identify genuine issues only with respect to “material” facts, Fed. R. Civ. P. 56(c), LRCiv 7.1(h), DOC is not required to respond to this paragraph.

Dated: March 17, 2017

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

ELIZABETH J. SHAPIRO
Deputy Director, Federal Programs Branch

/s/ Kevin M. Snell
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Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2017, I filed the attached electronically with the Clerk of the United States District Court for the District of Columbia through the CM/ECF system, which caused the following counsel of record to be served by electronic means:

Lauren Burke
Judicial Watch, Inc.
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Washington, DC 20024
(202) 646-5172
Lburke@judicialwatch.org

Attorney for Plaintiff

/s/ Kevin M. Snell

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 16-cv-03007-DME-MJW

FRIENDS OF ANIMALS, and
SEA SHEPHERD LEGAL

Plaintiffs,

v.

NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION,

Defendant.

STIPULATION OF SETTLEMENT AND DISMISSAL

Plaintiffs Friends of Animals and Sea Shepherd Legal (“Plaintiffs”) and Defendant National Oceanic Atmospheric Administration, an agency of the United States Department of Commerce (“Defendant”) (collectively, the “Parties”), by and through their undersigned counsel, hereby enter into this Stipulation of Settlement and Dismissal (“Stipulation”) in the above-captioned case. Specifically, the Parties stipulate and agree as follows:

RECITALS

1. On April 12, 2016, Plaintiffs submitted a Freedom of Information Act request to Defendant seeking records on thirteen topics that pertained to human activities impacting the Cook Inlet beluga whale. *See* Friends of Animals’ FOIA Request for Records, attached as Ex. 1 at 2-3.

2. On May 16, 2016, Defendant extended its response deadline of May 12, 2016

by ten business days for unusual circumstances.

3. Defendant made three interim releases responsive to Plaintiffs' request on June 9, July 26, and October 21, 2016.

4. On December 8, 2016, Plaintiffs filed the instant civil action.

5. On or about February 27, 2017, the Parties reached an agreed upon schedule of production for the remaining responsive records and the terms of settlement.

STIPULATION

1. Plaintiffs agree to dismiss the instant civil action without prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii).

2. In consideration for Plaintiffs' agreement to Paragraph 1 above, Defendant shall pay Plaintiffs the amount of four thousand ninety dollars (\$4,090.00), in full and complete satisfaction of Plaintiffs' claims for the attorneys' fees and litigation costs incurred in the above-captioned case. In the event of further litigation, Plaintiffs will not be entitled to claim any attorneys' fees or costs incurred prior to this settlement.

3. Defendant shall make payment of the total settlement amount, set forth in Paragraph 2 above, by electronic transfer of funds to Plaintiffs within forty-five (45) days of the dismissal of the above-captioned case (Plaintiffs' electronic funds transfer information will be provided separately). Plaintiffs' counsel shall cooperate with Defendant to ensure that all documentation required to process this payment is complete and accurate and submitted sufficiently in advance to allow for payment processing within forty-five days of dismissal.

4. Defendant shall release documents responsive to Plaintiffs' FOIA request in accordance with the following production schedule:

4.1 Defendant will produce a set of records **by March 14, 2017** that Defendant finds are responsive to topics (3) and (4) of the FOIA request. *See* Ex. 1 at 2. In a release letter accompanying this production, NOAA agrees to include a statement from the Assistant Administrator for National Marine Fisheries Service (“NMFS”), a division of NOAA, that describes how the search was reasonably calculated to uncover all responsive documents. The statement will describe which files were searched, the search method(s) used (electronic, manual, etc.), the locations searched, and the topics and terms searched. Further, in the release letter for the production of records responsive to topics (3) and (4), NMFS will provide a description of the methods used to segregate records NMFS found to be responsive to topics (3) and (4).

4.2 NOAA will produce a second set of records **by May 1, 2017**. This set of records will include responsive records that were not produced in prior releases to Plaintiffs.

4.3 NOAA will produce a third set of records **by August 1, 2017**. This set of records will include responsive records that were not produced in prior releases to Plaintiffs.

4.4 NOAA will produce a Vaughn Index for documents withheld pursuant to an applicable FOIA exemption in paragraphs 4.1, 4.2, and 4.3 **by August 31, 2017**.

4.5 NOAA will produce a final set of records **by September 30, 2017**. This set of records will include documents for the time period of April 12, 2016 (the date of the initial FOIA request) to December 31, 2016 that are responsive to the topics in the FOIA request.

4.6 In the event that Plaintiffs take issue with any of Defendant’s actions outlined in terms 4.1 to 4.5 above, Plaintiffs will promptly notify the undersigned counsel and/or an agreed upon NOAA contact of all such issues. The Parties agree to work together in good faith

to resolve such issues. If the Parties are unable to resolve any such issues within 45 days of Plaintiffs first presenting the issues to Defendant, Plaintiffs may pursue all available remedies in court. Plaintiffs shall have until **January 30, 2018** to present NOAA with any issues concerning the release of documents in paragraphs 4.1 to 4.5 above.

5. This Stipulation of Settlement is not, is in no way intended to be, and should not be construed as, an admission of liability or fault on the part of the United States, the United States Department of Commerce, the National Oceanic Atmospheric Administration, their agents, servants, employees, or officers, and is entered into by the Parties for the purpose of compromising disputed claims and avoiding the expense and risks of further litigation. The Parties' agreement to this settlement is without prejudice to any claims or defenses any party may assert in the future.

6. This Stipulation contains the entire agreement between the Parties hereto and supersedes any and all previous agreements, whether written or oral, between the Parties relating to the subject matter hereof. No promise or inducement has been made except as set forth herein, and no representation or understanding, whether written or oral, that is not expressly set forth herein shall be enforced or otherwise be given any force or effect in connection herewith.

7. The Parties acknowledge that the preparation of this Stipulation was collaborative in nature, and thereby agree that any presumption or rule that an agreement is construed against its drafter shall not apply to the interpretation of this agreement or any term or provision hereof.

8. This Stipulation may be executed in two or more counterparts, each of which

shall be deemed to be an original and all of which together shall be deemed to be one and the same agreement. A facsimile or other duplicate of a signature shall have the same effect as a manually-executed original.

9. Upon execution of this Stipulation by all Parties hereto, the Stipulation of Settlement and Dismissal shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, administrators, successors, and assigns. Each signatory to this Stipulation represents and warrants that he or she is fully authorized to enter into this Stipulation on behalf of his or her client.

10. Execution and filing of this Stipulation of Settlement and Dismissal by counsel for the Parties shall constitute a dismissal of the instant civil action, without prejudice.

Respectfully submitted this 10th day of March, 2017.

Respectfully submitted,

/s/ Michael Harris

Michael Ray Harris
Director, Wildlife Law Program
Friends of Animals
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Attorney for Plaintiff Friends of Animals

/s/ Brett Sommermeyer

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Attorney for Plaintiff Sea Shepherd Legal

ROBERT C. TROYER
Acting United States Attorney

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Counsel for Defendant

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on this 10th day of March, 2017, I filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to any party who has entered an appearance in this matter to the email addresses provided in CM/ECF.

s/ Marisela D. Sandoval
Office of the U.S. Attorney

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

FRIENDS OF ANIMALS,)
777 Post Road, Suite 205)
Darien, CT 06820; and)

WILDEARTH GUARDIANS,)
2590 Walnut Street)
Denver, CO 80205)

Plaintiffs,)

v.)

WILBUR ROSS, in his official capacity as)
the Secretary of Commerce, U.S.)
Department of Commerce)
1401 Constitution Ave., NW)
Washington, D.C. 20230; and)

NATIONAL OCEANIC AND)
ATMOSPHERIC ADMINISTRATION, an)
agency of the United States)
1401 Constitution Avenue, NW)
Washington, DC 20230)

Defendants.)

CASE NO. 17-cv-00569-RC

NOTICE OF VOLUNTARY DISMISSAL (FED. R. CIV. P. 41(a)(1)(A)(i))

Pursuant to Fed. R. Civ. P 41(a)(1)(A)(i), the Plaintiffs, by and through their counsel(s), hereby give notice that the above captioned action is voluntarily dismissed, without prejudice, as to all Defendants.

Dated: April 25, 2017

Respectfully Submitted,
/s/ Michael Harris
Michael Ray Harris (DC Bar # CO0049)
Director, Wildlife Law Program
Friends of Animals
7500 E. Arapahoe Road, Suite 385
Centennial, CO 80112
720-949-7791

CERTIFICATE OF SERVICE

I hereby certify that an electronic copy of the foregoing documents was served upon all counsel of record on April 26, 2017 via the ECF Filing System.

/s/ Michael Harris

Michael Ray Harris (DC Bar #C00049)

Friends of Animals

Wildlife Law Program

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Fax: 888.236.3303

michaelharris@friendsofanimals.org

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,)
)
Plaintiff,)
)
v.)
)
U.S. DEPARTMENT OF COMMERCE)
)
Defendant.)
_____)

Case No. 17-541-RBW

NOTICE OF DISMISSAL

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i), Plaintiff Judicial Watch, Inc. hereby dismisses this action.

Dated: April 24, 2017

Respectfully submitted,

s/ Chris Fedeli
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cfedeli@judicialwatch.org

Attorney for Plaintiff

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9 Attorneys for Plaintiffs
10 Klamath Riverkeeper

11 BRIAN J. STRETCH (CABN 163973)
12 Acting United States Attorney
13 ALEX G. TSE (CABN 152348)
14 Chief, Civil Division
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21 sabita.soneji@usdoj.gov

22 Attorneys for Federal Defendants

23 UNITED STATES DISTRICT COURT
24 NORTHERN DISTRICT OF CALIFORNIA

25 KLAMATH RIVERKEEPER,

26 Plaintiff,

27 v.

28 NATIONAL MARINE FISHERIES SERVICE, *et*
al.,

Defendants.

Civil Case No. 4:15-cv-02670-JSW

**STIPULATION FOR DISMISSAL
WITHOUT PREJUDICE
AND ORDER THEREON**

1 Plaintiff Klamath Riverkeeper and Defendants National Marine Fisheries Service ("NMFS"),
2 Penny Pritzker, as Secretary Of Commerce, William Stelle, as Regional Administrator of the National
3 Marine Fisheries Service West Coast Region, by and through their undersigned counsel, hereby stipulate
4 and agree as follows:

5 WHEREAS Plaintiff filed this action alleging violations of the Freedom of Information Act
6 ("FOIA") by Defendants;

7 WHEREAS Defendants do not admit that they have failed to comply with FOIA as alleged by
8 Plaintiffs;

9 WHEREAS Plaintiff and Defendants have agreed that it is in the Parties' mutual interest to enter
10 into this stipulation dismissing the Plaintiff's Complaint and the claims stated therein without prejudice
11 and without any admission of liability by the Defendants;

12 **NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE PARTIES AND**
13 **ORDERED BY THE COURT AS FOLLOWS:** This action and Plaintiffs' claims asserted in the
14 Complaint shall be dismissed without prejudice, effective upon entry of the order of the Court set forth
15 below.

16 Dated: December 18, 2015.

Respectfully Submitted,



CHRISTOPHER SPROUL
Attorney for Plaintiff Klamath Riverkeeper

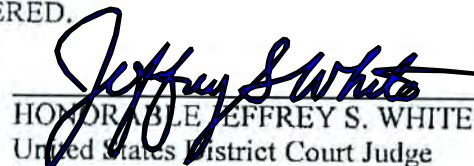


SABITA J. SONEJI
Assistant United States Attorney
Attorney for Federal Defendants

23 **[Proposed] Order**

24 PURSUANT TO STIPULATION, IT IS SO ORDERED.

25 Date: January 4, 2016

26 
27 HONORABLE JEFFREY S. WHITE
28 United States District Court Judge

1 BRIAN J. STRETCH (CABN 163973)
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2 SARA WINSLOW (DCBN 457643)
Chief, Civil Division
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7 Attorneys for Defendants

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
11

12 OUR CHILDREN’S EARTH FOUNDATION,) CASE NO. 14-CV-01130-WHO
et al.,) CASE NO. 14-CV-04365-WHO
13)
Plaintiffs,) **JOINT STATEMENT; JUDGMENT**
14)
v.)
15)
NATIONAL MARINE FISHERIES SERVICE,)
16 et al.,)
17 Defendants.)
18

JOINT STATEMENT

Pursuant to the Court’s March 1, 2017, Order and in connection with the parties’ March 24, 2017, Joint Supplemental Brief on Fees, the parties submit the attached proposed judgment for the Court’s consideration.

Defendants’ submission of the draft judgment does not constitute a commitment or requirement that the Federal Defendants obligate or pay funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other law or regulation.

Dated: March 30, 2017

BRIAN J. STRETCH
United States Attorney

/s/ Robin M. Wall
ROBIN M. WALL
Assistant United States Attorney
Attorneys for Defendants

Dated: March 30, 2017

/s/ Christopher Sproul
CHRISTOPHER SPROUL
Attorneys for Plaintiffs

CERTIFICATION

Pursuant to Civil L.R. 5-1(i)(3), the undersigned hereby attests that Christopher Sproul has concurred in the filing of this document.

Dated: March 30, 2017

BRIAN J. STRETCH
United States Attorney

/s/ Robin M. Wall
ROBIN M. WALL
Assistant United States Attorney
Attorneys for Defendant

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION


OUR CHILDREN’S EARTH FOUNDATION, et al.,	)	CASE NO. 14-CV-01130-WHO
	)	CASE NO. 14-CV-04365-WHO
Plaintiffs,)	
v.	)	JUDGMENT
NATIONAL MARINE FISHERIES SERVICE, et al.,)	
Defendants.)	

JUDGMENT

The issues having been fully considered, the Court having granted in part and denied in part the parties’ cross-motions for summary judgment and entered judgment in favor of the parties as set forth in the February 16, 2016, Stipulated Judgment on Related Cases (ECF 79, No. 14-cv-01130); and the Court having fully considered the parties’ Joint Supplemental Brief on Fees, it is hereby Ordered and Adjudged Plaintiffs are awarded \$556,434.98 in attorney’s fees and \$3,190.39 in costs.

SO ORDERED.

Dated: April 3, 2017



 WILLIAM H. ORRICK
 United States District Judge



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

March 20, 2017

Ms. Laura Dumais
Public Employees for Environmental Responsibility
962 Wayne Avenue, Suite 610
Silver Spring, MD 20910

Re: FOIA Request: DOC-NOAA-2016-001080

Dear Ms. Dumais:

This letter is in response to your Freedom of Information Act (FOIA) request entered into FOIAonline on April 13, 2016. You requested information concerning efforts by the National Marine Fisheries Service (NMFS) to replace Fisheries Observers with video-camera electronic monitoring between April 1, 2014 and the date of the submission of your request.

The records for this release consist of those records chosen by you after your review of the comprehensive index for all records compiled for your request. A summary of the release follows:

- **550** records are released to you in their entirety.
- **26** records are released to you in their entirety which consist of final versions of 92 draft documents for which you requested the final versions instead if it was completed. An explanation of these records is included in the attached Vaughn index.
- **135** records are being partially withheld pursuant to FOIA exemptions as indicated in the attached Vaughn index.
- **1** record is being fully withheld pursuant to 5 U.S.C. § 552 (b)(3) and (b)(4). The information withheld consists of a submission by a private company including confidential information prohibited by disclosure pursuant to the Magnuson-Stevens Fishery Conservation and Management Act and confidential business information.

If you have questions regarding this correspondence please contact Jason Cohen (AUSA) at Jason.Cohen@usdoj.gov or 202-252-2523.

Sincerely,

GRAFF.MARK.HYR
UM.1514447892

Digitally signed by
GRAFF.MARK.HYRUM.1514447892
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI,
ou=OTHER,
cn=GRAFF.MARK.HYRUM.1514447892
Date: 2017.03.20 16:17:17 -04'00'

Mark Graff
NOAA FOIA Officer
Office of the Chief Information Officer

Attachment

Cc: Jason Cohen, AUSA

From: Beverly Smith - NOAA Federal <beverly.smith@noaa.gov>
Sent: Wednesday, May 3, 2017 2:07 PM
To: Mark Graff - NOAA Federal
Cc: Beverly Smith
Subject: GUIDANCE NEEDED - Fwd: FOIA REQUEST #DOC-NOAA-2017-000631 SIMPSON - SCOPE MODIFICATION & CLARIFICATION CONFIRMATION E-MAIL

Hi Mark,

I left a voice mail message for you a little while ago. (b)(5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Thanks.
Bev.

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

From: Marianne Cufone <mcufone@recirculatingfarms.org>
Date: Wed, May 3, 2017 at 11:33 AM
Subject: Fwd: FOIA REQUEST #DOC-NOAA-2017-000631 SIMPSON - SCOPE MODIFICATION & CLARIFICATION CONFIRMATION E-MAIL
To: Beverly Smith - NOAA Federal <beverly.smith@noaa.gov>
Cc: Benjamin Simpson <benjamin@my.loyno.edu>, Jason Galjour <jmgaljou@my.loyno.edu>, Emily Posner <emilyposnerlaw@gmail.com>

Hi Beverly - per your request, here it is again, far below.

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

From: Marianne Cufone <mcufone@recirculatingfarms.org>
Date: Wed, May 3, 2017 at 10:30 AM
Subject: Fwd: FOIA REQUEST #DOC-NOAA-2017-000631 SIMPSON - SCOPE MODIFICATION & CLARIFICATION CONFIRMATION E-MAIL
To: mcufone <MCufone@recirculatingfarms.org>

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

From: Marianne Cufone <mcufone@recirculatingfarms.org>
Date: Tues, March 28, 2017 at 11:09 AM
Subject: Re: FOIA REQUEST #DOC-NOAA-2017-000631 SIMPSON - SCOPE MODIFICATION & CLARIFICATION CONFIRMATION E-MAIL
To: Beverly Smith - NOAA Federal <beverly.smith@noaa.gov>
Cc: Benjamin Simpson <Benjamin@my.loyno.edu>, Jason Galjour <jmgaljou@my.loyno.edu>, Emily Posner <emilyposnerlaw@gmail.com>

Hello Beverly - thanks very much for your and all the others' time on the call March 6th. After review and discussion about the below - please see our comments and further clarifications (underlined):

Request Scope Clarification and Modification

Pursuant to our conference call, the following is the scope clarification and modification that we discussed:

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Modification-Added: from 2009 to present. The requester agreed to narrow the scope to the stock assessment reports, including draft reports, and published manuscripts.

Clarification: The requester does not seek raw data.

- (2) All data concerning unusual mortality events in Atlantic Bottlenose dolphins in the Gulf of Mexico from 2009 to present.

Modification: All data concerning unusual mortality events in the Gulf of Mexico geographic area near Barataria Bay and in Barataria Bay the species Common Bottlenose Dolphins from 2009 to present. The requester limited his level A data request to Bottlenose dolphin strandings in the 3 parishes surrounding Barataria Bay from 2009 - present. The requester will identify specific dolphins from the Level A data for which specific necropsy information can be requested if needed, following review of publications provided.

Clarification: Requester seeks the cause of mortality and necropsy results. NMFS SEFSC advised that responsive public records include Level A data and websites that include publications and raw data used in those publications that discuss the overall mortality event. Additional responsive data include Level B and C data, including necropsy reports, histopathology reports and other analytical results.

- (3) All information regarding the LOF designation for the Gulf menhaden (*Brevoortia patronus* hereinafter "Gulf menhaden") purse seine fishery.

Modification-Added: from 1999 to present. The requester agreed to narrow the scope to the annual tier analyses and reports.

Clarification: Request seeks information as to why there is no change in the LOF designation year to year. SERO PRD advised that there has been no change in the designation of the Gulf menhaden fishery since 1999, so there are no additional annual reports on the fishery status designation given and it has remained within the Category II standards. We'd like to know WHY there is no change and seek any e-mails, discussions, analysis and summaries pertaining to the no change status.

- (4) All data recorded by independent observers on Gulf menhaden fishing boats from 1992 to present.

Modification-Added: from 1990 to present.

Clarification: Requester seeks information on how much interaction there is with the menhaden fishery and takes by fishery. NMFS SEFSC advised that this is not an observed fishery, but there was a NMFS funded pilot observer study from April-November 2011 that resulted in a report and summary. The SEFSC will provide website links to where the information from the LSU observer program is available. We seek ANY and ALL information regarding bycatch in the menhaden fishery in the Gulf of Mexico from 1990 - present.

- (5) Any information pertaining to takings of Common Bottlenose Dolphins in and around Barataria Bay.

Modification-Added: from 1999 to present, excluding Marine Mammal Protection Act permitted research takes only.

Clarification: Requester seeks incidental takes and self-reported takes in all fisheries. NMFS advised that responsive information for marine mammals will include bullets 7 and 8. Responsive material includes data from incidental takes that is included in SEFSC's Level A data, takes in SEFSC's non-stranding spreadsheet (if any), and large bycatch data in technical reports, and fishery research takes, and SER's self-reporting data through the Marine Mammal Authorization Program.

- (6) Visual representations and GPS data on Gulf menhaden landings from recent years.

Modification: Requester agreed to narrow the scope to maps of data by year from 2009 to present.

Clarification: NMFS advised that it collects GPS data from 2009 to present and prior to 2009 there is a less specific data code used, which cannot be mapped.

- (7) All reported incidental takings of Common Bottlenose Dolphins in the Gulf of Mexico around Barataria Bay and in Barataria Bay.

Modification-Added: See #5, above.

- (8) All reported bycatch data from the Gulf menhaden purse seine fishery.

Modification-Added: See #5, above, and around Barataria Bay for Bottlenose Dolphins.

- (9) All communications concerning the Gulf menhaden fishery (including memos, documents, emails, text messages, phone conversations, and all correspondence)

Modification-Added: in the Gulf of Mexico from 1999 to present.

Clarification: Records include but are not limited to LOF, bycatch, observer, and other decisions to regulate the fishery. NMFS advised that records will also include custodians located at the Office of Protected Resources in Silver Springs, MD.

On Thu, Mar 9, 2017 at 8:54 AM, Beverly Smith - NOAA Federal <beverly.smith@noaa.gov> wrote:
RE: Freedom of Information Act (FOIA) Request #DOC-NOAA-2017-000631

Dear Messers. Simpson and Galjour and Ms. Cufone and Posner:

This is in reference to the above-captioned FOIA request #DOC-NOAA-2017-000631 dated February 15, 2017, and received by our office on February 22, 2017. This confirms our telephone conference call on March 6, 2017, regarding the scope of your request and potentially responsive records. The conference call also included the following individuals:

National Marine Fisheries Service (NMFS)
Southeast Region (SER), Protected Resources Division
Jessica Powell, M.S., Fishery Biologist
Teletha Mincey, Program Analyst, FOIA Point of Contact

Southeast Fishery Science Center (SEFSC)
Keith Mullin, Ph.D., Research Fish Biologist
Jenny Litz, Ph.D., Research Fish Biologist
Liz Scott-Denton, Ph.D., Research Fish Biologist
Ray Mroch, Fishery Biologist

FOIA Request

In your request you seek information regarding the impact that the Gulf menhaden purse seine fishery has on Bottlenose dolphins in Barataria Bay. You specifically seek the following records:

- The most recent stock assessment data for the Barataria Bay Estuarian System Stock of Common Bottlenose Dolphins.
- All data concerning unusual mortality events in Atlantic Bottlenose dolphins in the Gulf of Mexico from 2009 to present.
- All information regarding the LOF designation for the Gulf menhaden (*Brevoortia patronus* hereinafter “Gulf menhaden”) purse seine fishery.
- All data recorded by independent observers on Gulf menhaden fishing boats from 1992 to present.
- Any information pertaining to takings of Common Bottlenose Dolphins in and around Barataria Bay.
- Visual representations and GPS data on Gulf menhaden landings from recent years.
- All reported incidental takings of Common Bottlenose Dolphins around Barataria Bay.
- All reported bycatch data from the Gulf menhaden purse seine fishery.
- All communications concerning the Gulf menhaden fishery (including memos, documents, emails, text messages, phone conversations, and all correspondence)

Request Scope Clarification and Modification

Pursuant to our conference call, the following is the scope clarification and modification that we discussed:

- (1) The most recent stock assessment data for the Barataria Bay Estuarine System Stock of Common Bottlenose Dolphins.

Modification-Added: from 2009 to present. The requester agreed to narrow the scope to the stock assessment reports, including draft reports, and published manuscripts.

Clarification: The requester does not seek raw data.

- (2) All data concerning unusual mortality events in Atlantic Bottlenose dolphins in the Gulf of Mexico from 2009 to present.

Modification: All data concerning unusual mortality events in the geographic area of Barataria Bay and the species Common Bottlenose Dolphins from 2009 to present. The requester limited his level A data request to Bottlenose dolphin strandings in the 3 parishes surrounding Barataria Bay from 2009 - present. The requester will identify specific dolphins

from the Level A data for which specific necropsy information can be requested if needed following review of publications provided.

Clarification: Requester seeks the cause of mortality and necropsy results. NMFS SEFSC advised that responsive public records include Level A data and websites that include publications and raw data used in those publications that discuss the overall mortality event. Additional responsive data include Level B and C data, including necropsy reports, histopathology reports and other analytical results.

- (3) All information regarding the LOF designation for the Gulf menhaden (*Brevoortia patronus* hereinafter "Gulf menhaden") purse seine fishery.

Modification-Added: from 1999 to present. The requester agreed to narrow the scope to the annual tier analyses and reports.

Clarification: Request seeks information as to why there is no change in the LOF designation year to year. SERO PRD advised that there has been no change in the designation of the Gulf menhaden fishery since 1999, so there are no additional annual reports on the fishery status designation given and it has remained within the Category II standards.

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- (5) Any information pertaining to takings of Common Bottlenose Dolphins in and around Barataria Bay.

Modification-Added: from 1999 to present, excluding Marine Mammal Protection Act permitted research takes.

Clarification: Requester seeks incidental takes and self-reported takes in all fisheries. NMFS advised that responsive information for marine mammals will include bullets 7 and 8. Responsive material includes data from incidental takes that is included in SEFSC's Level A data, takes in SEFSC's non-stranding spreadsheet (if any), and large bycatch data in technical reports, and fishery research takes, and SER's self-reporting data through the Marine Mammal Authorization Program.

- (6) Visual representations and GPS data on Gulf menhaden landings from recent years.

Modification: Requester agreed to narrow the scope to maps of data by year from 2009 to present.

Clarification: NMFS advised that it collects GPS data from 2009 to present and prior to 2009 there is a less specific data code used, which cannot be mapped.

- (7) All reported incidental takings of Common Bottlenose Dolphins around Barataria Bay.

Modification-Added: See #5, above.

- (8) All reported bycatch data from the Gulf menhaden purse seine fishery.

Modification-Added: See #5, above, and around Barataria Bay for Bottlenose Dolphins.

- (9) All communications concerning the Gulf menhaden fishery (including memos, documents, emails, text messages, phone conversations, and all correspondence)

Modification-Added: in the Gulf of Mexico from 1999 to present.

Clarification: Records include but are not limited to LOF, bycatch, observer, and other decisions to regulate the fishery. NMFS advised that records will also include custodians located at the Office of Protected Resources in Silver Springs, MD.

REQUEST TOLLING

Pursuant to 5 U.S.C. 552(a)(6)(A), our time to respond was tolled on March 2, 2017, until we concluded the scope clarification process and we agree on what it is that you seek. This does not start your time running again

from the beginning, but it does stop the clock until we conclude the scope clarification process.

If we do not hear from you within 30 calendar days from the date of this e-mail, we will assume that you do not wish to proceed and your request will be administratively closed.

If you have any questions, please do not hesitate to contact me at [727-551-5762](tel:727-551-5762) or beverly.smith@noaa.gov, or the NOAA FOIA Public Liaison Robert Swisher at [301-628-5755](tel:301-628-5755).

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

--

Marianne Cufone
Executive Director
Recirculating Farms Coalition
www.recirculatingfarms.org

Check us out on [Facebook](#) and [Twitter](#)!

--

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--

Beverly J. Smith
FOIA Coordinator
Southeast Region
NOAA's National Marine Fisheries Service

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, May 3, 2017 2:53 PM
To: Beverly Smith - NOAA Federal
Subject: Re: GUIDANCE NEEDED - Fwd: FOIA REQUEST #DOC-NOAA-2017-000631 SIMPSON - SCOPE MODIFICATION & CLARIFICATION CONFIRMATION E-MAIL

I think we would (b)(5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

I would suggest (b)(5) [REDACTED]
[REDACTED].

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

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

On Wed, May 3, 2017 at 2:06 PM, Beverly Smith - NOAA Federal <beverly.smith@noaa.gov> wrote:
Hi Mark,

I left a voice mail message for you a little while ago. (b)(5) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]?

Thanks.
Bev.

----- Forwarded message -----
From: **Marianne Cufone** <mcufone@recirculatingfarms.org>
Date: Wed, May 3, 2017 at 11:33 AM
Subject: Fwd: FOIA REQUEST #DOC-NOAA-2017-000631 SIMPSON - SCOPE MODIFICATION & CLARIFICATION CONFIRMATION E-MAIL
To: Beverly Smith - NOAA Federal <beverly.smith@noaa.gov>
Cc: Benjamin Simpson <benjamin@my.loyno.edu>, Jason Galjour <jmgaljou@my.loyno.edu>, Emily Posner

<emilyposnerlaw@gmail.com>

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

From: **Marianne Cufone** <mcufone@recirculatingfarms.org>

Date: Wed, May 3, 2017 at 10:30 AM

Subject: Fwd: FOIA REQUEST #DOC-NOAA-2017-000631 SIMPSON - SCOPE MODIFICATION & CLARIFICATION CONFIRMATION E-MAIL

To: mcufone <MCufone@recirculatingfarms.org>

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

From: **Marianne Cufone** <mcufone@recirculatingfarms.org>

Date: Tues, March 28, 2017 at 11:09 AM

Subject: Re: FOIA REQUEST #DOC-NOAA-2017-000631 SIMPSON - SCOPE MODIFICATION & CLARIFICATION CONFIRMATION E-MAIL

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

Cc: Benjamin Simpson <Benjamin@my.loyno.edu>, Jason Galjour <jmgaljou@my.loyno.edu>, Emily Posner <emilyposnerlaw@gmail.com>

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Clarification: Records include but are not limited to LOF, bycatch, observer, and other decisions to regulate the fishery. NMFS advised that records will also include custodians located at the Office of Protected Resources in Silver Springs, MD.

REQUEST TOLLING

Pursuant to 5 U.S.C. 552(a)(6)(A), our time to respond was tolled on March 2, 2017, until we concluded the scope clarification process and we agree on what it is that you seek. This does not start your time running again from the beginning, but it does stop the clock until we conclude the scope clarification process.

If we do not hear from you within 30 calendar days from the date of this e-mail, we will assume that you do not wish to proceed and your request will be administratively closed.

If you have any questions, please do not hesitate to contact me at [727-551-5762](tel:727-551-5762) or beverly.smith@noaa.gov, or the NOAA FOIA Public Liaison Robert Swisher at [301-628-5755](tel:301-628-5755).

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

--

Marianne Cufone
Executive Director
Recirculating Farms Coalition
www.recirculatingfarms.org

Check us out on [Facebook](#) and [Twitter](#)!

--

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--

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

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, May 3, 2017 3:08 PM
To: Stephen Lipps - NOAA Federal; John Almeida - NOAA Federal; Holmes, Colin; Robert Moller - NOAA Federal; Scott Smullen - NOAA Federal; Jeff Dillen - NOAA Federal; Kristen Gustafson - NOAA Federal
Cc: Tom Taylor; Kimberly Katzenbarger - NOAA FEDERAL; Charles; Dennis Morgan - NOAA Federal; Stacey Nathanson - NOAA Federal; Robert Swisher - NOAA Federal; Steven Goodman - NOAA Federal; Samuel Dixon - NOAA Affiliate; Lola Stith - NOAA Affiliate; Zachary Goldstein - NOAA Federal; Douglas Perry - NOAA Federal; Nkolika Ndubisi - NOAA Federal; Jeri Dockett - NOAA Affiliate; Cc: OCIO/OPPA; Troy Wilds - NOAA Federal; Lawrence Charters - NOAA Federal; Allison Soussi-Tanani - NOAA Federal; Bogomolny, Michael (Federal); Pamela Lawrence - NOAA Federal
Subject: Weekly FOIA and Incoming High Visibility Requests
Attachments: Sierra Club Order re MSJ Briefing Schedule.pdf; Weekly FOIA Incoming and High Visibility Requests 04.26.17 - 05.3.17.xls

Good Morning,

Attached is this week's report.

Four separate requests were received from Earthjustice on April 26. Although one of these requests was subsequently withdrawn (DOC-NOAA-2017-001091), three remaining requests will require a response. One of these requests is seeking Logbook data on Highly Migratory Species (HMS) (DOC-NOAA-2017-001092). Another is seeking data underlying bycatch estimates in the Gulf of Mexico. (DOC-NOAA-2017-001093). The third is seeking similar background data relied on for bycatch estimates considered by the NMFS SE Regional Office, as well as permitted vessels in the Gulf of Mexico, shark bycatch data, logbook data, and observer data related to those bycatch estimates. (DOC-NOAA2017-001094).

Lastly, a request was received by Cause of Action, asking for records regarding the retention of the Google Chat or Google Hangouts features of UMS. The request references a 2012 GC decision to exclude those documents as "off the record" and also seeks documents regarding that decision made by GC. (DOC-NOAA-2017-001101).

In the Sierra Club Litigation (b)(5) _____

_____).

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

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

1 BRIAN J. STRETCH (CABN 163973)
United States Attorney

2 SARA WINSLOW (DCBN 457643)
Chief, Civil Division

3 WENDY M. GARBERS (CABN 213208)
Assistant United States Attorney

4 450 Golden Gate Avenue, Box 36055
5 San Francisco, California 94102-3495
6 Telephone: (415) 436-6475
7 FAX: (415) 436-7234
wendy.garbers@usdoj.gov

8 Attorneys for Defendants
9 NATIONAL MARINE FISHERIES SERVICE
and U.S. FISH & WILDLIFE SERVICE

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 SIERRA CLUB, INC.,	)	Case No. 15-cv-05872 EDL
)	
14 Plaintiff,	)	STIPULATION AND PROPOSED ORDER RE
	)	SUMMARY JUDGMENT BRIEFING
15 v.	)	SCHEDULE
)	
16 NATIONAL MARINE FISHERIES SERVICE	)	Current Date: May 23, 2017
17 and U.S. FISH & WILDLIFE SERVICE,	)	Time: 9:00 a.m.
	)	The Honorable Elizabeth D. Laporte
18 Defendants.)	

19
20 **STIPULATION**

21 WHEREAS, lead plaintiff’s counsel, Reed Super, has been unexpectedly called out of town, as
22 his mother has been hospitalized;

23 WHEREAS, plaintiff’s combined summary judgment opposition and reply brief is currently due
24 on March 17, 2017;

25 WHEREAS, defendants’ reply brief is currently due on April 21, 2017;

26 WHEREAS, the hearing on the cross-summary judgment motions is currently set for May 23,
27 2017 at 9:00 a.m.;

28 IT IS HEREBY STIPULATED, that these deadlines be reset as follows:

- 1 1. Plaintiff’s combined summary judgment opposition and reply brief shall be due on March 31,
- 2 2017;
- 3 2. Defendants’ reply brief shall be due on May 5, 2017; and
- 4 3. Subject to the Court’s availability, the hearing on the summary judgment motion shall be reset
- 5 to June 6, 2017, at 9:00 a.m.

6
7 DATED: March 13, 2017

Respectfully submitted,

8 BRIAN J. STRETCH
United States Attorney

9 /s/ Wendy M. Garbers
10 WENDY M. GARBERS
Assistant United States Attorney

11 Attorneys for Defendants
12 NATIONAL MARINE FISHERIES
13 SERVICE and U.S. FISH &
WILDLIFE SERVICE

14 DATED: March 13, 2017

SUPER LAW GROUP, LLC

15 /s/ Reed W. Super*
16 REED W. SUPER

17 Attorneys for Plaintiff
18 SIERRA CLUB, INC.

19 **In compliance with Civil Local Rule 5-1(i)(3), the filer of this document attests under penalty of*
20 *perjury that each signatory has concurred in the filing of this document.*

21
22 ~~PROPOSED~~ ORDER

23
24 PURSUANT TO STIPULATION, IT IS SO ORDERED.

25 Dated: March 14, 2017

26
27 
28 THE HONORABLE ELIZABETH D. LAPORTE

Tracking Number	Type	Requester
DOC-NOAA-2017-001130	Request	Nicholas Patton
DOC-NOAA-2017-001118	Request	Tarek Alaruri
DOC-NOAA-2017-001101	Request	Ryan P. Mulvey
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-2017-001091	Request	Priya P. Kamath
DOC-NOAA-2017-001085	Request	Philip J. Wuest
DOC-NOAA-2017-001084	Request	Nathan Eagle

Requester Organization	Submitted	Received
Delaware Riverkeeper Network	05/01/2017	05/01/2017
https://docs.google.com/presentation/d/1KLWKNktpZyP2iaSxjEbtZrAQ	04/28/2017	04/28/2017
Cause of Action	04/27/2017	04/27/2017
Earthjustice	04/26/2017	04/26/2017
Earthjustice	04/26/2017	04/26/2017
Earthjustice	04/26/2017	04/26/2017
Earthjustice	04/26/2017	04/26/2017
Black Helterline LLP	04/25/2017	04/26/2017
Honolulu Civil Beat	04/25/2017	04/26/2017

Custom Report - 05/03/2017 11:38:16

Assigned To	Case File	Assigned To	Perfect?	Due	Closed Date	Status	Dispositions
NOAA	NOAA	No	TBD	TBD		Submitted	
NOAA	NOAA	No	TBD	TBD		Initial Evaluation	
NOAA	NOAA	No	TBD	TBD		Submitted	
NOAA	NOAA	No	TBD	TBD		Submitted	
NOAA	NOAA	No	TBD	TBD		Submitted	
NOAA	NOAA	No	TBD	TBD		Submitted	
NOAA	NOAA	No	TBD	TBD		Withdrawn	
NOAA	NOAA	No	TBD	TBD		Submitted	
NOAA	NOAA	No	TBD	TBD		Assignment Determination	

Detail

Please provide any records/documents/emails/letters/correspondence in the possession of National Marine Fisheries Service for offices in Oregon. I'd like to file a formal request for every Software & Hardware purchase/quote in the last 3 years. We'd like the Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), CoA Institute hereby requests access to the following information:

Please see attached.

Please see attached.

Please see attached.

Please see attached.

This request is for National Marine Fisheries Service for offices in Oregon. 1) All correspondence, notes, logs, memos, and reports regarding the following information:

I'm requesting: (1) a copy of the most recent agreement between Guam and Quota Management Inc., of Honolulu,

ies Service or NOAA regarding the Delaware City Refinery (NPDES Permit# DE0000256) that have been
company, manufacturing sku, pricing, product, msrp, purchase price & reseller. We'd like these in
any final guidance concerning the retention of instant messaging sessions created or received through

nos, minutes, appointment and meeting records, voicemails, files, papers and other records that include
that pertains to a quota-sharing agreement for bigeye tuna; (2) a copy of the most recent agreement be

n created/received/sent since September 3, 2015. Thank you.
electronic copies, please feel free to reach me at any time. We'd like the information in a CSV, JSON, .
the "Google Chat" or "Google Hangouts" feature of the National Oceanic and Atmospheric Administratic

: the following terms: Baker Rock, Grand Island, Harney Site. 2) All correspondence, notes, logs, memos
:tween American Samoa and Quota Management Inc., of Honolulu, that pertains to a quota-sharing agre

DOC formatting if possible. I'd also, like to FOIA the managers in charge of procurement and sourcing for NOAA's ("NOAA") Unified Messaging System (i.e., NOAA's Google-hosted agency e-mail platform). According

to, minutes, appointment and meeting records, files, relating to "Baker Rock", "Grand Island", "Harney Site", and (3) a copy of the most recent agreement between the Commonwealth of the

or each branch location. Please provide their contact information both email and phone number.
ng to a March 2012 handbook, “[p]er the decision of NOAA General Counsel,” communications through

e”, “Skeeter Creek”, or “Willamette River”, and “Waters of the State”, “Ordinary High Water”, “OHW”, “C
Northern Mariana Islands and Quota Management Inc., of Honolulu, that pertains to a quota-sharing a

Google Chat (or Google Hangouts) “will be con

HWL”, “annual high water even
greement for bigeye tuna.

From: Maria Williams - NOAA Federal <maria.williams@noaa.gov>
Sent: Thursday, May 4, 2017 11:46 AM
To: Mark Graff - NOAA Federal; Lola Stith - NOAA Affiliate
Subject: 441 - Smith
Attachments: Amended Scope - 441.pdf; Smith, Thomas (1) EEOC - 2017.03.16 Let...to NOAA re status of FOIA Requests.pdf; Fee Notification _000441 (Scope Change).pdf

Lola,

Please advise. (b)(5)

. You got time for a quick call?

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 NOAA Satellites on Social Media: [Facebook](#), [Twitter](#), [YouTube](#)

"Talent wins games, but teamwork and intelligence wins championship"

THE LAW OFFICES OF
GARY M. GILBERT & ASSOCIATES, P.C.
1100 Wayne Avenue, Suite 900
Silver Spring, MD 20910
Ph: (301) 608-0880 Fax: (301) 608-0881

March 16, 2017

Maria S. Williams
FOIA Officer
Room 9719-NOAA FOIA Office (SOU 10000)
1315 East-West Highway (SSMC3)
Silver Spring, MD 20910
Email: maria.williams@noaa.gov
Facsimile: (202) 308-4959
*Sent via first-class mail and electronic mail

Re: Thomas Smith; FOIA Request No. DOC-NOAA-2017-000441

Dear Ms. Williams:

I write in response to the Agency's February 16, 2017 correspondence regarding FOIA Request No. DOC-NOAA-2017-000441. As you are aware, The Law Offices of Gary M. Gilbert & Associates, P.C. represents Thomas Smith in this matter and is authorized to access information on his behalf. In the February 16, 2017 correspondence, the Agency provided a statement of the costs of searching, reviewing, and producing copies of the requested information and documentation, in the amount of \$3,189.21. However, the Agency did not provide an explanation as to how it arrived at this quoted cost. In an effort to reduce the aforementioned costs, I write to limit the scope of information and documentation initially sought in the January 10, 2017 FOIA Request. The newly-narrowed scope of this FOIA Request is detailed below. Please provide our office with an updated fee estimate, accounting for the narrowed scope of this request.

- Copies of any and all documents and communications related to the application, review, and consideration of Thomas E. Smith, Jr. for the Physical Scientist, ZP-1301-4 (DE/CR), position (Vacancy Announcement Number NSDIS-OSPO-2016-0037), located in Suitland, Maryland, from January 1, 2016 to present, including but not limited to assessments and communications regarding his qualifications for this position.
- Copies of any and all documents and communications which refer or relate to potentially placing Thomas E. Smith, Jr., in the Physical Scientist, ZP-1301-4 (DE/CR), position (Vacancy Announcement Number NSDIS-OSPO-2016-0037), located in Suitland, Maryland, as a reasonable accommodation, including all emails, drafted, sent, received, and/or maintained by Janine Herring, Debbie Ferrara, Tahara Dawkins, Employee Relations, and/or Human Relations from January 1, 2016 to present.
- Copies of any and all documents regarding the applications deemed best qualified and referred to the selecting and/or hiring official for the Physical Scientist, ZP-

1301-4 (DE/CR), position (Vacancy Announcement Number NSDIS-OSPO-2016-0037), located in Suitland, Maryland, from January 1, 2016 to present, including their applications and the referral list(s). Additionally, please provide copies of the position description, selection criteria, notes or other documents generated from interviews conducted with those applicants deemed best qualified, any ratings and/or rankings generated, and any documents or communications regarding the individual(s) ultimately selected for the position and the basis for these selection(s), including emails drafted, sent, received, and/or maintained by the selecting official, deciding official, and the Employee Relations and/or Human Resources personnel from January 1, 2014 to present.

If you have any questions or require any further clarification of the above revised FOIA Requests, please contact my colleague, Stephanie M. Herrera, Esq., or me at the above address or by email at sherrera@ggilbertlaw.com and emoran@ggilbertlaw.com, respectively.

Sincerely,

A handwritten signature in cursive script, appearing to read "Elizabeth N. Moran".

Elizabeth N. Moran, Esq.

cc: Thomas Smith
*Sent via electronic mail



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL ENVIRONMENTAL SATELLITE, DATA,
AND INFORMATION SERVICE

April 3, 2017

Elizabeth N. Moran
1100 Wayne Avenue
Silver Spring, MD 20910

Re: Request No. DOC-NOAA-2017-000441

Dear Ms. Moran,

This letter is in reference to your Freedom of Information Act (FOIA) request entered into FOIA online on January 26, 2017 for records pertaining to “*Vacancy Announcement NSDIS-OSPO-2016-0037 Physical Scientist, ZP-1301-4 (DE/CR) and Mr. Thomas Smith*”. NOAA has determined that the cost for searching for responsive documents will exceed \$25.00. Pursuant to the Code of Federal Regulations 15 CFR Part 4.11(e), we are providing you with a fee estimate. The fee estimate is determined in accordance with the uniform fee schedule established in 15 CFR Part 4.11(c) (i) for requesters that fall in the *Fee Category – Other*.

The NOAA Satellite and Information Service have determined that the cost of the requested information will be as follows:

- a. Search 1 - \$310.32
- b. Search 2 - \$310.32
- c. Search 3 - \$279.12
- d. Search 4 - \$279.28
- e. Search 5 - \$350.05

Total: 1,529.09

Invoice Amount: \$1,373.93

NOAA requires that you pay the estimated fee prior to receiving the requested documents pursuant to 15 CFR 4.11(i) (2). Please make your check or money order payable to the "Treasury of the United States," and send it to the NOAA Public Reference Facility (SOU 10000), 1315 East West Highway (SSMC3), Room 9719, Silver Spring, Maryland 20910. In compliance with the FOIA regulations, the 20-business-day time frame for completing your FOIA request stops until payment is received. Once your payment and authorization are received, we will continue to process your request.



Please be aware that not all responsive documents are necessarily releasable under the FOIA. If you have any questions about your request or NOAA's FOIA regulations or procedures, please contact Maria Williams at maria.williams@noaa.gov.

If payment or other communication is not received by *May 3, 2017* your FOIA request will be considered "closed."

Regards,

Digitally signed by
WILLIAMS.MARIA.STELLA.1042493429
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI,
ou=OTHER, cn=WILLIAMS.MARIA.STELLA.1042493429
Date: 2017.04.03 15:23:14 -04'00'

Maria S. Williams,
FOIA Coordinator

NOAA Satellite and Information Service

THE LAW OFFICES OF
GARY M. GILBERT & ASSOCIATES, P.C.
1100 Wayne Avenue, Suite 900
Silver Spring, MD 20910
Ph: (301) 608-0880 Fax: (301) 608-0881

March 16, 2017

Mark Graff
FOIA Officer
Room 9719-NOAA FOIA Office (SOU 10000)
1315 East-West Highway (SSMC3)
Silver Spring, MD 20910
Email: FOIA@noaa.gov
Facsimile: (301) 713-4040
*Sent via first-class mail, electronic mail, and facsimile

Re: Thomas Smith; Status of FOIA Requests

Dear Mr. Graff,

I write to follow up regarding my February 8, 2017 correspondence requesting information and documentation on behalf of my client, Thomas Smith. In this correspondence, I noted that Mr. Smith is seeking information regarding: (1) the Agency's compliance with the successful finding of discrimination in the EEO complaint filed by Mr. Smith (EEO Appeal No. 0120130553, Agency No. 54-2009-00092); and (2) all informal and formal EEO complaints filed by, or on behalf of Thomas Smith, against the Agency. For your convenience, I have attached a copy of this prior correspondence, as well as a signed statement from Thomas Smith providing our office with authorization to access this information on his behalf. As of the date of this letter, I have not yet received any correspondence from your office regarding these two FOIA Requests. Since the Agency has past their deadline to send us documents or correspondence relating to the FOIA Requests, please let us know the status of these FOIA Requests as soon as possible.

If you have any questions regarding these requests, please contact colleague, Stephanie Herrera, Esq, and me at the above address or by email at sherrera@ggilbertlaw.com or emoran@ggilbertlaw.com, respectively. We appreciate your time and attention to this matter.

Sincerely,



Elizabeth N. Moran, Esq.

Enclosure (2)

cc: Maria S. Williams
FOIA Officer
Room 9719-NOAA FOIA Office (SOU 10000)
1315 East-West Highway
Silver Spring, MD 20910
Email: maria.williams@noaa.gov
Facsimile: (202) 308-4959
*Sent via electronic mail

Thomas Smith
*Sent via electronic mail

THE LAW OFFICES OF
GARY M. GILBERT & ASSOCIATES, P.C.
1100 Wayne Avenue, Suite 900
Silver Spring, MD 20910
Ph: (301) 608-0880 Fax: (301) 608-0881

February 8, 2017

Mark Graff
FOIA Officer
Room 9719-NOAA FOIA Office (SOU 10000)
1315 East-West Highway (SSMC3)
Silver Spring, MD 20910
Email: FOIA@noaa.gov
Facsimile: (301) 713-4040
**Sent via first-class mail, electronic mail, and facsimile*

Re: Thomas Smith; FOIA Request

Dear Mr. Graff:

The Law Offices of Gary M. Gilbert & Associates, P.C. represents Thomas Smith. Pursuant to the Freedom of Information Act, 5 U.S.C § 552a(d)(1), we request the following information. Please find attached a signed statement from Mr. Smith providing our office with authorization to access information on his behalf.

Requested Documents:

- Copies of the Reports of Investigation for any and all informal or formal EEO complaints filed by, or on behalf of, Thomas Smith, including, but not limited to, Agency Nos. 54-2012-01801, 54-2011-02074, 54-2011-00267, 11-54-00066, 10-54-00811, 10-54-00339, and 08-54-00092. For Agency No. 54-2012-01801 Mr. Smith made informal contact with the Agency on November 29, 2011 and filed a Formal Complaint of Discrimination on December 16, 2011 on the issue of evaluation and/appraisal. For Agency No. 54-2011-02074 Mr. Smith made informal contact on September 12, 2011 and filed a Formal Complaint of Discrimination on October 28, 2011, raising claims of discrimination and harassment based on race and reprisal. For Agency No. 54-2011-00267 Mr. Smith made informal contact on May 13, 2011 and filed a Formal Complaint of Discrimination on June 23, 2011, raising claims of discrimination and harassment based on race and reprisal. For Agency No. 11-54-00066, Mr. Smith made informal contact on November 15, 2010 and filed a Formal Complaint of Discrimination on December 21, 2010, raising claims of discrimination and harassment based on race and reprisal. For Agency No. 10-54-00811, Mr. Smith made informal contact on March 15, 2010 and filed a Formal Complaint of Discrimination on May 25, 2010, alleging discrimination and harassment on the basis of reprisal. For Agency No. 10-54-00339, Mr. Smith initiated informal contact on December 30, 2009 and filed a Formal Complaint of Discrimination on February 9, 2010, raising claims of discrimination and harassment based on race and reprisal. For Agency No. 08-54-00092, Mr. Smith making informal contact on January 8, 2008 and filing a Formal Complaint of Discrimination on

April 3, 2008, raising claims of discrimination and harassment based on race and reprisal.

- Copies of any and all communications and documentation, drafted, sent, received, and/or maintained by the EEO Counselor(s) for any and all EEO complaints filed by, or on behalf of, Thomas Smith, against the Agency, including, but not limited to, Agency Nos. 54-2015-00137, 54-2014-00137, 54-2013-00264, 54-2012-01971, 54-2012-01801, 54-2011-02074, 54-2011-00267, 11-54-00066, 10-54-00811, 10-54-00339, and 08-54-00092. This request includes any and all communications, including but not limited to emails, between the EEO Counselor(s) for the aforementioned EEO complaints and any responsible management official named in that informal EEO complaint.

Please produce the above documents to the following address:

Elizabeth N. Moran, Esq.
Stephanie M. Herrera, Esq.
The Law Offices of Gary M. Gilbert & Associates, P.C.
1100 Wayne Avenue, Suite 900
Silver Spring, MD 20910
Tel: (301) 608-0880
Fax: (301) 608-0881
Emails: emoran@ggilbertlaw.com
sherrera@ggilbertlaw.com

If there are any fees incurred for searching for, reviewing, or copying the records, please notify us before processing the request if the amount exceeds \$25. This request is not for commercial purposes.

If all or any part of this request is denied, please cite each specific exemption the Agency believes its refusal to release the information and notify us of the appeal procedures available under the law.

Please contact us at the above address if the Agency has any questions regarding the scope of this request.

Sincerely,



Elizabeth N. Moran, Esq.
Stephanie M. Herrera, Esq.

Enclosure (1)

cc: Thomas Smith
**Sent via electronic mail*

To Whom It May Concern:

I write regarding the Freedom of Information Act (FOIA) request made in my name by my attorneys, Elizabeth N. Moran, Esq. and Stephanie M. Herrera, Esq., of The Law Offices of Gary M. Gilbert & Associates, P.C. I hereby certify my agreement that any records regarding the above-mentioned FOIA request may be released to Ms. Moran and Ms. Herrera, or to other attorneys in their office working on my case and acting on my behalf.



Thomas Smith

2-2-2017

Date

THE LAW OFFICES OF
GARY M. GILBERT & ASSOCIATES, P.C.
1100 Wayne Avenue, Suite 900
Silver Spring, MD 20910
Ph: (301) 608-0880 Fax: (301) 608-0881

February 8, 2017

Mark Graff
FOIA Officer
Room 9719-NOAA FOIA Office (SOU 10000)
1315 East-West Highway (SSMC3)
Silver Spring, MD 20910
Email: FOIA@noaa.gov
Facsimile: (301) 713-4040
**Sent via first-class mail, electronic mail, and facsimile*

Re: Thomas Smith; FOIA Request

Dear Mr. Graff:

The Law Offices of Gary M. Gilbert & Associates, P.C. represents Thomas Smith. Pursuant to the Freedom of Information Act, 5 U.S.C § 552a(d)(1), we request the following information. Please find attached a signed statement from Mr. Smith providing our office with authorization to access information on his behalf.

Requested Documents:

- Copies of any and all records, documents, and communications, including but not limited to emails, regarding any and all actions taken by any Agency employee, including but not limited to Mark Paese and Tahara Dawkins, to address, respond, and/or comply with the successful finding of discrimination in the EEO complaint filed by Thomas Smith (EEO Appeal No. 0120130553, Agency No. 54-2009-00092).

Please produce the above documents to the following address:

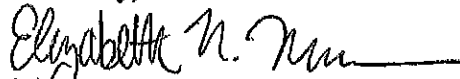
Elizabeth N. Moran, Esq.
Stephanie M. Herrera, Esq.
The Law Offices of Gary M. Gilbert & Associates, P.C.
1100 Wayne Avenue, Suite 900
Silver Spring, MD 20910
Tel: (301) 608-0880
Fax: (301) 608-0881
Emails: emoran@ggilbertlaw.com
sherrera@ggilbertlaw.com

If there are any fees incurred for searching for, reviewing, or copying the records, please notify us before processing the request if the amount exceeds \$25. This request is not for commercial purposes.

If all or any part of this request is denied, please cite each specific exemption the Agency believes its refusal to release the information and notify us of the appeal procedures available under the law.

Please contact us at the above address if the Agency has any questions regarding the scope of this request.

Sincerely,

A handwritten signature in cursive script, appearing to read "Elizabeth N. Moran", followed by a horizontal line.

Elizabeth N. Moran, Esq.
Stephanie M. Herrera, Esq.

Enclosure (1)

cc: Thomas Smith
**Sent via electronic mail*

To Whom It May Concern:

I write regarding the Freedom of Information Act (FOIA) request made in my name by my attorneys, Elizabeth N. Moran, Esq. and Stephanie M. Herrera, Esq., of The Law Offices of Gary M. Gilbert & Associates, P.C. I hereby certify my agreement that any records regarding the above-mentioned FOIA request may be released to Ms. Moran and Ms. Herrera, or to other attorneys in their office working on my case and acting on my behalf.



Thomas Smith

2-8-2017

Date

From: Beverly Smith - NOAA Federal <beverly.smith@noaa.gov>
Sent: Friday, May 5, 2017 1:17 PM
To: Mark Graff - NOAA Federal
Cc: Beverly Smith
Subject: Re: GUIDANCE NEEDED - Fwd: FOIA REQUEST #DOC-NOAA-2017-000631 SIMPSON - SCOPE MODIFICATION & CLARIFICATION CONFIRMATION E-MAIL

Mark,

Ms. Cufone has agreed to submit a new FOIA request. Thank you for your FOIA procedure guidance. Bev.

On Wed, May 3, 2017 at 2:53 PM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:

I think we woul (b)(5)

I would suggest (b)(5)

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

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On Wed, May 3, 2017 at 2:06 PM, Beverly Smith - NOAA Federal <beverly.smith@noaa.gov> wrote:

Hi Mark,

I left a voice mail message for you a little while ago. (b)(5)

Thanks.
Bev.

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

From: **Marianne Cufone** <mcufone@recirculatingfarms.org>

Date: Wed, May 3, 2017 at 11:33 AM

Subject: Fwd: FOIA REQUEST #DOC-NOAA-2017-000631 SIMPSON - SCOPE MODIFICATION & CLARIFICATION CONFIRMATION E-MAIL

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

Cc: Benjamin Simpson <benjamin@my.loyno.edu>, Jason Galjour <jmgaljou@my.loyno.edu>, Emily Posner <emilyposnerlaw@gmail.com>

Hi Beverly - per your request, here it is again, far below.

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

From: **Marianne Cufone** <mcufone@recirculatingfarms.org>

Date: Wed, May 3, 2017 at 10:30 AM

Subject: Fwd: FOIA REQUEST #DOC-NOAA-2017-000631 SIMPSON - SCOPE MODIFICATION & CLARIFICATION CONFIRMATION E-MAIL

To: mcufone <MCufone@recirculatingfarms.org>

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

From: **Marianne Cufone** <mcufone@recirculatingfarms.org>

Date: Tues, March 28, 2017 at 11:09 AM

Subject: Re: FOIA REQUEST #DOC-NOAA-2017-000631 SIMPSON - SCOPE MODIFICATION & CLARIFICATION CONFIRMATION E-MAIL

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

Cc: Benjamin Simpson <Benjamin@my.loyno.edu>, Jason Galjour <jmgaljou@my.loyno.edu>, Emily Posner <emilyposnerlaw@gmail.com>

Hello Beverly - thanks very much for your and all the others' time on the call March 6th. After review and discussion about the below - please see our comments and further clarifications (underlined):

Request Scope Clarification and Modification

Pursuant to our conference call, the following is the scope clarification and modification that we discussed:

- (1) The most recent stock assessment data for the Barataria Bay Estuarine System Stock of Common Bottlenose Dolphins.

Modification-Added: from 2009 to present. The requester agreed to narrow the scope to the stock assessment reports, including draft reports, and published manuscripts.

Clarification: The requester does not seek raw data.

- (2) All data concerning unusual mortality events in Atlantic Bottlenose dolphins in the Gulf of Mexico from 2009 to present.

Modification: All data concerning unusual mortality events in the Gulf of Mexico geographic area near Barataria Bay and in Barataria Bay the species Common Bottlenose Dolphins from 2009 to present. The requester limited his level A data request to Bottlenose dolphin strandings in the 3 parishes surrounding Barataria Bay from 2009 - present. The requester will identify specific dolphins from the Level A data for which specific necropsy information can be requested if needed, following review of publications provided.

Clarification: Requester seeks the cause of mortality and necropsy results. NMFS SEFSC advised that responsive public records include Level A data and websites that include publications and raw data used in those publications that discuss the overall mortality event. Additional responsive data include Level B and C data, including necropsy reports, histopathology reports and other analytical results.

- (3) All information regarding the LOF designation for the Gulf menhaden (*Brevoortia patronus* hereinafter "Gulf menhaden") purse seine fishery.

Modification-Added: from 1999 to present. The requester agreed to narrow the scope to the annual tier analyses and reports.

Clarification: Request seeks information as to why there is no change in the LOF designation year to year. SERO PRD advised that there has been no change in the designation of the Gulf menhaden fishery since 1999, so there are no additional annual reports on the fishery status designation given and it has remained within the Category II standards. We'd like to know WHY there is no change and seek any e-mails, discussions, analysis and summaries pertaining to the no change status.

- (4) All data recorded by independent observers on Gulf menhaden fishing boats from 1992 to present.

Modification-Added: from 1990 to present.

Clarification: Requester seeks information on how much interaction there is with the menhaden fishery and takes by fishery. NMFS SEFSC advised that this is not an observed fishery, but there was a NMFS funded pilot observer study from April-November 2011 that resulted in a report and summary. The SEFSC will provide website links to where the information from the LSU observer program is available. We seek ANY and ALL information regarding bycatch in the menhaden fishery in the Gulf of Mexico from 1990 - present.

- (5) Any information pertaining to takings of Common Bottlenose Dolphins in and around Barataria Bay.

Modification-Added: from 1999 to present, excluding Marine Mammal Protection Act permitted research takes only.

Clarification: Requester seeks incidental takes and self-reported takes in all fisheries. NMFS advised that responsive information for marine mammals will include bullets 7 and 8. Responsive material includes data from incidental takes that is included in SEFSC's Level A data, takes in SEFSC's non-stranding spreadsheet (if any), and large bycatch data in technical reports, and fishery research takes, and SER's self-reporting data through the Marine Mammal Authorization Program.

- (6) Visual representations and GPS data on Gulf menhaden landings from recent years.

Modification: Requester agreed to narrow the scope to maps of data by year from 2009 to present.

Clarification: NMFS advised that it collects GPS data from 2009 to present and prior to 2009 there is a less specific data code used, which cannot be mapped.

- (7) All reported incidental takings of Common Bottlenose Dolphins in the Gulf of Mexico around Barataria Bay and in Barataria Bay.

Modification-Added: See #5, above.

- (8) All reported bycatch data from the Gulf menhaden purse seine fishery.

Modification-Added: See #5, above, and around Barataria Bay for Bottlenose Dolphins.

- (9) All communications concerning the Gulf menhaden fishery (including memos, documents, emails, text messages, phone conversations, and all correspondence)

Modification-Added: in the Gulf of Mexico from 1999 to present.

Clarification: Records include but are not limited to LOF, bycatch, observer, and other decisions to regulate the fishery. NMFS advised that records will also include custodians located at the Office of Protected Resources in Silver Springs, MD.

On Thu, Mar 9, 2017 at 8:54 AM, Beverly Smith - NOAA Federal <beverly.smith@noaa.gov> wrote:
RE: Freedom of Information Act (FOIA) Request #DOC-NOAA-2017-000631

Dear Messers. Simpson and Galjour and Ms. Cufone and Posner:

This is in reference to the above-captioned FOIA request #DOC-NOAA-2017-000631 dated February 15, 2017, and received by our office on February 22, 2017. This confirms our telephone conference call on March 6, 2017, regarding the scope of your request and potentially responsive records. The conference call also included the following individuals:

National Marine Fisheries Service (NMFS)
Southeast Region (SER), Protected Resources Division
Jessica Powell, M.S., Fishery Biologist
Teletha Mincey, Program Analyst, FOIA Point of Contact

Southeast Fishery Science Center (SEFSC)
Keith Mullin, Ph.D., Research Fish Biologist
Jenny Litz, Ph.D., Research Fish Biologist
Liz Scott-Denton, Ph.D., Research Fish Biologist
Ray Mroch, Fishery Biologist

FOIA Request

In your request you seek information regarding the impact that the Gulf menhaden purse seine fishery has on Bottlenose dolphins in Barataria Bay. You specifically seek the following records:

- The most recent stock assessment data for the Barataria Bay Estuarian System Stock of Common Bottlenose Dolphins.
- All data concerning unusual mortality events in Atlantic Bottlenose dolphins in the Gulf of Mexico from 2009 to present.
- All information regarding the LOF designation for the Gulf menhaden (*Brevoortia patronus* hereinafter "Gulf menhaden") purse seine fishery.
- All data recorded by independent observers on Gulf menhaden fishing boats from 1992 to present.
- Any information pertaining to takings of Common Bottlenose Dolphins in and around Barataria Bay.
- Visual representations and GPS data on Gulf menhaden landings from recent years.
- All reported incidental takings of Common Bottlenose Dolphins around Barataria Bay.
- All reported bycatch data from the Gulf menhaden purse seine fishery.

- All communications concerning the Gulf menhaden fishery (including memos, documents, emails, text messages, phone conversations, and all correspondence)

Request Scope Clarification and Modification

Pursuant to our conference call, the following is the scope clarification and modification that we discussed:

- (1) The most recent stock assessment data for the Barataria Bay Estuarine System Stock of Common Bottlenose Dolphins.

Modification-Added: from 2009 to present. The requester agreed to narrow the scope to the stock assessment reports, including draft reports, and published manuscripts.

Clarification: The requester does not seek raw data.

- (2) All data concerning unusual mortality events in Atlantic Bottlenose dolphins in the Gulf of Mexico from 2009 to present.

Modification: All data concerning unusual mortality events in the geographic area of Barataria Bay and the species Common Bottlenose Dolphins from 2009 to present. The requester limited his level A data request to Bottlenose dolphin strandings in the 3 parishes surrounding Barataria Bay from 2009 - present. The requester will identify specific dolphins from the Level A data for which specific necropsy information can be requested if needed following review of publications provided.

Clarification: Requester seeks the cause of mortality and necropsy results. NMFS SEFSC advised that responsive public records include Level A data and websites that include publications and raw data used in those publications that discuss the overall mortality event. Additional responsive data include Level B and C data, including necropsy reports, histopathology reports and other analytical results.

- (3) All information regarding the LOF designation for the Gulf menhaden (*Brevoortia patronus* hereinafter "Gulf menhaden") purse seine fishery.

Modification-Added: from 1999 to present. The requester agreed to narrow the scope to the annual tier analyses and reports.

Clarification: Request seeks information as to why there is no change in the LOF designation year to year. SERO PRD advised that there has been no change in the designation of the Gulf menhaden fishery since 1999, so there are no additional annual reports on the fishery status designation given and it has remained within the Category II standards.

- (4) All data recorded by independent observers on Gulf menhaden fishing boats from 1992 to present.

Modification-Added: from 1990 to present. The requester agreed to narrow the scope to the 2011 final report and summary of a pilot observer study.

Clarification: Requester seeks information on how much interaction there is with the menhaden fishery and takes by fishery. NMFS SEFSC advised that this is not an observed fishery, but there was a NMFS funded pilot observer study from April-November 2011 that resulted in a report and summary. The SEFSC will provide website links to where the information from the LSU observer program is available.

- (5) Any information pertaining to takings of Common Bottlenose Dolphins in and around Barataria Bay.

Modification-Added: from 1999 to present, excluding Marine Mammal Protection Act permitted research takes.

Clarification: Requester seeks incidental takes and self-reported takes in all fisheries. NMFS advised that responsive information for marine mammals will include bullets 7 and 8. Responsive material includes data from incidental takes that is included in SEFSC's Level A data, takes in SEFSC's non-stranding spreadsheet (if any), and large bycatch data in technical reports, and fishery research takes, and SER's self-reporting data through the Marine Mammal Authorization Program.

- (6) Visual representations and GPS data on Gulf menhaden landings from recent years.

Modification: Requester agreed to narrow the scope to maps of data by year from 2009 to present.

Clarification: NMFS advised that it collects GPS data from 2009 to present and prior to 2009 there is a less specific data code used, which cannot be mapped.

- (7) All reported incidental takings of Common Bottlenose Dolphins around Barataria Bay.

Modification-Added: See #5, above.

- (8) All reported bycatch data from the Gulf menhaden purse seine fishery.

Modification-Added: See #5, above, and around Barataria Bay for Bottlenose Dolphins.

- (9) All communications concerning the Gulf menhaden fishery (including memos, documents, emails, text messages, phone conversations, and all correspondence)

Modification-Added: in the Gulf of Mexico from 1999 to present.

Clarification: Records include but are not limited to LOF, bycatch, observer, and other decisions to regulate the fishery. NMFS advised that records will also include custodians located at the Office of Protected Resources in Silver Springs, MD.

REQUEST TOLLING

Pursuant to 5 U.S.C. 552(a)(6)(A), our time to respond was tolled on March 2, 2017, until we concluded the scope clarification process and we agree on what it is that you seek. This does not start your time running again from the beginning, but it does stop the clock until we conclude the scope clarification process.

If we do not hear from you within 30 calendar days from the date of this e-mail, we will assume that you do not wish to proceed and your request will be administratively closed.

If you have any questions, please do not hesitate to contact me at [727-551-5762](tel:727-551-5762) or beverly.smith@noaa.gov, or the NOAA FOIA Public Liaison Robert Swisher at [301-628-5755](tel:301-628-5755).

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

--
Marianne Cufone
Executive Director
Recirculating Farms Coalition
www.recirculatingfarms.org

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--

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--

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

From: Ruth Ann Lowery - NOAA Federal <ruthann.lowery@noaa.gov>
Sent: Monday, May 8, 2017 2:17 PM
To: Mark Graff - NOAA Federal
Cc: Roxie Allison-Holman - NOAA Federal; Maria Williams - NOAA Federal; Robert Swisher - NOAA Federal
Subject: FW: Interim Release, Request DOC-NOAA-2017-000613
Attachments: Dkt. 16 - Motion for Summary Judgment.pdf

Mark,

(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
Fax: (301) 713-0658

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><(((°>`.,.,.~.,.><(((°>.,.,.~.,.><(((°>

From: Robert Swisher - NOAA Federal [mailto:robert.swisher@noaa.gov]
Sent: Friday, May 05, 2017 11:03 AM
To: Dan Vergano
Cc: Maria Williams - NOAA Federal; Mark Graff - NOAA Affiliate
Subject: Re: Interim Release, Request DOC-NOAA-2017-000613

Mr. Vergano,

The NOAA FOIA Officer, Mark Graff is on leave until Tuesday. He is very familiar with exemption requirements, I think it would be more fruitful for you to discuss your issues when he returns then.

On Thu, May 4, 2017 at 5:45 PM, Dan Vergano <dan.vergano@buzzfeed.com> wrote:
Maria, Robert,

Please let me know a good time to call about this response tomorrow morning (b)(5)
[Redacted]

Dan

Dan Vergano | Science Desk (DC) | [202 629 4563](tel:2026294563)

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On Thu, May 4, 2017 at 11:17 AM, foia@noaa.gov <foia@noaa.gov> wrote:

DOC-NOAA-2017-000613 has been approved for an interim release.

Records were released to the public as a result of this request. You may retrieve these records immediately using the following link: [View Records](#). Over the next 2 hours, these records are also being added to FOIAonline's search pages, further enabling you to retrieve these documents associated with your FOIA request at any time.

--

Rob Swisher

Director, Governance and Portfolio Division

[NOAA OCIO](#)

301-628-5755

240-723-5284

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

MOTION FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56, Defendant U.S. Department of Commerce hereby moves for summary judgment on all of Plaintiff's claims. This motion is supported by a statement of material facts as to which there is no genuine issue, a memorandum of points and authorities, the Declarations of Mark Graff and Dr. Richard Spinrad, and a *Vaughn* index. A proposed order is attached.

Dated: December 15, 2016

Respectfully submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

ELIZABETH J. SHAPIRO
Deputy Director, Federal Programs Branch

/s/ Kevin M. Snell
KEVIN M. SNELL
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue N.W., Room 6108
Washington, D.C. 20530
Tel.: (202) 305-0924
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E-mail: Kevin.Snell@usdoj.gov

Counsel for Defendant

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

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INTRODUCTION

In this Freedom of Information Act (“FOIA”), Plaintiff Judicial Watch requested from the National Oceanographic and Atmospheric Administration (“NOAA”), a component of the Department of Commerce, records relating to different temperature metrics and datasets.¹ The parties conferred and reached an agreement regarding the scope of the request and relevant search parameters. Using those agreed-upon parameters, NOAA conducted a search and ultimately produced responsive, non-exempt material.

Plaintiff now challenges the adequacy of NOAA’s search and all of its redactions and withholdings. But as discussed more fully herein, NOAA conducted a search that was reasonably calculated to locate all non-duplicative records in its possession responsive to Plaintiff’s request. Moreover, all of the challenged information and records that NOAA withheld were properly exempt from production. The Court should therefore grant summary judgment in favor of the Department of Commerce.

FACTUAL BACKGROUND

I. The Hiatus Paper

The FOIA request at issue centers around a June 4, 2015 study authored by NOAA scientists and published in the journal *Science* entitled *Possible Artifacts of Data Biases in the Recent Global Surface Warming Hiatus* (“Hiatus Paper” or “the Paper”). Between September 2013 and November 2014, the Intergovernmental Panel on Climate Change (“IPCC”) released a report in stages that concluded that the upward global surface temperature trend from 1998-2012

¹ The FOIA request also sought communications between NOAA and the House of Representatives Committee on Science, Space, and Technology. The agency made a separate production of these records, which Plaintiff’s counsel indicated in writing that Plaintiff did not intend to challenge. Therefore, this motion for summary judgment and accompanying documents do not address the agency’s response to that aspect of the request.

was lower than that from 1951-2012. Declaration of Mark Graff (“Graff Decl.”) Decl. ¶ 9 (attached herein as Exhibit A). The apparent observed slowing of the global surface temperatures was dubbed the “hiatus.” *Id.* The Hiatus Paper, drafted after that report by a team of NOAA scientists, sought to properly account for the alleged “hiatus.”

NOAA’s National Centers for Environmental Information (“NCEI”) produces and maintains datasets for global ocean areas and global land areas. *Id.* ¶ 6. Scientists throughout the government, including scientists at agencies other than NOAA, and outside of the government, use the sea surface temperature and land surface temperature datasets for a variety of purposes, including for climatic research and climate assessments. *Id.* NCEI scientists continually work to improve the datasets to provide the public the most up-to-date and accurate information. *Id.* There were two significant developments related to the “hiatus” after the IPCC’s report. In particular, 2013 and 2014 were two of the five warmest years on record for the globe. *Id.* ¶ 10. Also, NOAA scientists made significant improvements to its sea surface temperature dataset, one of largest being a correction that accounted for the difference in data collected from ships and buoys. *Id.* Buoys have been increasingly used since the 1970s to measure sea surface temperatures, and scientists developed a method to correct for the difference between these two observing systems and incorporated those corrections into the dataset. *Id.*

NCEI scientists regularly interpret and analyze datasets and release to the public the most up-to-date climate science, often through publication in scientific journals. *Id.* ¶ 7. The Hiatus Paper is an example of analysis and interpretation of the updated underlying data. *Id.* ¶ 8.

Around late October 2014, Tom Karl, then the Director of NCEI, circulated a draft paper to a group of NOAA scientists that developed an idea for properly accounting for the alleged “hiatus” based on the additional two years of global temperature data and the improvements to

NOAA's sea surface temperature dataset. *Id.* ¶ 11. Karl sought feedback on the draft paper, and a team of scientists at NOAA worked to develop a manuscript. *See id.* ¶¶ 11-13. Many drafts and revisions were exchanged among these scientists, along with emails discussing various aspects of the paper or its content, including suggestions on how best to describe the data, opinions on statistical error uncertainty ranges, thoughts on the implications of other researchers' work, and so on. *Id.* ¶ 13. Such collaboration via discussions and drafts is standard practice at NCEI. *Id.* ¶ 13.

In December 2014, the authors submitted the draft paper to the journal *Science*. *Id.* ¶ 14. Once there, the draft paper went through the journal's peer review process, in which five anonymous peer reviewers weighed in on the manuscript. *Id.* ¶ 20. When the authors received feedback, they discussed internally how to respond in writing to the comments they received, and also revised the manuscript to address the questions and concerns raised. *See id.* ¶ 21. After a second round of peer review, NOAA received word that the article would be published, and *Science* published the Paper on its website on June 4, 2015. *Id.* ¶ 23.

II. The FOIA Request and NOAA's Response

Plaintiff's FOIA request, dated October 30, 2015, sought in relevant part:

1. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the methodology and utilization of Night Marine Air Temperatures to adjust ship and buoy temperature data.
2. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the use of other global temperature datasets for both NOAA's in-house dataset improvements and monthly press releases conveying information to the public about global temperatures.
3. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the

utilization and consideration of satellite bulk atmospheric temperature readings for use in global temperature datasets.

Graff Decl. ¶ 24; *see also* Answer, ECF No. 8-1.

Upon review of the request, NOAA officials determined that it did not reasonably describe the records requested. Graff Decl. ¶ 25. Through counsel, NOAA conferred with Plaintiff to negotiate a clear description of the material sought. *Id.* During the course of those discussions, NOAA indicated to Plaintiff that it understood the request to reflect an interest in the Hiatus Paper and accordingly suggested modifying the request to call for a search for all documents and communications referring to the Hiatus Paper from its nine authors. *Id.* ¶ 26. Plaintiff confirmed its interest in that study, but indicated that it sought only records referring to the topics listed in its initial FOIA request. *Id.*

The parties ultimately “reached an agreement regarding the scope of the request and relevant search parameters.” Second Joint Status Report, ECF No. 10 at 2. For Plaintiff’s FOIA request, NOAA agreed to search the records of the nine authors of the Hiatus Paper for records referring to that paper and that contain one of the following search terms: “NMAT,” “Night Marine Air Temperatures,” “ISTI,” “ICOADS,” “sea ice,” “satellite,” “Advanced Very High Resolution Radiometer,” “AVHRR,” “Advanced Microwave Scanning Radiometer,” and “AMSR.” *Id.*; Graff Decl. ¶ 27.

After NOAA directed those custodians to run the agreed-upon searches, it made a production on May 27, 2016 of 102 pages of material in its entirety and 90 partially redacted pages. *See* Graff Decl. ¶ 29; Fourth Joint Status Report, ECF No. 12 at 2. NOAA withheld in their entirety 8,013 pages of records, and informed Plaintiff that because it sought records from nine separate custodians, a significant amount of duplicative material existed in the responsive records. *See* Graff Decl. ¶ 29; Fourth Joint Status Report, ECF No. 12. The parties then

discussed the details of potential challenges to NOAA's production, and NOAA agreed to provide Plaintiff a draft *Vaughn* index in an attempt to narrow the issues in dispute. *See* Fifth & Sixth Joint Status Report, ECF Nos. 13 & 14. Upon further review of the withheld information, on September 16, 2016, NOAA released to Plaintiff an additional 44 pages of material (7 of those pages were partially redacted to exclude Mr. Karl's cell phone number), Graff Decl. ¶ 30, and contemporaneous with this filing on December 15, 2016, NOAA released an additional 62 records, Graff Decl. ¶ 31.

STANDARD OF REVIEW

A court reviews an agency's response to a FOIA request *de novo*. 5 U.S.C. § 552(a)(4)(B). "FOIA cases are typically and appropriately decided on motions for summary judgment." *Moore v. Bush*, 601 F. Supp. 2d 6, 12 (D.D.C. 2009). In deciding at the summary judgment stage whether an agency has fully discharged its obligations under FOIA, "the agency must show, viewing the facts in the light most favorable to the requester, that there is no genuine issue of material fact." *Steinberg v. U.S. Dep't of Justice*, 23 F.3d 548, 551 (D.C. Cir. 1994).

ARGUMENT

I. NOAA's Search Was Reasonable, Adequate, and Satisfies Its Obligation Under the FOIA

A. The Standard for an Adequate Search

The touchstone for determining whether an agency should prevail on a motion for summary judgment in FOIA litigation is whether the agency demonstrates that its "search for documents was adequate." *Larson v. Dep't of State*, 565 F.3d 857, 869 (D.C. Cir. 2009). An agency's search is adequate if "it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." *Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). The adequacy of a FOIA

search is thus gauged “not by the fruits of the search, but by the appropriateness of the methods used to carry out the search.” *Ancient Coin Collectors Guild v. U.S. Dep’t of State*, 641 F.3d 504, 514 (D.C. Cir. 2011) (quoting *Iturralde v. Comptroller of Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003)). In short, “[t]he adequacy of the search . . . is judged by a standard of reasonableness.” *Steinberg*, 23 F.3d at 551; *see also DiBacco v. U.S. Army*, 795 F.3d 178, 194–95 (D.C. Cir. 2015) (“A search need not be perfect, only adequate, and adequacy is measured by the reasonableness of the effort in light of the specific request.” (quoting *Meeropol v. Meese*, 790 F.2d 942, 956 (D.C. Cir. 1986))).

“In demonstrating the adequacy of the search, the agency may rely upon reasonably detailed, nonconclusory affidavits submitted in good faith.” *Id.* (quoting *Weisberg v. Dep’t of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984)). Such affidavits are sufficient if they “set[] forth the search terms and the type of search performed, and aver[] that all files likely to contain responsive materials (if such records exist) were searched.” *Chambers v. U.S. Dep’t of Interior*, 568 F.3d 998, 1003 (D.C. Cir. 2009) (quoting *McCready v. Nicholson*, 465 F.3d 1, 7 (D.C. Cir. 2006)). This standard does not require that “the affidavits of the responding agency set forth with meticulous documentation the details of an epic search for the requested records.” *Perry v. Block*, 684 F.2d 121, 127 (D.C. Cir. 1982). “Rather, in the absence of countervailing evidence or apparent inconsistency of proof, affidavits that explain in reasonable detail the scope and method of the search conducted by the agency will suffice” *Id.* Moreover, “[s]uch agency affidavits attesting to a reasonable search ‘are afforded a presumption of good faith,’ and ‘can be rebutted only with evidence that the agency’s search was not made in good faith.’” *Riccardi v. US Dep’t of Justice*, 32 F. Supp. 3d 59, 63 (D.D.C. 2014) (quoting *Def. of Wildlife v. U.S. Dep’t of Interior*, 314 F. Supp.2d 1, 8 (D.D.C. 2004)).

Finally, courts in this circuit recognize the “well-worn rule . . . that the adequacy of a FOIA search is not to be judged by its results.” *Rosenberg v. United States Dep’t of Immigration & Customs Enf’t*, 13 F. Supp. 3d 92, 104 (D.D.C. 2014). “The question is not ‘whether there might exist any other documents possibly responsive to the request, but rather whether the search for those documents was *adequate*.’” *Steinberg*, 23 F.3d at 551 (quoting *Weisberg v. Dep’t of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984)) (emphases in original). Thus, courts have rejected challenges to the adequacy of a search, even when a “slim yield may be intuitively unlikely” and a “reasonable observer would find th[e] result[s] unexpected.” *Ancient Coin Collectors Guild*, 641 F.3d at 514. Moreover, “mere speculation that as yet uncovered documents might exist[] does not undermine the determination that the agency conducted an adequate search for the requested records.” *Wilbur v. CIA*, 355 F.3d 675, 678 (D.C. Cir. 2004); *see also Sheffield v. Holder*, 951 F. Supp. 2d 98, 101 (D.D.C. 2013) (noting that a requester “cannot rest . . . on mere conjecture or ‘purely speculative claims about the existence and discoverability of other documents’” (quoting *Elec. Privacy Info. Ctr. v. Dep’t of Homeland Sec.*, 384 F. Supp. 2d 100, 107 (D.D.C. 2005))).

B. NOAA Conducted an Adequate Search

As set forth in Mark Graff’s Declaration, NOAA’s search for records responsive to Plaintiff’s FOIA request was more than adequate. *See Perry*, 684 F.2d at 127. Judicial Watch and NOAA reached an agreement as to how the search would be carried out. The agency would search the records of the nine Hiatus Paper authors for any record referring to that study and containing the term “NMAT,” “night marine air temperatures,” “ISTI,” “ICOADS,” “sea ice,” “satellite,” “advanced very high resolution radiometer,” “AVHRR,” “advanced microwave scanning radiometer,” and “AMSR.” Graff Decl. ¶ 27; Second Joint Status Report at 2, ECF No.

10. The timeframe for the search would be October 1, 2014 to June 4, 2015. *Id.* NOAA determined that the records requested resided within one office, NCEI, because all of the agreed-upon custodians work or had worked there during the time frame in which responsive records were created. *Id.* ¶ 33. NOAA then directed those custodians to search their email, electronic, and paper files for records referring to the Karl Study and containing the agreed-upon search terms. *Id.* ¶ 35. Those scientists searched their electronic files (including email) and non-electronic files, collected any potentially responsive material, and forwarded that material for responsiveness and exemption review. *Id.* ¶¶ 36-38.² There were no common areas at NCEI for NOAA to search. *Id.* ¶ 37. Thus, all files determined to be reasonably likely to contain responsive, non-duplicative material were searched. *Id.* ¶ 44.

On this record, NOAA's search should be upheld under FOIA. NOAA has provided "a reasonably detailed [declaration], setting forth the search terms and the type of search performed," and averred that all files likely to contain responsive, non-duplicative materials were searched. *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 326 (D.C. Cir. 1999) (quoting *Oglesby*, 920 F.2d at 68). NOAA has "made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested." *Oglesby*, 920 F.2d at 68.

II. NOAA Properly Withheld Information Under Exemption 5

FOIA does not require disclosure of "matters that are . . . inter-agency or intra-agency memorandums or letters [which] would not be available by law to a party other than an agency in

² One custodian had retired from NCEI by the time the search was conducted and so that former employee's archived email was searched by another custodian. *See* Graff Decl. ¶ 36 n.1. No additional records responsive to this request from that author are known to have existed following his retirement. *See id.*

litigation with the agency.” 5 U.S.C. § 552(b)(5). “Exemption 5 . . . exempt[s] those documents, and only those documents, normally privileged in the civil discovery context.” *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975). Exemption 5 thus protects the attorney-client privilege, the attorney work product privilege, and the deliberative process privilege. *Id.*; see also *Rockwell Int’l Corp. v. Dep’t of Justice*, 235 F.3d 598, 601 (D.C. Cir. 2001).

The deliberative process privilege “allows the government to withhold documents and other materials that would reveal advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.” *In re Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997). According to the D.C. Circuit,

There are essentially three policy bases for this privilege. First, it protects creative debate and candid consideration of alternatives within an agency, and, thereby, improves the quality of agency policy decisions. Second, it protects the public from the confusion that would result from premature exposure to discussions occurring before the policies affecting it had actually been settled upon. And third, it protects the integrity of the decision-making process itself by confirming that officials should be judged by what they decided, not for matters they considered before making up their minds.

Russell v. Dep’t of the Air Force, 682 F.2d 1045, 1048 (D.C. Cir. 1982) (quoting *Jordan v. Dep’t of Justice*, 591 F.2d 753, 772-73 (D.C. Cir. 1978)).

The privilege is necessary because “those who expect public dissemination of their remarks may well temper candor with a concern for appearances . . . to the detriment of the decisionmaking process.” *Sears*, 421 U.S. at 150-51. “[E]fficiency of Government would be greatly hampered if, with respect to legal and policy matters, all Government agencies were prematurely forced to ‘operate in a fishbowl.’” *EPA v. Mink*, 410 U.S. 73, 87 (1973), *abrogated on other grounds*, Pub. L. No. 93-502, 88 Stat. 1561 (1974). There are “[t]wo requirements [that] are essential to the deliberative process privilege: the material must be predecisional and it must be deliberative.” *In re Sealed Case*, 121 F.3d at 737.

The agency is best situated “to know what confidentiality is needed ‘to prevent injury to the quality of agency decisions.’” *Chem. Mfrs. Ass’n v. Consumer Prod. Safety Comm’n*, 600 F. Supp. 114, 118 (D.D.C. 1984) (quoting *Sears*, 421 U.S. at 151). NOAA’s justification for asserting Exemption 5 is “sufficient if it appears ‘logical’ or ‘plausible.’” *Wolf v. CIA*, 473 F.3d 370, 374-75 (D.C. Cir. 2007).

Here, NOAA properly withheld information under Exemption 5 that is protected by the deliberative process privilege because the information withheld reflects deliberations in preparation for decisions of how to analyze and present data and theory, as well as decisions about how to respond to peer review comments and deliberations on developing public communications and congressional presentations. *See* Graff Decl. ¶¶ 50-63. Disclosure of such information, which is predecisional and deliberative, and contains selected factual material intertwined with opinion, would inhibit candid internal discussions and the expression of recommendations and judgments. *Id.* ¶ 64. Disclosure of the details of these confidential discussions and drafts could reasonably be expected to chill the open and frank exchange of comments and opinions that NOAA officials engage in, as well as inhibit candid internal discussions and recommendations regarding preferred courses of action for agency personnel. *Id.*

The documents withheld in full or in part under the deliberative process privilege fall generally into three categories: (1) drafts of the Hiatus Paper; (2) internal deliberations, including email exchanges; and (3) peer review materials, both formal and informal. As explained below and in the attached *Vaughn*, each redacted or withheld document contains both predecisional and deliberative information. Accordingly, NOAA properly asserted Exemption 5 based on the deliberative process privilege.

1. Drafts of the Hiatus Paper

NOAA withheld pursuant to Exemption 5 inter- or intra-agency, predecisional, and deliberative draft versions of the Hiatus Paper (including drafts of its accompanying figures and “supplementary materials”) that were produced while NOAA scientists were developing the Paper. Graff Decl. ¶ 51.³ “[D]raft documents by their very nature, are typically predecisional and deliberative, because they reflect only the tentative view of their authors; views that might be altered or rejected upon further deliberation either by their authors or by superiors.” *In re Apollo Grp., Inc. Sec. Litig.*, 251 F.R.D. 12, 31 (D.D.C. 2008) (non-FOIA case) (citation omitted). Accordingly, “drafts are commonly found exempt under the deliberative process exemption.” *People for the Am. Way Found. v. Nat’l Park Serv.*, 503 F. Supp. 2d 284, 303 (D.D.C. 2007). Among other reasons for this, disclosure of “decisions to insert or delete material or to change a draft’s focus or emphasis . . . would stifle the creative thinking and candid exchange of ideas necessary to produce good historical work.” *Dudman Commc’ns Corp. v. Dep’t of Air Force*, 815 F.2d 1565, 1569 (D.C. Cir. 1987). Indeed, drafts are ordinarily exempt regardless of whether or to what extent segments of the draft made their way into the final product: “If the segment appeared in the final version, it is already on the public record and need not be disclosed. If the segment did not appear in the final version, its omission reveals an agency deliberative process: for some reason, the agency decided not to rely on that fact or argument after having been invited to do so.” *Exxon Corp. v. Dep’t of Energy*, 585 F. Supp. 690, 698 (D.D.C. 1983) (quoting *Lead Industries Ass’n v. OSHA.*, 610 F.2d 70, 86 (2d Cir. 1979)); see *ViroPharma Inc. v. HHS*, 839 F. Supp. 2d 184, 193 (D.D.C. 2012) (“The choice of what factual

³ The fact that some draft versions were shared for peer review purposes outside of the federal government does not affect those drafts’ status as inter- or intra-agency. See *infra* at Section II.3.

material . . . to include or remove during the drafting process is itself often part of the deliberative process, and thus is properly exempt under Exemption 5.”); *cf. Marzen v. HHS*, 825 F.2d 1148, 1155 (7th Cir. 1987) (noting that privilege “protects not only the opinions, comments and recommendations in the draft, but also the process itself”).

These drafts are predecisional inasmuch as they were generated to assist the agency in preparing the final version of the Hiatus Paper. *See Quarles v. Dep’t of the Navy*, 893 F.2d 390, 392 (D.C. Cir. 1990) (explaining that materials are predecisional when “prepared in order to assist an agency decisionmaker in arriving at . . . decisions”). And they are deliberative in that they reflect the development of the final paper; these non-final, predecisional drafts contain opinions and recommendations of the NOAA authors; draft language, data, and data interpretation for consideration by other NOAA authors; comments on previous drafts of the paper; and/or responses to other NOAA authors’ or peer reviewers’ comments on earlier drafts of the paper. *See* Graff Decl. ¶ 51; *Vaughn* part 2 Category A. Withholding this material under Exemption 5 was proper, and the release of such drafts would inhibit agency scientists from expressing their views and deter NOAA scientists from participating candidly in the development of scientific products in the future. *See* Graff Decl. ¶ 51.⁴

2. Communications Among NOAA Personnel

Also integral to the drafting of the Hiatus Paper, the authors frequently communicated and exchanged ideas with one another via email during the Paper’s development. Here, NOAA

⁴ Equally appropriate, NOAA’s *Vaughn* also shows that the agency withheld draft documents that aided in or related to the development of the Paper, such as “[d]raft graphs of land and ocean temperature data created by NOAA scientists to be used in the paper,” *Vaughn* part 2 at bates pages 1170-73, “[d]raft graphs and charts of SST data to be used in [the] development of the paper,” *Vaughn* part 2 at bates pages 2071-76, and a “[d]raft powerpoint by [an] author presenting information on global temperature and presenting data analysis done by NOAA scientists for the paper,” *Vaughn* part 2 at bates pages 1876-86.

withheld inter- or intra-agency, predecisional, and deliberative communications. *See* Graff Decl. ¶ 50. In pursuing a research objective, scientists may begin with only a rough idea, and then develop, test, and revise that idea as data is collected and interpreted. Declaration of Richard W. Spinrad (“Spinrad Decl.”) ¶ 14 (attached herein as Exhibit B). Possible interpretations are generated and tested in part through candid debates and exchanges among peers. *Id.* ¶ 15. Indeed, the exchange and debate among peers is the mechanism that allows NOAA to ensure its scientific products are robustly developed and accurately tested. *Id.* ¶ 16. And there is a general and well-established presumption that such discussions are not intended to be, and will not be, shared with a wider audience, as confidentiality is essential to ensuring participants feel free to propose new ideas or explanations without fear of misinterpretation or being taken out of context. *Id.* ¶ 20. It is critical that this type of information be protected so as not to chill candid exchanges and debates, as well as to avoid the risk of confusing the public with preliminary or incomplete information. *See id.* ¶¶ 23-25.

NOAA’s *Vaughn* index reinforces that these types of predecisional and deliberative communications occurred here, were integral to the development of the Hiatus Paper, and were appropriately withheld or redacted. *See Abteu v. U.S. Dep’t of Homeland Sec.*, 808 F.3d 895, 898 (D.C. Cir. 2015) (“[O]fficials should be judged by what they decided, not for matters they considered before making up their minds” (citation and internal quotation mark omitted)). For example, NOAA is redacting or withholding communications between scientists in which authors asked for clarification on data analysis conducted for developing the Paper, *Vaughn* part 1 at bates pages 22-23, shared opinions on the results of a draft data analysis for developing the Paper, *Vaughn* part 1 at bates page 15, offered opinions as to the best approach to take in the Paper, *Vaughn* part 1 at bates pages 300, 335, 362-63, and provided opinions on statistical error

uncertainty ranges for development of the Paper, *Vaughn* part 1 at bates page 245. Moreover, NOAA withheld a document that presented questions and draft graphs to spur discussion among the NOAA scientists. This document was created and circulated for the purpose of author discussions during the development of the Hiatus Paper, and shows NOAA scientists considering what constitutes the best data analysis and presentation for the Paper. *See Vaughn* part 2 Category E; Graff Decl. ¶ 52.⁵

In addition to withholding communications concerning the development of the Hiatus Paper, NOAA also withheld communications and information reflecting the development of a plan by its officials for communications and press release in preparation for publication of the paper, *e.g. Vaughn* part 1 at bates page 289-90, *Vaughn* part 2 at bates page 7446-50, as well as the agency's development of a presentation to Congress, *e.g., Vaughn* part 1 at bates pages 143, 324 (explaining that redacted email reflected "NOAA scientist discussing climate change research and developing the agency's presentation for Congress"). This withheld information, which reflects NOAA's development of how to brief Congress and the public, is predecisional and deliberative and falls squarely within Exemption 5. *E.g., Judicial Watch, Inc. v. U.S. Dep't of the Treasury*, 796 F. Supp. 2d 13, 31 (D.D.C. 2011) (noting email discussing response to press inquiry protected under deliberative process privilege).

All of this material is precisely the sort of information that the deliberative process privilege is designed to protect. *See Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854,

⁵ Similarly, NOAA withheld information reflecting discussions among scientists concerning potential scientific inquiries. *See, e.g., Vaughn* part 1 at bates page 75 (discussing future climate research and asking for opinion on this research and on possible role of NOAA scientists in this research). Again, such material is predecisional and deliberative, and therefore is exempt from disclosure. *E.g., Sears*, 421 U.S. at 151 n.18 (explaining that protection extends to records that are part of decisionmaking process even where process does not produce actual decision by agency).

866 (D.C. Cir. 1980) (document is “predecisional” if it is “generated before the adoption of an agency policy” and “deliberative” if it “reflects the give-and-take of the consultative process”); *Dep’t of Interior v. Klamath Water Users Protective Ass’n*, 532 U.S. 1, 9 (2001) (explaining that deliberative process privilege’s “object is to enhance the quality of agency decisions by protecting open and frank discussion among those who make them within the Government”) (citation omitted); *Russell*, 682 F.2d at 1048 (“[T]he exemption protects not only communications which are themselves deliberative in nature, but all communications which, if revealed, would expose to public view the deliberative process of an agency.”). Moreover, any factual material in the withheld documents reflect the authors’ selection and presentation of factual material, Graff Decl. ¶ 65, and as such it too is covered by the deliberative process privilege. *See, e.g., Ancient Coin Collectors Guild*, 641 F.3d at 513 (explaining that factual material can be withheld where it reflects “an exercise of discretion and judgment calls” and that the “legitimacy of [the] withholding” turns on “whether the selection or organization of facts is part of an agency’s deliberative process”).

Because all of the redacted and withheld information is inter- or intra-agency, predecisional, and deliberative in nature, NOAA properly applied Exemption 5.

3. Peer Review Material

NOAA also withheld inter- or intra-agency material reflecting the different peer review processes its analyses and drafts underwent prior to publication of the Hiatus Paper. *Science* follows a formal peer review process in which subject matter experts evaluate the rigor and merit of the paper, and provide feedback on an array of issues. Graff Decl. ¶ 15. Those anonymous, impartial reviewers share their reviews with the authors, *Science*’s board, and potentially other reviewers (for cross-comment). *Id.* ¶ 17.

Here, *Science* sent the manuscript to five anonymous peer reviewers, and the scientists received two rounds of comments. Upon receiving these reviewers' comments, the NOAA scientists deliberated internally as to how to respond in writing to every comment received. NOAA properly withheld peer reviewer comments, the agency's internal draft responses to these peer reviewer comments, draft cover letters NOAA's scientists wrote to accompany their response, as well as the agency's final responses to peer reviewer comments. See Graff Decl. ¶¶ 53-54; *Vaughn* part 2 Category B, C, D.

The D.C. Circuit has specifically held that comments provided by peer reviewers during the peer review process for publication of scientific articles in scientific journals are covered by Exemption 5 because they are both "pre-decisional because it preceded the agency's decision whether and in what form to publish" the paper and were part of the agency's deliberative process "because the agency secured review commentary in order to make that decision." See *Formaldehyde Inst. v. U.S. Dep't of Health and Human Servs.*, 889 F.2d 1118, 1123-25 (D.C. Cir. 1989). As that Court recognized, agency scientists "must regularly rely on the comments of expert scientists to help them evaluate the readiness of agency work for publication [and i]n that sense they must rely on the opinions and recommendations of temporary consultants." *Id.* at 1125.

The scientists' draft responses to the peer reviewer comments are also covered by Exemption 5 since these materials, including personal opinions and recommendations, draft language, data, and data interpretation for consideration, as well as comments on previous drafts of the responses, reflect predecisional and deliberative discussions. See *Vaughn* part 2 Category C; Graff Decl. ¶ 54. Similarly, the final responses to peer review comments that NOAA submitted to *Science* during the peer review process reflect the agency's response to constructive

criticism and advice, and were part of the process to assist in the authors' deliberation as to whether and in what form to publish the paper. *See Vaughn* part 2 Category D; Graff Decl. ¶ 55. These final responses, then, fit comfortably within Exemption 5. *See Petroleum Info. Corp.*, 976 F.2d at 1434 (agency documents that were "prepared in order to assist an agency decisionmaker in arriving at his decision" are "predecisional" (citation omitted)); *Coastal States Gas Corp.*, 617 F.2d at 866. Finally, the draft cover letters to *Science* accompanying the scientists' responses to the peer review comments contain edits or otherwise do not include the final wording of the letter, reflecting that the scientists' final approach had not been finalized at that point. *Vaughn* part 2 Category B; Graff Decl. ¶ 53. Withholding such draft material was appropriate.

The fact that the peer review comments were sent by *Science*, and the responses to those peer reviewer comments were sent back to *Science*, does not affect their status as "intra-agency" materials that may be protected by Exemption 5. "Recognizing that the purpose of the exemption was to promote the quality of agency policy decisions and that often these policy decisions were best made by incorporating the advice of outside experts, [the D.C. Circuit] developed a 'consultant corollary' whereby communications with temporary consultants would be considered 'intra-agency' for the purposes of Exemption 5." *Judicial Watch v. U.S. Dep't of Transp.*, 950 F. Supp. 2d 213, 216 (D.D.C. 2013) (citing cases). "When communications between an agency and a non-agency aid the agency's decision-making process and the non-agency did not have an outside interest in obtaining a benefit that is at the expense of competitors, the communication must be considered an intra-agency communication for the purposes of FOIA Exemption 5." *Judicial Watch*, 950 F. Supp. 2d at 218-19 (citing *Nat'l Inst. of Military Justice v. U.S. Dep't of Defense*, 512 F.3d 677 680-85 (D.C. Cir. 2008) ("*NIMJ*"); *Lardner v. U.S. Dep't of Justice*, No. 03-0180, 2005 WL 758267, at *1 (D.D.C. Mar. 31, 2015);

see also, e.g., Hooker v. HHS, 887 F. Supp. 2d 40, 55 (D.D.C. 2012) (upholding agency’s withholding of predecisional and deliberative letter from former employee where he “played the same role in the agency’s process of deliberation after his departure that he would have played had he remained”), *aff’d*, No. 13-5280, 2014 WL 3014213 (D.C. Cir. May 13, 2014); *see also Elec. Privacy Info. Ctr. v. DHS*, 892 F. Supp. 2d 28, 46 (D.D.C. 2012) (“In order to be excluded from the exemption, the contractors must assume a position that is ‘necessarily adverse’ to the government.”).⁶

Moreover, maintaining the confidentiality of these communications is important, as disclosure would discourage the sharing of candid thoughts of the reviewers and scientists. Graff Decl. ¶ 55, 64; *see also* Spinrad Decl. ¶¶ 20-21 (explaining importance of confidentiality in developing scientific products). Here, as in *Formaldehyde*, it is “indisputable” that both “reviewers’ comments are expected to be confidential” and “disclosure of reviewers’ comments would seriously harm the deliberative process.” 889 F.2d at 1124 (internal citations and quotations omitted).

Outside of *Science*’s formal peer review process, NOAA scientists welcomed the informal peer review from a limited number of consultants in evaluating the underlying datasets

⁶ *Department of the Interior v. Klamath Water Users Protective Association*, 532 U.S. 1 (2001), holding that Exemption 5 did not protect documents submitted by American Indian Tribes to the Interior Department addressing tribal interests that were then the subject of state and federal water allocation proceedings, does not prevent the application of the consultant corollary here. Rather, the D.C. Circuit “has allowed any communication that aids the agency’s deliberative process to be protected as ‘intra-agency,’” and “*Klamath* only modifies this by requiring that we not protect communications with interested parties seeking a government benefit that is adverse to others seeking that benefit.” *Judicial Watch*, 950 F. Supp. 2d at 218 (footnote omitted).

Also, to fall within the consultant corollary, there is no requirement that an individual must possess a contractual relationship with the agency in question. *See, e.g., NIMJ*, 512 F.3d at 679-87 (deliberative process privilege exempted from disclosure comments received by Department of Defense, in the course of issuing regulations, from non-governmental lawyers who were former high ranking governmental officials or academics or both).

and developing the Hiatus Paper. Graff Decl. ¶ 56; *see also Formaldehyde Inst.*, 889 F.2d at 1125. In the field of climate science, only a small number of scientists have the relevant, specialized expertise, *see* Spinrad ¶ 17, and it is common for scientists to seek input from colleagues both inside and outside the federal government, *id.* ¶ 19. Sometimes experts that are located outside of the federal government have an expertise that can aid the agency. *See id.* ¶ 17. The consultants here, each of whom is highly regarded in his specialized field, Graff Decl. ¶ 58, share the common goal with NOAA of advancing scientific inquiry and developing accurate information on climate science, *see id.* ¶ 56; *see also Formaldehyde*, 889 F.2d at 1122, quoting *Ryan v. Dep't of Defense*, 617 F.2d 781, 789-90 (D.C. Cir. 1980) (“In the course of its day-to-day activities, an agency often needs to rely on the opinions and recommendations of temporary consultants, as well as its own employees. Such consultations are an integral part of its deliberative process; to conduct this process in public view would inhibit frank discussion of policy matters and likely impair the quality of decisions.”).

As the *Vaughn* and Mark Graff’s declaration make clear, withholding this informal peer review was also appropriate, as their input was used by NOAA to ensure that only the highest quality scientific product would be released. Tom Karl, for example, asked a scientist affiliated with the National Center for Atmospheric Research to comment on a draft while the paper was in development, and that scientist provided insights and feedback in response. Graff Decl. ¶ 59; *Vaughn* part 1 bates 66-67 (explaining redacted information contained feedback and review of a data analysis for the paper and raises issue for further discussion). Other climate science experts responded to the authors upon learning from *Science* of the pending publication, as commonly occurs after an author submits a high-profile scientific paper for publication. *See* Graff Decl. ¶ 60. Two other experts provided feedback on the Paper, discussed implications of the Hiatus

Paper’s conclusion, or provided and discussed data analyses, Graff Decl. ¶¶ 62-63, *Vaughn* part 1 at bates 292-93, which helped provide important feedback about the agency’s product and informed the agency’s continuous, ongoing work of updating agency datasets and trend analyses, Graff Decl. ¶¶ 62-63; *see Vaughn* part 1 at bates 295-96 (noting that expert’s work may be incorporated into a future NOAA analysis). With respect to these types of communications, a general and well-established presumption exists that these communications will not be shared with a wider audience, which is essential to scientific exchanges and the testing and refinement of ideas that help ensure that the agency’s scientific products are well developed and robust. *See Spinrad* Decl. ¶ 20. Disclosing this material could inhibit candid discussions and exchanges and chill the open and frank exchanges upon which NOAA scientists rely. *See Graff* Decl. ¶ 64.

In sum, NOAA’s *Vaughn* and declarations make plain that the agency appropriately applied Exemption 5 to redact and withhold information protected by the deliberative process privilege.

III. NOAA Properly Withheld Information Under Exemption 6

Exemption 6 protects the privacy of individuals from unwarranted invasion. Exemption 6 allows the withholding of information about individuals in “personnel and medical files and similar files” when the disclosure of such information would constitute a “clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). Exemption 6 requires the agency to balance the individual’s right to privacy against the public’s interest in disclosure. *See U.S. Dep’t of the Air Force v. Rose*, 425 U.S. 352, 372 (1976); *Reed v. NLRB*, 927 F.2d 1249, 1251 (D.C. Cir. 1991). When weighing the public interest involved in disclosure, the court considers: (1) whether disclosure would serve the “core purpose” for which Congress enacted the FOIA. *i.e.*, to show “what the government is up to,” and (2) the public interest in general, not particular interests of

the person or group seeking the information. *U.S. Dep't of Justice v. Reporters Comm. For Freedom of the Press*, 489 U.S. 749, 750, 775 (1989).

Here, Exemption 6 has been applied to protect information in which individuals have a recognized privacy interest, specifically, the phone numbers of NOAA scientists. *See, e.g., Vaughn* part 1 at bates 23. Because this information can be identified as applying to a specific individual, the information withheld under Exemption 6 constitutes “similar files” within the meaning of statute; courts have routinely held that phone numbers meet this threshold test. *See, e.g., Judicial Watch, Inc. v. U.S. Dep't of State*, 875 F. Supp. 2d 37, 47 (D.D.C. 2012); *Smith v. Dep't of Labor*, 798 F. Supp. 2d 274, 283 (D.D.C. 2011); *Lowy v. IRS*, No. C 10-767, 2011 WL 1211479, at *16 (N.D. Cal. Mar. 30, 2011).

This threshold test having been met, the next step is to compare the privacy interest at stake with the benefit disclosure would provide toward the public’s understanding of how government operates. *Dep't of Def. v. Fed. Labor Relations Auth.*, 510 U.S. 487, 495 (1994). Here, there is a substantial privacy interest at stake in preventing the burden of unsolicited phone calls and harassment. *See Moore v. Bush*, 601 F. Supp. 2d 6, 14 (D.D.C. 2009); *United Am. Fin., Inc. v. Potter*, 667 F. Supp. 2d 49, 65-66 (D.D.C. 2009); *cf. Shurtleff v. EPA*, 991 F. Supp. 2d 1, 18 (D.D.C. 2013) (protecting email address). By contrast, an individual’s phone number sheds no light on the operations and activities of the agency. NOAA balances the individual’s strong privacy interests against the fact that release of this information would fail to shed any light on the conduct of governmental business, and reasonably concluded that, with regard to the information withheld pursuant to Exemption 6, the individual privacy interests outweighed any public interest in disclosure. Graff Decl. ¶ 66. *See FLRA*, 510 U.S. at 497 (“We must weigh the privacy interest . . . in nondisclosure . . . against the only relevant public interest in the FOIA

balancing analysis – the extent to which disclosure of the information sought would she[d] light on an agency’s performance of its statutory duties’ or otherwise let citizens know what their government is up to.”). Accordingly, Exemption 6 was properly applied.

IV. NOAA Has Produced All Reasonably Segregable Information

The FOIA requires that, if a record contains information that is exempt from disclosure, any “reasonably segregable” information must be disclosed after deletion of the exempt information, 5 U.S.C. § 552(b), unless the non-exempt portions are “inextricably intertwined with exempt portions.” *Mead Data Ctr. v. U.S. Dep’t of Air Force*, 566 F.2d 242, 260 (D.C. Cir. 1977); *Kurdyukov v. U.S. Coast Guard*, 578 F. Supp. 2d 114, 128 (D.D.C. 2008). This provision does not, however, require disclosure of records in which the non-exempt information that remains is meaningless. *See Nat’l Sec. Archive Fund v. CIA*, 402 F. Supp. 2d 211, 221 (D.D.C. 2005) (concluding that no reasonably segregable information existed because “the non-exempt information would produce only incomplete, fragmented, unintelligible sentences composed of isolated, meaningless words”). Consistent with this obligation, NOAA has reviewed each of the documents redacted or withheld and has concluded that there is no additional non-exempt information that may reasonably be segregated and released. *See Graff Decl.* ¶ 67. Accordingly, no further non-exempt material is subject to release.

CONCLUSION

NOAA has conducted an adequate search for documents responsive to Plaintiff’s request, and properly withheld information exempt from disclosure under Exemptions 5 and 6. Furthermore, all reasonably segregable information has been released to Plaintiff. For these reasons, the Department of Commerce respectfully requests that summary judgment be entered in its favor.

Dated: December 15, 2016

Respectfully submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

ELIZABETH J. SHAPIRO
Deputy Director, Federal Programs Branch

/s/ Kevin M. Snell
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Counsel for Defendant

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF COMMERCE,

Defendant.

Civil Docket No. 15-cv-2088 (CRC)

**STATEMENT OF MATERIAL FACTS IN SUPPORT OF UNITED STATES
DEPARTMENT OF COMMERCE’S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Civil Rule 7(h)(1), the following is a statement of material facts as to which the movant, the United States Department of Commerce (“the Department”), contends there is no genuine issue:

1. Between September 2013 and November 2014, the Intergovernmental Panel on Climate Change released a report in stages that concluded that the upward global surface temperature trend from 1998-2012 was lower than that from 1951-2012. Declaration of Mark Graff (“Graff Decl.”) ¶ 9.
2. The apparent observed slowing of the global surface temperatures was dubbed the “hiatus.” Graff Decl. ¶ 9.
3. The National Centers for Environmental Information (“NCEI”) at NOAA produces and maintains datasets for global ocean areas and global land areas. Graff Decl. ¶ 6.
4. NCEI scientists continually work to improve the datasets to provide the public the most up-to-date and accurate information. Graff Decl. ¶ 5.

5. NCEI scientists regularly interpret and analyze datasets and release to the public the most up-to-date climate science, often through publication in scientific journals. Graff Decl. ¶ 7.
6. On June 4, 2015, a study authored by NOAA scientists was published in *Science* entitled *Possible Artifacts of Data Biases in the Recent Global Surface Warming Hiatus* (“Hiatus Paper” or “the Paper”). Graff Decl. ¶ 23.
7. The Hiatus Paper is an example of analysis and interpretation of the updated underlying data. Graff Decl. ¶ 10.
8. Around late October 2014, Tom Karl, then the Director of NCEI, circulated a draft paper to a group of NOAA scientists that developed an idea for properly accounting for the alleged “hiatus” based on the additional two years of global temperature data and the improvements to NOAA’s sea surface temperature dataset. Graff Decl. ¶ 11.
9. Karl sought feedback on the draft paper, and a team of scientists at NOAA formed to develop a manuscript. *See* Graff Decl. ¶¶ 11-13.
10. Many drafts and revisions were exchanged among these scientists, along with emails discussing various aspects of the paper or its content, including suggestions on how best to describe the data, opinions on statistical error uncertainty ranges, thoughts on implications of other researchers’ work, and so on. Graff Decl. ¶ 13.
11. Such collaboration via discussions and drafts is standard practice at NCEI. Graff Decl. ¶ 13.
12. In December 2014, the authors submitted the draft paper to the journal *Science*. Graff Decl. ¶ 14.

13. Once there, the draft paper went through the journal's peer review process, in which five anonymous peer reviewers weighed in on the manuscript. Graff Decl. ¶ 20.
14. When the authors received feedback, they discussed internally how to respond in writing to the comments they received, and also revised the manuscript to address the questions and concerns raised. *See* Graff Decl. ¶ 21.
15. After a second round of peer review, NOAA received word that the article would be published, and *Science* published the Paper on its website on June 4, 2015. Graff Decl. ¶ 23.
16. Plaintiffs' FOIA request, dated October 30, 2015, sought in relevant part:
 1. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the methodology and utilization of Night Marine Air Temperatures to adjust ship and buoy temperature data.
 2. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the use of other global temperature datasets for both NOAA's in-house dataset improvements and monthly press releases conveying information to the public about global temperatures.
 3. Any and all documents and records of communications sent to or from NOAA officials, employees and contractors regarding, concerning or relating to the utilization and consideration of satellite bulk atmospheric temperature readings for use in global temperature datasets.Graff Decl. ¶ 24; *see also* ECF No. 8-1.
17. Upon review of the request, NOAA officials determined that it did not reasonably describe the records requested. Graff Decl. ¶ 25.
18. Through counsel, NOAA conferred with Plaintiff to negotiate a clear description of the material sought. Graff Decl. ¶ 25.

19. During the course of those discussions, NOAA indicated to Plaintiff that it understood the request to reflect an interest in the Hiatus Paper and accordingly suggested modifying the request to call for a search for all documents and communications referring to the Hiatus Paper from its nine authors. Graff Decl. ¶ 26.
20. Plaintiff confirmed its interest in that study, but indicated that it sought only records referring to the topics listed in its initial FOIA request. Graff Decl. ¶ 26.
21. The parties ultimately “reached an agreement regarding the scope of the request and relevant search parameters.” Second Joint Status Report, ECF No. 10 at 2.
22. For Plaintiff’s FOIA request, NOAA agreed to search the records of the nine authors of the Hiatus Paper for records referring to that paper and that contain one of the following search terms: “NMAT,” “Night Marine Air Temperatures,” “ISTI,” “ICOADS,” “sea ice,” “satellite,” “Advanced Very High Resolution Radiometer,” “AVHRR,” “Advanced Microwave Scanning Radiometer,” and “AMSR.” Second Joint Status Report, ECF No. 10 at 2; Graff Decl. ¶ 27.
23. NOAA determined that the records requested resided within one office, NCEI, because all of the agreed-upon custodians work or had worked there during the time frame in which responsive records were created. Graff Decl. ¶ 33.
24. NOAA then directed those custodians to search their email, electronic, and paper files for records referring to the Karl Study and containing the agreed-upon search terms. Graff Decl. ¶ 35.
25. Those scientists searched their electronic files (including email) and non-electronic files, collected any potentially responsive material, and forwarded that material for responsiveness and exemption review. Graff Decl. ¶¶ 36-38.

26. One custodian had retired from NCEI by the time the search was conducted and so that former employee's archived email was searched by another custodian. No additional records responsive to this request from that author are known to have existed following his retirement. *See* Graff Decl. ¶ 36 n.1.
27. There were no common areas at NCEI for NOAA to search. Graff Decl. ¶ 37.
28. Thus, all files determined to be reasonably likely to contain responsive, non-duplicative material were searched. Graff Decl. ¶ 44.
29. On May 27, 2016, NOAA produced 102 pages of material in its entirety and 90 partially redacted pages. Graff Decl. ¶ 29; Fourth Joint Status Report, ECF No. 12 at 2. NOAA withheld in their entirety 8,013 pages of records. Graff Decl. ¶ 29; Fourth Joint Status Report, ECF No. 12 at 2
30. NOAA informed Plaintiff at that time that because it sought records from nine separate custodians, a significant amount of duplicative material existed in the responsive records. *See* Graff Decl. ¶ 29
31. Upon further review of the withheld information, NOAA made two supplemental productions. *See* Graff Decl. ¶¶ 30-31.
32. On September 16, 2016, NOAA released to Plaintiff an additional 44 pages of material (7 of those pages were partially redacted to exclude Mr. Karl's phone number), Graff Decl. ¶ 30.
33. Contemporaneously with this filing (on December 15), NOAA is releasing an additional 62 records. Graff Decl. ¶ 31.
34. NOAA withheld information pursuant to FOIA Exemption 5 and the deliberative process privilege. *See Vaughn Index.*

35. NOAA withheld information pursuant to FOIA Exemption 6. *See Vaughn* Index.

Dated: December 15, 2016

Respectfully submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

ELIZABETH J. SHAPIRO
Deputy Director, Federal Programs Branch

/s/ Kevin M. Snell
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Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2016, I filed the attached electronically with the Clerk of the United States District Court for the District of Columbia through the CM/ECF system, which caused the following counsel of record to be served by electronic means:

Lauren Burke
Judicial Watch, Inc.
425 Third Street SW, Suite 800
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(202) 646-5172
Lburke@judicialwatch.org

Attorney for Plaintiff

/s/ Kevin M. Snell

From: Stacey Nathanson - NOAA Federal <stacey.nathanson@noaa.gov>
Sent: Tuesday, May 9, 2017 9:30 AM
To: Samuel Dixon
Cc: Steven Goodman - NOAA Federal; John Almeida - NOAA Federal; Mark Graff - NOAA Federal; Amanda Patterson - NOAA Federal
Subject: Re: Freedom of Information Act Appeal: CoA Institute, Request No. DOC-NOAA-2016-000423

Just wanted to remind folks that Cause of Action filed a lawsuit on another appeal on day 21 (b)(5)

Stacey Nathanson
Attorney-Advisor
NOAA Office of the General Counsel
Fisheries and Protected Resources Section
Phone: 301-713-9673
Email: Stacey.Nathanson@noaa.gov

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On Tue, May 9, 2017 at 9:16 AM, Samuel Dixon <samuel.dixon@noaa.gov> wrote:

(b)(5)

Samuel Dixon
Contractor - IBSS Corp
NMFS Assistant FOIA Liaison
(301) 427-8739
samuel.dixon@noaa.gov

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

From: Ryan Mulvey <ryan.mulvey@causeofaction.org>
Date: Tue, May 9, 2017 at 7:06 AM
Subject: Freedom of Information Act Appeal: CoA Institute, Request No. DOC-NOAA-2016-000423
To: "FOIAAppeals@doc.gov" <FOIAAppeals@doc.gov>
Cc: Samuel Dixon <samuel.dixon@noaa.gov>

Dear Appeals Officer:

Please find attached a copy of Cause of Action Institute's administrative appeal from NOAA's interim response to FOIA request No. 2016-000423. I am sending a courtesy copy to the FOIA officer assigned to this request, as we respectfully request the continued processing of the remaining responsive records during the pendency of the appeal.

Thank you for your assistance in processing the attached appeal.

Kind regards,

Ryan Mulvey

Ryan P. Mulvey | Counsel

Cause of Action Institute

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(o) [202.400.2729](tel:202.400.2729) / (c) (b)(6)

Ryan.Mulvey@causeofaction.org

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From: Samuel Dixon <samuel.dixon@noaa.gov>
Sent: Tuesday, May 9, 2017 9:33 AM
To: Stacey Nathanson - NOAA Federal
Cc: Steven Goodman - NOAA Federal; John Almeida - NOAA Federal; Mark Graff - NOAA Federal; Amanda Patterson - NOAA Federal
Subject: Re: Freedom of Information Act Appeal: CoA Institute, Request No. DOC-NOAA-2016-000423

(b)(6)

Sam

Samuel Dixon
Contractor - IBSS Corp
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On Tue, May 9, 2017 at 9:29 AM, Stacey Nathanson - NOAA Federal <stacey.nathanson@noaa.gov> wrote:

Just wanted to remind folks that Cause of Action filed a lawsuit on another appeal on day 21 (b)(5)

Stacey Nathanson
Attorney-Advisor
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(b)(5)

Samuel Dixon

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From: **Ryan Mulvey** <ryan.mulvey@causeofaction.org>
Date: Tue, May 9, 2017 at 7:06 AM
Subject: Freedom of Information Act Appeal: CoA Institute, Request No. DOC-NOAA-2016-000423
To: "FOIAAppeals@doc.gov" <FOIAAppeals@doc.gov>
Cc: Samuel Dixon <samuel.dixon@noaa.gov>

Dear Appeals Officer:

(b)(5)
[Redacted text block]

Thank you for your assistance in processing the attached appeal.

Kind regards,

Ryan Mulvey

Ryan P. Mulvey | Counsel

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From: Bogomolny, Michael (Federal) <MBogomolny@doc.gov>
Sent: Tuesday, May 9, 2017 10:08 AM
To: Almeida, John (Federal)
Cc: Macdonald, Mitch (Federal); Nathanson, Stacey (Federal); Graff, Mark (Federal)
Subject: Re: Freedom of Information Act Appeal: CoA Institute, Request No. DOC-NOAA-2016-000423

Thanks, John (b)(6)

-bogo

From: John Almeida - NOAA Federal <john.almeida@noaa.gov>
Sent: Tuesday, May 9, 2017 9:39:19 AM
To: Bogomolny, Michael (Federal)
Cc: Macdonald, Mitch (Federal); Nathanson, Stacey (Federal); Graff, Mark (Federal)
Subject: Fwd: Freedom of Information Act Appeal: CoA Institute, Request No. DOC-NOAA-2016-000423

We just got word of a new administrative appeal (below) on a Cause of Action FOIA request relating to at-sea monitoring.

(b)(6)

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

From: Samuel Dixon <samuel.dixon@noaa.gov>
Date: Tue, May 9, 2017 at 9:16 AM
Subject: Fwd: Freedom of Information Act Appeal: CoA Institute, Request No. DOC-NOAA-2016-000423
To: Steven Goodman - NOAA Federal <Steven.Goodman@noaa.gov>, Stacey Nathanson - NOAA Federal <stacey.nathanson@noaa.gov>, John Almeida - NOAA Federal <john.almeida@noaa.gov>, Mark Graff - NOAA Federal <mark.graff@noaa.gov>, Amanda Patterson - NOAA Federal <amanda.patterson@noaa.gov>

(b)(6)

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

From: **Ryan Mulvey** <ryan.mulvey@causeofaction.org>

Date: Tue, May 9, 2017 at 7:06 AM

Subject: Freedom of Information Act Appeal: CoA Institute, Request No. DOC-NOAA-2016-000423

To: "FOIAAppeals@doc.gov" <FOIAAppeals@doc.gov>

Cc: Samuel Dixon <samuel.dixon@noaa.gov>

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CAUSE *of* ACTION
— INSTITUTE —

From: John Almeida - NOAA Federal <john.almeida@noaa.gov>
Sent: Tuesday, May 9, 2017 9:39 AM
To: Bogomolny, Michael (Federal)
Cc: Mitch Macdonald - NOAA Federal; Stacey Nathanson - NOAA Federal; Mark Graff - NOAA Federal
Subject: Fwd: Freedom of Information Act Appeal: CoA Institute, Request No. DOC-NOAA-2016-000423
Attachments: CoA FOIA Appeal, Request No. 2016-000423.pdf

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

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Date: Tue, May 9, 2017 at 9:16 AM
Subject: Fwd: Freedom of Information Act Appeal: CoA Institute, Request No. DOC-NOAA-2016-000423
To: Steven Goodman - NOAA Federal <Steven.Goodman@noaa.gov>, Stacey Nathanson - NOAA Federal <stacey.nathanson@noaa.gov>, John Almeida - NOAA Federal <john.almeida@noaa.gov>, Mark Graff - NOAA Federal <mark.graff@noaa.gov>, Amanda Patterson - NOAA Federal <amanda.patterson@noaa.gov>

(b)(5)
[Redacted]

Samuel Dixon
Contractor - IBSS Corp
NMFS Assistant FOIA Liaison
(301) 427-8739
samuel.dixon@noaa.gov

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

From: **Ryan Mulvey** <ryan.mulvey@causeofaction.org>
Date: Tue, May 9, 2017 at 7:06 AM
Subject: Freedom of Information Act Appeal: CoA Institute, Request No. DOC-NOAA-2016-000423
To: "FOIAAppeals@doc.gov" <FOIAAppeals@doc.gov>
Cc: Samuel Dixon <samuel.dixon@noaa.gov>

Dear Appeals Officer:

Please find attached a copy of Cause of Action Institute's administrative appeal from NOAA's interim response to FOIA request No. 2016-000423. I am sending a courtesy copy to the FOIA officer assigned to this request, as we respectfully request the continued processing of the remaining responsive records during the pendency of the appeal.

Thank you for your assistance in processing the attached appeal.

Kind regards,

Ryan Mulvey

Ryan P. Mulvey | Counsel

Cause of Action Institute

1875 Eye Street NW, Suite 800

Washington, D.C. 20006

(o) [202.400.2729](tel:202.400.2729) / (c) (b)(6)

Ryan.Mulvey@causeofaction.org

Admitted to the practice of law in New York State and the District of Columbia

CAUSE of ACTION
— INSTITUTE —

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

Pursuing Freedom & Opportunity through Justice & AccountabilitySM

May 9, 2017

VIA ELECTRONIC MAIL

Assistant General Counsel for Litigation, Employment, and Oversight
ATTN: Freedom of Information Act Appeal
United States Department of Commerce
Office of General Counsel
14th Street & Constitution Avenue, N.W., Room 5875
Washington, D.C. 20230
E-mail: FOIAAppeals@doc.gov

Re: Freedom of Information Act Appeal, Request No. 2016-000423

Dear Appeals Officer:

This is a timely administrative appeal from the fourth interim response of the National Oceanic and Atmospheric Administration (“NOAA”) to Cause of Action Institute (“CoA Institute”) Freedom of Information Act (“FOIA”) request number DOC-NOAA-2016-000423. Specifically, CoA Institute appeals NOAA’s wholesale redaction of responsive records, as well as its improper use of Exemption 5, in conjunction with various, unidentified privileges.

Procedural Background

On December 21, 2015, CoA Institute submitted a FOIA request to the National Marine Fisheries Service (“NMFS”), which is a component of NOAA.¹ The request sought various types of records concerning the Northeast Multispecies Sector At-Sea Monitor Program and the draft Industry-Funded Monitoring Omnibus Amendment. CoA Institute requested a public interest fee waiver and treatment as a representative of the news media for fee purposes.

NOAA acknowledged receipt of CoA Institute’s FOIA request by letter, dated January 13, 2016, and assigned it tracking number DOC-NOAA-2016-000423.² On March 9, 2016, NOAA administratively closed the request on the grounds that CoA Institute had not provided a response to a fee-related inquiry.³ By letter, dated March 17, 2016, CoA Institute asked that the request be re-opened because that closure was in error.⁴ After the agency failed to respond, CoA Institute filed an administrative appeal on April 7, 2016.⁵ On May 2, 2016, the Department of Commerce granted the appeal in part and instructed NOAA to re-open the CoA Institute FOIA request.⁶ NOAA then granted CoA Institute a full waiver of fees associated with its request.⁷

¹ Letter from CoA Inst. to Joan Moubleaux, Nat’l Marine Fisheries Serv. (Dec. 21, 2015) (attached as Exhibit 1).

² Letter from Samuel Dixon, Nat’l Marine Fisheries Serv., to CoA Inst. (Jan. 13, 2016) (attached as Exhibit 2).

³ Letter from Mark Graff, Nat’l Oceanic & Atmospheric Admin., to CoA Inst. (Mar. 9, 2016) (on file with CoA Inst.).

⁴ Letter from CoA Inst. to Mark Graff, Nat’l Oceanic & Atmospheric Admin. (Mar. 17, 2016) (on file with CoA Inst.).

⁵ Letter from CoA Inst. to Benjamin Friedman, Dep’t of Commerce (Apr. 7, 2016) (on file with CoA Inst.).

⁶ Letter from Beth M. Grossman, Dep’t of Commerce, to CoA Inst. (May 2, 2016) (on file with CoA Inst.).

⁷ Letter from Mark Graff, Nat’l Oceanic & Atmospheric Admin., to CoA Inst. (May 16, 2016) (on file with CoA Inst.).

NOAA released its first interim response and production of responsive records on August 26, 2016,⁸ with subsequent rolling productions on October 24, 2016 and December 19, 2016.⁹ By letter, dated April 21, 2017, NOAA issued its fourth interim response and produced 175 additional responsive records, totaling 2,005 pages.¹⁰ Seventy-three (73) records were released in their entirety without redaction. 102 records were withheld in part under Exemption 5, in conjunction with the deliberative process, attorney-client, and attorney work product privileges, and Exemption 6, which permits the redaction of certain personally-identifying information. CoA Institute files this timely appeal from the improper use of Exemption 5 to withhold six (6) records, or portions thereof.

Argument

Before producing responsive records, an agency must conduct a careful review to determine whether non-exempt, reasonably-segregable portions of any record can be disclosed “after deletion of the [exempt] portions.”¹¹ An *entire* record cannot be withheld simply because it contains *some* exempt material.¹² Records that may, in large part, be protected under the deliberative process and attorney-client privileges, for example, can contain purely factual material that is neither confidential nor pre-decisional and deliberative. Such material must be disclosed under the FOIA. In this case, NOAA’s extensive redaction of responsive records—including total redaction, despite the wording of the response letter—suggests that NOAA did not conduct a line-by-line review.

NOAA’s treatment of the records at issue also suggests that it misapplied Exemption 5, which protects “inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency.”¹³ This includes records “normally privileged in the civil discovery context” under, *inter alia*, the attorney-client, attorney work product, and deliberative process privileges.¹⁴ NOAA has failed to provide sufficient supporting details to justify its invocation of Exemption 5 and any applicable privileges.¹⁵ Assuming, *arguendo*, that portions of the records at issue could be redacted, NOAA’s extensive withholding suggests, again, that it failed to undertake the required review for reasonably-segregable, non-exempt material.

As NOAA has failed to identify the privileges it used in *specific* instances, CoA Institute cannot determine why NOAA even redacted records otherwise responsive to its request. To the extent a record contains information protected under the attorney-client privilege, for example, NOAA proffers no facts or authority to establish the existence of an attorney-client relationship, let alone describe how the underlying record reflects opinions, services, or other legal assistance

⁸ Letter from Steven Goodman, Nat’l Marine Fisheries Serv., to CoA Inst. (Aug. 26, 2016) (on file with CoA Inst.)

⁹ Letter from Samuel D. Rauch, III, Nat’l Marine Fisheries Serv., to CoA Inst. (Dec. 19, 2016) (on file with CoA Inst.); Letter from Steven Goodman, Nat’l Marine Fisheries Serv., to CoA Inst. (Oct. 24, 2016) (on file with CoA Inst.)

¹⁰ Letter from Alan Risenhoover, Nat’l Marine Fisheries Serv., to CoA Inst. (Apr. 21, 2017) (attached as Exhibit 3).

¹¹ 5 U.S.C. § 552(b); *Perry-Torres v. Dep’t of State*, 404 F. Supp. 2d 140, 144–45 (D.D.C. 2005) (“[An agency’s] explanation . . . should state that a line-by-line analysis . . . was conducted and that . . . no information can reasonably be segregated.”)

¹² See *Wightman v. Bureau of Alcohol, Tobacco & Firearms*, 755 F.2d 979, 982–83 (1st Cir. 1985).

¹³ 5 U.S.C. § 552(b)(5).

¹⁴ *Nat’l Labor Relations Bd. v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975).

¹⁵ CoA Institute does not challenge the application of Exemption 6 to the records at issue.

provided in the context of such a relationship.¹⁶ And the unredacted portions of the records at issue do not provide sufficient context to infer those supporting justifications.¹⁷

NOAA has similarly failed to demonstrate that any records it intended to withhold as deliberative are both (a) pre-decisional, that is, “antecedent to the adoption of an agency policy,”¹⁸ and (b) deliberative, or a “direct part of . . . [a] process [of] mak[ing] recommendations or express[ing] opinions on legal or policy matters.”¹⁹ If any of the records at issue do not contain material reflecting the “give-and-take of the consultative process,”²⁰ their disclosure would not vitiate the purpose of the privilege, *i.e.*, to enhance the quality of agency decision-making.²¹ The absence of any indication as to when NOAA is applying the deliberative process privilege—or any other—compounds the inadequacy of NOAA’s response.

1. Records “0.7.812.16264” and “0.7.812.16318”

These two records (attached as Exhibits 4 and 5, respectively) comprise an e-mail chain between various officials concerning estimates for at-sea monitoring costs. There is no indication as to which privilege NOAA is using to withhold portions of the records. The withheld material could not, in any case, be deliberative. More importantly, the inconsistent redaction of the names of the recipients (“Ned and Alan”) of Richard Merrick’s e-mail, and the otherwise extensive withholding, suggests a careful, line-by-line segregability review was not undertaken.

¹⁶ In the FOIA context, the attorney-client privilege protects communications between a client and its attorney made “for the purpose of securing primarily either (i) an opinion on law or (ii) legal services or (iii) assistance in some legal proceedings.” *In re Sealed Case*, 737 F.2d 94, 98–99 (D.C. Cir. 1984). An agency is the “client” and its departmental counsel is the “attorney.” *Tax Analysts v. Internal Revenue Serv.*, 117 F.3d 607, 618 (D.C. Cir. 1997). The privilege applies only to communications created in the context of an actual attorney-client relationship, and not whenever an agency communicates with lawyers. *Brinton v. Dep’t of State*, 636 F.2d 600, 603 (D.C. Cir. 1980) (“[T]he attorney-client privilege applies only when information is the product of an attorney-client relationship and is maintained as confidential between attorney and client.”). Attorney-produced documents communicated to an agency—even if confidential—are not protected under the attorney-client privilege if they are authoritative interpretations of agency law. *See, e.g., Tax Analysts*, 117 F.3d at 619; *Nat’l Council of La Raza v. Dep’t of Justice*, 411 F.3d 350, 360–61 (2d Cir. 2005). Finally, the privilege “must be ‘strictly confined within the narrowest possible limits consistent with the logic of its principle.’” *In re Lindsey*, 148 F.3d 1100, 1108 (D.C. Cir. 1988) (citation omitted). As the D.C. Circuit has held, “it is clear that when an attorney conveys to his client facts acquired from other persons or sources, those facts are not privileged” unless they reflect client confidences.” *Brinton*, 636 F.2d at 603.

¹⁷ NOAA’s response letter also indicated that it used the attorney work product privilege in conjunction with Exemption 5. That privilege may only be invoked “to protect records reflecting ‘such matters as trial preparation, trial strategy, interpretations, and personal evaluations and opinions.’” *Adionser v. Dep’t of Justice*, 811 F. Supp. 2d 284, 297 (D.D.C. 2011); *see also* Fed. R. Civ. P. 26(b)(3). The privilege attaches once “some articulable claim, likely to lead to litigation” arises. *Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 865 (D.C. Cir. 1980). It is not apparent that this privilege could even be used to exempt the records at issue in this appeal, but to the extent it has been so used, NOAA has failed to adequately justify the privilege’s use. *See Wolfson v. United States*, 672 F. Supp. 2d 20, 30 (D.D.C. 2009); *Miller v. Dep’t of Justice*, 562 F. Supp. 2d 82, 115 (D.D.C. 2008).

¹⁸ *Ancient Coin Collectors Guild v. Dep’t of State*, 641 F.3d 504, 513 (D.C. Cir. 2011).

¹⁹ *Vanghn v. Rosen*, 523 F.2d 1136, 1143–44 (D.C. Cir. 1975).

²⁰ *Coastal States Gas Corp.*, 617 F.2d at 867; *see also Pub. Citizen, Inc. v. Office of Mgmt. & Budget*, 598 F.3d 865, 875 (D.C. Cir. 2010) (concluding that “[t]o the extent the documents . . . neither make recommendations for policy change nor reflect internal deliberations on the advisability of any particular course of action, they are not predecisional and deliberative”).

²¹ *See Sears, Roebuck & Co.*, 421 U.S. at 151 (observing that the “ultimate purpose of this long-recognized privilege is to prevent injury to the quality of agency decisions”).

2. Record “0.7.812.5092-000001”

This record (attached as Exhibit 6) is the “roll out plan” for NMFS’s November 10, 2015 notice that the groundfish sector at-sea monitoring program would transition to industry funding. NOAA redacted substantive portions of the document under Exemption 5 without identifying any privilege. The header suggests that the record is “For Official Use Only” and contains “Pre-decisional Deliberative Information.” That alone, however, does not support NOAA’s withholding, which is presumably under the deliberative process privilege.

The e-mail to which the “roll out plan” was attached indicates that it was *not* a draft—which would be protected as deliberative—but rather a “final version” to be used for “Congressional notification” and, ultimately, notice to sector fishermen.²² Other records from the interim production support this contention. An earlier transmission of a “draft” version of the “roll out plan” is plainly stated in the name of an attached file, while the word “final” is used for the record at issue.²³ The finalized “roll out plan” must be re-processed.

3. Record “0.7.812.5032”

This e-mail (attached as Exhibit 9) has all substantive content redacted under Exemption 5, in conjunction with an unidentified privilege. Neither the sender nor the recipients of the e-mail are attorneys with NOAA, so the attorney-client privilege cannot apply. NOAA also failed to provide any details to justify any application of the deliberative process privilege. The subject of the e-mail, *i.e.*, a prediction in NMFS’s own report that industry-funded at-sea monitoring would render 60% of the groundfish sector fleet unprofitable, suggests that the e-mail contains discussion of the veracity of that statistic or related (perhaps, extenuating) facts.²⁴ That sort of material would not be pre-decisional and could not be deliberative.

4. Record “0.7.812.523-000001”

NOAA has withheld nearly all of this unidentified memorandum (attached as Exhibit 10) in full without identifying any privilege used in conjunction with Exemption 5. Considering it is marked as having been reviewed by Eileen Sobeck, the “agency head” of NMFS, it is likely a final document that contains post-deliberative content. NOAA has failed to provide any details to support its use of Exemption 5. Considering the extensive redactions and the length of the record, NOAA likely failed to conduct a careful line-by-line segregability review.

²² E-mail from Stephanie Hunt, Nat’l Oceanic & Atmospheric Admin., to Victor Vecchio, Nat’l Oceanic & Atmospheric Admin., *et al* (Nov. 10, 2015) (Record “0.7.812.5092”) (attached as Exhibit 7).

²³ *Compare* Ex. 7 (attaching “Rollout_ASM funding extension_11_10_15_final.docx”) *and* E-mail from Jennifer Goebel, Nat’l Oceanic & Atmospheric Admin., to John Bullard, Nat’l Oceanic & Atmospheric Admin. (Nov. 5, 2015) (Record “0.7.812.10923”) (attaching “DRAFT_ASM-funding-expended-Rollout_11_5_15.docx”) (attached as Exhibit 8).

²⁴ *See generally* NEW ENG. FISHERIES MGMT. COUNCIL, DRAFT REPORT: PRELIMINARY EVALUATION OF THE IMPACT OF GROUND FISH-SECTOR FUNDED AT SEA MONITORING ON GROUND FISH FISHERY PROFITS at 10 (June 19, 2015), available at <http://bit.ly/28QUXwT>.

5. Record “0.7.812.5209-000001”

NOAA withheld this eighty-eight page record (attached as Exhibit 11) in full, failing to identify any applicable privilege used in conjunction with Exemption 5. Given the length of the document and the extensiveness of the redactions, it is likely that NOAA was overbroad in this application of Exemption 5. At the least, NOAA should have provided sufficient information to support the use of the deliberative process or attorney-client privileges.

* * *

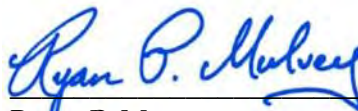
Considering the number of records—and the number of responsive pages—that have been withheld in full or without an identified privilege, NOAA likely applied Exemption 5 too broadly. NOAA should re-review the records at issue; carefully determine the extent to which Exemption 5 applies; articulate a detailed justification for the use of any recognized privileges, specifying their use on relevant redactions; and promptly produce non-exempt, segregable material.

Conclusion

NOAA’s fourth interim response to CoA Institute’s December 21, 2015 FOIA request is inadequate. The agency failed both to invoke Exemption 5 properly and to reasonably segregate responsive material. During the pendency of this appeal, CoA Institute respectfully requests that NOAA continue to process and produce any remaining responsive records.

Thank you for your immediate attention to this matter. If you have any questions, please contact me by e-mail at ryan.mulvey@causeofaction.org or by telephone at (202) 499-4232.

Sincerely,



RYAN P. MULVEY
COUNSEL

cc:

Samuel Dixon, Assistant FOIA Liaison, National Marine Fisheries Service

EXHIBIT

1



Advocates for Government Accountability

A 501(c)(3) Nonprofit Corporation

December 21, 2015

VIA E-MAIL C/O FOIA@NOAA.GOV

U.S. Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
ATTN: Joan Mumbleaux, FOIA Liaison
1315 East-West Highway
Silver Spring, MD 20910

Re: Freedom of Information Act Request

Dear Ms. Mumbleaux:

I write on behalf of Cause of Action, a nonprofit strategic oversight group committed to ensuring that government decision-making is open, honest, and fair.¹ In carrying out its mission, Cause of Action uses various investigative and legal tools to educate the public about the importance of government transparency and accountability. Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), Cause of Action hereby requests access to the following records maintained by the National Marine Fisheries Service (“NMFS”):

1. All records of communications between (i) Eileen Sobeck, Assistant Administrator for Fisheries; (ii) Samuel Rauch, Deputy Assistant Administrator for Regulatory Programs; (iii) Brian Pawlak, Director of the Office of Management and Budget; (iv) Alan Risenhoover, Director of the Office of Sustainable Fisheries; or (v) John Bullard, Regional Administrator for the Greater Atlantic Region, and any person associated with the following entities concerning industry funding for the Northeast Multispecies Fishery’s At-Sea Monitor Program or the draft Industry-Funded Monitoring Omnibus Amendment (“Omnibus Amendment”)²:
 - a. NOAA Office of General Counsel;

¹ See CAUSE OF ACTION, www.causeofaction.org.

² Draft: Industry-Funded Monitoring, An Omnibus Amendment to the Fishery Management Plans of the Mid-Atlantic and New England Fishery Management Councils (Sept. 2015), *available at* <https://goo.gl/vsd9Cb>.

- b. NOAA Office of Legislative and Intergovernmental Affairs;
- c. Department of Commerce Office of General Counsel;
- d. Department of Commerce Office of the White House Liaison;
- e. New England Fishery Management Council; or
- f. Mid-Atlantic Fishery Management Council.

The time period for this item of the request is December 1, 2009 to the present.

2. All records of communications between the NMFS employees identified in Item One and non-governmental stakeholders, including both non-profit and for-profit entities, concerning industry funding for the At-Sea Monitor Program or the Omnibus Amendment. The time period for this item of the request is December 1, 2009 to the present. At a minimum, please search for correspondence with the following organizations:
 - a. MRAG Americas, Inc. (“@mragamericas.com”);
 - b. A.I.S., Inc. (“@aisobservers.com”);
 - c. East West Technical Services LLC (“@ewts.com”);
 - d. Fathom Research LLC (“@fathomresearchllc.com”);
 - e. Environmental Defense Fund (“@edf.org”);
 - f. Cape Cod Commercial Hook Fishermen’s Association (“@capecodfishermen.org”);
 - g. Herring Alliance (“@herringalliance.org”);
 - h. Nature Conservancy (“@nature.org”);
 - i. Earthjustice (“@earthjustice.org”);
 - j. Oceana (“@oceana.org”); or
 - k. Pew Oceans Commission (“@pewoceans.org”).
3. All records of correspondence between NMFS and any person communicating with an e-mail address hosted by a Congressional domain (e.g., “mail.house.gov” or “senate.gov”) concerning industry funding for the At-Sea Monitor Program or the Omnibus Amendment. The time period for this item of the request is December 1, 2009 to the present.
4. All records of communications between NMFS and the Office of Management and Budget’s Office of Information and Regulatory Affairs concerning any proposals for industry-funded at-sea monitoring originating with the New England or Mid-Atlantic Fishery Management Councils. The time period for this item of the request is December 1, 2009 to the present.

Request for a Public Interest Fee Waiver

Cause of Action requests a waiver of any and all applicable fees.³ FOIA provides that agencies shall furnish requested records without or at reduced charge if “disclosure of the information is in the public interest because it is likely to contribute significantly to public

³ 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 15 C.F.R. § 4.11(k).

understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”⁴ In this case, the requested records will unquestionably shed light on the “operations or activities of the government,” namely, NMFS’s regulatory efforts, in conjunction with the New England and Mid-Atlantic Fishery Management Councils, to transition to industry-funded monitoring for a portion of the American fishing industry subject to the provisions of the Magnuson-Stevens Fishery Conservation and Management Act, as amended.

Disclosure is likely to “contribute significantly” to public understanding of these matters because, to date, the records that Cause of Action seeks have not been made publicly available. Specifically, Cause of Action is interested in educating the public about the extent to which outside stakeholders have been involved with, or commented on, the proposed transition to industry-funded monitoring for the At-Sea Monitor Program and for various other fisheries under the Omnibus Amendment. NMFS and the Fishery Management Councils have disclosed little about the sources and stakeholders on which they have relied in achieving the goal of industry-funded monitoring. Further, there is scant documentation of the collaboration between the Fishery Management Councils, NMFS, and other governmental actors, such as the Department of Commerce or the Office of Management and Budget, in realizing this goal. The requested records would thus attract public interest and contribute in a meaningful and unique way to public understanding of NMFS’s efforts and the industry’s general regulatory scheme.

Cause of Action has both the intent and ability to make the results of this request available to a reasonably broad public audience through various media. Cause of Action’s staff has a wealth of experience and expertise in government oversight, investigative reporting, and federal public interest litigation. These professionals will analyze the information responsive to this request, use their editorial skills to turn raw materials into a distinct work, and share the resulting analysis with the public, whether through Cause of Action’s regularly published online newsletter, memoranda, reports, or press releases. Further, Cause of Action, a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code, has no commercial interest in making this request.

Request To Be Classified as a Representative of the News Media

For fee status purposes, Cause of Action also qualifies as a “representative of the news media” under FOIA.⁵ As the D.C. Circuit recently held, the “representative of the news media” test is properly focused on the *requestor*, not the specific FOIA *request* at issue.⁶ Cause of Action satisfies this test because it gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience.⁷ Although it is not required by the statute, Cause of Action gathers the news it

⁴ 5 U.S.C. § 552(a)(4)(A)(iii); *see Cause of Action v. Fed. Trade Comm’n*, No. 13-5335, 2015 U.S. App. LEXIS 14934, at *15–24 (D.C. Cir. Aug. 25, 2015) (discussing proper application of public-interest fee waiver test).

⁵ 5 U.S.C. § 552(a)(4)(A)(ii)(II); 15 C.F.R. § 4.11(b)(6).

⁶ *See Cause of Action*, 799 F.3d at 1121.

⁷ Cause of Action notes that the agency’s definition of “representative of the news media” (15 C.F.R. § 4.11(b)(6)) is in conflict with the statutory definition and controlling case law. The agency has improperly retained the outdated “organized and operated” standard that Congress abrogated when it provided a statutory definition in the OPEN Government Act of 2007. *Id.* at 1125 (“Congress . . . omitted the ‘organized and operated’ language when it enacted

regularly publishes from a variety of sources, including FOIA requests, whistleblowers/insiders, and scholarly works. Cause of Action does not merely make raw information available to the public, but rather distributes distinct work products, including articles, blog posts, investigative reports, newsletters, and congressional testimony and statements for the record.⁸ These distinct works are distributed to the public through various media, including Cause of Action's website, Twitter, and Facebook. Cause of Action also provides news updates to subscribers via e-mail.

The statutory definition of a "representative of the news media" unequivocally contemplates that organizations such as Cause of Action, which electronically disseminate information and publications via "alternative media[,] shall be considered to be news-media entities."⁹ In light of the foregoing, numerous federal agencies — including the Department of Commerce — have appropriately recognized Cause of Action's news media status in connection with its FOIA requests.¹⁰

Record Preservation Requirement

Cause of Action requests that the disclosure officer responsible for the processing of this request issue an immediate hold on all records responsive, or potentially responsive, to this

the statutory definition in 2007. . . . [Therefore,] there is no basis for adding an 'organized and operated' requirement to the statutory definition." Under either definition, Cause of Action qualifies as a representative of the news media.

⁸ See, e.g., *Cause of Action Testifies Before Congress on Questionable White House Detail Program*, CAUSE OF ACTION (May 19, 2015), available at <http://goo.gl/Byditl>; CAUSE OF ACTION, 2015 GRADING THE GOVERNMENT REPORT CARD (Mar. 16, 2015), available at <http://goo.gl/MqObwV>; *Cause of Action Launches Online Resource: ExecutiveBranchEarmarks.com*, CAUSE OF ACTION (Sept. 8, 2014), available at <http://goo.gl/935qAi>; CAUSE OF ACTION, GRADING THE GOVERNMENT: HOW THE WHITE HOUSE TARGETS DOCUMENT REQUESTERS (Mar. 18, 2014), available at <http://goo.gl/BiaEaH>; CAUSE OF ACTION, GREENTECH AUTOMOTIVE: A VENTURE CAPITALIZED BY CRONYISM (Sept. 23, 2013), available at <http://goo.gl/N0xSvs>; CAUSE OF ACTION, POLITICAL PROFITEERING: HOW FOREST CITY ENTERPRISES MAKES PRIVATE PROFITS AT THE EXPENSE OF AMERICAN TAXPAYERS PART I (Aug. 2, 2013), available at <http://goo.gl/GpP1wR>.

⁹ 5 U.S.C. § 552(a)(4)(A)(ii)(II).

¹⁰ See, e.g., FOIA Request 2015-HQFO-00691, Dep't of Homeland Sec. (Sept. 22, 2015); FOIA Request F-2015-12930, Dept. of State (Sept. 2, 2015); FOIA Request 14-401-F, Dep't of Educ. (Aug. 13, 2015); FOIA Request HQ-2015-01689-F, Dep't of Energy (Aug. 7, 2015); FOIA Request 2015-OSEC-04996-F, Dep't of Agric. (Aug. 6, 2015); FOIA Request OS-2015-00419, Dep't of Interior (Aug. 3, 2015); FOIA Request 780831, Dep't of Labor (Jul 23, 2015); FOIA Request 15-05002, Sec. & Exch. Comm'n (July 23, 2015); FOIA Request 145-FOI-13785, Dep't of Justice (Jun. 16, 2015); FOIA Request 15-00326-F, Dep't of Educ. (Apr. 08, 2015); FOIA Request 2015-26, Fed. Energy Regulatory Comm'n (Feb. 13, 2015); FOIA Request HQ-2015-00248, Dep't of Energy (Nat'l Headquarters) (Dec. 15, 2014); FOIA Request F-2015-106, Fed. Commc'n Comm'n (Dec. 12, 2014); FOIA Request HQ-2015-00245-F, Dep't of Energy (Dec. 4, 2014); FOIA Request F-2014-21360, Dep't of State, (Dec. 3, 2014); FOIA Request LR-2015-0115, Nat'l Labor Relations Bd. (Dec. 1, 2014); FOIA Request 201500009F, Exp.-Imp. Bank (Nov. 21, 2014); FOIA Request 2015-OSEC-00771-F, Dep't of Agric. (OCIO) (Nov. 21, 2014); FOIA Request OS-2015-00068, Dep't of Interior (Office of Sec'y) (Nov. 20, 2014); FOIA Request CFPB-2015-049-F, Consumer Fin. Prot. Bureau (Nov. 19, 2014); FOIA Request GO-14-307, Dep't of Energy (Nat'l Renewable Energy Lab.) (Aug. 28, 2014); FOIA Request HQ-2014-01580-F, Dep't of Energy (Nat'l Headquarters) (Aug. 14, 2014); FOIA Request LR-20140441, Nat'l Labor Relations Bd. (June 4, 2014); FOIA Request 14-01095, Sec. & Exch. Comm'n (May 7, 2014); FOIA Request 2014-4QFO-00236, Dep't of Homeland Sec. (Jan. 8, 2014); FOIA Request DOC-OS-2014-000304, Dep't of Commerce (Dec. 30, 2013); FOIA Request 14F-036, Health Res. & Serv. Admin. (Dec. 6, 2013); FOIA Request 2013-073, Dep't of Homeland Sec. (Apr. 5, 2013); FOIA Request 2012-RMA-02563F, Dep't of Agric. (May 3, 2012); FOIA Request 2012-00270, Dep't of Interior (Feb. 17, 2012); FOIA Request 12-00455-F, Dep't of Educ. (Jan. 20, 2012).

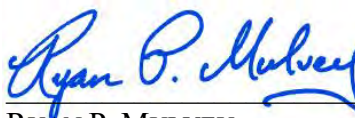
request, so as to prevent their disposal until such time as a final determination has been issued on Cause of Action's request and any administrative remedies for appeal have been exhausted. It is unlawful for an agency to destroy or dispose of any record subject to a FOIA request.¹¹

Record Production and Contact Information

In an effort to facilitate document review, please provide the responsive documents in electronic form in lieu of a paper production. If a certain portion of responsive records can be produced more readily, Cause of Action requests that those records be produced first and the remaining records be produced on a rolling basis as circumstances permit.

If you have any questions about this request, please contact me by telephone at (202) 499-4232 or by e-mail at ryan.mulvey@causeofaction.org. Thank you for your attention to this matter.

Sincerely,



RYAN P. MULVEY
COUNSEL

¹¹ See 15 C.F.R. § 4.3(d) (“Components shall not dispose of records while they are the subject of a pending request, appeal, or lawsuit under the FOIA.”); 36 C.F.R. § 1230.3(b) (“Unlawful or accidental destruction (also called unauthorized destruction) means disposal of an unscheduled or permanent record; disposal prior to the end of the NARA-approved retention period of a temporary record . . . ; and disposal of a record subject to a FOIA request, litigation hold, or any other hold requirement to retain the records.”); *Chambers v. Dep’t of the Interior*, 568 F.3d 998, 1004–05 (D.C. Cir. 2009) (“[A]n agency is not shielded from liability if it intentionally transfers or destroys a document after it has been requested under the FOIA or the Privacy Act.”); *Judicial Watch, Inc. v. Dep’t of Commerce*, 34 F. Supp. 2d 28, 41–44 (D.D.C. 1998).

EXHIBIT

2



Ryan P. Mulvey
1919 Pennsylvania Avenue NW
Suite 650
Washington DC, 20006

JAN 13 2016

Re: FOIA Request DOC-NOAA-2016-000423

Dear Mr. Mulvey:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request.

Your request was entered into FOIAonline, our request tracking database, on January 6, 2016. Your request tracking number is DOC-NOAA-2016-000423.

You requested:

1. *All records of communications between (i) Eileen Sobeck, Assistant Administrator for Fisheries; (ii) Samuel Rauch, Deputy Assistant Administrator for Regulatory Programs; (iii) Brian Pawlak, Director of the Office of Management and Budget; (iv) Alan Risenhoover, Director of the Office of Sustainable Fisheries; or (v) John Bullard, Regional Administrator for the Greater Atlantic Region, and any person associated with the following entities concerning industry funding for the Northeast Multispecies Fishery's At-Sea Monitor Program or the draft Industry-Funded Monitoring Omnibus Amendment ("Omnibus Amendment"):*
 - a. *NOAA Office of General Counsel;*
 - b. *NOAA Office of Legislative and Intergovernmental Affairs;*
 - c. *Department of Commerce Office of General Counsel;*
 - d. *Department of Commerce Office of the White House Liaison;*
 - e. *New England Fishery Management Council; or*
 - f. *Mid-Atlantic Fishery Management Council.*
 - g. *The time period for this item of the request is December 1, 2009 to the present.*
2. *All records of communications between the NMFS employees identified in Item One and non-governmental stakeholders, including both non-profit and for-profit entities, concerning industry funding for the At-Sea Monitor Program or the Omnibus Amendment. The time period for this item of the request is December*



1, 2009 to the present. At a minimum, please search for correspondence with the following organizations:

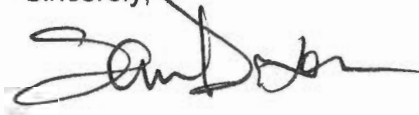
- a. MFRAG Americas, Inc. (“@mragamericas.com”);
 - b. A.I.S., Inc. (“@aisobservers.com”);
 - c. East West Technical Services LLC (“@ewts.com”);
 - d. Fathom Research LLC (“@fathomresearchllc.com”);
 - e. Environmental Defense Fund (“@edf.org”);
 - f. Cape Cod Commercial Hook Fishermen’s Association (“@capecodfishermen.org”);
 - g. Herring Alliance (“@herringalliance.org”);
 - h. Nature Conservancy (“@nature.org”);
 - i. Earthjustice (“@earthjustice.org”);
 - j. Oceana (“@oceana.org”); or
 - k. Pew Oceans Commission (“@pewoceans.org”).
3. All records of correspondence between NMFS and any person communicating with an e-mail address hosted by a Congressional domain (e.g., “mail.house.gov” or “senate.gov”) concerning industry funding for the At-Sea Monitor Program or the Omnibus Amendment. The time period for this item of the request is December 1, 2009 to the present.
4. All records of communications between NMFS and the Office of Management and Budget’s Office of Information and Regulatory Affairs concerning any proposals for industry-funded at-sea monitoring originating with the New England or Mid-Atlantic Fishery Management Councils. The time period for this item of the request is December 1, 2009 to the present.

15 C.F.R. 4.6(d) (2) allows an agency to extend the FOIA response deadline by ten business days for unusual circumstances. Due to the need to search for and collect the requested records from field facilities or other establishments separate from the office processing the request in addition to the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are the subject of a single request we are choosing to invoke this 10 day extension and anticipate completing your request by February 19, 2016.

Please contact us if you are interested in narrowing the scope of your request. Narrowing your request will help expedite its processing.

If you have questions regarding your request, please contact Samuel Dixon at samuel.dixon@noaa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Sam Dixon", written in a cursive style.

Samuel Dixon
NMFS Assistant FOIA Liaison

EXHIBIT

3



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

Ryan P. Mulvey
1919 Pennsylvania Avenue NW
Suite 650
Washington DC 20006

APR 21 2017

Re: Request No. DOC-NOAA-2016-000423

Dear Mr. Mulvey,

This letter is in response to your Freedom of Information Act (FOIA) request which was received by our office on 01/06/2016, in which you requested:

1. All records of communications between (i) Eileen Sobeck, Assistant Administrator for Fisheries; (ii) Samuel Rauch, Deputy Assistant Administrator for Regulatory Programs; (iii) Brian Pawlak, Director of the Office of Management and Budget; (iv) Alan Risenhoover, Director of the Office of Sustainable Fisheries; or (v) John Bullard, Regional Administrator for the Greater Atlantic Region, and any person associated with the following entities concerning industry funding for the Northeast Multispecies Fishery's At-Sea Monitor Program or the draft Industry-Funded Monitoring Omnibus Amendment ("Omnibus Amendment"):
 - a) NOAA Office of General Counsel;
 - b) NOAA Office of Legislative and Intergovernmental Affairs;
 - c) Department of Commerce Office of General Counsel;
 - d) Department of Commerce Office of the White House Liaison;
 - e) New England Fishery Management Council; or
 - f) Mid-Atlantic Fishery Management Council.

The time period for this item of the request is December 1, 2009 to the present.

2. All records of communications between the NMFS employees identified in Item One and non-governmental stakeholders, including both non-profit and for-profit entities, concerning industry funding for the At-Sea Monitor Program or the Omnibus Amendment. The time period for this item of the request is December 1, 2009 to the present. At a minimum, please search for correspondence with the following organizations:
 - a) MRAG Americas, Inc. ("@mragamericas.com");



- b) A.I.S., Inc. (“@aisobservers.com”);
 - c) East West Technical Services LLC (“@ewts.com”);
 - d) Fathom Research LLC (“@fathomresearchllc.com”);
 - e) Environmental Defense Fund (“@edf.org”);
 - f) Cape Cod Commercial Hook Fishermen’s Association (“@capecodfishermen.org”);
 - g) Herring Alliance (“@herringalliance.org”);
 - h) Nature Conservancy (“@nature.org”);
 - i) Earthjustice (“@earthjustice.org”);
 - j) Oceana (“@oceana.org”); or
 - k) Pew Oceans Commission (“@pewoceans.org”).
3. All records of correspondence between NMFS and any person communicating with an e-mail address hosted by a Congressional domain (e.g., “mail.house.gov” or “senate.gov”) concerning industry funding for the At-Sea Monitor Program or the Omnibus Amendment. The time period for this item of the request is December 1, 2009 to the present.

All records of communications between NMFS and the Office of Management and Budget’s Office of Information and Regulatory Affairs concerning any proposals for industry-funded at-sea monitoring originating with the New England or Mid-Atlantic Fishery Management Councils. The time period for this item of the request is December 1, 2009 to the present.

This is the fourth interim response to your request. At this time we are producing 175 additional documents responsive to your request. 73 of these records are being produced to you in their entirety.

102 of these records contain redactions made under 5 U.S.C. § 552 (b)(5), which allows the withholding of information that is deliberative in nature and/or includes attorney-client information or attorney work product or 5 U.S.C. § 552 (b)(6) which allows for the withholding of personally identifying information.

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 Samuel Dixon at samuel.dixon@noaa.gov. You may also contact the NOAA FOIA Public Liaison Robert Swisher at (301) 628-5755.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan Risenhoover", with a long horizontal flourish extending to the left.

Alan Risenhoover,
Acting Deputy Assistant Administrator
for Regulatory Programs

EXHIBIT

4

Alan Risenhoover - NOAA Federal

From: Alan Risenhoover - NOAA Federal
Sent: Friday, September 05, 2014 2:55 PM
To: Samuel Rauch - NOAA Federal
Cc: Emily Menashes; Kelly Denit - NOAA Federal
Subject: Fwd: Estimate of ASM costs

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

From: **Richard Merrick - NOAA Federal** <richard.merrick@noaa.gov>
Date: Friday, September 5, 2014
Subject: Re: Estimate of ASM costs
To: Ned Cyr - NOAA Federal <ned.cyr@noaa.gov>, Alan Risenhoover - NOAA Federal <alan.risenhoover@noaa.gov>
Cc: David Detlor - NOAA Federal <david.detlor@noaa.gov>, Lee Benaka - NOAA Federal <Lee.Benaka@noaa.gov>, Emily Menashes - NOAA Federal <emily.menashes@noaa.gov>, Jane DiCosimo - NOAA Affiliate <jane.dicosimo@noaa.gov>, Stephanie Hunt - NOAA Federal <stephanie.hunt@noaa.gov>, Richard Merrick - NOAA Federal <richard.merrick@noaa.gov>

Ned and Alan

(b)(5)

(b)(5)

Wendy L. Gabriel, Ph. D.
Chief, Fisheries and Ecosystems Monitoring and Analysis Division
Northeast Fisheries Science Center
NOAA Fisheries
166 Water Street
Woods Hole, MA 02543
[\(508\) 495-2213](tel:(508)495-2213)

--

Richard

Director, Scientific Programs and Chief Science Advisor
NOAA Fisheries
1315 East West Highway
Silver Spring, MD 20910

(301) 427-8000

(b)(5)

EXHIBIT

5

Alan Risenhoover - NOAA Federal

From: Alan Risenhoover - NOAA Federal
Sent: Friday, September 05, 2014 3:16 PM
To: Samuel Rauch - NOAA Federal
Cc: Samuel Rauch - NOAA Federal; Emily Menashes; Kelly Denit - NOAA Federal
Subject: Re: Estimate of ASM costs

(b)(5)

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

From: **Richard Merrick - NOAA Federal** <richard.merrick@noaa.gov>
Date: Friday, September 5, 2014
Subject: Re: Estimate of ASM costs
To: Ned Cyr - NOAA Federal <ned.cyr@noaa.gov>, Alan Risenhoover - NOAA Federal <alan.risenhoover@noaa.gov>
Cc: David Detlor - NOAA Federal <david.detlor@noaa.gov>, Lee Benaka - NOAA Federal <Lee.Benaka@noaa.gov>, Emily Menashes - NOAA Federal <emily.menashes@noaa.gov>, Jane DiCosimo - NOAA Affiliate <jane.dicosimo@noaa.gov>, Stephanie Hunt - NOAA Federal

Wendy L. Gabriel, Ph. D.
Chief, Fisheries and Ecosystems Monitoring and Analysis Division
Northeast Fisheries Science Center
NOAA Fisheries
166 Water Street
Woods Hole, MA 02543
[\(508\) 495-2213](tel:(508)495-2213)

--

Richard

Director, Scientific Programs and Chief Science Advisor
NOAA Fisheries
1315 East West Highway
Silver Spring, MD 20910
(301) 427-8000

(b)(5)

EXHIBIT

6

For Official Use Only-Pre-decisional Deliberative Information-Not for Public Release

November 10, 2015

**ROLL OUT PLAN FOR
Announcing Transition to Industry Funding for Northeast Groundfish At-Sea Monitoring
Effective January 1, 2016**

(b)(5)

EXHIBIT

7

Stephanie Hunt - NOAA Federal

From: Stephanie Hunt - NOAA Federal
Sent: Tuesday, November 10, 2015 3:23 PM
To: Victor Vecchio - NOAA Federal
Cc: Teri Frady - NOAA Federal; Michael Pentony - NOAA Federal; Jennifer Goebel - NOAA Federal; Allison Ferreira - NOAA Federal; Olivia Rugo - NOAA Affiliate; Mark Grant - NOAA Federal; Wendy Gabriel - NOAA Federal; Amy Martins - NOAA Federal; Craig Woolcott - NOAA Federal; Linda Belton - NOAA Federal; Kate Taylor - NOAA Federal; Kate Naughten - NOAA Federal; Connie Barclay - NOAA Federal; Brandon Sousa - NOAA Federal; Lee Benaka - NOAA Federal; Jane DiCosimo - NOAA Federal; John Bullard - NOAA Federal; Bill Karp - NOAA Federal; Brianne Szczepanek - NOAA Federal; Jenna Swartz - NOAA Affiliate; Laurel Bryant - NOAA Federal; Katherine Brogan - NOAA Federal; Colin Kliewer - NOAA Federal; Jennie Lyons - NOAA Federal; Alesia Read - NOAA Federal
Subject: Rollout beginning today: Transition to Industry Funding for Northeast Groundfish At-Sea Monitoring Effective January 1, 2016
Attachments: Rollout_ASM funding extension_11_10_15_final.docx

All;

Apologies for the delay in this but we have been going back and forth on the Q/As. We now have a final version which is attached. Craig is beginning Congressional notification now and other steps should wait until at least 4:30 pm today. Please wait for the go-ahead from Craig.

Stephanie

On Thu, Nov 5, 2015 at 3:45 PM, Victor Vecchio - NOAA Federal <victor.vecchio@noaa.gov> wrote:

Hi,

Attached is the roll out plan for : *Announcing Transition to Industry Funding for Northeast Groundfish At-Sea Monitoring Effective January 1, 2016.*

Please notify the team as each task of the roll out plan is completed.

Roll out begins tomorrow at 9:00 am (11/6/2015).

Thank you, Vic Vecchio

--

Victor J. Vecchio

*Acting Legislative Affairs Specialist; Roll Out Coordinator
NOAA Fisheries, Office of the Assistant Administrator
U.S. Department of Commerce*

Office: [301-427-8022](tel:301-427-8022)

victor.vecchio@noaa.gov



|

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Stephanie L. Hunt
NOAA Fisheries
U.S. Department of Commerce
stephanie.hunt@noaa.gov
office: 301.427.8062
cell: 301.325.1096

EXHIBIT

8

Jennifer Goebel - NOAA Federal

From: Jennifer Goebel - NOAA Federal
Sent: Thursday, November 05, 2015 3:49 PM
To: John Bullard - NOAA Federal; Michael Pentony - NOAA Federal; Sarah Heil - NOAA Federal; Mark Grant - NOAA Federal
Cc: Liz Sullivan - NOAA Federal; William Whitmore - NOAA Federal; Allison Ferreira - NOAA Federal
Subject: Re: Rollout for groundfish at-sea monitoring funding announcement
Attachments: DRAFT_ASM-funding-expended-Rollout_11_5_15.docx

Here's the rollout. The fun begins tomorrow at 9am.

On Thu, Nov 5, 2015 at 12:59 PM, Jennifer Goebel - NOAA Federal <jennifer.goebel@noaa.gov> wrote:

It looks like the Science Center will be rolling out the announcement about ASM funding lasting through the Dec 31 tomorrow.

I don't have a final rollout yet, but send it on when I do.

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

From: **Stephanie Hunt - NOAA Federal** <stephanie.hunt@noaa.gov>
Date: Thu, Nov 5, 2015 at 12:46 PM
Subject: Re: Draft roll-out for groundfish at-sea monitoring funding announcement
To: Jennifer Goebel - NOAA Federal <jennifer.goebel@noaa.gov>
Cc: Bill Karp - NOAA Federal <bill.karp@noaa.gov>, Teri Frady - NOAA Federal <teri.fradyl@noaa.gov>, Susan Gardner - NOAA Federal <susan.gardner@noaa.gov>, Allison Ferreira <Allison.Ferreira@noaa.gov>, Wendy Gabriel - NOAA Federal <wendy.gabriel@noaa.gov>, Amy Martins - NOAA Federal <Amy.Martins@noaa.gov>

Vic will send the final rollout plan today for a rollout tomorrow. He got several revisions to the plan but nothing major.

On Thu, Nov 5, 2015 at 11:18 AM, Jennifer Goebel - NOAA Federal <jennifer.goebel@noaa.gov> wrote:

> Hi All,

> Do we know when this will be going out?

>

> Thanks,

> Jen

>

> On Wed, Nov 4, 2015 at 12:54 PM, Stephanie Hunt - NOAA Federal

> <stephanie.hunt@noaa.gov> wrote:

>>

>> Thanks. Hope your keynote went well.

>>

>>

>> On Wed, Nov 4, 2015 at 12:47 PM, Bill Karp - NOAA Federal

>> <bill.karp@noaa.gov> wrote:

>> > I'm OK with being more definitive. Sorry for the delay, I'm in a

>> > conference

>> > and was speaking this morning. I'm not too concerned about timing.

>> >

>> >

>> >

>> > On Nov 4, 2015, at 09:57, Teri Frady - NOAA Federal

>> > <teri.frady@noaa.gov>

>> > wrote:

>> >

>> > We have a meeting on Monday with industry and would like this to be out

>> > before then if possible. Trying to avoid a Friday release as several

>> > high-profile industry members have often complained that we release bad

>> > news

>> > on Friday purposefully so that they have little time to react and the

>> > news

>> > gets buried on the weekend..

>> >

>> > On Wed, Nov 4, 2015 at 9:42 AM, Stephanie Hunt - NOAA Federal

>> > <stephanie.hunt@noaa.gov> wrote:

>> >>

>> >> Bill;

>> >> We need to be definitive on this point. Can you please make the call?

>> >> I've attached a revised rollout with that more definitive statement

>> >> and I need confirmation before circulating this. Also, is there a

>> >> driver for doing this tomorrow? I'd prefer to do it Friday so we have

>> >> more time to inform folks internally.

>> >> Stephanie

>> >>

>> >> On Wed, Nov 4, 2015 at 9:34 AM, Teri Frady - NOAA Federal

>> >> <teri.frady@noaa.gov> wrote:

>> >> > That is my understanding, but perhaps Bill should have the final

>> >> > word.

>> >> >

>> >> > This is from Amy on Nov 2 is pretty definitive and what got this

>> >> > rolling

>> >> > to

>> >> > begin with:

>> >> >

>> >> > Hello NEFSC Leadership,

>> >> > This email is to update you on the remaining funds in the At-Sea

>> >> > Monitoring

>> >> > contracts. Our last public announcement was that we had sufficient

>> >> > funds to

>> >> > last at least through November, and an update would be provided at

>> >> > the

>> >> > beginning of the month. Given the rate of spending, fishing effort,

>> >> > and

>>>> training expenditures, we expect the funds to be fully expended by
>>>> the
>>>> end
>>>> of December. This would make the target transition date move from
>>>> December
>>>> 1st, 2015 to January 1st, 2016.
>>>> This should be the last of the funds, so I am not expecting to have
>>>> remaining funds after that time.
>>>>
>>>> If you could please start the process to inform Headquarters, GARFO,
>>>> sector
>>>> managers, providers, and the public, that would be great.
>>>> Please let me know if additional information is needed.
>>>> Thank you,
>>>> Amy
>>>>
>>>> On Wed, Nov 4, 2015 at 9:29 AM, Stephanie Hunt - NOAA Federal
>>>> <stephanie.hunt@noaa.gov> wrote:
>>>>>>
>>>>>> Can you confirm that we will not run any additional estimates and
>>>>>> that
>>>>>> this is the final extension? We need to be more explicit on that
>>>>>> point given how many times we have extended.
>>>>>>
>>>>>> On Wed, Nov 4, 2015 at 9:20 AM, Teri Frady - NOAA Federal
>>>>>> <teri.frady@noaa.gov> wrote:
>>>>>>> attached
>>>>>>>
>>>>>>> On Tue, Nov 3, 2015 at 5:09 PM, Stephanie Hunt
>>>>>>> <stephanie.hunt@noaa.gov>
>>>>>>> wrote:
>>>>>>>>
>>>>>>>> The key messages need to explain that this is another extension
>>>>>>>> and
>>>>>>>> describe when we originally expected funding to run out. Is this
>>>>>>>> the
>>>>>>>> last
>>>>>>>> extension we expect? If so that also needs to be clearly spelled
>>>>>>>> out
>>>>>>>> in
>>>>>>>> the
>>>>>>>> key messages.
>>>>>>>>
>>>>>>>> Can you make these changes quickly?
>>>>>>>> Sent from my iPhone
>>>>>>>>
>>>>>>>> On Nov 3, 2015, at 4:51 PM, Teri Frady - NOAA Federal
>>>>>>>> <teri.frady@noaa.gov> wrote:
>>>>>>>>>
>>>>>>>>> Attached for HQ review. I believe you and Susan have

>>>>>> > discussed.
>>>>>> > This
>>>>>> > has been reviewed this end by NEC & GAR.
>>>>>> >
>>>>>> > --
>>>>>> > Teri Frady
>>>>>> > Chief, Research Communications
>>>>>> > NOAA Fisheries Northeast Fisheries Science Center
>>>>>> > [508.495.2239](tel:508.495.2239)/[774.327.9404](tel:774.327.9404)
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>>>>>> >
>>>>>> > <ASM-funding-expended-Rollout110315-1.docx>
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>>>>>> > --
>>>>>> > Teri Frady
>>>>>> > Chief, Research Communications
>>>>>> > NOAA Fisheries Northeast Fisheries Science Center
>>>>>> > [508.495.2239](tel:508.495.2239)/[774.327.9404](tel:774.327.9404)
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>>>>>> > --
>>>>>> > Stephanie L. Hunt
>>>>>> > NOAA Fisheries
>>>>>> > U.S. Department of Commerce
>>>>>> > stephanie.hunt@noaa.gov
>>>>>> > office: [301.427.8062](tel:301.427.8062)
>>>>>> > cell: [301.325.1096](tel:301.325.1096)
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>> >> Stephanie L. Hunt
>> >> NOAA Fisheries
>> >> U.S. Department of Commerce
>> >> stephanie.hunt@noaa.gov
>> >> office: [301.427.8062](tel:301.427.8062)
>> >> cell: [301.325.1096](tel:301.325.1096)

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>> > Teri Frady
>> > Chief, Research Communications
>> > NOAA Fisheries Northeast Fisheries Science Center
>> > [508.495.2239/774.327.9404](tel:508.495.2239/774.327.9404)

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>> Stephanie L. Hunt
>> NOAA Fisheries
>> U.S. Department of Commerce
>> stephanie.hunt@noaa.gov
>> office: [301.427.8062](tel:301.427.8062)
>> cell: [301.325.1096](tel:301.325.1096)

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> Jennifer S. Goebel
> Public Affairs Officer
> office: [978-281-9175/cell 617-335-4301](tel:978-281-9175/cell-617-335-4301)
> Greater Atlantic Regional Fisheries Office
> NOAA Fisheries Service
> 55 Great Republic Drive
> Gloucester, MA 01930
>

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Stephanie L. Hunt
NOAA Fisheries

U.S. Department of Commerce

stephanie.hunt@noaa.gov

office: [301.427.8062](tel:301.427.8062)

cell: [301.325.1096](tel:301.325.1096)

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Jennifer S. Goebel

Public Affairs Officer

office: [978-281-9175](tel:978-281-9175) /cell [617-335-4301](tel:617-335-4301)

Greater Atlantic Regional Fisheries Office

NOAA Fisheries Service

55 Great Republic Drive

Gloucester, MA 01930

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office: [978-281-9175](tel:978-281-9175) /cell [617-335-4301](tel:617-335-4301)

Greater Atlantic Regional Fisheries Office

NOAA Fisheries Service

55 Great Republic Drive

Gloucester, MA 01930

EXHIBIT

9

Samuel Rauch - NOAA Federal

From: Samuel Rauch - NOAA Federal
Sent: Friday, December 11, 2015 12:53 PM
To: Victor Vecchio - NOAA Federal
Cc: Brandon Sousa - NOAA Federal; Brianne Szczepanek - NOAA Federal
Subject: Re: ASM Report on Groundfish Profits (60% fleet unprofitable quote)

(b)(5)



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Samuel D. Rauch III
Deputy Assistant Administrator for Regulatory Programs
National Marine Fisheries Service/NOAA
U.S. Department of Commerce
301-427-8000

EXHIBIT

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EXHIBIT

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CAUSE *of* ACTION
— INSTITUTE —

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Tuesday, May 9, 2017 12:17 PM
To: Stacey Nathanson - NOAA Federal
Cc: Samuel Dixon; Steven Goodman - NOAA Federal; John Almeida - NOAA Federal; Amanda Patterson - NOAA Federal; Chua, Alvin
Subject: Re: Freedom of Information Act Appeal: CoA Institute, Request No. DOC-NOAA-2016-000423

(Looping in Alvin at DOC)

(b)(5)

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

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On Tue, May 9, 2017 at 9:29 AM, Stacey Nathanson - NOAA Federal <stacey.nathanson@noaa.gov> wrote:

Just wanted to remind folks that Cause of Action filed a lawsuit on another appeal on day 21 (b)(5)

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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On Tue, May 9, 2017 at 9:16 AM, Samuel Dixon <samuel.dixon@noaa.gov> wrote:

(b)(5)

Samuel Dixon
Contractor - IBSS Corp
NMFS Assistant FOIA Liaison
[\(301\) 427-8739](tel:(301)427-8739)
samuel.dixon@noaa.gov

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

From: **Ryan Mulvey** <ryan.mulvey@causeofaction.org>
Date: Tue, May 9, 2017 at 7:06 AM
Subject: Freedom of Information Act Appeal: CoA Institute, Request No. DOC-NOAA-2016-000423
To: "FOIAAppeals@doc.gov" <FOIAAppeals@doc.gov>
Cc: Samuel Dixon <samuel.dixon@noaa.gov>

Dear Appeals Officer:

Please find attached a copy of Cause of Action Institute's administrative appeal from NOAA's interim response to FOIA request No. 2016-000423. I am sending a courtesy copy to the FOIA officer assigned to this request, as we respectfully request the continued processing of the remaining responsive records during the pendency of the appeal.

Thank you for your assistance in processing the attached appeal.

Kind regards,

Ryan Mulvey

Ryan P. Mulvey | Counsel

Cause of Action Institute

1875 Eye Street NW, Suite 800

Washington, D.C. 20006

(o) [202.400.2729](tel:202.400.2729) / (c) (b)(6)

Ryan.Mulvey@causeofaction.org

Admitted to the practice of law in New York State and the District of Columbia



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CAUSE *of* ACTION
— INSTITUTE —

From: Andrew Roy <acr@asri.aero>
Sent: Tuesday, May 9, 2017 12:21 PM
To: mark.graff@noaa.gov
Subject: FW: FOIA Request from ASRI
Attachments: 20170321-NOAA FOIA Request-FINAL.PDF

Mark,

As discussed, please see the below.

Regards

Andrew Roy – Director, Engineering Services

Aviation Spectrum Resources, Inc. (ASRI) – www.ASRI.aero

Office & Cell: +1-443-951-0340 | Email: ACR@asri.aero | Mail: ASRI, 180 Admiral Cochrane Drive, Suite 300, Annapolis, MD, 21401, USA

From: Andrew Roy
Sent: Tuesday, 21 March, 2017 16:32
To: FOIA@NOAA.gov
Subject: FOIA Request from ASRI

Dear NOAA FOIA Office,

Please see attached the FOIA request from Aviation Spectrum Resources Inc. (ASRI). Thank you

Regards

Andrew Roy – Director, Engineering Services

Aviation Spectrum Resources, Inc. (ASRI) – www.ASRI.aero

Office & Cell: +1-443-951-0340 | Email: ACR@asri.aero | Mail: ASRI, 180 Admiral Cochrane Drive, Suite 300, Annapolis, MD, 21401, USA



Aviation Spectrum Resources Inc. ♦ 180 Admiral Cochrane Drive ♦ Suite 300 ♦ Annapolis, MD 21401
Phone: 410-266-6030 ♦ Fax: 443-951-0349 ♦ <http://www.asri.aero>

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

21 March 2017

FREEDOM OF INFORMATION ACT REQUEST

Dear NOAA FOIA Office:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552.

On behalf of Aviation Spectrum Resources, Inc. (ASRI), the undersigned hereby requests that copies of the following documents, including letters or correspondence, or any other documents or recordings responsive to the requests listed below and/or containing the following information, be provided to the undersigned:

1. Any letters, written records, correspondence, documents and/or reports (whether written or recorded) from the Under Secretary of Commerce for Oceans and Atmospheres (former or acting) to the National Telecommunications and Information Administration (NTIA) from September 1, 2016 to the present, inclusive, regarding regulatory or operational considerations in the 1675 – 1680 MHz or 1675-1695 MHz radiofrequency bands, specifically those associated with potential spectrum repurposing of these bands from current and prospective federal government uses to commercial mobile operations or the sharing of these spectrum bands by federal government and commercial mobile operators.
2. Any letters, written records, correspondence, documents and/or reports (whether written or recorded) from the Assistant Secretary for Environmental Observation and Prediction (former or acting) to the National Telecommunications and Information Administration (NTIA) from September 1, 2016 to the present, inclusive, regarding regulatory or operational considerations in the 1675 – 1680 MHz or 1675-1695 MHz radiofrequency bands, specifically those associated with potential spectrum repurposing of these bands from current and prospective federal government uses to commercial mobile operations or the sharing of these spectrum bands by federal government and commercial mobile operators.
3. Any letters, written records, correspondence, documents and/or reports (whether written or recorded) from (1) the Assistant Administrator, National Environmental Satellite, Data & Information Service (NESDIS) (former or acting), or (2) the Deputy Assistant Administrator of NESDIS, to the National Telecommunications and Information Administration (NTIA) from September 1, 2016 to the present, inclusive, regarding regulatory or operational considerations in the 1675 – 1680 MHz or 1675-1695 MHz radiofrequency bands, specifically those associated

with potential spectrum repurposing of these bands from current and prospective federal government uses to commercial mobile operations or the sharing of these spectrum bands by federal government and commercial mobile operators.

4. Any letters, written records, correspondence, documents and/or reports (whether written or recorded) from (1) the NESDIS CIO, e.g., Assistant Chief Information Officer (ACIO/NESDIS) or (2) the NESDIS Deputy CIO, e.g., Deputy Assistant Chief Information Officer (DCIO/NESDIS) (former or acting) to the National Telecommunications and Information Administration (NTIA) from September 1, 2016 to the present, inclusive, regarding regulatory or operational considerations in the 1675 – 1680 MHz or 1675-1695 MHz radiofrequency bands, specifically those associated with potential spectrum repurposing of these bands from current and prospective federal government uses to commercial mobile operations or the sharing of these spectrum bands by federal government and commercial mobile operators.

ASRI requests a waiver of all fees for this request on the basis that disclosure of the requested information to ASRI would be in the public interest. *See* 15 C.F.R. § 4.11(l)(1)(i). In order to help you consider this request, you should know that ASRI is the communications company of the U.S. civilian air transport industry. Owned by the airlines and other airspace users, ASRI is operated on a cooperative basis to provide a non-discriminatory service to these entities. Additionally, ASRI's mission includes the defense of access to, and the use of, adequate radiofrequency spectrum resources to support aviation activities to ensure the safety of the flying public and the efficiency of airline operations.

Disclosure of the requested information to ASRI is in the public interest because it is likely to contribute significantly to public understanding of the activities of the government in connection with the foregoing radiofrequency spectrum bands and is not primarily in ASRI's commercial interest. *See* 15 C.F.R. § 4.11(l)(2)(ii) (the first fee waiver requirement is met when the disclosure is "likely to contribute" to an increased public understanding of government operations or activities); *see also* 15 C.F.R. § 4.11(l)(3)(ii) (finding that a fee waiver or reduction is justified when the public interest in disclosure is greater than any identified commercial interest).

More specifically, these bands are essential for the timely and reliable dissemination of hydrological and metrological information. Aviation operations are highly weather-sensitive. If proposed repurposing or spectrum sharing of 1675 – 1680 MHz or 1675-1695 MHz creates radio frequency interference that adversely impacts the receipt of hydrological and metrological information necessary for aviation operations, the safety of the travelling public could be affected. Thus, the 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 only the individual understanding of the requester. *See* 15 C.F.R. § 4.11(l)(2)(iii). The information requested will enable ASRI to conduct further analysis of the foregoing issues and contribute to its participation in the ongoing FCC proceedings¹ concerning the Geostationary Operational

¹ *See* FCC RM-11681. In this proceeding, Ligado Network LLC ("Ligado") asks the FCC to initiate a rulemaking to allocate the 1675-1680 MHz band for terrestrial mobile use on a

Environmental Satellite system, also known as GOES, which operates in these spectrum bands. ASRI's contributions to those proceedings will become available to the public through the FCC's website.

In the event that you do not waive fees, ASRI is willing to pay fees for this request up to a maximum of \$250. If you estimate that the fees will exceed this limit, please first provide notice to the point of contact listed below before proceeding and provide the point of contact with an estimate of the costs (and obtain approval to incur them). *See* 15 C.F.R. § 4.11(i)(2) ("A notice under this paragraph shall offer the requester an opportunity to discuss the matter with Departmental personnel in order to modify the request in an effort to meet the requester's needs at a lower cost."). If a waiver is granted or, alternatively, if the fees do not exceed the amount stated above, please supply the records without informing the point of contact of the cost.

If you deny all or any part of this request for information, please cite each specific exemption you think justifies your withholding of information. Please notify the point of contact of appeal procedures available under the law.

Thank you for your consideration of this request.

Please correspond with Mr. Andrew Roy, Director of Engineering, ASRI, with any questions in this matter. He may be reached at (443) 951-0340 or via email at acr@asri.aero

Sincerely,

By: /s/ Kris Hutchison

Kris Hutchison
President
Aviation Spectrum Resources, Inc.
180 Admiral Cochrane Drive, Suite 300
Annapolis, MD 21401

shared basis with federal use. The original petition in this proceeding was filed in 2012 by Ligado's predecessor in interest, LightSquared Subsidiary LLC.

From: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>
Sent: Tuesday, May 9, 2017 12:34 PM
To: Mark Graff - NOAA Federal
Subject: April 2017 FOIA Monthly Report (DRAFT FOR YOUR REVIEW/APPROVAL)
Attachments: FOIA Monthly Status Report 04-30-2017.xlsx; FOIA Monthly Status Report 04-30-2017.pdf; Incoming - 42017.xls; Closed - 42017.xls; Backlog - 42017.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

On Tue, May 9, 2017 at 11:52 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:
Thanks!

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 Tue, May 9, 2017 at 6:50 AM, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:
Good morning Mark - I'll have a draft of the monthly report to you by noon today.

Lola

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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

Tracking Number	Type	Requester	Submitted
DOC-NOAA-2017-000609	Request	Brian Murphy	02/03/2017
DOC-NOAA-2017-000298	Request	Charles Mouton	11/30/2016
DOC-NOAA-2016-001241	Request	Shomari B. Wade	05/18/2016
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-2016-001775	Request	Ehsan Naranji	09/19/2016
DOC-NOAA-2017-000169	Request	MICHAEL PEPSON	11/09/2016
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-2016-001094	Request	Anthony Arguez	05/02/2016
DOC-NOAA-2016-000351	Request	Bill Marshall	10/30/2015
DOC-NOAA-2017-000701	Request	Zeenat Mian	03/01/2017
DOC-NOAA-2017-000744	Request	Zeenat Mian	03/08/2017
DOC-NOAA-2017-000752	Request	Sarah B. Brady	03/08/2017
DOC-NOAA-2017-000596	Request	Adam Carlesco	02/02/2017
DOC-NOAA-2017-000304	Request	Bryn Blomberg	11/30/2016
DOC-NOAA-2017-000539	Referral	Jamie Pang	01/30/2017
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	MICHAEL PEPSON	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-2016-001751	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-2016-000605	Request	Margaret Townsend	02/10/2016
DOC-NOAA-2016-001533	Request	J W August	07/27/2016
DOC-NOAA-2016-001270	Request	scott A. doyle	06/08/2016
DOC-NOAA-2016-001326	Request	Thomas Knudson	06/21/2016
DOC-NOAA-2016-001299	Request	Thomas Knudson	06/15/2016
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-2017-000535	Request	John Ullom	01/18/2017
DOC-NOAA-2017-000384	Request	Marshall Morales	01/03/2017
DOC-NOAA-2017-000414	Request	Arnold & Porter Kaye Scholer LLP	01/09/2017
DOC-NOAA-2017-000659	Request	Dan Fountain	02/21/2017
DOC-NOAA-2017-000572	Request	Karen MacDonald	02/07/2017
DOC-NOAA-2016-001599	Request	Machelle 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-2017-000530	Request Raymond Tubb	01/27/2017
DOC-NOAA-2017-000532	Request Corin Hoggard	01/27/2017
DOC-NOAA-2017-000768	Request Julio C. Gomez	03/10/2017
DOC-NOAA-2017-000364	Request Peter J. Speicher	12/23/2016
DOC-NOAA-2017-000186	Request Elizabeth Nowicki	11/16/2016
DOC-NOAA-2016-001403	Request Ivria Fried	07/07/2016
DOC-NOAA-2017-000794	Request Jared E. Knicley	03/14/2017
DOC-NOAA-2017-000846	Request Elizabeth N. Moran	03/16/2017
DOC-NOAA-2017-000845	Request Elizabeth N. Moran	03/16/2017
DOC-NOAA-2017-000708	Request Emily C. Atkin	03/01/2017
DOC-NOAA-2017-000408	Request Jeremy Singer-Vine	01/06/2017
DOC-NOAA-2017-000187	Request Elizabeth Nowicki	11/16/2016
DOC-NOAA-2016-001346	Request Tammy Murphy	06/10/2016

Assigned To	Due	Days Backlogged
AGO	03/15/2017	33
AGO	01/13/2017	41
AGO	06/30/2016	208
AGO	10/08/2015	390
AGO	10/08/2015	390
AGO	07/31/2015	438
CAO	11/01/2016	123
LA	01/05/2017	80
NESDIS	04/05/2017	18
NESDIS	03/29/2017	23
NESDIS	03/24/2017	26
NESDIS	07/20/2016	195
NESDIS	01/14/2016	325
NMFS	04/18/2017	9
NMFS	04/06/2017	17
NMFS	04/06/2017	17
NMFS	03/28/2017	24
NMFS	01/13/2017	27
NMFS	03/01/2017	30
NMFS	03/15/2017	33
NMFS	02/03/2017	50
NMFS	01/05/2017	80
NMFS	12/30/2016	83
NMFS	11/10/2016	116
NMFS	10/28/2016	125
NMFS	10/27/2016	126
NMFS	10/14/2016	145
NMFS	03/15/2016	167
NMFS	08/29/2016	167
NMFS	08/03/2016	185
NMFS	07/26/2016	191
NMFS	07/20/2016	195
NMFS	05/25/2016	226
NMFS	02/04/2016	227
NMFS	05/04/2016	235
NMFS	10/23/2015	239
NMFS	03/15/2016	277
NMFS	02/18/2016	311
NMFS	09/10/2014	404
NMFS	12/24/2014	581
NMFS	12/05/2014	594
NOAA FOIA	02/24/2017	46
NOAA FOIA	01/13/2017	74
NOAA FOIA	12/30/2016	76
NOAA FOIA	10/13/2016	136
NOS	02/27/2017	3
NOS	02/24/2017	9
NOS	03/07/2017	16
NOS	03/29/2017	23
NOS	03/10/2017	36
NOS	09/29/2016	121

NOS	12/04/2015	352
NOS	10/13/2015	532
NWS	03/02/2017	4
NWS	03/02/2017	12
NWS	04/12/2017	13
NWS	02/09/2017	56
NWS	12/15/2016	93
NWS	08/12/2016	178
OC	04/17/2017	10
USEC	04/18/2017	9
USEC	04/13/2017	12
USEC	04/12/2017	13
USEC	02/21/2017	49
WFMO	12/15/2016	93
WFMO	08/31/2016	165

Tracking Number	Type	Requester	Requester Organization	Submitted
DOC-NOAA-2017-000344	Request	Bob Kucharuk	Eagle Strategic Services LLC	12/19/2016
DOC-NOAA-2017-001004	Request	CHRIS STEINS	Urban Insight	04/11/2017
DOC-NOAA-2017-000964	Request	Sandra K. Stewart	Global Science & Technology Inc.	04/06/2017
DOC-NOAA-2017-000963	Request	Sandra K. Stewart	Global Science & Technology Inc.	04/06/2017
DOC-NOAA-2017-000962	Request	Sandra K. Stewart	Global Science & Technology Inc.	04/06/2017
DOC-NOAA-2017-000961	Request	Sandra K. Stewart	Global Science & Technology Inc.	04/06/2017
DOC-NOAA-2017-000960	Request	Sandra K. Stewart	Global Science & Technology Inc.	04/06/2017
DOC-NOAA-2017-000930	Request	Bill Thomas		04/02/2017
DOC-NOAA-2017-000511	Request	Bill Thomas		01/19/2017
DOC-NOAA-2017-000512	Request	Bill Thomas		01/19/2017
DOC-NOAA-2016-001640	Request	Christy E. Brown	Kaufman & Canoles, P.C.	08/15/2016
DOC-NOAA-2016-001570	Request	Kari Herron	Ray Qunney & Nebeker	08/08/2016
DOC-NOAA-2017-000257	Request	Christopher Hudak	Environmental Advocates	12/06/2016
DOC-NOAA-2016-001833	Request	Margaret Townsend		09/29/2016
DOC-NOAA-2016-001479	Request	Christopher Hudak	Environmental Advocates	07/20/2016
DOC-NOAA-2017-001005	Request	Stephen Mashuda	Earthjustice	04/04/2017
DOC-NOAA-2017-000781	Request	Olga Pristin		03/12/2017
DOC-NOAA-2017-000784	Request	Russ Rector		03/10/2017
DOC-NOAA-2017-000925	Request	bruce weyhrauch	law office of bruce b weyhrauch llc	03/10/2017
DOC-NOAA-2016-000775	Request	Jason Domark	White & Case LLP	03/08/2016
DOC-NOAA-2017-000679	Request	Jennifer A. Burnette		02/23/2017
DOC-NOAA-2017-000510	Request	Russ Rector		01/26/2017
DOC-NOAA-2017-000639	Request	Stanley Tromp	Freelance Journalist	02/10/2017
DOC-NOAA-2017-000753	Request	David MacDonald		03/08/2017
DOC-NOAA-2017-000610	Request	Sara Reardon	Nature	02/06/2017
DOC-NOAA-2017-000896	Request	Sandi Podskoc	Retirement Benefits Institute	03/28/2017
DOC-NOAA-2017-000683	Request	Matthew J. Novak	Gizmodo / Univision	02/25/2017
DOC-NOAA-2017-000650	Request	Shaun Williams		02/17/2017
DOC-NOAA-2017-000614	Request	Kendra Pierre-Louis	Popular Science	02/14/2017
DOC-NOAA-2017-000474	Request	Steven McIntosh		01/22/2017

Received	Assigned To	Perfected?	Due	Closed Date	Status
12/19/2016	AGO	Yes	01/24/2017	04/13/2017	Closed
04/11/2017	AGO	Yes	05/16/2017	04/24/2017	Closed
04/06/2017	AGO	Yes	05/09/2017	04/20/2017	Closed
04/06/2017	AGO	Yes	05/09/2017	04/20/2017	Closed
04/06/2017	AGO	Yes	05/09/2017	04/20/2017	Closed
04/06/2017	AGO	Yes	05/09/2017	04/20/2017	Closed
04/06/2017	AGO	Yes	05/09/2017	04/20/2017	Closed
04/03/2017	AGO	Yes	05/08/2017	04/19/2017	Closed
01/19/2017	AGO	Yes	03/01/2017	04/19/2017	Closed
01/19/2017	AGO	Yes	03/01/2017	04/20/2017	Closed
08/15/2016	NESDIS	Yes	09/26/2016	04/19/2017	Closed
08/08/2016	NESDIS	Yes	09/13/2016	04/19/2017	Closed
12/06/2016	NMFS	Yes	02/15/2017	04/28/2017	Closed
09/29/2016	NMFS	Yes	11/08/2016	04/20/2017	Closed
07/21/2016	NMFS	Yes	09/22/2016	04/26/2017	Closed
04/04/2017	NMFS	Yes	05/12/2017	04/19/2017	Closed
03/13/2017	NMFS	Yes	04/17/2017	04/11/2017	Closed
03/10/2017	NMFS	Yes	04/17/2017	04/18/2017	Closed
03/10/2017	NMFS	Yes	04/28/2017	04/20/2017	Closed
03/08/2016	NMFS	Yes	04/06/2016	04/04/2017	Closed
02/23/2017	NMFS	Yes	03/29/2017	04/12/2017	Closed
01/26/2017	NMFS	Yes	02/28/2017	04/19/2017	Closed
02/10/2017	NOS	Yes	03/21/2017	04/19/2017	Closed
03/09/2017	USEC	Yes	04/06/2017	04/20/2017	Closed
02/06/2017	USEC	Yes	03/15/2017	04/03/2017	Closed
03/28/2017	WFMO	Yes	05/08/2017	04/17/2017	Closed
02/27/2017	WFMO	Yes	04/04/2017	04/17/2017	Closed
02/21/2017	WFMO	Yes	05/03/2017	04/20/2017	Closed
02/14/2017	WFMO	Yes	03/21/2017	04/12/2017	Closed
01/23/2017	WFMO	Yes	03/01/2017	04/06/2017	Closed

Dispositions

Partial grant/partial denial
Full denial based on exemptions
Request withdrawn
Request withdrawn
Request withdrawn
Request withdrawn
Request withdrawn
Request withdrawn
Request withdrawn
Full grant
Full grant
Partial grant/partial denial
Partial grant/partial denial
Partial grant/partial denial
Other - Request opened in error
Duplicate request
Request withdrawn
Full grant
Partial grant/partial denial
Partial grant/partial denial
Full grant
Fee-related reason
No records
No records
No records
Request withdrawn
Request withdrawn
No records
Other - Admin close - no response from requester
Partial grant/partial denial

Detail

I understand that there is a full or partial incumbent currently performing the services described in RFI Solicitation 1
Freedom of Information Act Request for Proposals for RFQ EA-133F-16-RQ-0522. I request that a copy of the proposal be provided.
We are requesting information under the Freedom of Information Act for NOAA SciTech Contract DOCDG133E10
We are requesting information under the Freedom of Information Act for NOAA SciTech Contract DOCDG133E10
We are requesting information under the Freedom of Information Act for NOAA SciTech Contract DOCDG133E12
We are requesting information under the Freedom of Information Act for NOAA SciTech Contract DOCDG133E12
We are requesting information under the Freedom of Information Act on NOAA SciTech Contract DOCDG133E12
We are requesting a copy of the below solicitations and any other documents relative to the government solicitation
We are requesting a copy of the below solicitations and any other documents relative to the government solicitation
We are requesting a copy of the below solicitations and any other documents relative to the government solicitation
1. Copies of all pay stubs evidencing net, gross and year-to-date pay (both taxable and non-taxable), including one for
Gail Bingham was invited by Roger Heymann to speak at a NOAA conference on greenhouse gas measurements.
EcoRights requests that "You" please provide the following "documents": 1. Any and all "documents" "related to" the
The Center requests from NMFS all records prepared pursuant to the EPA's obligation under Section 7 of the ESA
Note: all requests set forth below are for documents generated on or after January 1, 2009 through the date that NOAA
Request copies of any and all documents, records, communications, correspondence, or materials, on or after January 1, 2009
I would like to get an inventory on cetaceans at Mystic Aquarium (CT), all cetaceans that ever lived at Mystic, including
Please send me the latest MMIR for the navy dolphin program just living and dead.
Please provide all documents referred to by Ms Buck below and include, with respect to the following (15,757 Units)
This FOIA request seeks documents related to the dredging of the Port of Miami, also known as the "Port of Miami"
A copy of the most current Marine Mammal Inventory Report, listing all cetaceans both living and deceased.
Provide all MMIR transfer information (shared/unshared) available to the present. Also, I would like the record(s) in
In November 2016, the cabinet in Ottawa approved Kinder Morgan's proposed expansion of its existing TransMountain
Any correspondence (including emails and attachments) between the Under Secretary of Commerce for Oceans and
Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of all communications
Department of Commerce National Oceanic and Atmospheric Administration To whomsoever it may concern: Pursuant
I request a list of all vacant positions that the NOAA is unable to fill as a result of the current federal hiring freeze, effective
UPDATED 4/5 - Requester spoke with NARA and was instructed to seek a FOIA through NOAA and the direct through
Any and all records, data or documents associated with the former National Oceanic and Atmospheric Administration
I am requesting the following information from NOAA: Copies of the resumes of the applicants who were successful

NCNT2000-16-01140. I would like to obtain a copy of the awarded contract or task order for these service proposals submitted for RFQ EA-133F-16-RQ-0522, NMFS Web Modernization, be provided to me. The contracts are: CQ0031, Task Order DOCT0008, Technical, Scientific, and Engineering Support for the Joint Polar Satellite System; CQ0033, Task Order DOCDG133E10Q0033T0003, Satellite Data Assimilation Science and Technology; CQ0021, Task Order DOCDG133E12CQ0021T0003, Program Support and Outreach Activities. The original contract numbers are: CQ0021, Task Order DOCDG133E12CQ0021T005, Science Algorithm Software Systems issued to IMC; CQ0020 Task Order Number DOCDG133E12CQ0020T0008 Sensor Science and Technology Applications listed below. Also please confirm what the solicitation ID is? Solicitation: Contracting Office Agency Number listed below. Also please confirm what the solicitation ID is? Solicitation: Contracting Office Agency Number listed below. Also please confirm what the solicitation ID is? Solicitation: Contracting Office Agency Number listed below. 1. Overtime, off duty pay, commissions, special pay; 2. Mileage and travel reimbursements; 3. Any and all other benefits. At the time, Crain was also an SDL employee. Gail Bingham and David Crain would have been working on the "Chris Yates email" concerning input he, and any NMFS West Coast Region staff provided to NOAA Headquarters. I would like to consult with NMFS to ensure no jeopardy to listed species or adverse modification of critical habitat for the species. NMFS responds to this request. 1. Any reports, memoranda, correspondence, or other documents (including but not limited to) from January 1, 2005 through December 31, 2011: By, to, or between any official, employee, or contractor of the NMFS regarding all the deaths, transfers, pregnancies and births.

also designated as H-2C-C-B-808,503,381 through 808,519,137 (2C Halibut IFQs), 37,640 Units, designated as the Miami Harbor Phase III Federal Channel Expansion, and the Miami Deep

in Excel format and correlate the information by date
 to maintain pipeline into the Port of Metro Vancouver, which could increase tanker traffic by more than 1,000 tons per day and Atmosphere and anyone from the Canadian Department of Fisheries and Oceans, and/or with an email or phone communications sent to Benjamin Friedman, Craig McLean, and Mitchell Ross between 2/1 and 2/6 mentioned in the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of the information requested by the President effective at noon on January 22, 2017. If a single list has not been compiled, I request the information through the military branch (submit Fed/Military FOIA). I would like to have all information within your human resources file on (NOAA) employee Jack Bates, associated with his tenure at the National Climatic Data Center. This information was initially hired by NOAA's Office of Law Enforcement under USAJOBS announcements: Enforcement Officer

[REDACTED]

es, any modifications that may have been subsequently issued, and a copy of the winning technical pro
ntract specialist for this RFQ was Sarah Rall in the NOAA Eastern Region Acquisition Division. Our con
allite System awarded to Science & Technology Corporation (STC). The original period of performe
/ Applications awarded to Riverside Technology Inc. The original period of performance was 08/01/2012
ginal period of performance was 07/01/2012 to 06/30/2017. The task order was issued by Thomas Fout
MSG. The original period of performance was 9/20/12 to 9/19/17. The Task Order was issued by Thoma
ons with an original period of performance of 9/24/12 to 9/23/17. The Task Order was issued by Thoma
ame: NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION Contracting Office Name: EAST
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r compensation for expenses paid to employee from January 1, 2014 through the date of your response
g on STORM with Roger Heyman, Robert Atlas, and Chris Barnet. An additional name is John Pereira.
Q on the impact of the "Stockdale Memo." This request is only for the input on the impact of the "Stockc
or EPA's approvals of the following: 1. The EPA's September 17, 2013 approval of changes to New Har
ling electronic mail messages) concerning any Endangered Species Act ("ESA") section 7 consultations
National Marine Fisheries Service ("NMFS"), and any official, employee, or contractor U.S.

rd as H-3A-C-B-808,606,301 through 808,643,940 (3A Halibut IFQs), and 47,317 Units, designated as S
Dredge,? which took place from approximately 2013 to 2015 (the ?Project?). We request that a copy of

ips annually off the Pacific coast. Please send me your reports, correspondence and internal briefing no
rail address ending in dfo-mpo.gc.ca Limit to documents from Jan 1, 2017 to present.
ning Milo Yiannopoulos, riots at Berkeley, or requesting information about federal money and grants to tl
names, addresses, phone numbers, email addresses, grade and step (if applicable), and job titles of a
request the lists that have been generated by each office or department individually.
an resources within your agency on this individual and any information from any other agency or organiz
is to include but not be limited to the following personnel records, yearly performance reviews, professic
; ZA-1801-2 (DE/CR), NMFS OLE 2016-0002, Opened 4/27/16. Closed 6/3/16. Enforcement Officer, ZA

posal.

pany invested significant effort to submit a proposal as part of this RFQ. We were not awarded the contract as the deadline is ending 12/20/2017.

to 07/31/2017. It was issued by Thomas Fout, Branch Chief, Contracting Officer, Office of Acquisition and Grants, Silver Spring, MD 20910.

is Fout, Branch Chief, Contracting Officer, Office of Acquisition and Grants, Silver Spring MD 20910.

is F. Fout, Branch Chief, Contracting Officer, Office of Acquisition and Grants, Silver Spring, MD 20910

ERN ACQUISITION DIVISION Referenced IDV ID: GS00Q12NRD4009 Award ID: DOCEA133W13NCC

ERN ACQUISITION DIVISION Referenced IDV ID: GS00Q12NRD4009 Award ID: DOCEA133W13NCC

ERN ACQUISITION DIVISION Referenced IDV ID: GS00Q12NRD4009 Award ID: DOCEA133W14NCC

to this subpoena; 4. Copy of employee's W-2 or I99 for 2014 and 2015 to the present; 5. Copies of state

We represent a defendant in the action GeoMetWatch Corp. v. Alan Hall, et al., currently pending in the

state of Maryland. The "Stockdale Memo" that Chris Yates provided to NOAA HQ and the input on the impact of the "Stockdale Memo"

regarding the impact of the "Stockdale Memo" on the input on the impact of the "Stockdale Memo" on the

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tract. This request is made to understand where our firm fell short in the contracting process.

nd Grants, Silver Spring, MD 20910

153 Solicitation ID: EA-133W-13-RQ-0108 /EA133W13RQ0108 Vendor Name: SEGOVIA, INC. Date S
153 Solicitation ID: EA-133W-13-RQ-0108 /EA133W13RQ0108 Vendor Name: SEGOVIA, INC. Date S
261 Solicitation ID: Vendor Name: SEGOVIA, INC. Date Signed (mm/dd/yyyy): 03/26/2014 Our compar
ements indicating value of all employee's fringe benefits including, but not limited to, retirement, 401k, p
Federal District Court of Utah, Case No. 1:14-cv-00060. Our office is looking for documents, correspon
' the NMFS West Coast Region staff provided to NOAA HQ and is not a broader request for other docur
Vermont's aquatic life water quality standards; 3. The EPA's February 2, 2015 approval of changes to M
sments, or informal consultations, pertaining to the implementation of the National Flood Insurance Prog
with Section 7 of the Endangered Species Act ("ESA"), including but not limited to any form:

Qs and any Consent and Acknowledgement in conjunction with the transfer of quota, all transfer docum
ents or modifications, and permit assignments or transfers, related to the Project. 3. All records of decisio

ts' environmental, carbon, and climate change impacts, and oil spill risks and impacts. Records generat
tion from those officials in response. I would like to receive the information in searchable electronic form
ices in Alabama.

----- I want to do a FOIA on Kenneth Joseph Roberts to see if he was seconded or special assi
rd documents sufficient to show length of employment/tenure in this position and all previous positions v
ade available because of the precedent set forth in Core v. USPS, which finds there is "no substan

igned (mm/dd/yyyy):01/31/2013

igned (mm/dd/yyyy):01/31/2013 Our company is willing to pay up to \$20.00 for the FOIA request without
y is willing to pay up to \$20.00 for the FOIA request without advance notification.

ension plans, profit sharing plans, stock options, deferred income, (including statements relating to any
idence, communications, bids, contracts, licenses, and license applications related to GeoMetWatch's a
nents related to the "Stockdale memo." This request is only for "documents" generated on or prior to Jul
aine's aquatic life water quality standards; 4. The EPA's June 5, 2015 approval of changes to Maine's
gram ("NFIP") by the Federal Emergency Management Agency ("FEMA") at the California statewide leve
al or informal consultation between NMFS and the Coast Guard, relating to the Coast Guard's adoption

ents by Mr. Ben Gross in October 2014, all notifications to Jurene Museth from NOAA Fisheries, Alaska
on (?RODs?) and memoranda of records of decision related to the Project. 4. Any documents discussin

ted since Jan. 1, 2016 to the present day. _____ Exclude media and press releases, and m

iat.

gnment to NOAA while he served in the US Navy within in Naval Fleet Atlantic as a Dental Technician ar
with NOAA, job descriptions of all positions within NOAA, and communications between John Bates and
tial invasion of privacy in information identifying successful federal job applicants." I understand th:

[REDACTED]


advance notification.

loans or advances taken on any such benefit, and including beneficiary designations on any such benefit application for a remote sensing license application. The requested documents would be related to the following: 1. Any documents to or from NMFS staff Chris Kiefer "related to" the "draft Englebright concerning aquatic life water quality criteria; 5. The EPA's February 24, 2011 approval of changes to Connecticut's regulations or relating to any of the following California counties and/or towns/cities/unincorporated territories thereof: 1. Traffic Separation Schemes in the Strait of Juan de Fuca and its Approaches; in Puget Sound and its

2. Region, Restricted Access Management that the transfer, and all other notes correspondence or documents regarding, interpreting or applying permits or other legal requirements related to the Project. 5. All biological opinion

material already publicly released (for example, online). If there is such material online I would appreciate

information from the following: 1. Fleet Marine Forces Field Service Medical Technician; Fleet Marine Forces Atlantic between October 1960 and October 1962; 2. Thomas R. Karl.
3. All information such as social security numbers, addresses, email, phone numbers, dates of birth and su




its); 6. Health and dental insurance plans (reflecting each type of coverage available to employee (HMO
chnology called geosynchronous-imaging Fourier transform spectrometer or GIFTS; It may also be refe
urrence letter." 3. Any and all NOAA Fisheries "documents" from January 1, 2000 to the present, in the p
aquatic life water quality criteria; and 6. The EPA's April 6, 2016 approval of North Carolina's water quali
in: Humboldt, Santa Cruz, Monterey, Ventura, Santa Barbara, San Luis Obispo, San Mateo, Marin, and
Approaches; and in Haro Strait, Boundary Pass, and the Strait of Georgia, proposed as an interim rule :

nents referring or related to these IFQs from January 1, 2016 to date.
ions and other documents related to compliance with the Endangered Species Act, related to the Project

it if you could me to it.

1st 1969--October 15th 1971. Mr. Roberts could have been seconded on TAD/TDY to NOAA between 1
pervisor's name are not releasable under FOIA and I am not requesting that information. I understand th



, PPO, etc.) and for each plan, the premium cost paid by employer and the premium cost payable by the insured as STORM, which is the commercial version of the technology. The company is called GeoMetView. No possession of any NOAA Fisheries Office, Department, and/or Division, including any NOAA law enforcement standards. This request includes, but is not limited to, letters of concurrence, "no effect" determination for Sonoma Counties. 2. Any reports, memoranda, correspondence, or other documents (including electronic) adopted at 75 Fed. Reg. 70,818 (Nov. 19, 2010) and adopted as a final rule at 76 Fed. Reg. 23,919 (Apr. 26, 2011).

6. All documents regarding alleged violations of Project permits, incidental take statements, or other information.

1969-1971 via Military Assistance Command Vietnam CONUS or MACV Saigon.

That personally protected information will be blacked out on the applicants resumes. However, information

[REDACTED]

employee in each of the categories (employee only, employee and spouse, employ
/atch Corporation. The principals of the company are David Crain, Allen Huang, and Gene (or Eugene) F
ment division, "related to" whether any entities or individuals may have caused or did cause, or ma
is, biological opinions, biological assessments, and biological evaluations. data
nic mail messages) concerning any ESA section 10 permits that have been applied for or issued, pe
1).

egal requirements related to the Project. This includes warning letters, notices, rep

1 on the resume such as work experience, previous work experience, skills, education, and knowledge i:

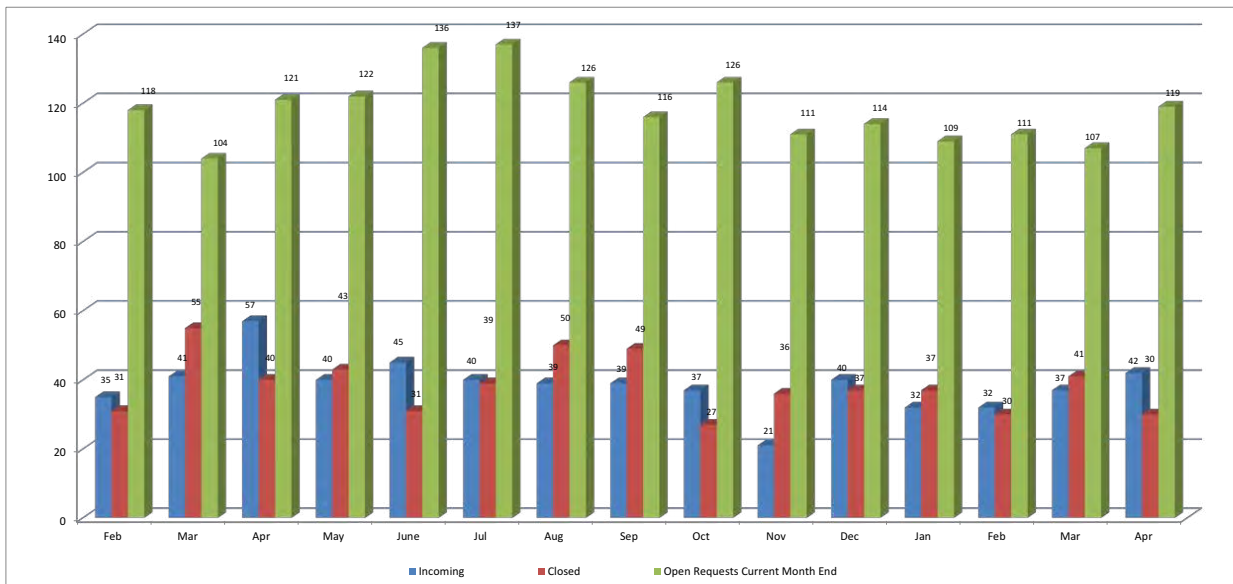


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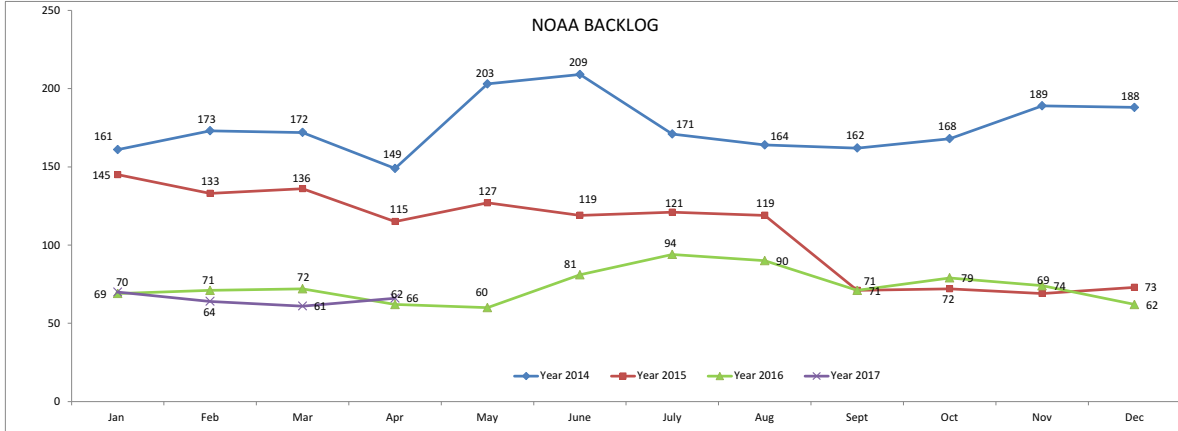
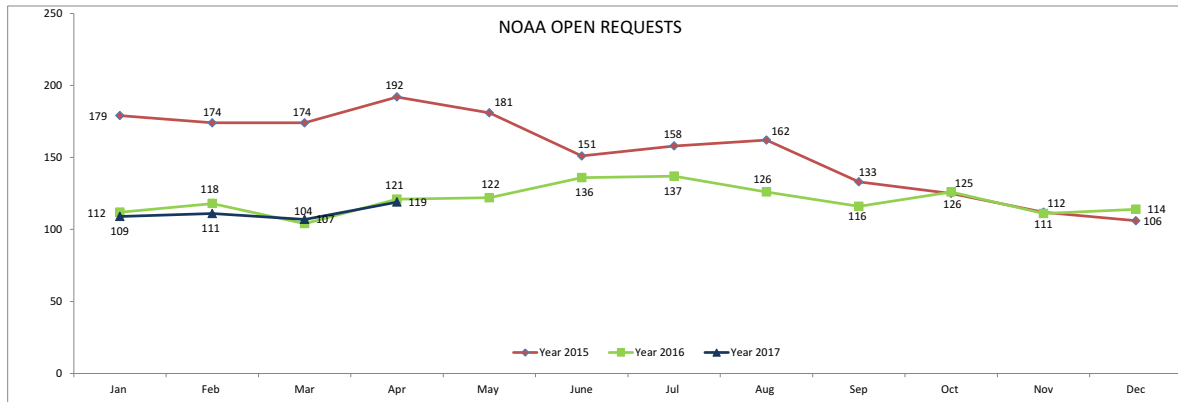
s generally

FOIA Monthly Status Report 04-30-2017

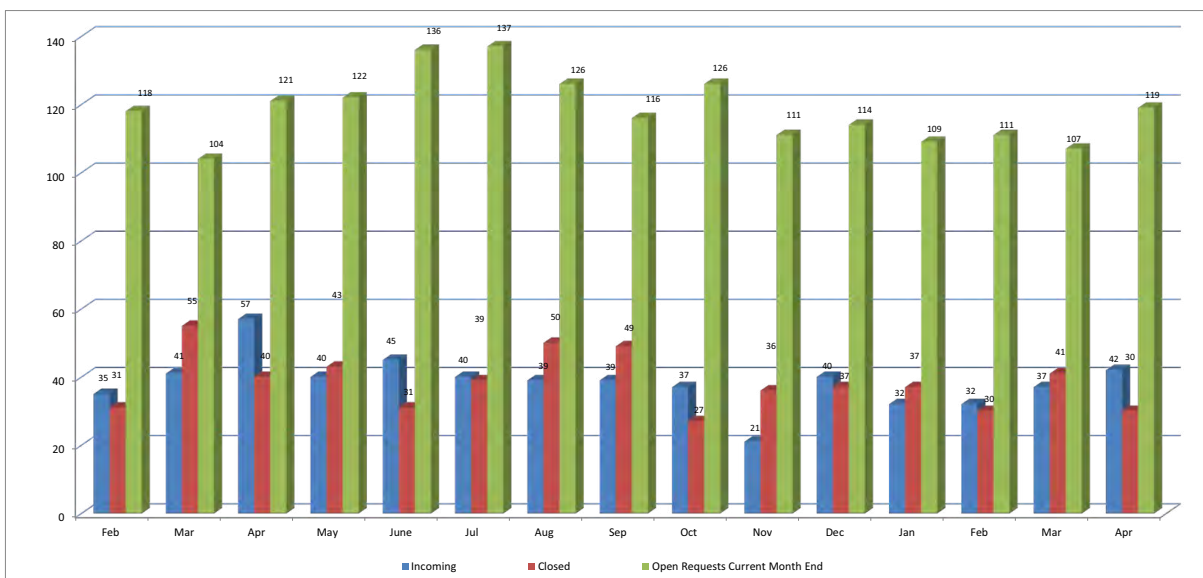
Organization	Open Requests Previous Month End	Incoming Requests	Closed Requests	Open Requests Current Month End	Backlog 21-120 days	Backlog 121-364 days	Backlog 365 or more days	Total Backlog
AGO	3	9	10	2	2	1	3	6
CAO	0	0	0	0	0	1	0	1
CFO	0	0	0	0	0	0	0	0
CIO	2	0	0	2	0	0	0	0
CIO/FOIA	28	12	0	40	3	1	0	4
GC	2	0	0	2	0	0	0	0
IA	0	0	0	0	0	0	0	0
LA	0	0	0	0	1	0	0	1
NESDIS	16	2	2	16	3	2	0	5
NMFS	8	15	10	13	11	14	3	28
NOS	13	0	1	12	5	2	1	8
NWS	11	3	0	14	5	1	0	6
OAR	1	0	0	1	0	0	0	0
OMAO	0	0	0	0	0	0	0	0
OC	3	0	0	3	1	0	0	1
PPI	0	0	0	0	0	0	0	0
USAO	7	1	2	6	4	0	0	4
WFMO	13	0	5	8	1	1	0	2
NOAA Totals	107	42	30	119	36	23	7	66

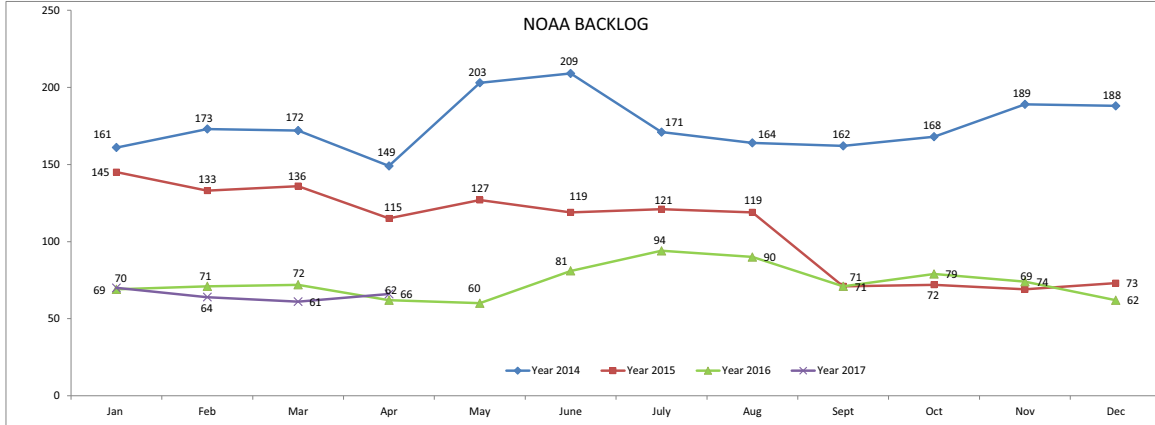
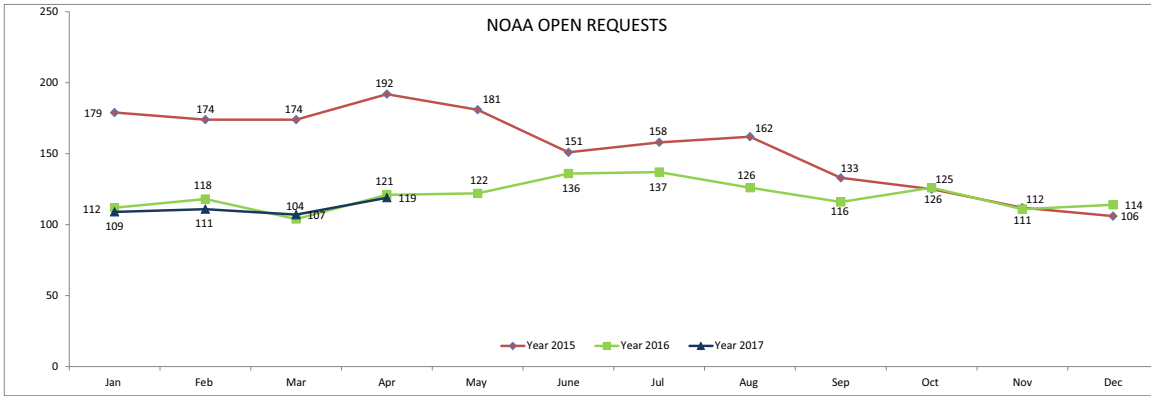


FOIA Monthly Status Report 04-30-2017



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	9	10	2	2	1	3	6
CAO	0	0	0	0	0	1	0	1
CFO	0	0	0	0	0	0	0	0
CIO	2	0	0	2	0	0	0	0
CIO/FOIA	28	12	0	40	3	1	0	4
GC	2	0	0	2	0	0	0	0
IA	0	0	0	0	0	0	0	0
LA	0	0	0	0	1	0	0	1
NESDIS	16	2	2	16	3	2	0	5
NMFS	8	15	10	13	11	14	3	28
NOS	13	0	1	12	5	2	1	8
NWS	11	3	0	14	5	1	0	6
OAR	1	0	0	1	0	0	0	0
OMAO	0	0	0	0	0	0	0	0
OC	3	0	0	3	1	0	0	1
PPI	0	0	0	0	0	0	0	0
USAO	7	1	2	6	4	0	0	4
WFMO	13	0	5	8	1	1	0	2
NOAA Totals	107	42	30	119	36	23	7	66





Tracking Number	Type	Requester
DOC-NOAA-2017-001102	Request	Jeffrey Howerton
DOC-NOAA-2017-001004	Request	CHRIS STEINS
DOC-NOAA-2017-000965	Request	Sandra K. Stewart
DOC-NOAA-2017-000964	Request	Sandra K. Stewart
DOC-NOAA-2017-000963	Request	Sandra K. Stewart
DOC-NOAA-2017-000962	Request	Sandra K. Stewart
DOC-NOAA-2017-000961	Request	Sandra K. Stewart
DOC-NOAA-2017-000960	Request	Sandra K. Stewart
DOC-NOAA-2017-000930	Request	Bill Thomas
DOC-NOAA-2017-001066	Request	Margaret Townsend
DOC-NOAA-2017-000952	Request	Greg Wallace
DOC-NOAA-2017-001070	Request	Christopher Hudak
DOC-NOAA-2017-001068	Request	Zeenat Mian
DOC-NOAA-2017-001042	Request	russ h. rector
DOC-NOAA-2017-001038	Request	Sean Sherman
DOC-NOAA-2017-001014	Request	Steven P. Gray
DOC-NOAA-2017-001139	Request	David A. Moskowitz
DOC-NOAA-2017-001003	Request	Amy Haddow
DOC-NOAA-2017-000994	Request	Mariel Combs
DOC-NOAA-2017-000986	Request	Tristan R. Armer
DOC-NOAA-2017-000992	Request	Joanna McCall
DOC-NOAA-2017-000944	Request	Samuel K. Rebmann
DOC-NOAA-2017-001024	Request	Arthur Severance
DOC-NOAA-2017-001006	Request	Stephen Mashuda
DOC-NOAA-2017-001005	Request	Stephen Mashuda
DOC-NOAA-2017-000940	Request	Elizabeth Zultoski
DOC-NOAA-2017-001118	Request	Tarek Alaruri
DOC-NOAA-2017-001101	Request	Ryan P. Mulvey
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-2017-001091	Request	Priya P. Kamath
DOC-NOAA-2017-001085	Request	Philip J. Wuest
DOC-NOAA-2017-001084	Request	Nathan Eagle
DOC-NOAA-2017-001079	Request	Austin R. Evers
DOC-NOAA-2017-001073	Request	Christopher Hudak
DOC-NOAA-2017-001072	Request	Christopher Hudak
DOC-NOAA-2017-001071	Request	Christopher Hudak
DOC-NOAA-2017-001059	Request	Richard Hirn
DOC-NOAA-2017-001055	Request	Richard Hirn
DOC-NOAA-2017-001030	Request	Bob Hepler
DOC-NOAA-2017-000938	Request	Emily C. Atkin

Requester Organization	Submitted	Received
	04/17/2017	04/17/2017
Urban Insight	04/11/2017	04/11/2017
Global Science & Technology Inc.	04/06/2017	04/06/2017
Global Science & Technology Inc.	04/06/2017	04/06/2017
Global Science & Technology Inc.	04/06/2017	04/06/2017
Global Science & Technology Inc.	04/06/2017	04/06/2017
Global Science & Technology Inc.	04/06/2017	04/06/2017
Global Science & Technology Inc.	04/06/2017	04/06/2017
	04/02/2017	04/03/2017
	04/10/2017	04/10/2017
	04/05/2017	04/05/2017
Environmental Advocates	04/21/2017	04/21/2017
	04/21/2017	04/21/2017
dff	04/17/2017	04/17/2017
Public Citizen, Inc	04/17/2017	04/17/2017
Law Offices of Steven P. Gray	04/12/2017	04/12/2017
The Conservation Angler	04/12/2017	04/12/2017
Cruise Line Agencies of Alaska	04/11/2017	04/11/2017
Oceana	04/10/2017	04/11/2017
HSCBPA	04/10/2017	04/10/2017
National Corporate Research, LTD	04/05/2017	04/05/2017
	04/04/2017	04/05/2017
Coastal Villages	04/04/2017	04/04/2017
Earthjustice	04/04/2017	04/04/2017
Earthjustice	04/04/2017	04/04/2017
Advocates for the West	04/03/2017	04/04/2017
https://docs.google.com/presentation/d/1KLWKNktpZyP2iaSxjEbtZrAQ	04/28/2017	04/28/2017
Cause of Action	04/27/2017	04/27/2017
Earthjustice	04/26/2017	04/26/2017
Earthjustice	04/26/2017	04/26/2017
Earthjustice	04/26/2017	04/26/2017
Earthjustice	04/26/2017	04/26/2017
Black Helterline LLP	04/25/2017	04/26/2017
Honolulu Civil Beat	04/25/2017	04/26/2017
American Oversight	04/24/2017	04/25/2017
Environmental Advocates	04/21/2017	04/21/2017
Environmental Advocates	04/21/2017	04/21/2017
Environmental Advocates	04/21/2017	04/21/2017
National Weather Service Employees	04/18/2017	04/18/2017
National Weather Service Employees	04/17/2017	04/17/2017
	04/14/2017	04/14/2017
New Republic	04/03/2017	04/03/2017

Assigned To	Perfected?	Due	Closed Date	Status
AGO	Yes	05/30/2017	TBD	Assignment Determination
AGO	Yes	05/16/2017	04/24/2017	Closed
AGO	Yes	05/09/2017	TBD	Assignment Determination
AGO	Yes	05/09/2017	04/20/2017	Closed
AGO	Yes	05/09/2017	04/20/2017	Closed
AGO	Yes	05/09/2017	04/20/2017	Closed
AGO	Yes	05/09/2017	04/20/2017	Closed
AGO	Yes	05/09/2017	04/20/2017	Closed
AGO	Yes	05/08/2017	04/19/2017	Closed
NESDIS	Yes	05/17/2017	TBD	Final Preparation of Response
NESDIS	Yes	05/09/2017	TBD	Assignment Determination
NMFS	Yes	06/01/2017	TBD	Assignment Determination
NMFS	Yes	06/01/2017	TBD	Assignment Determination
NMFS	Yes	05/16/2017	TBD	Assignment Determination
NMFS	Yes	05/16/2017	TBD	Assignment Determination
NMFS	Yes	05/16/2017	TBD	Evaluation of Records
NMFS	Yes	06/14/2017	TBD	Assignment Determination
NMFS	Yes	05/31/2017	TBD	Assignment Determination
NMFS	Yes	05/09/2017	TBD	Assignment Determination
NMFS	Yes	05/09/2017	TBD	Evaluation of Records
NMFS	Yes	05/08/2017	05/03/2017	Closed
NMFS	Yes	05/08/2017	05/02/2017	Closed
NMFS	Yes	05/12/2017	TBD	Assignment Determination
NMFS	Yes	05/23/2017	TBD	Final Preparation of Response
NMFS	Yes	05/12/2017	04/19/2017	Closed
NMFS	Yes	05/22/2017	TBD	Assignment Determination
NOAA FOIA	No	TBD	TBD	Initial Evaluation
NOAA FOIA	No	TBD	TBD	Initial Evaluation
NOAA FOIA	No	TBD	TBD	Initial Evaluation
NOAA FOIA	No	TBD	TBD	Initial Evaluation
NOAA FOIA	No	TBD	TBD	Initial Evaluation
NOAA FOIA	No	TBD	TBD	Withdrawn
NOAA FOIA	No	TBD	TBD	Submitted
NOAA FOIA	No	TBD	TBD	Assignment Determination
NOAA FOIA	No	TBD	TBD	Initial Evaluation
NOAA FOIA	No	TBD	TBD	Initial Evaluation
NOAA FOIA	No	TBD	TBD	Initial Evaluation
NOAA FOIA	No	TBD	TBD	Initial Evaluation
NWS	Yes	05/19/2017	TBD	Assignment Determination
NWS	Yes	05/17/2017	TBD	Assignment Determination
NWS	Yes	05/16/2017	TBD	Assignment Determination
USEC	Yes	05/08/2017	TBD	Final Preparation of Response

Dispositions

Full denial based on exemptions

Request withdrawn

Request withdrawn

Request withdrawn

Request withdrawn

Request withdrawn

Request withdrawn

No records

Full grant

Full grant

No records

Duplicate request

No records

Detail

The time frame I am interested in for grants is or efforts to coordinate on anything current related to the subject ma
Freedom of Information Act Request for Proposals for RFQ EA-133F-16-RQ-0522. I request that a copy of the proj
We are requesting information under the Freedom of Information Act for NOAA SciTech Contract DOCDG133E12
We are requesting information under the Freedom of Information Act for NOAA SciTech Contract DOCDG133E10
We are requesting information under the Freedom of Information Act for NOAA SciTech Contract DOCDG133E10
We are requesting information under the Freedom of Information Act for NOAA SciTech Contract DOCDG133E12
We are a requesting information under the Freedom of Information Act for NOAA SciTech Contract DOCDG133E1
We are requesting information under the Freedom of Information Act on NOAA SciTech Contract DOCDG133E12
We are requesting a copy of the below solicitations and any other documents relative to the government solicitator
The Center requests from the National Oceanic and Atmospheric Administration ("NOAA") all agency directives, in
REVISED APRIL 13, 2017: The new scope of this request will include a search of NESDIS/NCEI, as well as the O
1. Any reports, memoranda, correspondence, or other documents (including electronic mail messages) concerning
Under the Freedom of Information Act I would like to request the following: All communications inter office (within 1
please send me the complete mmir on file for INSTITUTE FOR MARINE SCIENCES.

Any and all records concerning implementation of Executive Order 13771, entitled "Reducing Regulation and Conti
Cody Barton; Case No. 3K0-15-205 Cl. The purpose of this letter is to request a copy of all documents generated c
All documents regarding the rate of conversion (i.e. passage loss, natural mortality, unaccounted for harvest, or ot
We are requesting a copy of findings from a National Marine Fisheries Service investigation into the death of a fin
REVISED SCOPE: You request the following information for the HI SLL Fishery from 2014 to 2017 (Priority): - All
1. All joint enforcement agreements between NOAA/NMFS and the states of Tx., La., Ms., Al., Fl.; 2. All contracts c
One copy of the January 20, 2017 letter submitted by National Marine Fisheries Serviceto the U.S. Anny Cotps of E
To Whom It May Concern: Pursuant to the Freedom of Information Act (FOIA) as Amended, I hereby quest copies
The recommendations that Alaska Governor Wally Hickel made to the North Pacific Fishery Management Council
Biological opinions or informal consultations the Coast Guard conducted with NMFS as a result of the rulemaking i
Request copies of any and all documents, records, communications, correspondence, or materials, on or after Jan
1. Any Endangered Species Act ("ESA") section 7 consultations or draft consultations regarding the effects of the Y
I'd like to file a formal request for every Software & Hardware purchase/quote in the last 3 years. We'd like the
Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), CoA Institute hereby requests access to
Please see attached.

Please see attached.

Please see attached.

Please see attached.

This request is for National Marine Fisheries Service for offices in Oregon. 1) All correspondence, notes, logs, mer
I'm requesting: (1) a copy of the most recent agreement between Guam and Quota Management Inc., of Honolulu,
Please see attached. COMM-NOAA-17-0109.

Please see attached FOIA Request and Fee Waiver Request (one document).

Please see attached FOIA Request and Fee Waiver Request (one document).

Please see attached FOIA Request and Fee Waiver Request (one document).

1. A copy of any and all reports on the testing of the radiosonde autolauncher manufactured by the Vaisala Corpora

1. A copy of all contracts for services between the agency and Joseph Swerdzewski and Associates, LLC., for serv
ASOS Operation and Monitoring Center had a long running website (<http://www3.amss.nws.noaa.gov/>), which wa
I request a copy of the following documents: Any and all resignation letters submitted to the agency administrator s

[REDACTED]

letter is the last five years. I am making a records request for all information (Documents, photos, emails proposals submitted for RFQ EA-133F-16-RQ-0522, NMFS Web Modernization, be provided to me. The following are listed below. Also please confirm what the solicitation ID is? Solicitation: Contracting Office Agency Instructions, and/or other communications, including communications with the Trump administration trans office of the Undersecretary. The search will be for any communications regarding the preservation of energy any potential, contemplated, proposed, or completed Endangered Species Act ("ESA") section 7 consultations (NOAA) and intra office (between NOAA and external sources/entities) where the following message from

rolling Regulatory Costs," the February 2, 2017 OMB guidance entitled, "Interim Guidance Implementing concerning an incident that took place on May 22, 2013, in Kodiak, Alaska concerning an incident that was a non-harvest source of mortality) of Passive Integrated Transponder (PIT)-tagged adult salmon and whale in Resurrection Bay on May 29, 2016, when it was struck by the Zaandam, a Holland America cruise ship. Video and photographs of injured or dead sea turtles and marine mammals - All photographs of injured or agreements with private contractors that do the Marine Recreational Information Programs (MRIP), in Engineers as part of the Apalachicola-Chattahoochee-Flint River Basin Master Water Control Manual up of the following records: All Marine Mammal Inventory Reports for all available fiscal years; all requests ("NPFMC") on or about November 25, 1992, regarding Community Development Programs ("CDPs") as identified in the FOIA request letter, 76 Fed Reg. 23191 (April 26, 2011), dated between January 1, 2006 to January 1, 2005 through December 31, 2011: By, to, or between any official, employee, or contractor of the Yakima Project, the YRBWEP, or the YBIP, or any federal projects or actions taken pursuant to the Yakima Project company, manufacturing sku, pricing, product, msrp, purchase price & reseller. We'd like these records any final guidance concerning the retention of instant messaging sessions created or received through

minutes, minutes, appointment and meeting records, voicemails, files, papers and other records that include that pertains to a quota-sharing agreement for bigeye tuna; (2) a copy of the most recent agreement be

ation conducted by the National Weather Service. We understand that such testing has been conducted services to the National Weather Service, including statements of work, and such elements of those contracts is available for access by the general public. This website was available for many years, however in early since November 8, 2016. This includes but is not limited to correspondence via email, fax messages, and

vement from the 1970's and 1980's. I am particularly interested in information from the protests against
pany invested significant effort to submit a proposal as part of this RFQ. We were not awarded the con
s issued by Thomas Fout, Branch Chief, Contracting Officer, Office of Acquisition and Grants, Silver Sp
nce is ending 12/20/2017.

to 07/31/2017. It was issued by Thomas Fout, Branch Chief, Contracting Officer, Office of Acquisition a
, Branch Chief, Contracting Officer, Office of Acquisitions and Grants, Silver Spring, MD 20910.

is Fout, Branch Chief, Contracting Officer, Office of Acquisition and Grants, Silver Spring MD 20910.

s F. Fout, Branch Chief, Contracting Officer, Office of Acquisition and Grants, Silver Spring, MD 20910

ERN ACQUISITION DIVISION Referenced IDV ID: GS00Q12NRD4009 Award ID: DOCEA133W13NCC
munications, any climate change-related or energy-related words or phrases, including but not limited to
those two offices.

l Assessments, Biological Evaluations, or informal consultations, pertaining to the implementation of the
e (<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
he F/V Laura.

r 1, 2012 to the date of the agency's search for documents responsive to this request, specifically includi
r 2016 said the cruise company would not be penalized for the whale's death, and the ship's Master has
) 10 per year/species) *(Prioritizing images of sea turtles and marine mammals for the HI SSL) -----
rials used to formulate a bid request or RFP for the contractors handling the MRIP, including but not limi
ps of Engineers' Record of Decision for the ApalachicolaChattahoochee- Flint River Basin Master Wate
r, public display, or enhancing the survival or recovery of a species or stock filed between January 1st, 1
(the “NPFMC Recommendations”); • Any materials that Governor Hickel or the State of Alaska submitte

Coast Guard ("Coast Guard".) regarding or relating in any way the Coast Guard's compliance
Fish Conservancy only requests records described in this paragraph that were created or obtained after
.DOC formatting if possible. I'd also, like to FOIA the managers in charge of procurement and sourcing f
on's (“NOAA”) Unified Messaging System (i.e., NOAA's Google-hosted agency e-mail platform). Accordi

s, minutes, appointment and meeting records, files, relating to “Baker Rock”, “Grand Island”, “Harney Si
ement for bigeye tuna, and (3) a copy of the most recent agreement between the Commonwealth of the

ay be located in or maintained by Joe Pica, the Director of the NWS Office of Observations. 2. Documen
ese contracts are associated with the National Weather Service's collective bargaining with the National
ation to ASOS (Automated Surface Observing System) operations. My request is for any and all docume

[REDACTED]
PG and E's Diablo Canyon in San Luis Obispo County California involving groups such as Mothers for F
tract. This request is made to understand where our firm fell short in the contracting process.
ring, MD 20910.

nd Grants, Silver Spring, MD 20910

0153 Solicitation ID: EA-133W-13-RQ-0108 /EA133W13RQ0108 Vendor Name: SEGOVIA, INC. Date S
"climate change," "global warming," "climate disruption," "greenhouse gas emissions," "emissions reduc

National Flood Insurance Program ("NFIP") by the Federal Emergency Management Agency ("FEMA")
Ms. Mian in person to resolve the situation amicably

menting Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs.'" This re

ing (but not limited to): - Emails, notes, and other correspondence between NOAA Fisheries staff and th
asked us for a copy of the report on which that article was based.

----- Oceana requests records created during at-sea monitor
ited to the telephone survey operator and the dockside-intercept program; 4. All materials, programs, po
r Control Manual Update and Water Supply Storage Assessment for Alabama, Florida, and Georgia, da
997 and date of receipt of the requested information; all recommendations of non-releasability provided
ad to the NPFMC regarding the NPFMC Recommendations; • The recommendations that Governor Hick

with Section 7 of the Endangered Species Act ("ESA"), including but not limited to any form
January 1, 2000. 2. Any correspondence with BOR concerning the Yakima Project, the YRBWEP, or th
for each branch location. Please provide their contact information both email and phone number.
ing to a March 2012 handbook, "[p]er the decision of NOAA General Counsel," communications through

te", "Skeeter Creek", or "Willamette River", and "Waters of the State", "Ordinary High Water", "OHW", "C
e Northern Mariana Islands and Quota Management Inc., of Honolulu, that pertains to a quota-sharing a

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 whe
entation concerning the decision making process on why the website was removed from online access a

[REDACTED]
Peace, the Abalone Alliance and Musicians United for Safe Energy. There are significant aspects on the

signed (mm/dd/yyyy):01/31/2013

tions,” and/or “Paris agreement,” and any related words or phrases.

at the California statewide level or relating solely or specifically to any of the following California counties:

request includes both records related to implementation generally and records related to the effect of impli

the NOAA Northwest Fisheries Science Center and the Technical Advisory Committee to the United State

ing pursuant to the observer program's monitoring requirements for the Hawaii-based deep-set pelagic
wer points, manuals or like materials used to train personnel to conduct the MRIP, including but not limi
ted March 30, 2017. We request that you provide us with accurate copies or a complete and accurate ac
to the National Marine Fisheries Service between January 1st, 1997 and date of receipt of the requeste
rel submitted to the U.S. Secretary of Commerce on or about November 26 or 27, 1992, regarding the C

al or informal consultation between NMFS and the Coast Guard, relating to the Coast Guard's adoption
e YBIP or any federal projects or actions taken to implement the Yakima Project, the YRBWEP, or the YI

Google Chat (or Google Hangouts) “will be considered ‘off the record’ and will not be recorded in anywa

OWL”, “annual high water event”, “flooding” or “flood event”, “wetland”, “wetland delineation”, “wetland r
greement for bigeye tuna.

ce; estimated cost of installation per unit; and estimated cost of maintenance and operation per unit.
ther the government contracting party is NOAA or the National Weather Service. 2. A copy of all bills ter
ind is no longer available to the general public.

[REDACTED]
coast. Your group may keep historical records. 3) Any proposed grants regarding the development of a f

s and/or towns/cities/unincorporated territories therein: Humboldt, Santa Cruz, Monterey, Ventura, Santa

ementation on any specific rule. This request also includes any and all communications between the Na

is v. Oregon proceeding that relate to salmon and steelhead conversion; - Reports, conclusions, analysis:

longline fishery and the shallow-set pelagic longline fishery.

ted to the telephone survey operator and the dockside-intercept program.

ccount of the information requested. This is a commercial request. We agree to pay reasonable search :

d information; all National Marine Fisheries Service determinations of non-releasability filed between Jar
:DPs and the percentages of the CDQ to be allocated to each CDP (the "Commerce Recommendations"

of Traffic Separation Schemes in the Strait of Juan de Fuca and its Approaches; in Puget Sound and its
BIP. This request seeks any comments, emails, notes, letters, meeting or phone records, or other forma

ay."2 Records concerning the Office of General Counsel's ("OGC") "decision," in this respect, are respor

mitigation" and "wetland banking" that were created by, received by, sent to or that reference any of the i

rdered to the agency for services rendered to the National Weather Service by Joseph Swerdzewski and

[REDACTED]
film or tv project surrounding the events described above as much would on be on or near the coast end

1 Barbara, San Luis Obispo, San Mateo, Marin, and Sonoma counties. 2. Any reports, memoranda, corre
tional Marine Fisheries Service and OMB (including the Office of Information and Regulatory Affairs) rel:
s and studies of the rate of salmon and steelhead conversion. "All documents" includes, but is not limite

and reproduction costs; however if these costs exceed \$1000, we request that you notify us before repr
January 1st, 1997 and date of receipt of the requested information. I request that the records, if available, l
"); • Any materials that Governor Hickel, the State of Alaska, the NPFMC, any member of the NPFMC, o

Approaches; and in Haro Strait, Boundary Pass, and the Strait of Georgia, proposed as an interim rule ;
l or informal correspondence. Wild Fish Conservancy only requests records described in this paragraph
1sive to CoA Institute's request, as are other records reflecting agency-wide guidance on the retention of

following individuals or organizations between the dates of January 1, 2015 and the present. a. Mark Ba

1 Associates, LLC. 3. A copy of any and all reports provided to the National Weather Service by Joseph

[REDACTED]
ouraging tourism, appreciation and conservation. 4) Any proposed architectural projects in Santa Barbar

espondence, or other documents (including electronic mail messages) concerning any ESA section 10 p

ated to or concerning Executive Order 13771, the Interim Guidance, or the Guidance.

d to, all correspondence, permits, permit applications, agreements, contracts, minutes, memoranda, pla

roducing the documents.

oe provided electronically .

r National Marine Fisheries Service ("NMFS") submitted to the Secretary regarding the Commerce Rec

at 75 Fed. Reg. 70,818 (Nov. 19, 2010) and adopted as a final rule at 76 Fed. Reg. 23,919 (Apr. 26, 2011)
that were created or obtained after January 1, 2000.

f chat/instant or text messages created or received through NOAA's Google-hosted e-mail platform.

uer b. Chris Lidstone c. Martin Schott d. Jake Miller e. Greg Apke f. Tom Murtaugh g. Pete Olmstead h.

Swerdzewski and Associates, LLC pursuant to these contracts. 4. Documents which reveal which budg

[REDACTED]
a county that is artistic in nature in the last 5 years. Could be a sculpture pa

permits that have been applied for or issued, Freedom of Information Act Request April

ns, e-mails, reports, databases, and notes. This request includes all documents that have ever

ommendations; • Any materials submitted by the prospective CDP Aleutian Pribilof Islands Community C

1).

Janine Castro i. Joy Vaughn j. Jeff Boechler k. Mark Liverman l. Lori Warner-Dic

at PPA the costs associated with or billed by Joseph Swerdzewski and Associates, LLC under these



Development Association in its application

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Tuesday, May 9, 2017 12:58 PM
To: Lola Stith - NOAA Affiliate
Subject: Fwd: FW: FOIA Request from ASRI
Attachments: 20170321-NOAA FOIA Request-FINAL.PDF

This is that other one that looks like it didn't get logged in that just needs to be logged in and routed quickly.

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: Andrew Roy <acr@asri.aero>
Date: Tue, May 9, 2017 at 12:21 PM
Subject: FW: FOIA Request from ASRI
To: "mark.graff@noaa.gov" <mark.graff@noaa.gov>

Mark,

As discussed, please see the below.

Regards

Andrew Roy – Director, Engineering Services
Aviation Spectrum Resources, Inc. (ASRI) – www.ASRI.aero

Office & Cell: [+1-443-951-0340](tel:+1-443-951-0340) | Email: ACR@asri.aero | Mail: ASRI, 180 Admiral Cochrane Drive, Suite 300, Annapolis, MD, 21401, USA

From: Andrew Roy
Sent: Tuesday, 21 March, 2017 16:32
To: FOIA@NOAA.gov
Subject: FOIA Request from ASRI

Dear NOAA FOIA Office,

Please see attached the FOIA request from Aviation Spectrum Resources Inc. (ASRI). Thank you

Regards

Andrew Roy – Director, Engineering Services
Aviation Spectrum Resources, Inc. (ASRI) – www.ASRI.aero

Office & Cell: [+1-443-951-0340](tel:+14439510340) | Email: ACR@asri.aero | Mail: ASRI, 180 Admiral Cochrane Drive, Suite 300, Annapolis, MD, 21401, USA



Aviation Spectrum Resources Inc. ♦ 180 Admiral Cochrane Drive ♦ Suite 300 ♦ Annapolis, MD 21401
Phone: 410-266-6030 ♦ Fax: 443-951-0349 ♦ <http://www.asri.aero>

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

21 March 2017

FREEDOM OF INFORMATION ACT REQUEST

Dear NOAA FOIA Office:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552.

On behalf of Aviation Spectrum Resources, Inc. (ASRI), the undersigned hereby requests that copies of the following documents, including letters or correspondence, or any other documents or recordings responsive to the requests listed below and/or containing the following information, be provided to the undersigned:

1. Any letters, written records, correspondence, documents and/or reports (whether written or recorded) from the Under Secretary of Commerce for Oceans and Atmospheres (former or acting) to the National Telecommunications and Information Administration (NTIA) from September 1, 2016 to the present, inclusive, regarding regulatory or operational considerations in the 1675 – 1680 MHz or 1675-1695 MHz radiofrequency bands, specifically those associated with potential spectrum repurposing of these bands from current and prospective federal government uses to commercial mobile operations or the sharing of these spectrum bands by federal government and commercial mobile operators.
2. Any letters, written records, correspondence, documents and/or reports (whether written or recorded) from the Assistant Secretary for Environmental Observation and Prediction (former or acting) to the National Telecommunications and Information Administration (NTIA) from September 1, 2016 to the present, inclusive, regarding regulatory or operational considerations in the 1675 – 1680 MHz or 1675-1695 MHz radiofrequency bands, specifically those associated with potential spectrum repurposing of these bands from current and prospective federal government uses to commercial mobile operations or the sharing of these spectrum bands by federal government and commercial mobile operators.
3. Any letters, written records, correspondence, documents and/or reports (whether written or recorded) from (1) the Assistant Administrator, National Environmental Satellite, Data & Information Service (NESDIS) (former or acting), or (2) the Deputy Assistant Administrator of NESDIS, to the National Telecommunications and Information Administration (NTIA) from September 1, 2016 to the present, inclusive, regarding regulatory or operational considerations in the 1675 – 1680 MHz or 1675-1695 MHz radiofrequency bands, specifically those associated

with potential spectrum repurposing of these bands from current and prospective federal government uses to commercial mobile operations or the sharing of these spectrum bands by federal government and commercial mobile operators.

4. Any letters, written records, correspondence, documents and/or reports (whether written or recorded) from (1) the NESDIS CIO, e.g., Assistant Chief Information Officer (ACIO/NESDIS) or (2) the NESDIS Deputy CIO, e.g., Deputy Assistant Chief Information Officer (DCIO/NESDIS) (former or acting) to the National Telecommunications and Information Administration (NTIA) from September 1, 2016 to the present, inclusive, regarding regulatory or operational considerations in the 1675 – 1680 MHz or 1675-1695 MHz radiofrequency bands, specifically those associated with potential spectrum repurposing of these bands from current and prospective federal government uses to commercial mobile operations or the sharing of these spectrum bands by federal government and commercial mobile operators.

ASRI requests a waiver of all fees for this request on the basis that disclosure of the requested information to ASRI would be in the public interest. *See* 15 C.F.R. § 4.11(l)(1)(i). In order to help you consider this request, you should know that ASRI is the communications company of the U.S. civilian air transport industry. Owned by the airlines and other airspace users, ASRI is operated on a cooperative basis to provide a non-discriminatory service to these entities. Additionally, ASRI's mission includes the defense of access to, and the use of, adequate radiofrequency spectrum resources to support aviation activities to ensure the safety of the flying public and the efficiency of airline operations.

Disclosure of the requested information to ASRI is in the public interest because it is likely to contribute significantly to public understanding of the activities of the government in connection with the foregoing radiofrequency spectrum bands and is not primarily in ASRI's commercial interest. *See* 15 C.F.R. § 4.11(l)(2)(ii) (the first fee waiver requirement is met when the disclosure is "likely to contribute" to an increased public understanding of government operations or activities); *see also* 15 C.F.R. § 4.11(l)(3)(ii) (finding that a fee waiver or reduction is justified when the public interest in disclosure is greater than any identified commercial interest).

More specifically, these bands are essential for the timely and reliable dissemination of hydrological and metrological information. Aviation operations are highly weather-sensitive. If proposed repurposing or spectrum sharing of 1675 – 1680 MHz or 1675-1695 MHz creates radio frequency interference that adversely impacts the receipt of hydrological and metrological information necessary for aviation operations, the safety of the travelling public could be affected. Thus, the 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 only the individual understanding of the requester. *See* 15 C.F.R. § 4.11(l)(2)(iii). The information requested will enable ASRI to conduct further analysis of the foregoing issues and contribute to its participation in the ongoing FCC proceedings¹ concerning the Geostationary Operational

¹ *See* FCC RM-11681. In this proceeding, Ligado Network LLC ("Ligado") asks the FCC to initiate a rulemaking to allocate the 1675-1680 MHz band for terrestrial mobile use on a

Environmental Satellite system, also known as GOES, which operates in these spectrum bands. ASRI's contributions to those proceedings will become available to the public through the FCC's website.

In the event that you do not waive fees, ASRI is willing to pay fees for this request up to a maximum of \$250. If you estimate that the fees will exceed this limit, please first provide notice to the point of contact listed below before proceeding and provide the point of contact with an estimate of the costs (and obtain approval to incur them). *See* 15 C.F.R. § 4.11(i)(2) ("A notice under this paragraph shall offer the requester an opportunity to discuss the matter with Departmental personnel in order to modify the request in an effort to meet the requester's needs at a lower cost."). If a waiver is granted or, alternatively, if the fees do not exceed the amount stated above, please supply the records without informing the point of contact of the cost.

If you deny all or any part of this request for information, please cite each specific exemption you think justifies your withholding of information. Please notify the point of contact of appeal procedures available under the law.

Thank you for your consideration of this request.

Please correspond with Mr. Andrew Roy, Director of Engineering, ASRI, with any questions in this matter. He may be reached at (443) 951-0340 or via email at acr@asri.aero

Sincerely,

By: /s/ Kris Hutchison

Kris Hutchison
President
Aviation Spectrum Resources, Inc.
180 Admiral Cochrane Drive, Suite 300
Annapolis, MD 21401

shared basis with federal use. The original petition in this proceeding was filed in 2012 by Ligado's predecessor in interest, LightSquared Subsidiary LLC.

From: Breyan, Jonathan (OIP) <Jonathan.Breyan@usdoj.gov>
Sent: Tuesday, May 9, 2017 1:54 PM
To: Mark Graff - NOAA Federal
Subject: RE: FOIA Counselor question

Thanks for the clarification, Mark.

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

If I might assist further, please let me know.

Thanks again.

Regards,
Jonathan

From: Mark Graff - NOAA Federal [mailto:mark.graff@noaa.gov]
Sent: Tuesday, May 09, 2017 1:12 PM
To: Breyan, Jonathan (OIP) <jbreyan@jmd.usdoj.gov>
Subject: Re: FOIA Counselor question

Hi Jonathan,

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

[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

[Redacted]
[Redacted]?

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

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On Tue, May 9, 2017 at 12:44 PM, Breyan, Jonathan (OIP) <Jonathan.Breyan@usdoj.gov> wrote:

Good afternoon, Mark:

I listened to your voicemail message and transcribed it as follows. (b)(5) [Redacted]
[Redacted]
[Redacted]

[Redacted]
[Redacted]
[Redacted]?

Thanks for your assistance.

Regards,

Jonathan

Jonathan Breyan

Attorney-Advisor

Office of Information Policy

[\(202\) 514-8858](tel:(202)514-8858)

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Tuesday, May 9, 2017 5:16 PM
To: smar@omb.eop.gov
Cc: Lola Stith - NOAA Affiliate; Robert Swisher - NOAA Federal
Subject: OMB Fee Guidelines and for Agency Retaining FOIA Fees

Good Morning,

In several of the FOIA requests we are currently processing, (b)(5) [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. Thank you in advance.

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

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From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, May 10, 2017 9:31 AM
To: Stephen Lipps - NOAA Federal; John Almeida - NOAA Federal; Holmes, Colin; Robert Moller - NOAA Federal; Scott Smullen - NOAA Federal; Jeff Dillen - NOAA Federal; Kristen Gustafson - NOAA Federal
Cc: Tom Taylor; Kimberly Katzenbarger - NOAA FEDERAL; Charles; Dennis Morgan - NOAA Federal; Stacey Nathanson - NOAA Federal; Robert Swisher - NOAA Federal; Steven Goodman - NOAA Federal; Samuel Dixon - NOAA Affiliate; Lola Stith - NOAA Affiliate; Zachary Goldstein - NOAA Federal; Douglas Perry - NOAA Federal; Nkolika Ndubisi - NOAA Federal; Jeri Dockett - NOAA Affiliate; Cc: OCIO/OPPA; Troy Wilds - NOAA Federal; Lawrence Charters - NOAA Federal; Allison Soussi-Tanani - NOAA Federal; Bogomolny, Michael (Federal); Pamela Lawrence - NOAA Federal
Subject: Weekly FOIA and Incoming High Visibility Requests
Attachments: Weekly FOIA Incoming and High Visibility Requests 05.3.17 - 05.10.17.xls; PEER Joint Status Report.pdf

Good Morning,

Attached is this week's report.

NOAA received a request from Goodwin Procter LLP seeking records related to the Biological Opinion and Biological Monitoring Plan for Indian Point Units 2 and 3. (DOC-NOAA-2017-001179). Also, a request was received from the Natural Resources Defense Council seeking records related to the "Administration of Coral Reef Resources in the Northwst Hawaiian Islands" at 24 O.L.C. 183 (2000). (DOC-NOAA-2017-001163). NOAA also received another request from Zeenat Mian. (DOC-NOAA-2017-001175). This request sought records regarding the use of the RW71/72 camera and the attachment of external devices to a Hawaiian monk seal. This is the 20th FOIA request received at the Department overall from Ms. Mian in the last year, and the 4th in the last 2 weeks.

In litigation, another Joint Status Report is due in the *PEER v. NOAA* litigation on May 18, 2017. To that end,

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

This week NOAA also provided input and review for the DOC Public FOIA Reference Guide, which should be available shortly as a guide to the public on FOIA processes throughout the Department. NOAA included links to many of the NOAA Line Office forward facing data sets and publications as a resource of proactive disclosures made here at NOAA.

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

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

PUBLIC EMPLOYEES FOR)	
ENVIRONMENTAL RESPONSIBILITY,)	
	)	Civil Action No. 16-cv-1631-CRC
Plaintiff,)	
)	
v.)	
)	
NATIONAL OCEANIC AND)	
ATMOSPHERIC ADMINISTRATION)	
)	
Defendant.)	

JOINT STATUS REPORT

Plaintiff Public Employees for Environmental Responsibility (“PEER”) and Defendant National Oceanic and Atmospheric Administration (“NOAA”), by and through counsel, jointly submit this report in this Freedom of Information Act (“FOIA”) lawsuit.

NOAA provided its final response to PEER on March 20, 2017, including a *Vaughn* index detailing the reasons for claimed exemptions. PEER has reviewed the materials and has conveyed a small number of questions and concerns to NOAA. The parties propose that the Court allow them through May 18, 2017, to attempt to resolve disputes, if any, about the produced documents. On or before that date, the parties shall submit either a joint status report, stipulation of settlement and dismissal, or a proposed schedule for summary judgment briefing.

Respectfully submitted on April 3, 2017,

/s/ Laura Dumais
Laura Dumais, DC Bar #1024007
Public Employees for Environmental Responsibility
962 Wayne Ave, Suite 610
Silver Spring, MD 20910
(202) 265-7337
Counsel for Plaintiff

CHANNING D. PHILLIPS
United States Attorney
D.C. Bar #415793

DANIEL VAN HORN
Chief, Civil Division
D.C. Bar #924092

By: /s/ Jason T. Cohen
JASON T. COHEN
ME Bar #004465
Assistant United States Attorney
555 Fourth St., N.W.
Washington, D.C. 20530
Phone: (202) 252-2523
Fax: (202) 252-2599
Email: jason.cohen@usdoj.gov
Attorneys for Defendant

Tracking Number	Type	Requester	Requester Organization	Submitted
DOC-NOAA-2017-001188	Request	Jordan Waltz		05/09/2017
DOC-NOAA-2017-001181	Request	Eileen L. Morrison	Goodwin Procter LLP	05/09/2017
DOC-NOAA-2017-001179	Request	Eileen L. Morrison	Goodwin Procter LLP	05/09/2017
DOC-NOAA-2017-001180	Request	Eileen L. Morrison	Goodwin Procter LLP	05/09/2017
DOC-NOAA-2017-001176	Request	John Freitas		05/08/2017
DOC-NOAA-2017-001164	Request	John R. Leek	San Diego Council of Divers	05/07/2017
DOC-NOAA-2017-001163	Request	Jacqueline Iwata	Natural Resources Defense Council	05/05/2017
DOC-NOAA-2017-001175	Request	Zeenat Mian		05/05/2017
DOC-NOAA-2017-001174	Request	Shellie Harper	South Pacific Tuna Corporation	05/05/2017
DOC-NOAA-2017-001161	Request	Karen MacDonald		05/04/2017

Custom Report - 05/10/2017 08:27:18

Received	Assigned To	Case File Assigned To	Perfected?	Due	Closed Date
05/10/2017	NOAA	NOAA	No	TBD	TBD
05/09/2017	NOAA	NOAA	No	TBD	TBD
05/09/2017	NOAA	NOAA	No	TBD	TBD
05/09/2017	NOAA	NOAA	No	TBD	TBD
05/08/2017	Kehaupuaokal Kamaka	Kehaupuaokal Kamaka	Yes	06/06/2017	TBD
05/08/2017	NOAA	NOAA	No	TBD	TBD
05/05/2017	NOAA	NOAA	No	TBD	TBD
05/05/2017	Brent Miyamoto	Brent Miyamoto	Yes	06/05/2017	TBD
05/05/2017	Kehaupuaokal Kamaka	Kehaupuaokal Kamaka	Yes	06/06/2017	TBD
05/04/2017	NOAA	NOAA	No	TBD	TBD

Status	Dispositions
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Submitted

Submitted

Submitted

Submitted

Assignment Determination

Assignment Determination

Submitted

Assignment Determination

Assignment Determination

Submitted

Detail

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
This request is made to the National Marine Fisheries Service. I request the following: All Records (defined to inclu
This Request is directed to the National Marine Fisheries Service. I request the following: All Records (defined to ir
I need is some information on fish catch per day for U.S. boats in the period between September of 2012 and May
This is to initiate an FOIA request for documents and correspondence sent to and from the South West Office of P
Please produce the following records in the National Oceanic & Atmospheric Administration's (NOAA) posses
RW71/72 (formerly RW08) Can you please provide information on the following: - approximate length and weight c
We are preparing for activities in 2018 which are now more firmly established operationally with the completion of ε
Please provide the following from NOAA Office of Response and Restoration, regarding the Carla Maersk/Conti Pe

rough-toothed dolphin, Sea Life Park Hawaii, died 8/30/1984; A complete necropsy report of I'ANUI HAI
ide data, information, emails, reports, and comments) received on or after January 29, 2013 from the Ne
ide data, information, emails, reports, and comments) received on or after January 29, 2013 from the Ne
clude data, information, emails, reports, and comments) received on or after January 29, 2013 from the
2013 , if possible without mentioning Boat names...a few boats with the Carol Linda size.
rotected Resources in Long Beach (Ruvelas and Yates) and the San Diego office of the Director of Parl
ision, custody or control that are referenced in Administration of Coral Reef Resources in the Northwest
of RW72 - dimensions and weight of attached camera - camera attachment method used - purpose of th
a modified Treaty. Although these preparations may also be impacted by the adoption of a revised conse
aridot ship collision of 3/9/2015 in the Houston Ship Channel: 1- Fate and transport forecast for both the

MAI (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
New York State Department of Environmental Conservation about, related to, or concerning the Biological
New York State Department of Environmental Conservation about, related to, or concerning the Biolog

cs and Recreation. Just during 2017, correspondence concerning placement, fabrication, intent, design,
Hawaiian Islands, 24 O.L.C. 183, 184 & n.1 (2000). • Memorandum for Randolph Moss, Assistant
ie camera - Camera ownership - length of time it will remain on the seal - camera removal methods - co
ervation and management measure in December at the WCPF Commission annual meeting, we are in t
MTBE air plume and MTBE contaminated water 2- The human health hazard assessment of the MTBE

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.
Opinion and Biological Monitoring Plan for Indian Point Units 2 and 3.
ical Opinion and Biological Monitoring Plan for Indian Point Units 2 and 3.

of signs for public education concerning La Jolla seals and sea lions. And of public education on the sai
Attorney General, Office of Legal Counsel, from John Leshy, Solicitor, Department of the Interior, James
llateral effects on seal's behaviour while camera is attached - risk level of entanglement for the seal - m
he process of determining fishing days to be procured under the Treaty as well via bi-lateral arrangemer
air exposure 3 - The environmental impact analysis report of the MTBE air release.

necropsy of KAULANA, (NOA0000204), Bottlenose Dolphin, Sea Life Park Hawaii, died 10/28/1983; A c

me matters by citizen groups and/or California Fish and Wildlife.

s Dorskind, General Counsel, National Oceanic and Atmospheric Administration, and Dinah Bear, Gene
onitoring efforts while camera remains attached to the seal - animal selection criteria - camera-obtained
nts. With the price of fishing days both under the Treaty and under bi-lateral arrangements being so cost

complete necropsy of KILAKILA, (NOA0000222), short-finned pilot whale, Sea Life Park Hawaii, died 7/4

ral Counsel, Council on Environmental Quality, Re: Request for Opinion Regarding Administration of Cc
data availability / publish dates for the public - all research papers / documents related to attachment of
tly, we believe it is important that we review our options very carefully. In this regard we are asking for yc

1/1979

• Coral Reef Resources in the Northwest Hawaiian Islands (June 30, 2000). • Letter for Randolph Moss, Asst. Dir., NMFS, regarding the use of external devices to a Hawaiian monk seal. • Request for your assistance in providing some summaries of regional purse seine log sheet and IFims data to verify s

Assistant Attorney General, Office of Legal Counsel, from James Dorskind, General Counsel, NOAA (July 2014):
one of our internal data sources for our vessels. What we are seeking specifically is NMFS-held catch c

24, 2000).

data for calendar years 2013, 2014, 2015, & 2016 in SKJ, BET, YFT tonnages by species. We are :

also looking to sort each year's data by SPTC vessel, month, and EEZ (including the US EEZs and

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, May 10, 2017 3:54 PM
To: Glenn Tallia - NOAA Federal; Heather Book - NOAA Federal; Hillary Davidson; Kristen Gustafson - NOAA Federal; Matthew Womble - NOAA Affiliate; Rodney Vieira - NOAA Federal; Rose Stanley - NOAA Federal; Russell Vose - NOAA Federal; Ruth Ann Lowery - NOAA Federal; Tim Owen - NOAA Federal
Cc: Lola Stith - NOAA Affiliate; Robert Swisher - NOAA Federal; Dennis Morgan - NOAA Federal
Subject: Karl-related FOIA requests
Attachments: Karl-related requests extraction 5.10.xls

Good Afternoon,

Attached please find the updated spreadsheet for 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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From: James LeDuc - NOAA Federal <james.leduc@noaa.gov>
Sent: Thursday, May 11, 2017 3:43 PM
To: Mark Graff - NOAA Federal
Cc: Lola Stith - NOAA Affiliate; Devin Brakob - NOAA Federal
Subject: FOIA DOC-NOAA-2017-001191
Attachments: DOC-NOAA-2017-001191 pdf request from requester.PDF

(b)(5) [REDACTED] ?

****SCOPE CHANGE ON MAY 11, 2017 TO INCLUDE (E-MAILS)**** Any letters, written records, correspondence (including but not limited to e-mails), documents and/or reports in whatever form, whether existing in hard copy, stored electronically, or otherwise recorded from the Under Secretary of Commerce for Oceans and Atmospheres (former or acting), the Assistant Secretary for Environment Observation and Prediction, the Assistant Administrator, National Environmental Satellite, Data & Information Service (NESDIS) (former or acting), or (2) the Deputy Assistant Administrator of NESDIS, the NESDIS CIO, e.g., Assistant Chief Information Officer (ACIO/NESDIS) or (2) the NESDIS Deputy CIO, e.g., Deputy Assistant Chief Information Officer (DCIO/NESDIS) (former or acting) to the National Telecommunications and Information Administration (NTIA) from September 1, 2016 to the present, inclusive, regarding regulatory or operational considerations in the 1675 – 1680 MHz or 1675-1695 MHz radio frequency bands, specifically those associated with potential spectrum repurposing of these bands from current and prospective federal government uses to commercial mobile operations or the sharing of these spectrum bands by federal government and commercial mobile operators. ****See Supporting Files for addition request detail****

Jim LeDuc
NOAA HCHB Room 58020
Office 202-482-0965
Ce (b)(6) [REDACTED]



Aviation Spectrum Resources Inc. ♦ 180 Admiral Cochrane Drive ♦ Suite 300 ♦ Annapolis, MD 21401
Phone: 410-266-6030 ♦ Fax: 443-951-0349 ♦ <http://www.asri.aero>

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

21 March 2017

FREEDOM OF INFORMATION ACT REQUEST

Dear NOAA FOIA Office:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552.

On behalf of Aviation Spectrum Resources, Inc. (ASRI), the undersigned hereby requests that copies of the following documents, including letters or correspondence, or any other documents or recordings responsive to the requests listed below and/or containing the following information, be provided to the undersigned:

1. Any letters, written records, correspondence, documents and/or reports (whether written or recorded) from the Under Secretary of Commerce for Oceans and Atmospheres (former or acting) to the National Telecommunications and Information Administration (NTIA) from September 1, 2016 to the present, inclusive, regarding regulatory or operational considerations in the 1675 – 1680 MHz or 1675-1695 MHz radiofrequency bands, specifically those associated with potential spectrum repurposing of these bands from current and prospective federal government uses to commercial mobile operations or the sharing of these spectrum bands by federal government and commercial mobile operators.
2. Any letters, written records, correspondence, documents and/or reports (whether written or recorded) from the Assistant Secretary for Environmental Observation and Prediction (former or acting) to the National Telecommunications and Information Administration (NTIA) from September 1, 2016 to the present, inclusive, regarding regulatory or operational considerations in the 1675 – 1680 MHz or 1675-1695 MHz radiofrequency bands, specifically those associated with potential spectrum repurposing of these bands from current and prospective federal government uses to commercial mobile operations or the sharing of these spectrum bands by federal government and commercial mobile operators.
3. Any letters, written records, correspondence, documents and/or reports (whether written or recorded) from (1) the Assistant Administrator, National Environmental Satellite, Data & Information Service (NESDIS) (former or acting), or (2) the Deputy Assistant Administrator of NESDIS, to the National Telecommunications and Information Administration (NTIA) from September 1, 2016 to the present, inclusive, regarding regulatory or operational considerations in the 1675 – 1680 MHz or 1675-1695 MHz radiofrequency bands, specifically those associated

with potential spectrum repurposing of these bands from current and prospective federal government uses to commercial mobile operations or the sharing of these spectrum bands by federal government and commercial mobile operators.

4. Any letters, written records, correspondence, documents and/or reports (whether written or recorded) from (1) the NESDIS CIO, e.g., Assistant Chief Information Officer (ACIO/NESDIS) or (2) the NESDIS Deputy CIO, e.g., Deputy Assistant Chief Information Officer (DCIO/NESDIS) (former or acting) to the National Telecommunications and Information Administration (NTIA) from September 1, 2016 to the present, inclusive, regarding regulatory or operational considerations in the 1675 – 1680 MHz or 1675-1695 MHz radiofrequency bands, specifically those associated with potential spectrum repurposing of these bands from current and prospective federal government uses to commercial mobile operations or the sharing of these spectrum bands by federal government and commercial mobile operators.

ASRI requests a waiver of all fees for this request on the basis that disclosure of the requested information to ASRI would be in the public interest. *See* 15 C.F.R. § 4.11(l)(1)(i). In order to help you consider this request, you should know that ASRI is the communications company of the U.S. civilian air transport industry. Owned by the airlines and other airspace users, ASRI is operated on a cooperative basis to provide a non-discriminatory service to these entities. Additionally, ASRI's mission includes the defense of access to, and the use of, adequate radiofrequency spectrum resources to support aviation activities to ensure the safety of the flying public and the efficiency of airline operations.

Disclosure of the requested information to ASRI is in the public interest because it is likely to contribute significantly to public understanding of the activities of the government in connection with the foregoing radiofrequency spectrum bands and is not primarily in ASRI's commercial interest. *See* 15 C.F.R. § 4.11(l)(2)(ii) (the first fee waiver requirement is met when the disclosure is "likely to contribute" to an increased public understanding of government operations or activities); *see also* 15 C.F.R. § 4.11(l)(3)(ii) (finding that a fee waiver or reduction is justified when the public interest in disclosure is greater than any identified commercial interest).

More specifically, these bands are essential for the timely and reliable dissemination of hydrological and metrological information. Aviation operations are highly weather-sensitive. If proposed repurposing or spectrum sharing of 1675 – 1680 MHz or 1675-1695 MHz creates radio frequency interference that adversely impacts the receipt of hydrological and metrological information necessary for aviation operations, the safety of the travelling public could be affected. Thus, the 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 only the individual understanding of the requester. *See* 15 C.F.R. § 4.11(l)(2)(iii). The information requested will enable ASRI to conduct further analysis of the foregoing issues and contribute to its participation in the ongoing FCC proceedings¹ concerning the Geostationary Operational

¹ *See* FCC RM-11681. In this proceeding, Ligado Network LLC ("Ligado") asks the FCC to initiate a rulemaking to allocate the 1675-1680 MHz band for terrestrial mobile use on a

Environmental Satellite system, also known as GOES, which operates in these spectrum bands. ASRI's contributions to those proceedings will become available to the public through the FCC's website.

In the event that you do not waive fees, ASRI is willing to pay fees for this request up to a maximum of \$250. If you estimate that the fees will exceed this limit, please first provide notice to the point of contact listed below before proceeding and provide the point of contact with an estimate of the costs (and obtain approval to incur them). *See* 15 C.F.R. § 4.11(i)(2) (“A notice under this paragraph shall offer the requester an opportunity to discuss the matter with Departmental personnel in order to modify the request in an effort to meet the requester’s needs at a lower cost.”). If a waiver is granted or, alternatively, if the fees do not exceed the amount stated above, please supply the records without informing the point of contact of the cost.

If you deny all or any part of this request for information, please cite each specific exemption you think justifies your withholding of information. Please notify the point of contact of appeal procedures available under the law.

Thank you for your consideration of this request.

Please correspond with Mr. Andrew Roy, Director of Engineering, ASRI, with any questions in this matter. He may be reached at (443) 951-0340 or via email at acr@asri.aero

Sincerely,

By: /s/ Kris Hutchison

Kris Hutchison
President
Aviation Spectrum Resources, Inc.
180 Admiral Cochrane Drive, Suite 300
Annapolis, MD 21401

shared basis with federal use. The original petition in this proceeding was filed in 2012 by Ligado's predecessor in interest, LightSquared Subsidiary LLC.

From: Roxie Allison-Holman - NOAA Federal <roxie.allison-holman@noaa.gov>
Sent: Thursday, May 11, 2017 3:05 PM
To: Mark Graff - NOAA Federal; Lola Stith - NOAA Affiliate
Cc: Annie Thomson - NOAA Federal
Subject: Fwd: GC's approval needed for this urgent FOIA
Attachments: FOIA_SCC_NOAA_Review_Set_040517 (2).pdf; Horner (Carbon Emails) Rqst (2).pdf; FOIA_SCC_NOAA_Review_Set_040517 (1).pdf

(b)(5)

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

From: Annie Thomson - NOAA Federal <annie.thomson@noaa.gov>
Date: Thu, May 11, 2017 at 1:55 PM
Subject: GC's approval needed for this urgent FOIA
To: Roxie Allison-Holman - NOAA Federal <roxie.allison-holman@noaa.gov>

Hi Roxie,

(b)(5)

██████?
Thanks, Annie

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

From: Eric Locklear - NOAA Federal <eric.locklear@noaa.gov>
Date: Wed, May 10, 2017 at 11:32 AM
Subject: Re: FOIA DOC-NOAA-2017-000953 EPA request
To: Annie Thomson - NOAA Federal <annie.thomson@noaa.gov>
Cc: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>

Annie,

After speaking with Mark Graff and reviewing the documents (b)(5) ██████████. If you have any additional questions or concerns don't hesitate to contact me.

Eric

On Wed, May 10, 2017 at 7:12 AM, Eric Locklear - NOAA Federal <eric.locklear@noaa.gov> wrote:
Annie,
I have a call scheduled with Mark Graff, NOAA's FOIA Officer/Bureau Chief Privacy Officer this morning. I'll let you know what the outcome is.

Eric

--

Roxie Allison-Holman
Attorney
NOAA GC for Weather, Satellites and Research
[301-713-9683](tel:301-713-9683)

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REQUEST UNDER THE FREEDOM OF INFORMATION ACT

September 22, 2015

U.S. Environmental Protection Agency
Records, FOIA and Privacy Branch
1200 Pennsylvania Avenue, NW (2822T)
Washington, D.C. 20460
Email: hq.foia@epa.gov

Re: Request for Certain Agency Records — Social Cost of Carbon Emails

To EPA Freedom of Information Officer,

On behalf of the Competitive Enterprise Institute (CEI), please consider this request pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.* CEI is a non-profit public policy institute organized under section 501(c)3 of the tax code and with research, investigative journalism and publication functions, as well as a transparency initiative seeking public records relating to environmental and energy policy and how policymakers use public resources, all of which include broad dissemination of public information obtained under open records and freedom of information laws.

Please provide us, within twenty working days,¹ copies of **emails sent to or from Elizabeth Kopits or Alex Martens which a) contain, in the To or From, cc: and/or**

¹ See *Citizens for Responsible Ethics in Washington v. Federal Election Commission*, 711 F.3d 180, 186 (D.C. Cir. 2013), and discussion, *infra*.

bcc: fields, the Subject field, and/or the email body, any of the terms or parties: “SCC”, “social cost”, Maureen Cropper, Richard Newell, William Pizer and/or John Weyant², b) which were sent or received during 2015, through the date you process this request.

We request the entire thread in which any email responsive to the above description appears regardless if portions of the thread(s) pre-date 2015.

We agree to pay up to \$150.00 for responsive records in the event EPA denies our fee waiver request detailed, *infra*.

Relevant Background to this Request and the Public Interest

This request seeks certain EPA correspondence with or mentioning outside third parties and relevant to a panel established by the National Academies of Science — specifically, by its contract, research consulting firm the National Research Council — on Assessing Approaches to Updating the Social Cost of Carbon. The Social Cost of Carbon is a term for claims of the cumulative damage allegedly inflicted by an incremental ton of carbon dioxide emitted in a particular year (and only damage, not benefits of affordable energy or the social costs of carbon mitigation, although the economic and social costs of carbon mitigation likely and vastly exceed the social costs of carbon (dioxide)).

The SCC is a product of speculative climatology combined with speculative economics and is an unknown quantity, discernible in neither meteorological nor

² That is, an email is responsive if is to, from, copies *or* references any of the parties anywhere. This includes referencing a party, for example Maureen Cropper, in a To, From or cc:/bcc: field if her address (e.g., cropper@econ.umd.edu) appears therein, or the party’s name appears in any form, e.g., “Cropper, Maureen” or “Maureen Cropper”.

economic data. Regardless, government regulators have assigned a figure that appears to be designed to support a conclusion rather than reflect one. By fiddling with inputs in complex computer models, SCC analysts can obtain just about any result they desire. However interesting as an academic exercise, when used to guide policy, SCC has a political function of making fossil fuels look unaffordable no matter how cheap, and renewable energy — which remains uneconomic in most applications after as much as 125 years of competition (e.g., wind, solar) with more reliable sources of energy — appear to be a bargain at any price. (For example, PAGE model creator [Chris Hope](#) argues the discount rate should be 1%, which yields an SCC in 2010 of \$266, which implies that replacing existing coal generation with new solar photovoltaic is “economically efficient”).

Correspondence discussing this issue, including with and/or about outside parties tasked with evaluating the government’s assigned figure, is of public interest because regulators including EPA, and allies among other climate campaigners, desire ever-bigger SCC values to justify ever-more costly anti-carbon (dioxide) regulations. Further, if panelists selected for this *post facto* review of the government’s SCC have indicated their minds are already made up on the issue or on key elements of the analysis, this, too, is of great public interest in evaluating the utility of any panel conclusions.

Regardless, FOIA requests require no demonstration of wrongdoing, and the public interest prong of a FOIA response is the only aspect to which these factors are relevant; we address the public interest in the issue as relates to CEI’s request for fee waiver in detail, *infra*, and respectfully remind EPA that federal agencies acknowledge

CEI is a representative of the news media such that, at most, CEI can be charged the costs of copying these records (for electronic records, those costs should be *de minimis*).

EPA Must Err on the Side of Disclosure

It is well-settled that Congress, through FOIA, “sought ‘to open agency action to the light of public scrutiny.’” *DOJ v. Reporters Comm. for Freedom of Press*, 498 U.S. 749, 772 (1989) (quoting *Dep’t of Air Force v. Rose*, 425 U.S. 353, 372 (1976)). The legislative history is replete with reference to the, “‘general philosophy of full agency disclosure’” that animates the statute. *Rose*, 425 U.S. at 360 (quoting S.Rep. No. 813, 89th Cong., 2nd Sess., 3 (1965)). Accordingly, when an agency withholds requested documents, the burden of proof is placed squarely on the agency, with all doubts resolved in favor of the requester. *See, e.g., Federal Open Mkt. Comm. v. Merrill*, 443 U.S. 340, 352 (1979). This burden applies across scenarios and regardless of whether the agency is claiming an exemption under FOIA in whole or in part. *See, e.g., Tax Analysts*, 492 U.S. 136, 142 n. 3 (1989); *Consumer Fed’n of America v. Dep’t of Agriculture*, 455 F.3d 283, 287 (D.C. Cir. 2006); *Burka*, 87 F.3d 508, 515 (D.C. Cir. 1996).

These disclosure obligations are to be accorded added weight in light of the recent Presidential directive to executive agencies to comply with FOIA to the fullest extent of the law. *Presidential Memorandum For Heads of Executive Departments and Agencies*, 75 F.R. § 4683, 4683 (Jan. 21, 2009). As the President emphasized, “a democracy requires accountability, and accountability requires transparency,” and “the Freedom of Information Act... is the most prominent expression of a profound national commitment to ensuring open Government.” Accordingly, the President has directed that FOIA “be

administered with a clear presumption: In the face of doubt, openness prevails” and that a “presumption of disclosure should be applied to all decisions involving FOIA.”

Request for Fee Waiver

This discussion through the top of page 20 is detailed as a result of our recent experience of federal agencies improperly using denial of fee waivers to impose an economic barrier to access, an improper means of delaying or otherwise denying access to public records to groups whose requests are, apparently, unwelcome, including and particularly CEI. This is also despite our history of regularly obtaining fee waivers. It is only relevant if EPA considers denying our fee waiver request.

Disclosure would substantially contribute to the public at large’s understanding of governmental operations or activities, on a matter of demonstrable public interest.

CEI’s principal request for waiver or reduction of all costs is pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) (“Documents shall be furnished without any 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 government and is not primarily in the commercial interest of the requester”).

CEI does not seek these records for a commercial purpose. Requester is organized and recognized by the Internal Revenue Service as 501(c)3 educational organization. As such, requester also has no commercial interest possible in these records. If no commercial interest exists, an assessment of that non-existent interest is not required in any balancing test with the public’s interest.

As a non-commercial requester, CEI is entitled to liberal construction of the fee waiver standards. 5 U.S.C.S. § 552(a)(4)(A)(iii), *Perkins v. U.S. Department of Veterans Affairs*, 754 F. Supp. 2d 1 (D.D.C. Nov. 30, 2010).

The public interest fee waiver provision “is to be liberally construed in favor of waivers for noncommercial requesters.” *McClellan Ecological Seepage Situation v. Carlucci*, 835 F. 2d 1284, 2184 (9th Cir. 1987). The Requester need not demonstrate that the records would contain any particular evidence, such as of misconduct. Instead, the question is whether the requested information is likely to contribute significantly to public understanding of the operations or activities of the government, period. *See Judicial Watch v. Rosotti*, 326 F. 3d 1309, 1314 (D.C. Cir 2003).

FOIA is aimed in large part at promoting active oversight roles of watchdog public advocacy groups. “The legislative history of the fee waiver provision reveals that it 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.” *Better Government Ass’n v. State*, 780 F.2d 86, 88-89 (D.C. Cir. 1986) (fee waiver intended to benefit public interest watchdogs), citing to *Ettlinger v. FBI*, 596 F. Supp. 867, 872 (D.Mass. 1984); S. COMM.

ON THE JUDICIARY, AMENDING the FOIA, S. REP. NO. 854, 93rd Cong., 2d Sess. 11-12 (1974)).³

“This is in keeping with the statute’s purpose, which is ‘to remove the roadblocks and technicalities which have been used by... agencies to deny waivers.’” *Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Educ.*, 593 F. Supp. 261, 268 (D.D.C. 2009), citing to *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th. Cir. 1987) (quoting 132 Cong. Rec. S16496 (Oct. 15, 1986) (statement of Sen. Leahy).

Requester’s ability — as well as many nonprofit organizations, educational institutions and news media that will benefit from disclosure — to utilize FOIA depends on their ability to obtain fee waivers. For this reason, “Congress explicitly recognized the importance and the difficulty of access to governmental documents for such typically under-funded organizations and individuals when it enacted the ‘public benefit’ test for FOIA fee waivers. This waiver provision was added to FOIA ‘in an attempt to prevent government agencies from using high fees to discourage certain types of requesters and

³ This was grounded in the recognition that the two plaintiffs in that merged appeal were, like Requester, public interest non-profits that “rely heavily and frequently on FOIA and its fee waiver provision to conduct the investigations that are essential to the performance of certain of their primary institutional activities -- publicizing governmental choices and highlighting possible abuses that otherwise might go undisputed and thus unchallenged. These investigations are the necessary prerequisites to the fundamental publicizing and mobilizing functions of these organizations. Access to information through FOIA is vital to their organizational missions.” *Better Gov’t v. State*. They therefore, like Requester, “routinely make FOIA requests that potentially would not be made absent a fee waiver provision”, requiring the court to consider the “Congressional determination that such constraints should not impede the access to information for appellants such as these.” *Id.*

requests,' in a clear reference to requests from journalists, scholars and, most importantly for our purposes, nonprofit public interest groups. Congress made clear its intent that fees should not be utilized to discourage requests or to place obstacles in the way of such disclosure, forbidding the use of fees as “toll gates” on the public access road to information.” *Better Government Ass'n v. State*, 780 F.2d 86, 88-89 (D.C. Cir. 1986).

As the *Better Government* court also recognized, public interest groups employ FOIA for activities “essential to the performance of certain of their primary institutional activities -- publicizing governmental choices and highlighting possible abuses that otherwise might go undisputed and thus unchallenged. These investigations are the necessary prerequisites to the fundamental publicizing and mobilizing functions of these organizations. Access to information through FOIA is vital to their organizational missions.” *Id.*

Congress enacted FOIA clearly intending that “fees should not be used for the purpose of discouraging requests for information or as obstacles to disclosure of requested information.” *Ettlinger v. F.B.I.*, 596 F. Supp. 867, 872 (D. Mass. 1984), citing Conf. Comm. Rep., H.R. Rep. No. 1380, 93d Cong., 2d Sess. 8 (1974) at 8. Refusal of fees as a means of withholding records from a FOIA requester constitutes improper withholding. *Id.* at 874.

Therefore, “insofar as... [agency] guidelines and standards in question act to discourage FOIA requests and to impede access to information for precisely those groups Congress intended to aid by the fee waiver provision, they inflict a continuing hardship on the non-profit public interest groups who depend on FOIA to supply their lifeblood --

information.” *Better Gov’t v. State* (internal citations omitted). The courts therefore will not permit such application of FOIA requirements that “‘chill’ the ability and willingness of their organizations to engage in activity that is not only voluntary, but that Congress explicitly wished to encourage.” *Id.* As such, agency implementing regulations may not facially or in practice interpret FOIA’s fee waiver provision in a way creating a fee barrier for Requester.

Courts have noted FOIA’s legislative history to find that a fee waiver request is likely to pass muster “if the information disclosed is new; supports public oversight of agency operations, including the quality of agency activities and the effects of agency policy or regulations on public health or safety; or, otherwise confirms or clarifies data on past or present operations of the government.” *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d at 1284-1286 (9th Cir. 1987).

This information request meets that description, for reasons both obvious and specified.

1) The subject matter of the requested records specifically concerns identifiable operations or activities of the government. Potentially responsive records reflect EPA involvement with EPA on high-profile, highly controversial regulations as part of what is colloquially known as the administration’s “war on coal”, particularly its efforts to regulate greenhouse gases (GHGs) under the Clean Air Act,⁴ the costs and benefits (EPA’s domain) and how agencies are seemingly attempting to finesse

⁴ For a timeline of this rule making *see e.g.*, http://www.epa.gov/climatechange/Downloads/endangerment/EndangermentFinding_Timeline.pdf.

them having become one of the rules' more contentious aspects.⁵ Further, EPA's involvement in constructing the "social cost of carbon" figure has impacts on rules throughout the federal government, including but by no means limited to the Department of Energy.

Release of these records also directly relates to high-level promises by the President and the Attorney General to be "the most transparent administration in history."⁶ This transparency promise, in its serial incarnations, demanded and spawned widespread media coverage, and study which prompted further media and public interest as well as congressional oversight (*see e.g.*, an internet search of "study Obama transparency").

The Department of Justice Freedom of Information Act Guide concedes that this threshold is easily met. There can be no question that it is met here and, for that potentially responsive records unquestionably reflect "identifiable operations or activities of the government" with a connection that is direct and clear, not remote.

2) Requester intends to broadly disseminate responsive information. As demonstrated herein requester has both the intent and the ability to convey any information obtained through this request to the public.

⁵ *See e.g.*, U.S. Chamber of Commerce and Institute for Energy Research on this at <https://www.uschamber.com/blog/epa-pumps-benefits-proposed-carbon-regulation> and <http://instituteforenergyresearch.org/analysis/epas-absurd-justifications-power-plant-regulations/>, respectively.

⁶ Jonathan Easley, *Obama says his is 'most transparent administration' ever*, THE HILL, Feb. 14, 2013, <http://thehill.com/blogs/blog-briefing-room/news/283335-obama-this-is-the-most-transparent-administration-in-history>.

CEI regularly publishes works and are regularly cited in newspapers and trade and political publications, representing a practice of broadly disseminating public information obtained under FOIA, which practice requester intends to continue in the instant matter.⁷

⁷ Print examples include *e.g.*, Stephen Dinan, *Do Text Messages from Feds Belong on Record? EPA's Chief's Case Opens Legal Battle*, WASHINGTON TIMES, Apr. 30, 2011, at A1; Peter Foster, *More Good News for Keystone*, NATIONAL POST, Jan. 9, 2013, at 11; Juliet Eilperin, *EPA IG Audits Jackson's Private E-mail Account*, WASHINGTON POST, Dec. 19, 2013, at A6; James Gill, *From the Same Town, But Universes Apart*, NEW ORLEANS TIMES-PICAYUNE, Jan. 2, 2013, at B1; Kyle Smith, *Hide & Sneak*, NEW YORK POST, Jan. 6, 2013, at 23; Dinan, *EPA Staff to Retrain on Open Records; Memo Suggests Breach of Policy*, WASHINGTON TIMES, Apr. 9, 2013, at A4; Dinan, *Suit Says EPA Balks at Release of Records; Seeks Evidence of Hidden Messages*, WASHINGTON TIMES, Apr. 2, 2013, at A1, Dinan, "Researcher: NASA hiding climate data", WASHINGTON TIMES, Dec. 3, 2009, at A1, Dawn Reeves, *EPA Emails Reveal Push To End State Air Group's Contract Over Conflict*, INSIDE EPA, Aug. 14, 2013; Dinan, [EPA's use of secret email addresses was widespread: report](#), WASHINGTON TIMES, Feb. 13, 2014. *See also*, Christopher C. Horner, *EPA administrators invent excuses to avoid transparency*, WASHINGTON EXAMINER, Nov. 25, 2012, <http://washingtonexaminer.com/epa-administrators-invent-excuses-to-avoid-transparency/article/2514301#.UL0aPYf7L9U>; *EPA Circles Wagons in 'Richard Windsor' Email Scandal*, BREITBART, Jan. 16, 2013, <http://www.breitbart.com/Big-Government/2013/01/16/What-s-in-a-Name-EPA-Goes-Full-Bunker-in-Richard-Windsor-Email-Scandal>; *EPA Circles Wagons in 'Richard Windsor' Email Scandal*, BREITBART, Jan. 16, 2013; *The FOIA coping response in climate scientists*, WATTS UP WITH THAT, Jan. 21, 2014; *Nothing to See Here! Shredding Parties and Hiding the Decline in Taxpayer-Funded Science*, WATTS UP WITH THAT, Feb. 17, 2014; *The Collusion of the Climate Crowd*, WASHINGTON EXAMINER, Jul. 6, 2012; *Obama Admin Hides Official IPCC Correspondence from FOIA Using Former Romney Adviser John Holdren*, BREITBART, Oct. 17, 2013; *Most Secretive Ever? Seeing Through 'Transparent' Obama's Tricks*, WASHINGTON EXAMINER, Nov. 3, 2011; *NOAA releases tranche of FOIA documents -- 2 years later*, WATTS UP WITH THAT (two-time "science blog of the year"), Aug. 21, 2012; *The roadmap less traveled*, WATTS UP WITH THAT, Dec. 18, 2012; *EPA Doc Dump: Heavily redacted emails of former chief released*, BREITBART, Feb. 22, 2013; *EPA Circles Wagons in 'Richard Windsor' Email Scandal*, BREITBART, Jan. 16, 2013, *DOJ to release secret emails*, BREITBART, Jan. 16, 2013; *EPA administrators invent excuses to avoid transparency*, WASHINGTON EXAMINER, Nov. 25, 2012; *Chris Horner responds to the EPA statement today on the question of them running a black-ops program*, WATTS UP WITH THAT, Nov. 20, 2012; *FOIA and the coming US Carbon Tax via the US Treasury*, WATTS UP WITH THAT, Mar. 22, 2013; *Today is D-Day -- Delivery Day -- for Richard Windsor Emails*, WATTS UP WITH THAT, Jan. 14, 2013; *EPA Doubles Down on 'Richard Windsor' Stonewall*, WATTS UP WITH THAT, Jan. 15, 2013; *Treasury evasions on carbon tax email mock Obama's 'most transparent administration ever' claim*, WASHINGTON EXAMINER, Oct. 25, 2013.

3) **Disclosure is “likely to contribute” to an understanding of specific government operations or activities because the releasable material will be meaningfully informative in relation to the subject matter of the request.** Requester intends to broadly disseminate responsive information. The requested records have an informative value and are “likely to contribute to an understanding of Federal government operations or activities,” just as did requester’s other FOIA requests of EPA, and just as with those requests this SCC issue is of significant and increasing public interest. An internet search for the social cost of carbon affirms that this is not subject to reasonable dispute.

However, **the Department of Justice’s Freedom of Information Act Guide makes it clear that, in the DoJ’s view, the “likely to contribute” determination hinges in substantial part on whether the requested documents provide information that is not already in the public domain.** It cannot be denied that, to the extent the requested information is available to any parties, this is information held only by EPA or EPA, is therefore clear that the requested records are “likely to contribute” to an understanding of your agency's decisions because they are not otherwise accessible other than through a FOIA request.

Thus, disclosure and dissemination of this information will facilitate meaningful public participation in the policy debate, therefore fulfilling the requirement that the documents requested be “meaningfully informative” and “likely to contribute” to an understanding of your agency's dealings with interested parties outside the agency and interested -- but not formally involved -- employees who may nonetheless be having an

impact on the federal permitting process, state and local processes and/or activism on the issue.

4) The disclosure will contribute to the understanding of the public at large, as opposed to the understanding of the requester or a narrow segment of interested persons. Requester has an established practice of utilizing FOIA to educate the public, lawmakers, and news media about the government’s operations and, in particular and as illustrated in detail above, have brought to light important information about policies grounded in energy and environmental policy. CEI intends to continue this effort in the context of and using records responsive to this request, as debate, analysis and publication continue on these regulations.

CEI is dedicated to and has a documented record of promoting the public interest, advocating sensible policies to protect human health and the environment, broadly disseminating public information, and routinely receiving fee waivers under FOIA.

With a demonstrated interest and record in the relevant policy debates and expertise in the subject of energy- and environment-related regulatory policies, CEI unquestionably has the “specialized knowledge” and “ability and intention” to disseminate the information requested in the broad manner, and to do so in a manner that contributes to the understanding of the “public-at-large.”

5) The disclosure will contribute “significantly” to public understanding of government operations or activities. *We repeat and incorporate here by reference the arguments above from the discussion of how disclosure is “likely to contribute” to an understanding of specific government operations or activities.*

There is no publicly available information on the discussions this request seeks. Because there is no such information or any such analysis in existence, any increase in public understanding of this issue is a significant contribution to this increasingly important issue as regards the operation and function of government.

Because CEI has no commercial interests of any kind, disclosure can only result in serving the needs of the public interest.

Other Considerations

EPA must consider four conditions to determine whether a request is in the public interest and uses four factors in making that determination. We have addressed all factors, but add the following additional considerations relevant to factors 2 and 4.

Factor 2

FOIA requires the Requester to show that the disclosure is likely to contribute to an understanding of government operations or activities. Under this factor, agencies assess the “informative value” of the records and demands “an increase” in understanding. This factor 2 has a fatal logical defect. Agencies offer no authority for requiring an “increase” in understanding, nor does it provide a metric by which to measure an increase. And, agencies offer no criteria by which to determine under what conditions information that is in the records and is already somewhere in the public domain would be likely to contribute to public understanding.

Agencies typically argue that they evaluate Factor 2 (and all others) on a case by case basis. In doing so, it “must pour ‘some definitional content’ into a vague statutory term by ‘defining the criteria it is applying.’” *PDK Labs. v. United States DEA*, 438 F.3d

1184, 1194, (D.C. Cir. 2006)(citations omitted). “To refuse to define the criteria it is applying is equivalent to simply saying no without explanation.” *Id.* “A substantive regulation must have sufficient content and definitiveness as to be a meaningful exercise in agency lawmaking. It is certainly not open to an agency to promulgate mush.”

Paralyzed Veterans of Am. V. D.C. Arena LP, 117 F.3d 579, 584 (D.C. Cir. 1997). Agency failure to pour any definitional content into the term “increase” does not even rise to the level of mush.

Despite the lack of any metric on what would constitute a sufficient increase in public understanding, the Requester meets the requirement because for the information we seek there is no public information. The information we seek will be used to increase the public’ understanding of a current EPA’s employee’s role in the EPA’s endangerment regulations. There is no public information available on this issue Any information on that would increase the public’s knowledge.

The public has no other means to secure information on these government operations other than through the Freedom of Information Act. Absent access to the public record, the public cannot learn about these governmental activities and operations.

Factor 4

Agencies requires the Requester to show how the disclosure is likely to contribute significantly to public understanding of government operations or activities.

Once again, we note that agencies have not provided any definitional content into the vague statutory term “significantly,” offering no criteria or metric by which to measure the significance of the contribution to public understanding CEI will provide.

Nevertheless, as previously explained, the public has no source of information on the issue. Any increase in public understanding of this issue is a significant contribution to this highly visible and politically important issue as regards the operation and function of government, especially at a time when agency transparency is (rightly) so controversial.

As such, requester has stated “with reasonable specificity that their request pertains to operations of the government,” that they intend to broadly disseminate responsive records. “[T]he informative value of a request depends not on there being certainty of what the documents will reveal, but rather on the requesting party having explained with reasonable specificity how those documents would increase public knowledge of the functions of government.” *Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health and Human Services*, 481 F. Supp. 2d 99, 107-109 (D.D.C. 2006).

We note that federal agencies regularly waive requester CEI’s fees for substantial productions arising from requests expressing the same intention, even using the same

language as used in the instant request.⁸ This request is unlikely to yield substantial document production.

For all of these reasons, CEI's fees should be waived in the instant matter.

Alternately, CEI qualifies as a media organization for purposes of fee waiver

The provisions for determining whether a requesting party is a representative of the news media, and the "significant public interest" provision, are not mutually exclusive. Again, as CEI is a non-commercial requester, it is entitled to liberal construction of the fee waiver standards. 5 U.S.C.S. § 552(a)(4)(A)(iii), *Perkins v. U.S. Department of Veterans Affairs*. Alternately and only in the event EPA/EPA refuses to waive our fees under the "significant public interest" test, which we would then appeal while requesting EPA proceed with processing on the grounds that we are a media organization, we request a waiver or limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii) ("fees shall be limited to reasonable standard charges for document duplication when records are not

⁸ See, e.g., no fees required by other agencies for processing often substantial numbers of records on the same or nearly the same but less robust waiver-request language include: **DoI** OS-2012-00113, OS-2012-00124, OS-2012-00172, FWS-2012-00380, BLM-2014-00004, BLM-2012-016, BLM: EFTS 2012-00264, CASO 2012-00278, NVSO 2012-00277; **NOAA** 2013-001089, 2013-000297, 2013-000298, 2010-0199, and "Peterson-Stocker letter" FOIA (August 6, 2012 request, no tracking number assigned, records produced); **DoL** (689053, 689056, 691856 (all from 2012)); **FERC** 14-10; **DoE** HQ-2010-01442-F, 2010-00825-F, HQ-2011-01846, HQ-2012-00351-F, HQ-2014-00161-F, HQ-2010-0096-F, GO-09-060, GO-12-185, HQ-2012-00707-F; **NSF** (10-141); **OSTP** 12-21, 12-43, 12-45, 14-02.; **EPA** HQ-2013-000606, HQ-FOI-01087-12, HQ-2013-001343, R6-2013-00361, R6-2013-00362, R6-2013-00363, HQ-FOI-01312-10, R9-2013-007631, HQ-FOI-01268-12, HQ-FOI-01269, HQ-FOI-01270-12, HQ-2014-006434. These latter examples involve EPA either waiving fees, not addressing the fee issue, or denying fee waiver but dropping that posture when requester sued.

sought for commercial use and the request is made by.... a representative of the news media...”).

However, we note that as documents (emails) are requested and available electronically, there are no copying costs.

Requester repeats by reference the discussion as to its publishing practices, reach and intentions to broadly disseminate, all in fulfillment of CEI’s mission, set forth *supra*.

Also, the federal government has already acknowledged that CEI qualifies as a media organization under FOIA.⁹

The key to “media” fee waiver is whether a group publishes, as CEI most surely does. *See supra*. In *National Security Archive v. Department of Defense*, 880 F.2d 1381 (D.C. Cir. 1989), the D.C. Circuit wrote:

The relevant legislative history is simple to state: because one of the purposes of FIRA is to encourage the dissemination of information in Government files, as Senator Leahy (a sponsor) said: “It is critical that the phrase ‘representative of the news media’ be broadly interpreted if the act is to work as expected.... If fact, *any person or organization which regularly publishes or disseminates information to the public ... should qualify for waivers as a ‘representative of the news media.’*”

Id. at 1385-86 (emphasis in original).

As the court in *Electronic Privacy Information Center v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003) noted, this test is met not only by outlets in the business of publishing such as newspapers; instead, citing to the *National Security Archives* court, it noted one key fact is determinative, the “*plan to act, in essence, as a publisher*, both in print and other media.” *EPIC v. DOD*, 241 F.Supp.2d at 10 (*emphases added*). “In short,

⁹ *See e.g.*, Treasury FOIA Nos. 2012-08-053, 2012-08-054.

the court of appeals in National Security Archive held that “[a] representative of the news media is, in essence, a person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience.” *Id.* at 11. *See also, Media Access Project v. FCC*, 883 F.2d 1063, 1065 (D.C. Cir. 1989).

For these reasons, CEI plainly qualifies as a “representative of the news media” under the statutory definition, because it routinely gathers information of interest to the public, uses editorial skills to turn it into distinct work, and distributes that work to the public.

The information is of critical importance to the nonprofit policy advocacy groups engaged on these relevant issues, news media covering the issues, and others concerned with EPA/EPA activities in this controversial area, or as the Supreme Court once noted, what their government is up to.

For these reasons, requester qualifies as a “representative[] of the news media” under the statutory definition, because it routinely gathers information of interest to the public, uses editorial skills to turn it into distinct work, and distributes that work to the public. *See EPIC v. Dep’t of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003)(non-profit organization that gathered information and published it in newsletters and otherwise for general distribution qualified as representative of news media for purpose of limiting fees). Courts have reaffirmed that non-profit requesters who are not traditional news media outlets can qualify as representatives of the new media for purposes of the FOIA, particularly after the 2007 amendments to FOIA. *See ACLU of Washington v. U.S. Dep’t*

of Justice, No. C09-0642RSL, 2011, 2011 U.S. Dist. LEXIS 26047 at *32 (W.D. Wash. Mar. 10, 2011). *See also Serv. Women’s Action Network v. DOD*, 2012 U.S. Dist. Lexis 45292 (D. Conn., Mar. 30, 2012).

Accordingly, any fees charged must be limited to duplication costs. The records requested are available electronically and are requested in electronic format, so there should be no costs.

Conclusion

We expect EPA to release within the statutory period all responsive records and any segregable portions of responsive records containing properly exempt information, to disclose records possibly subject to exemptions to the maximum extent permitted by FOIA’s discretionary provisions and otherwise proceed with a bias toward disclosure, consistent with the law’s clear intent, judicial precedent affirming this bias, and President Obama’s directive to all federal agencies on January 26, 2009. Memo to the Heads of Exec. Offices and Agencies, Freedom of Information Act, 74 Fed. Reg. 4683 (Jan. 26, 2009) (“The Freedom of Information Act should be administered with a clear presumption: in the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, or because of speculative or abstract fears”).

We expect all aspects of this request including the search for responsive records be processed free from conflict of interest. We request EPA provide particularized assurance that it is reviewing some quantity of records with an eye toward production on some estimated schedule, so as to establish some reasonable belief that it is

processing our request. 5 U.S.C.A. § 552(a)(6)(A)(i). EPA must at least inform us of the scope of potentially responsive records, including the scope of the records it plans to produce and the scope of documents that it plans to withhold under any FOIA exemptions; FOIA specifically requires EPA to immediately notify CEI with a particularized and substantive determination, and of its determination and its reasoning, as well as CEI's right to appeal; further, FOIA's unusual circumstances safety valve to extend time to make a determination, and its exceptional circumstances safety valve providing additional time for a diligent agency to complete its review of records, indicate that responsive documents must be collected, examined, and reviewed in order to constitute a determination. *See Citizens for Responsible Ethics in Washington v. Federal Election Commission*, 711 F.3d 180, 186 (D.C. Cir. 2013). *See also, Muttitt v. U.S. Central Command*, 813 F. Supp. 2d 221; 2011 U.S. Dist. LEXIS 110396 at *14 (D.D.C. Sept. 28, 2011)(addressing "the statutory requirement that [agencies] provide estimated dates of completion").

We request a rolling production of records, such that the agency furnishes records to my attention as soon as they are identified, preferably electronically, but as needed then to my attention, at the address below. We inform EPA of our intention to protect our appellate rights on this matter at the earliest date should EPA not comply with FOIA per, *e.g., CREW v. Fed. Election Comm'n*, 711 F.3d 180 (D.C. Cir. 2013).

If you have any questions please do not hesitate to contact me. I look forward to your timely response.

Sincerely,



Christopher C. Horner
Competitive Enterprise Institute
1899 L Street, NW, 12th Floor
Washington, D.C. 20036
202.262.4458 (M)
chorner@cei.org

From: Annie Thomson - NOAA Federal <annie.thomson@noaa.gov>
Sent: Friday, May 12, 2017 1:07 PM
To: Lola Stith - NOAA Affiliate; Mark Graff - NOAA Federal
Subject: Fwd: GC's approval needed for this urgent FOIA
Attachments: FOIA_SCC_NOAA_Review_Set_040517 (2).pdf; Horner (Carbon Emails) Rqst (2).pdf; FOIA_SCC_NOAA_Review_Set_040517 (1).pdf

Good Afternoon,

Just following up on (b)(5)? Please let me know. Thanks, Annie

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

From: Roxie Allison-Holman - NOAA Federal <roxie.allison-holman@noaa.gov>
Date: Thu, May 11, 2017 at 3:04 PM
Subject: Fwd: GC's approval needed for this urgent FOIA
To: Mark Graff - NOAA Federal <mark.graff@noaa.gov>, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>
Cc: Annie Thomson - NOAA Federal <annie.thomson@noaa.gov>

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

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

From: Annie Thomson - NOAA Federal <annie.thomson@noaa.gov>
Date: Thu, May 11, 2017 at 1:55 PM
Subject: GC's approval needed for this urgent FOIA
To: Roxie Allison-Holman - NOAA Federal <roxie.allison-holman@noaa.gov>

Hi Roxie,

(b)(5)
[Redacted]?
Thanks, Annie

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

From: Eric Locklear - NOAA Federal <eric.locklear@noaa.gov>
Date: Wed, May 10, 2017 at 11:32 AM
Subject: Re: FOIA DOC-NOAA-2017-000953 EPA request
To: Annie Thomson - NOAA Federal <annie.thomson@noaa.gov>
Cc: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>

Annie,

After speaking with Mark Graff and reviewing the documents (b)(5). If you have any additional questions or concerns don't hesitate to contact me.

Eric

On Wed, May 10, 2017 at 7:12 AM, Eric Locklear - NOAA Federal <eric.locklear@noaa.gov> wrote:
Annie,
I have a call scheduled with Mark Graff, NOAA's FOIA Officer/Bureau Chief Privacy Officer this morning. I'll let you know what the outcome is.

Eric

--

Roxie Allison-Holman
Attorney
NOAA GC for Weather, Satellites and Research
[301-713-9683](tel:301-713-9683)

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

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REQUEST UNDER THE FREEDOM OF INFORMATION ACT

September 22, 2015

U.S. Environmental Protection Agency
Records, FOIA and Privacy Branch
1200 Pennsylvania Avenue, NW (2822T)
Washington, D.C. 20460
Email: hq.foia@epa.gov

Re: Request for Certain Agency Records — Social Cost of Carbon Emails

To EPA Freedom of Information Officer,

On behalf of the Competitive Enterprise Institute (CEI), please consider this request pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.* CEI is a non-profit public policy institute organized under section 501(c)3 of the tax code and with research, investigative journalism and publication functions, as well as a transparency initiative seeking public records relating to environmental and energy policy and how policymakers use public resources, all of which include broad dissemination of public information obtained under open records and freedom of information laws.

Please provide us, within twenty working days,¹ copies of **emails sent to or from Elizabeth Kopits or Alex Martens which a) contain, in the To or From, cc: and/or**

¹ See *Citizens for Responsible Ethics in Washington v. Federal Election Commission*, 711 F.3d 180, 186 (D.C. Cir. 2013), and discussion, *infra*.

bcc: fields, the Subject field, and/or the email body, any of the terms or parties: “SCC”, “social cost”, Maureen Cropper, Richard Newell, William Pizer and/or John Weyant², b) which were sent or received during 2015, through the date you process this request.

We request the entire thread in which any email responsive to the above description appears regardless if portions of the thread(s) pre-date 2015.

We agree to pay up to \$150.00 for responsive records in the event EPA denies our fee waiver request detailed, *infra*.

Relevant Background to this Request and the Public Interest

This request seeks certain EPA correspondence with or mentioning outside third parties and relevant to a panel established by the National Academies of Science — specifically, by its contract, research consulting firm the National Research Council — on Assessing Approaches to Updating the Social Cost of Carbon. The Social Cost of Carbon is a term for claims of the cumulative damage allegedly inflicted by an incremental ton of carbon dioxide emitted in a particular year (and only damage, not benefits of affordable energy or the social costs of carbon mitigation, although the economic and social costs of carbon mitigation likely and vastly exceed the social costs of carbon (dioxide)).

The SCC is a product of speculative climatology combined with speculative economics and is an unknown quantity, discernible in neither meteorological nor

² That is, an email is responsive if is to, from, copies *or* references any of the parties anywhere. This includes referencing a party, for example Maureen Cropper, in a To, From or cc:/bcc: field if her address (e.g., cropper@econ.umd.edu) appears therein, or the party’s name appears in any form, e.g., “Cropper, Maureen” or “Maureen Cropper”.

economic data. Regardless, government regulators have assigned a figure that appears to be designed to support a conclusion rather than reflect one. By fiddling with inputs in complex computer models, SCC analysts can obtain just about any result they desire. However interesting as an academic exercise, when used to guide policy, SCC has a political function of making fossil fuels look unaffordable no matter how cheap, and renewable energy — which remains uneconomic in most applications after as much as 125 years of competition (e.g., wind, solar) with more reliable sources of energy — appear to be a bargain at any price. (For example, PAGE model creator [Chris Hope](#) argues the discount rate should be 1%, which yields an SCC in 2010 of \$266, which implies that replacing existing coal generation with new solar photovoltaic is “economically efficient”).

Correspondence discussing this issue, including with and/or about outside parties tasked with evaluating the government’s assigned figure, is of public interest because regulators including EPA, and allies among other climate campaigners, desire ever-bigger SCC values to justify ever-more costly anti-carbon (dioxide) regulations. Further, if panelists selected for this *post facto* review of the government’s SCC have indicated their minds are already made up on the issue or on key elements of the analysis, this, too, is of great public interest in evaluating the utility of any panel conclusions.

Regardless, FOIA requests require no demonstration of wrongdoing, and the public interest prong of a FOIA response is the only aspect to which these factors are relevant; we address the public interest in the issue as relates to CEI’s request for fee waiver in detail, *infra*, and respectfully remind EPA that federal agencies acknowledge

CEI is a representative of the news media such that, at most, CEI can be charged the costs of copying these records (for electronic records, those costs should be *de minimis*).

EPA Must Err on the Side of Disclosure

It is well-settled that Congress, through FOIA, “sought ‘to open agency action to the light of public scrutiny.’” *DOJ v. Reporters Comm. for Freedom of Press*, 498 U.S. 749, 772 (1989) (quoting *Dep’t of Air Force v. Rose*, 425 U.S. 353, 372 (1976)). The legislative history is replete with reference to the, ““general philosophy of full agency disclosure”” that animates the statute. *Rose*, 425 U.S. at 360 (quoting S.Rep. No. 813, 89th Cong., 2nd Sess., 3 (1965)). Accordingly, when an agency withholds requested documents, the burden of proof is placed squarely on the agency, with all doubts resolved in favor of the requester. *See, e.g., Federal Open Mkt. Comm. v. Merrill*, 443 U.S. 340, 352 (1979). This burden applies across scenarios and regardless of whether the agency is claiming an exemption under FOIA in whole or in part. *See, e.g., Tax Analysts*, 492 U.S. 136, 142 n. 3 (1989); *Consumer Fed’n of America v. Dep’t of Agriculture*, 455 F.3d 283, 287 (D.C. Cir. 2006); *Burka*, 87 F.3d 508, 515 (D.C. Cir. 1996).

These disclosure obligations are to be accorded added weight in light of the recent Presidential directive to executive agencies to comply with FOIA to the fullest extent of the law. *Presidential Memorandum For Heads of Executive Departments and Agencies*, 75 F.R. § 4683, 4683 (Jan. 21, 2009). As the President emphasized, “a democracy requires accountability, and accountability requires transparency,” and “the Freedom of Information Act... is the most prominent expression of a profound national commitment to ensuring open Government.” Accordingly, the President has directed that FOIA “be

administered with a clear presumption: In the face of doubt, openness prevails” and that a “presumption of disclosure should be applied to all decisions involving FOIA.”

Request for Fee Waiver

This discussion through the top of page 20 is detailed as a result of our recent experience of federal agencies improperly using denial of fee waivers to impose an economic barrier to access, an improper means of delaying or otherwise denying access to public records to groups whose requests are, apparently, unwelcome, including and particularly CEI. This is also despite our history of regularly obtaining fee waivers. It is only relevant if EPA considers denying our fee waiver request.

Disclosure would substantially contribute to the public at large’s understanding of governmental operations or activities, on a matter of demonstrable public interest.

CEI’s principal request for waiver or reduction of all costs is pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) (“Documents shall be furnished without any 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 government and is not primarily in the commercial interest of the requester”).

CEI does not seek these records for a commercial purpose. Requester is organized and recognized by the Internal Revenue Service as 501(c)3 educational organization. As such, requester also has no commercial interest possible in these records. If no commercial interest exists, an assessment of that non-existent interest is not required in any balancing test with the public’s interest.

As a non-commercial requester, CEI is entitled to liberal construction of the fee waiver standards. 5 U.S.C.S. § 552(a)(4)(A)(iii), *Perkins v. U.S. Department of Veterans Affairs*, 754 F. Supp. 2d 1 (D.D.C. Nov. 30, 2010).

The public interest fee waiver provision “is to be liberally construed in favor of waivers for noncommercial requesters.” *McClellan Ecological Seepage Situation v. Carlucci*, 835 F. 2d 1284, 2184 (9th Cir. 1987). The Requester need not demonstrate that the records would contain any particular evidence, such as of misconduct. Instead, the question is whether the requested information is likely to contribute significantly to public understanding of the operations or activities of the government, period. *See Judicial Watch v. Rosotti*, 326 F. 3d 1309, 1314 (D.C. Cir 2003).

FOIA is aimed in large part at promoting active oversight roles of watchdog public advocacy groups. “The legislative history of the fee waiver provision reveals that it 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.” *Better Government Ass’n v. State*, 780 F.2d 86, 88-89 (D.C. Cir. 1986) (fee waiver intended to benefit public interest watchdogs), citing to *Ettlinger v. FBI*, 596 F. Supp. 867, 872 (D.Mass. 1984); S. COMM.

ON THE JUDICIARY, AMENDING the FOIA, S. REP. NO. 854, 93rd Cong., 2d Sess. 11-12 (1974)).³

“This is in keeping with the statute’s purpose, which is ‘to remove the roadblocks and technicalities which have been used by... agencies to deny waivers.’” *Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Educ.*, 593 F. Supp. 261, 268 (D.D.C. 2009), citing to *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th. Cir. 1987) (quoting 132 Cong. Rec. S16496 (Oct. 15, 1986) (statement of Sen. Leahy)).

Requester’s ability — as well as many nonprofit organizations, educational institutions and news media that will benefit from disclosure — to utilize FOIA depends on their ability to obtain fee waivers. For this reason, “Congress explicitly recognized the importance and the difficulty of access to governmental documents for such typically under-funded organizations and individuals when it enacted the ‘public benefit’ test for FOIA fee waivers. This waiver provision was added to FOIA ‘in an attempt to prevent government agencies from using high fees to discourage certain types of requesters and

³ This was grounded in the recognition that the two plaintiffs in that merged appeal were, like Requester, public interest non-profits that “rely heavily and frequently on FOIA and its fee waiver provision to conduct the investigations that are essential to the performance of certain of their primary institutional activities -- publicizing governmental choices and highlighting possible abuses that otherwise might go undisputed and thus unchallenged. These investigations are the necessary prerequisites to the fundamental publicizing and mobilizing functions of these organizations. Access to information through FOIA is vital to their organizational missions.” *Better Gov’t v. State*. They therefore, like Requester, “routinely make FOIA requests that potentially would not be made absent a fee waiver provision”, requiring the court to consider the “Congressional determination that such constraints should not impede the access to information for appellants such as these.” *Id.*

requests,' in a clear reference to requests from journalists, scholars and, most importantly for our purposes, nonprofit public interest groups. Congress made clear its intent that fees should not be utilized to discourage requests or to place obstacles in the way of such disclosure, forbidding the use of fees as “toll gates” on the public access road to information.” *Better Government Ass'n v. State*, 780 F.2d 86, 88-89 (D.C. Cir. 1986).

As the *Better Government* court also recognized, public interest groups employ FOIA for activities “essential to the performance of certain of their primary institutional activities -- publicizing governmental choices and highlighting possible abuses that otherwise might go undisputed and thus unchallenged. These investigations are the necessary prerequisites to the fundamental publicizing and mobilizing functions of these organizations. Access to information through FOIA is vital to their organizational missions.” *Id.*

Congress enacted FOIA clearly intending that “fees should not be used for the purpose of discouraging requests for information or as obstacles to disclosure of requested information.” *Ettlinger v. F.B.I.*, 596 F. Supp. 867, 872 (D. Mass. 1984), citing Conf. Comm. Rep., H.R. Rep. No. 1380, 93d Cong., 2d Sess. 8 (1974) at 8. Refusal of fees as a means of withholding records from a FOIA requester constitutes improper withholding. *Id.* at 874.

Therefore, “insofar as... [agency] guidelines and standards in question act to discourage FOIA requests and to impede access to information for precisely those groups Congress intended to aid by the fee waiver provision, they inflict a continuing hardship on the non-profit public interest groups who depend on FOIA to supply their lifeblood --

information.” *Better Gov’t v. State* (internal citations omitted). The courts therefore will not permit such application of FOIA requirements that “‘chill’ the ability and willingness of their organizations to engage in activity that is not only voluntary, but that Congress explicitly wished to encourage.” *Id.* As such, agency implementing regulations may not facially or in practice interpret FOIA’s fee waiver provision in a way creating a fee barrier for Requester.

Courts have noted FOIA’s legislative history to find that a fee waiver request is likely to pass muster “if the information disclosed is new; supports public oversight of agency operations, including the quality of agency activities and the effects of agency policy or regulations on public health or safety; or, otherwise confirms or clarifies data on past or present operations of the government.” *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d at 1284-1286 (9th Cir. 1987).

This information request meets that description, for reasons both obvious and specified.

1) The subject matter of the requested records specifically concerns identifiable operations or activities of the government. Potentially responsive records reflect EPA involvement with EPA on high-profile, highly controversial regulations as part of what is colloquially known as the administration’s “war on coal”, particularly its efforts to regulate greenhouse gases (GHGs) under the Clean Air Act,⁴ the costs and benefits (EPA’s domain) and how agencies are seemingly attempting to finesse

⁴ For a timeline of this rule making *see e.g.*, http://www.epa.gov/climatechange/Downloads/endangerment/EndangermentFinding_Timeline.pdf.

them having become one of the rules' more contentious aspects.⁵ Further, EPA's involvement in constructing the "social cost of carbon" figure has impacts on rules throughout the federal government, including but by no means limited to the Department of Energy.

Release of these records also directly relates to high-level promises by the President and the Attorney General to be "the most transparent administration in history."⁶ This transparency promise, in its serial incarnations, demanded and spawned widespread media coverage, and study which prompted further media and public interest as well as congressional oversight (*see e.g.*, an internet search of "study Obama transparency").

The Department of Justice Freedom of Information Act Guide concedes that this threshold is easily met. There can be no question that it is met here and, for that potentially responsive records unquestionably reflect "identifiable operations or activities of the government" with a connection that is direct and clear, not remote.

2) Requester intends to broadly disseminate responsive information. As demonstrated herein requester has both the intent and the ability to convey any information obtained through this request to the public.

⁵ *See e.g.*, U.S. Chamber of Commerce and Institute for Energy Research on this at <https://www.uschamber.com/blog/epa-pumps-benefits-proposed-carbon-regulation> and <http://instituteforenergyresearch.org/analysis/epas-absurd-justifications-power-plant-regulations/>, respectively.

⁶ Jonathan Easley, *Obama says his is 'most transparent administration' ever*, THE HILL, Feb. 14, 2013, <http://thehill.com/blogs/blog-briefing-room/news/283335-obama-this-is-the-most-transparent-administration-in-history>.

CEI regularly publishes works and are regularly cited in newspapers and trade and political publications, representing a practice of broadly disseminating public information obtained under FOIA, which practice requester intends to continue in the instant matter.⁷

⁷ Print examples include *e.g.*, Stephen Dinan, *Do Text Messages from Feds Belong on Record? EPA's Chief's Case Opens Legal Battle*, WASHINGTON TIMES, Apr. 30, 2011, at A1; Peter Foster, *More Good News for Keystone*, NATIONAL POST, Jan. 9, 2013, at 11; Juliet Eilperin, *EPA IG Audits Jackson's Private E-mail Account*, WASHINGTON POST, Dec. 19, 2013, at A6; James Gill, *From the Same Town, But Universes Apart*, NEW ORLEANS TIMES-PICAYUNE, Jan. 2, 2013, at B1; Kyle Smith, *Hide & Sneak*, NEW YORK POST, Jan. 6, 2013, at 23; Dinan, *EPA Staff to Retrain on Open Records; Memo Suggests Breach of Policy*, WASHINGTON TIMES, Apr. 9, 2013, at A4; Dinan, *Suit Says EPA Balks at Release of Records; Seeks Evidence of Hidden Messages*, WASHINGTON TIMES, Apr. 2, 2013, at A1, Dinan, "Researcher: NASA hiding climate data", WASHINGTON TIMES, Dec. 3, 2009, at A1, Dawn Reeves, *EPA Emails Reveal Push To End State Air Group's Contract Over Conflict*, INSIDE EPA, Aug. 14, 2013; Dinan, [EPA's use of secret email addresses was widespread: report](#), WASHINGTON TIMES, Feb. 13, 2014. *See also*, Christopher C. Horner, *EPA administrators invent excuses to avoid transparency*, WASHINGTON EXAMINER, Nov. 25, 2012, <http://washingtonexaminer.com/epa-administrators-invent-excuses-to-avoid-transparency/article/2514301#.UL0aPYf7L9U>; *EPA Circles Wagons in 'Richard Windsor' Email Scandal*, BREITBART, Jan. 16, 2013, <http://www.breitbart.com/Big-Government/2013/01/16/What-s-in-a-Name-EPA-Goes-Full-Bunker-in-Richard-Windsor-EMAIL-Scandal>; *EPA Circles Wagons in 'Richard Windsor' Email Scandal*, BREITBART, Jan. 16, 2013; *The FOIA coping response in climate scientists*, WATTS UP WITH THAT, Jan. 21, 2014; *Nothing to See Here! Shredding Parties and Hiding the Decline in Taxpayer-Funded Science*, WATTS UP WITH THAT, Feb. 17, 2014; *The Collusion of the Climate Crowd*, WASHINGTON EXAMINER, Jul. 6, 2012; *Obama Admin Hides Official IPCC Correspondence from FOIA Using Former Romney Adviser John Holdren*, BREITBART, Oct. 17, 2013; *Most Secretive Ever? Seeing Through 'Transparent' Obama's Tricks*, WASHINGTON EXAMINER, Nov. 3, 2011; *NOAA releases tranche of FOIA documents -- 2 years later*, WATTS UP WITH THAT (two-time "science blog of the year"), Aug. 21, 2012; *The roadmap less traveled*, WATTS UP WITH THAT, Dec. 18, 2012; *EPA Doc Dump: Heavily redacted emails of former chief released*, BREITBART, Feb. 22, 2013; *EPA Circles Wagons in 'Richard Windsor' Email Scandal*, BREITBART, Jan. 16, 2013, *DOJ to release secret emails*, BREITBART, Jan. 16, 2013; *EPA administrators invent excuses to avoid transparency*, WASHINGTON EXAMINER, Nov. 25, 2012; *Chris Horner responds to the EPA statement today on the question of them running a black-ops program*, WATTS UP WITH THAT, Nov. 20, 2012; *FOIA and the coming US Carbon Tax via the US Treasury*, WATTS UP WITH THAT, Mar. 22, 2013; *Today is D-Day -- Delivery Day -- for Richard Windsor Emails*, WATTS UP WITH THAT, Jan. 14, 2013; *EPA Doubles Down on 'Richard Windsor' Stonewall*, WATTS UP WITH THAT, Jan. 15, 2013; *Treasury evasions on carbon tax email mock Obama's 'most transparent administration ever' claim*, WASHINGTON EXAMINER, Oct. 25, 2013.

3) **Disclosure is “likely to contribute” to an understanding of specific government operations or activities because the releasable material will be meaningfully informative in relation to the subject matter of the request.** Requester intends to broadly disseminate responsive information. The requested records have an informative value and are “likely to contribute to an understanding of Federal government operations or activities,” just as did requester’s other FOIA requests of EPA, and just as with those requests this SCC issue is of significant and increasing public interest. An internet search for the social cost of carbon affirms that this is not subject to reasonable dispute.

However, **the Department of Justice’s Freedom of Information Act Guide makes it clear that, in the DoJ’s view, the “likely to contribute” determination hinges in substantial part on whether the requested documents provide information that is not already in the public domain.** It cannot be denied that, to the extent the requested information is available to any parties, this is information held only by EPA or EPA, is therefore clear that the requested records are “likely to contribute” to an understanding of your agency's decisions because they are not otherwise accessible other than through a FOIA request.

Thus, disclosure and dissemination of this information will facilitate meaningful public participation in the policy debate, therefore fulfilling the requirement that the documents requested be “meaningfully informative” and “likely to contribute” to an understanding of your agency's dealings with interested parties outside the agency and interested -- but not formally involved -- employees who may nonetheless be having an

impact on the federal permitting process, state and local processes and/or activism on the issue.

4) The disclosure will contribute to the understanding of the public at large, as opposed to the understanding of the requester or a narrow segment of interested persons. Requester has an established practice of utilizing FOIA to educate the public, lawmakers, and news media about the government’s operations and, in particular and as illustrated in detail above, have brought to light important information about policies grounded in energy and environmental policy. CEI intends to continue this effort in the context of and using records responsive to this request, as debate, analysis and publication continue on these regulations.

CEI is dedicated to and has a documented record of promoting the public interest, advocating sensible policies to protect human health and the environment, broadly disseminating public information, and routinely receiving fee waivers under FOIA.

With a demonstrated interest and record in the relevant policy debates and expertise in the subject of energy- and environment-related regulatory policies, CEI unquestionably has the “specialized knowledge” and “ability and intention” to disseminate the information requested in the broad manner, and to do so in a manner that contributes to the understanding of the “public-at-large.”

5) The disclosure will contribute “significantly” to public understanding of government operations or activities. *We repeat and incorporate here by reference the arguments above from the discussion of how disclosure is “likely to contribute” to an understanding of specific government operations or activities.*

There is no publicly available information on the discussions this request seeks. Because there is no such information or any such analysis in existence, any increase in public understanding of this issue is a significant contribution to this increasingly important issue as regards the operation and function of government.

Because CEI has no commercial interests of any kind, disclosure can only result in serving the needs of the public interest.

Other Considerations

EPA must consider four conditions to determine whether a request is in the public interest and uses four factors in making that determination. We have addressed all factors, but add the following additional considerations relevant to factors 2 and 4.

Factor 2

FOIA requires the Requester to show that the disclosure is likely to contribute to an understanding of government operations or activities. Under this factor, agencies assess the “informative value” of the records and demands “an increase” in understanding. This factor 2 has a fatal logical defect. Agencies offer no authority for requiring an “increase” in understanding, nor does it provide a metric by which to measure an increase. And, agencies offer no criteria by which to determine under what conditions information that is in the records and is already somewhere in the public domain would be likely to contribute to public understanding.

Agencies typically argue that they evaluate Factor 2 (and all others) on a case by case basis. In doing so, it “must pour ‘some definitional content’ into a vague statutory term by ‘defining the criteria it is applying.’” *PDK Labs. v. United States DEA*, 438 F.3d

1184, 1194, (D.C. Cir. 2006)(citations omitted). “To refuse to define the criteria it is applying is equivalent to simply saying no without explanation.” *Id.* “A substantive regulation must have sufficient content and definitiveness as to be a meaningful exercise in agency lawmaking. It is certainly not open to an agency to promulgate mush.”

Paralyzed Veterans of Am. V. D.C. Arena LP, 117 F.3d 579, 584 (D.C. Cir. 1997). Agency failure to pour any definitional content into the term “increase” does not even rise to the level of mush.

Despite the lack of any metric on what would constitute a sufficient increase in public understanding, the Requester meets the requirement because for the information we seek there is no public information. The information we seek will be used to increase the public’ understanding of a current EPA’s employee’s role in the EPA’s endangerment regulations. There is no public information available on this issue Any information on that would increase the public’s knowledge.

The public has no other means to secure information on these government operations other than through the Freedom of Information Act. Absent access to the public record, the public cannot learn about these governmental activities and operations.

Factor 4

Agencies requires the Requester to show how the disclosure is likely to contribute significantly to public understanding of government operations or activities.

Once again, we note that agencies have not provided any definitional content into the vague statutory term “significantly,” offering no criteria or metric by which to measure the significance of the contribution to public understanding CEI will provide.

Nevertheless, as previously explained, the public has no source of information on the issue. Any increase in public understanding of this issue is a significant contribution to this highly visible and politically important issue as regards the operation and function of government, especially at a time when agency transparency is (rightly) so controversial.

As such, requester has stated “with reasonable specificity that their request pertains to operations of the government,” that they intend to broadly disseminate responsive records. “[T]he informative value of a request depends not on there being certainty of what the documents will reveal, but rather on the requesting party having explained with reasonable specificity how those documents would increase public knowledge of the functions of government.” *Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health and Human Services*, 481 F. Supp. 2d 99, 107-109 (D.D.C. 2006).

We note that federal agencies regularly waive requester CEI’s fees for substantial productions arising from requests expressing the same intention, even using the same

language as used in the instant request.⁸ This request is unlikely to yield substantial document production.

For all of these reasons, CEI's fees should be waived in the instant matter.

Alternately, CEI qualifies as a media organization for purposes of fee waiver

The provisions for determining whether a requesting party is a representative of the news media, and the "significant public interest" provision, are not mutually exclusive. Again, as CEI is a non-commercial requester, it is entitled to liberal construction of the fee waiver standards. 5 U.S.C.S. § 552(a)(4)(A)(iii), *Perkins v. U.S. Department of Veterans Affairs*. Alternately and only in the event EPA/EPA refuses to waive our fees under the "significant public interest" test, which we would then appeal while requesting EPA proceed with processing on the grounds that we are a media organization, we request a waiver or limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii) ("fees shall be limited to reasonable standard charges for document duplication when records are not

⁸ See, e.g., no fees required by other agencies for processing often substantial numbers of records on the same or nearly the same but less robust waiver-request language include: **DoI** OS-2012-00113, OS-2012-00124, OS-2012-00172, FWS-2012-00380, BLM-2014-00004, BLM-2012-016, BLM: EFTS 2012-00264, CASO 2012-00278, NVSO 2012-00277; **NOAA** 2013-001089, 2013-000297, 2013-000298, 2010-0199, and "Peterson-Stocker letter" FOIA (August 6, 2012 request, no tracking number assigned, records produced); **DoL** (689053, 689056, 691856 (all from 2012)); **FERC** 14-10; **DoE** HQ-2010-01442-F, 2010-00825-F, HQ-2011-01846, HQ-2012-00351-F, HQ-2014-00161-F, HQ-2010-0096-F, GO-09-060, GO-12-185, HQ-2012-00707-F; **NSF** (10-141); **OSTP** 12-21, 12-43, 12-45, 14-02.; **EPA** HQ-2013-000606, HQ-FOI-01087-12, HQ-2013-001343, R6-2013-00361, R6-2013-00362, R6-2013-00363, HQ-FOI-01312-10, R9-2013-007631, HQ-FOI-01268-12, HQ-FOI-01269, HQ-FOI-01270-12, HQ-2014-006434. These latter examples involve EPA either waiving fees, not addressing the fee issue, or denying fee waiver but dropping that posture when requester sued.

sought for commercial use and the request is made by.... a representative of the news media...”).

However, we note that as documents (emails) are requested and available electronically, there are no copying costs.

Requester repeats by reference the discussion as to its publishing practices, reach and intentions to broadly disseminate, all in fulfillment of CEI’s mission, set forth *supra*.

Also, the federal government has already acknowledged that CEI qualifies as a media organization under FOIA.⁹

The key to “media” fee waiver is whether a group publishes, as CEI most surely does. *See supra*. In *National Security Archive v. Department of Defense*, 880 F.2d 1381 (D.C. Cir. 1989), the D.C. Circuit wrote:

The relevant legislative history is simple to state: because one of the purposes of FIRA is to encourage the dissemination of information in Government files, as Senator Leahy (a sponsor) said: “It is critical that the phrase ‘representative of the news media’ be broadly interpreted if the act is to work as expected.... If fact, *any person or organization which regularly publishes or disseminates information to the public ... should qualify for waivers as a ‘representative of the news media.’*”

Id. at 1385-86 (emphasis in original).

As the court in *Electronic Privacy Information Center v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003) noted, this test is met not only by outlets in the business of publishing such as newspapers; instead, citing to the *National Security Archives* court, it noted one key fact is determinative, the “*plan to act, in essence, as a publisher*, both in print and other media.” *EPIC v. DOD*, 241 F.Supp.2d at 10 (*emphases added*). “In short,

⁹ *See e.g.*, Treasury FOIA Nos. 2012-08-053, 2012-08-054.

the court of appeals in National Security Archive held that “[a] representative of the news media is, in essence, a person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience.” *Id.* at 11. *See also, Media Access Project v. FCC*, 883 F.2d 1063, 1065 (D.C. Cir. 1989).

For these reasons, CEI plainly qualifies as a “representative of the news media” under the statutory definition, because it routinely gathers information of interest to the public, uses editorial skills to turn it into distinct work, and distributes that work to the public.

The information is of critical importance to the nonprofit policy advocacy groups engaged on these relevant issues, news media covering the issues, and others concerned with EPA/EPA activities in this controversial area, or as the Supreme Court once noted, what their government is up to.

For these reasons, requester qualifies as a “representative[] of the news media” under the statutory definition, because it routinely gathers information of interest to the public, uses editorial skills to turn it into distinct work, and distributes that work to the public. *See EPIC v. Dep’t of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003)(non-profit organization that gathered information and published it in newsletters and otherwise for general distribution qualified as representative of news media for purpose of limiting fees). Courts have reaffirmed that non-profit requesters who are not traditional news media outlets can qualify as representatives of the new media for purposes of the FOIA, particularly after the 2007 amendments to FOIA. *See ACLU of Washington v. U.S. Dep’t*

of Justice, No. C09-0642RSL, 2011, 2011 U.S. Dist. LEXIS 26047 at *32 (W.D. Wash. Mar. 10, 2011). *See also Serv. Women's Action Network v. DOD*, 2012 U.S. Dist. Lexis 45292 (D. Conn., Mar. 30, 2012).

Accordingly, any fees charged must be limited to duplication costs. The records requested are available electronically and are requested in electronic format, so there should be no costs.

Conclusion

We expect EPA to release within the statutory period all responsive records and any segregable portions of responsive records containing properly exempt information, to disclose records possibly subject to exemptions to the maximum extent permitted by FOIA's discretionary provisions and otherwise proceed with a bias toward disclosure, consistent with the law's clear intent, judicial precedent affirming this bias, and President Obama's directive to all federal agencies on January 26, 2009. Memo to the Heads of Exec. Offices and Agencies, Freedom of Information Act, 74 Fed. Reg. 4683 (Jan. 26, 2009) ("The Freedom of Information Act should be administered with a clear presumption: in the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, or because of speculative or abstract fears").

We expect all aspects of this request including the search for responsive records be processed free from conflict of interest. We request EPA provide particularized assurance that it is reviewing some quantity of records with an eye toward production on some estimated schedule, so as to establish some reasonable belief that it is

processing our request. 5 U.S.C.A. § 552(a)(6)(A)(i). EPA must at least inform us of the scope of potentially responsive records, including the scope of the records it plans to produce and the scope of documents that it plans to withhold under any FOIA exemptions; FOIA specifically requires EPA to immediately notify CEI with a particularized and substantive determination, and of its determination and its reasoning, as well as CEI's right to appeal; further, FOIA's unusual circumstances safety valve to extend time to make a determination, and its exceptional circumstances safety valve providing additional time for a diligent agency to complete its review of records, indicate that responsive documents must be collected, examined, and reviewed in order to constitute a determination. *See Citizens for Responsible Ethics in Washington v. Federal Election Commission*, 711 F.3d 180, 186 (D.C. Cir. 2013). *See also, Muttitt v. U.S. Central Command*, 813 F. Supp. 2d 221; 2011 U.S. Dist. LEXIS 110396 at *14 (D.D.C. Sept. 28, 2011)(addressing "the statutory requirement that [agencies] provide estimated dates of completion").

We request a rolling production of records, such that the agency furnishes records to my attention as soon as they are identified, preferably electronically, but as needed then to my attention, at the address below. We inform EPA of our intention to protect our appellate rights on this matter at the earliest date should EPA not comply with FOIA per, *e.g., CREW v. Fed. Election Comm'n*, 711 F.3d 180 (D.C. Cir. 2013).

If you have any questions please do not hesitate to contact me. I look forward to your timely response.

Sincerely,



Christopher C. Horner
Competitive Enterprise Institute
1899 L Street, NW, 12th Floor
Washington, D.C. 20036
202.262.4458 (M)
chorner@cei.org

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, May 17, 2017 11:19 AM
To: Bogomolny, Michael (Federal)
Subject: Re: searching for unreleased documents in DOC-NOAA-2017-000701
Attachments: FORDEM FOIA 2017-000701 signed SG (1).pdf

Hi Bogo--

(b)(5)
[Redacted]
[Redacted]
[Redacted]. I'm including that Memo, which contains the custodian's contact information, to this email for your convenience.

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, May 17, 2017 at 11:05 AM, Bogomolny, Michael (Federal) <MBogomolny@doc.gov> wrote:
Mark,

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

Thanks,
bogo

[NOAA LETTERHEAD]

MEMORANDUM FOR: NOAA FOIA Office
FROM: NMFS FOIA Office
SUBJECT: DOC-NOAA-2017-000701
Confidential and sensitive Responsive Records

For purposes of FOIAonline (FO), our request tracking database, this memorandum stands in place of weekly report by the NOAA General Counsel Pacific Islands, Section Chief to the head of NOAA General Counsel. To limit the risk of unauthorized access the records must be stored outside of FO.

Complying with NOAA Administrative Order 205-14, Freedom of Information Act, section 5, paragraph 5.05(f) and section 6, paragraph 6.03(g), this memorandum documents exemption from storing certain responsive records for FOIA request DOC-NOAA-2017-000701 in FO.

The requested records are exempted from disclosure under 5 U.S.C.552(b)(5), attorney work product. Access is limited to authorized agency personnel.

The custodian for these records is Frederick Tucher, Section Chief for the Pacific Islands General Counsel (Frederick.Tucher@noaa.gov).

GOODMAN.STEVE
N.M.1407171310

Digitally signed by
GOODMAN.STEVEN.M.1407171310
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI,
ou=OTHER, cn=GOODMAN.STEVEN.M.1407171310
Date: 2017.04.12 14:27:18 -04'00'

Steven Goodman
Acting NMFS FOIA Officer

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, May 17, 2017 2:46 PM
To: Stephen Lipps - NOAA Federal; John Almeida - NOAA Federal; Holmes, Colin; Robert Moller - NOAA Federal; Scott Smullen - NOAA Federal; Jeff Dillen - NOAA Federal; Kristen Gustafson - NOAA Federal
Cc: Tom Taylor; Kimberly Katzenbarger - NOAA FEDERAL; Charles; Dennis Morgan - NOAA Federal; Stacey Nathanson - NOAA Federal; Robert Swisher - NOAA Federal; Steven Goodman - NOAA Federal; Samuel Dixon - NOAA Affiliate; Lola Stith - NOAA Affiliate; Zachary Goldstein - NOAA Federal; Douglas Perry - NOAA Federal; Nkolika Ndubisi - NOAA Federal; Jeri Dockett - NOAA Affiliate; Cc: OCIO/OPPA; Troy Wilds - NOAA Federal; Lawrence Charters - NOAA Federal; Allison Soussi-Tanani - NOAA Federal; Bogomolny, Michael (Federal); Pamela Lawrence - NOAA Federal
Subject: Weekly FOIA Incoming and High Visibility Requests
Attachments: Defendant's Reply ISO MSJ.pdf; Weekly FOIA Incoming and High Visibility Requests 05.10.17 - 05.17.17.xls

Good Afternoon,

Attached is this week's report.

One request was received from Earthjustice asking for records reflecting the fate, management, and use of BLM lands in southwest Oregon governed by the Oregon and California Lands Act. (DOC-2017-001196).

In the Sierra Club FOIA Litigation, in the Northern District of California, NOAA filed its Reply Memorandum in Support of our Cross Motion for Summary Judgment (attached). That case, in part, is litigating the applicability of FOIA Exemption (b)(5) to the Draft Biological Opinions sought by the Plaintiff. The original request sought eight categories of records relating to the EPA 316(b) Rule, Biological Opinion, and ESA Consultation. The hearing on that Motion is currently set for June 6, 2017.

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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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 SIERRA CLUB, INC.,
14 Plaintiff,

15 v.

16 NATIONAL MARINE FISHERIES SERVICE)
17 and UNITED STATES FISH AND WILDLIFE)
18 SERVICE,)
19 Defendants.)

) Case No. 15-cv-05872 EDL

) **DEFENDANTS' REPLY MEMORANDUM IN**
) **SUPPORT OF CROSS MOTION FOR**
) **SUMMARY JUDGMENT**

) Date: June 6, 2017

) Time: 9:00 a.m.

) The Honorable Elizabeth D. Laporte

INTRODUCTION

Judge Conti’s on-point and in-district decision in *Our Children’s Earth Foundation*, 2015 WL 4452136, Nos. 14-4365 SC and 14-1130 SC (N.D. Cal. July 20, 2015), and the Ninth Circuit’s decision in *National Wildlife Federation*, 861 F.2d 1114 (9th Cir.1988), each compel the conclusion that the draft biological opinions and related documents at issue here are protected from FOIA disclosure by the deliberative process privilege. The draft biological opinions are the same type of working drafts, or tentative agency opinions, that Judge Conti found protected. Scientific decisions are no less eligible for deliberative process protection than other agency decisions. Moreover, the privilege protects an agency’s deliberative process. Even factual and scientific documents are protected, where disclosure would allow for reconstruction of the agency’s thought process, as it would here.

Contrary to plaintiff’s view, the draft biological opinions did *not* reflect the Services’¹ final views. The jeopardy opinions expressed in the draft biological opinions were quintessential tentative agency positions. The Services ultimately *changed their minds* and came to no jeopardy opinions at the conclusion of the two-year consultation process. This particular section 7 consultation was complex and novel and presented numerous scientific, policy, and legal considerations, ultimately resulting in NMFS, FWS, and EPA modifying their positions in the “give-and-take” process of preparing the final Biological Opinion. *See Nw. Env’tl. Advocates v. U.S. E.P.A.*, No. CIV 05-1876-HA, 2009 WL 349732, at *7 (D. Or. Feb. 11, 2009) (recognizing that documents revealing an agency’s “give-and-take” process of considering alternate courses of action are protected under Ninth Circuit precedent). The Court should thus grant the Services’ motion and hold that the 25 remaining documents at issue are deliberative process protected.

I. THE DRAFT BIOLOGICAL OPINIONS ARE PROTECTED BY THE DELIBERATIVE PROCESS PRIVILEGE.

A. The December 6 and 9 Draft Opinions Are “Tentative Agency Positions” That Were Ultimately Not Adopted.

Plaintiff concedes that documents containing “tentative agency positions” can be covered by the deliberative process privilege. (*See, e.g.*, Opp. at 1, 2, 5, and 9.) That is precisely what the draft

¹ This memorandum uses the same abbreviations as defendants’ opening brief.

1 biological opinions at issue here are. The draft opinions were clearly “tentative,” as the Services
2 **changed their opinion**, ultimately issuing a “no jeopardy” opinion, as opposed to the “jeopardy”
3 opinions contemplated during the preliminary stages. (Frazer Dec. ¶¶ 3-6; Rauch Dec. ¶¶ 10-11.) The
4 drafts were never signed or sent to the EPA. Instead, as Gary Frazer at FWS explained, “in December
5 [2013], the FWS concluded that additional consultation was needed to better understand and consider
6 the operation of key elements of EPA’s rule, the elements of which were still being deliberated within
7 EPA as well. Therefore, these December 6 and December 9, 2013 draft opinions were never signed by
8 me and distributed to EPA as the agency’s official preliminary position. In fact, the FWS, NMFS, and
9 the EPA all agreed, that more work needed to be done and agreed to extend the time frame for
10 consultation.” (Frazer Dec. ¶ 6.)

11 Samuel D. Rauch, III, at NMFS, also testified about the tentative nature of the views expressed
12 in the draft biological opinions. “The December 6, 2013, NMFS’ draft opinion at issue here was clearly
13 not final, as NMFS never issued a separate biological opinion, the final Opinion had substantial changes
14 from NMFS’ December 6, 2013 draft and reached an entirely different conclusion (i.e., no jeopardy).
15 Moreover, NMFS never sent its December 6, 2013 draft at issue to the EPA.” (Rauch Dec. ¶ 12.)
16 “Ultimately, NMFS abandoned this draft and did not issue an opinion, instead co-signing the Joint
17 Opinion.” (*Id.* ¶ 15.)

18 Plaintiff’s claim that the December 6 and December 9 drafts “reflect the formal positions of the
19 agencies” is just wrong. (Opp. at 9.) The drafts “were not informally or expressly adopted as the
20 agency’s position.” *See Defs. of Wildlife v. U.S. Dep’t of Interior*, 314 F. Supp. 2d 1, 21-22 (D.D.C.
21 2004) (holding that where “record d[id] not reflect that these documents were expressly adopted by the
22 [agency],” they were exempt from FOIA disclosure under the deliberative process privilege). It matters
23 not that, at one point in time, the Services hoped to have final agency views by December 6, 2013, to
24 share with the EPA. (Opp. at 9.) As that point in time approached, everyone agreed that the Services
25 **did not** have a final agency position to share under 50 C.F.R. § 402.14(g)(5) and that more work needed
26 to be done. (Frazer Dec. ¶ 6; Rauch Dec. ¶ 10.) It is precisely because the December 9 draft did not
27 reflect the formal view of FWS, for example, that Gary Frazer did not sign it and did not “distribute[it]
28 to the EPA as the agency’s official preliminary position.” (Frazer Dec. ¶ 6.) As Samuel Rauch testified,

1 draft opinions remain “subject to change until final signature,” and the December 6 draft was never
2 signed. (Rauch Dec. ¶ 12, 15.)

3 The evidence is not simply that the “EPA needed to revise its November 1, 2013 regulation if it
4 wanted to avoid” a jeopardy finding, as plaintiff claims. (Opp. at 10.) Instead, as Mr. Frazer testified,
5 FWS felt that “additional consultation was needed to better understand and consider the operation of key
6 elements of EPA’s rule, the elements of which were still being deliberated within EPA” and to consider
7 “EPA’s commitment to oversee implementation of the rule.” (Frazer Dec. ¶¶ 6, 3.) Tellingly, plaintiff
8 is unable to cite any authority holding the Services are precluded from modifying contemplated
9 § 402.14(g)(5) timetables by agreement, which is precisely what happened here. (Opp. at 9-13.) As of
10 December 6 and 9, 2013, there was simply no final agency position.

11 The draft biological opinions thus fall precisely under the “tentative agency positions” that even
12 plaintiffs acknowledge can be deliberative process protected. (Opp. at 1, 2, 5, and 9.) The court in
13 *Desert Survivors v. U.S. Dep’t of the Interior*, No. 16-CV-01165-JCS, 2017 WL 475281, at *14 (N.D.
14 Cal. Feb. 6, 2017), upon which plaintiff relies, made this same observation, noting that disclosure of
15 “tentative opinions” would be more “likely to have a chilling effect” on agency decision making. *See*
16 *also F.T.C. v. Warner Commc’ns Inc.*, 742 F.2d 1156, 1161 (9th Cir. 1984) (The deliberative process
17 “privilege permits the government to withhold documents that reflect *advisory opinions*,
18 *recommendations and deliberations . . .*”) (emphasis added). Because the December 6 and December
19 9 drafts reflect a tentative agency views—views that the Services ultimately abandoned—they are
20 protected by the deliberative process privilege.²

21 **B. The Draft Opinions Here Fall Under The *Our Children’s Earth* Decision And Are**
22 **Deliberative Process Protected.**

23 Plaintiff is unable to point to any other on-point, in-district authority other than *Our Children’s*
24

25 _____
26 ² NMFS has also established that the April 4, 2014 draft of the biological opinion is protected. It
27 is clearly pre-decisional, as the Biological Opinion was not finalized until May 19, 2014 (Rauch Dec.
28 ¶ 6.) As Samuel Rauch explained in his declaration, the April 4 draft was created as part of the
Services’ deliberations: “Because the Services decided to issue a joint Opinion and because this draft
reflected a version of EPA’s Regulation that differed prior to the issuance of the final joint Opinion, this
draft was abandoned and never finalized.” (Rauch Dec. ¶ 17.) It was clearly not “the 50 C.F.R.
§ 402.14(g)(5) draft,” as plaintiff posits (Opp. at 18), as it was “not sent to EPA.” (Rauch Dec. ¶ 17.)

1 *Earth v. National Marine Fisheries Service*. In *Our Children’s Earth*, Judge Conti held that the draft
2 biological opinions at issue, save one, were protected by the deliberative process privilege. The
3 document that Judge Conti found unprotected does not appear to have been a draft biological opinion at
4 all, but rather “an email from a NOAA employee to her supervisor with a summary and her review on a
5 SHEP monitoring report (pages 1–2) as well as an attachment organizing that summary/review on a
6 chart (page 3).” 2015 WL 4452136, at *5. In contrast, the deliberative process documents “[we]re
7 working drafts subject to revision for a biological opinion that was being prepared for release[.]” *Id.* at
8 *5. That is precisely what the draft biological opinions at issue here are. As the declarants have
9 testified, the December 6 and December 9 draft opinions were working drafts, which the Services
10 ultimately did not adopt. (Frazer Dec. ¶¶ 3-6; Rauch Dec. ¶¶ 10-11.) They were not just “subject to
11 revision,” but were instead actually revised. (*Id.*)

12 Plaintiff’s view that the scientific, ESA Section 7 consultation process “does not implicate the
13 Services’ policy-oriented judgment” is at odds with Judge Conti’s reasoning in *Our Children’s Earth*.
14 (Opp. at 2, 12-13.) Judge Conti agreed that, in the course of the ESA section 7 consultation, NMFS
15 “was required to base its biological opinion on the best scientific information available.” 2015 WL
16 4452136, at *5. However, Judge Conti disagreed that the nature of NMFS’s undertaking made the draft
17 biological opinions unsuitable for deliberate process protection. On the contrary, citing the Ninth
18 Circuit’s decision in *National Wildlife Federation*, Judge Conti held that “the drafts sought reflect the
19 *interpretations* of that scientific information by staff and scientists, thus reflecting their personal
20 opinions on the science.” 2015 WL 4452136, at *5 (emphasis in original).

21 Moreover, unlike the out-of-district decision in *Greenpeace v. National Marine Fisheries*
22 *Service*, 198 F.R.D. 540 (W.D. Wash. 2000), upon which plaintiff relies, Judge Conti’s decision is
23 consistent with Ninth Circuit precedent. Ninth Circuit caselaw establishes that the deliberate process
24 privilege applies to not only to the formulation of “policies,” but to other “**government decisions**,” as
25 well. *Warner Commc’ns Inc.*, 742 F.2d at 1161. Accordingly, in *National Wildlife Federation*, the
26 Ninth Circuit held that the Forest Service’s draft plans and environmental impact statements (“EIS”)
27 were protected by the deliberative process privilege, notwithstanding the fact that they were scientific in
28 nature. 861 F.2d at 1118 (rejecting argument that, to qualify to deliberate process protection, a

1 document “must relate to deliberations of law and policy”).

2 The drafts at issue fall under the four corners of *Our Children’s Earth*, which is better reasoned
3 than the out-of-district decisions upon which plaintiff relies. The Court should follow Judge Conti’s
4 decision and find the December 6 and December 9 working drafts of the biological opinion are
5 deliberative process protected.

6 **C. The Draft Biological Opinions Are Protected In Their Entirety.**

7 Plaintiff’s argument that there are segregable portions of the draft biological opinions, such as
8 “compilations of data,” which “could easily be segregated” (Opp. at 16-17), ignores an important aspect
9 of the Ninth Circuit’s segregability jurisprudence. The privilege protects an agency’s decision-making
10 process. Accordingly, “even if the content of a document is *factual*, if disclosure of the document
11 would *expose the decision-making process itself to public scrutiny* by revealing the agency’s
12 evaluation and analysis of the multitudinous facts, the document would nonetheless be exempt from
13 disclosure.” *National Wildlife Fed’n*, 861 F.2d at 1118 (internal quotation omitted) (emphasis added).
14 Gary Frazer has testified that FWS withheld the entire December 9 working draft of the biological
15 opinions because disclosure of parts of the opinion could “shed light on FWS’s thinking and discussions
16 at the time the document was drafted” and “it is not possible to reveal any factual material without
17 revealing the Services’ preliminary analysis and assumptions.” (Frazer Dec. ¶ 25; *see also* Rauch Dec.
18 ¶ 15 (“The discussion of the factual material in the [December 6 working draft] is generally intertwined
19 with the analysis such that it is not possible to reveal the factual material without revealing the agency’s
20 preliminary analysis.”).) The Services have shown that, under *National Wildlife Federation*, the entirety
21 of the draft December 6 and 9 biological opinions are protected by the deliberative process privilege.

22 **II. DRAFT PORTIONS OF THE BIOLOGICAL OPINION, AND RELATED EMAILS
23 AND CORRESPONDENCE, ARE ALSO PROTECTED BY THE DELIBERATIVE
24 PROCESS PRIVILEGE.**

25 The parties’ arguments about draft portions of the biological opinion, such as the RPAs, and the
26 emails and other correspondence that NMFS staff exchanged in the process of preparing and making
27 decisions about the biological opinion mirror their arguments about the drafts of the biological opinion
28 themselves. The Services maintain that these documents are protected by the deliberative process
privilege for at least two reasons. First, the privilege protects the agency’s decision making process.

1 *National Wildlife Fed'n*, 861 F.2d at 1118 (“[W]e believe a better analytical tool than merely
2 determining whether the material itself was essentially deliberative or factual should be used: we should
3 focus on whether the document in question is a part of the *deliberative process*.”) (emphasis in original).
4 “Hence, even if the content of a document is factual, if disclosure of the document would expose the
5 decision-making process itself to public scrutiny by revealing the agency’s evaluation and analysis of
6 the multitudinous facts, the document would nonetheless be exempt from disclosure.” *Id.* (internal
7 quotations omitted). Mr. Frazer and Mr. Rauch have testified that disclosure of the draft RPAs, emails,
8 and other correspondence would reveal the Services’ deliberative process. (*See, e.g.*, Frazer Dec. ¶ 26
9 (“There is no way to release this document [a draft RPA] without undermining the deliberative process
10 between members of the FWS internally, as well as between staff of FWS, NMFS and EPA”); Rauch
11 Dec. ¶¶ 16-36.)

12 Second, these documents do not lose their protection, simply because they concern a scientific
13 governmental decision and contain scientific information. (Opp. at 21 (arguing that a “scientific table
14 showing the amount of take for a species of fish over time” is not exempt).) As set forth in Services’
15 opening memorandum, the deliberative process privilege protects not just policy formulation, but the
16 “process by which governmental *decisions* and policies are formulated.” *Dep’t of Interior v. Klamath*
17 *Water Users Protective Ass’n*, 532 U.S. 1, 8 (2001) (emphasis added). “While a jeopardy determination
18 may sound purely factual, it is a decision based on a welter of subsidiary decisions that cannot easily be
19 so characterized, involving such things as what factors to consider, how to weigh them, how to address
20 gaps in the evidence, and how to reconcile inconsistencies in the evidence.” *Sierra Club v. Kempthorne*,
21 488 F. Supp. 2d 1188, 1191-92 (S.D. Ala. 2007). The draft RPAs and related correspondence are thus
22 protected by the deliberative process privilege.³

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³ Plaintiff specifically identifies NMFS Doc No. 0.7.266.45161, a “one-paragraph email sent March 10, 2014 from Jennifer Schultz of NMFS . . . discussing implementation of the 2001 MOA” with EPA (Rauch Dec. ¶ 27) as one for which “[d]efendants have offered no explanation for why analysis of the implementation of a sixteen-year-old agreement [would] expose individual deliberations about this BiOp.” (Opp. at 20.) This is not true. Samuel Rauch describes, in paragraph 26 of his declaration, as specifically as he can without revealing the substance of the communication, the relevance of the 2001 MOA to the draft biological opinion at issue.

1 **III. THE SERVICES HAVE DEMONSTRATED A LACK OF SEGREGABILITY, ON A**
 2 **DOCUMENT-BY-DOCUMENT BASIS.**

3 The Services have met their burden of establishing a lack of segregability. Unlike the “blanket
 4 statement” that Judge Conti found “insufficient” in *Our Children's Earth*, 2015 WL 4452136, at *5,
 5 which purported to cover *all* the “documents listed in the *Vaughn* Index,” Gary Frazer and Samuel
 6 Rauch have gone through each of the 27 documents at issue,⁴ on a *document-by-document basis* and
 7 provided their segregability conclusions. (Frazer Dec. ¶¶ 22-31; Rauch Dec. ¶¶ 15-36.) “The district
 8 court may rely on an agency’s declaration in making its segregability determination.” *Hamdan v. U.S.*
 9 *Dep’t of Justice*, 797 F.3d 759, 779 (9th Cir. 2015). That is especially appropriate here, as the Services
 10 have supplied with Court with detailed declarations—Mr. Rauch’s declaration is 18 pages long, and Mr.
 11 Frazer’s declaration is 13 pages. Each declarant explains what the disputed document is and the reasons
 12 it is protected by the deliberative process privilege. (Rauch Dec. ¶¶ 22-31; Frazer Dec. ¶¶14-36.) In
 13 light of these detailed declarations, the Services “are entitled to a presumption that they complied with
 14 the obligation to disclose reasonably segregable material.” *Sussman v. U.S. Marshals Serv.*, 494 F.3d
 15 1106, 1117 (D.C. Cir. 2007); *see also Hamdan*, 797 F.3d at 779 (“Agency affidavits that are sufficiently
 16 detailed are presumed to be made in good faith and may be taken at face value.”).

17 Moreover, it is apparent that the Services were careful and mindful of the need to disclose, where
 18 possible. NMFS, for example, released 1,536 documents with redactions and, in re-reviewing the
 19 documents in connection with this motion, released three additional documents (one with redactions).
 20 (Rauch Dec. ¶¶ 8, 14.) FWS similarly released 347 documents with redactions. (Frazer Dec. ¶ 10.)
 21 This shows that the Services “clearly considered each document and tried to release some portion” of it.
 22 *Our Children's Earth Found. v. Nat’l Marine Fisheries Serv.*, No. 14-1130 SC, 2015 WL 6331268, at *6
 23 (N.D. Cal. Oct. 21, 2015).

24 Finally, the Services disagree that “scientific and factual information” included in these drafts are
 25 unprotected. (Opp. at 18.) In contrast with plaintiff’s view, the Ninth Circuit has established that the
 26 standard is not whether the document contains factual and/or scientific information. Instead, the
 27

28 ⁴ Plaintiff has withdrawn its request for two of these, and there are now only 25 documents at
 issue. (Opp. at 18.)

1 standard is whether disclosure of the document would allow for reconstruction of the agency's decision-
2 making process. "[E]ven if the content of a document is factual, if disclosure of the document would
3 expose the decision-making process itself to public scrutiny by revealing the agency's evaluation and
4 analysis of the multitudinous facts, the document would nonetheless be exempt from disclosure."
5 *National Wildlife Fed'n*, 861 F.2d at 1118 (internal quotation omitted). The Services have reviewed the
6 drafts in question and determined that, under this standard, they contain no segregable information.
7 (Frazer Dec. ¶¶ 22-25; Rauch Dec. ¶¶ 15, 17.)

8 **IV. PLAINTIFF HAS NOT DEMONSTRATED A DISPUTE OF MATERIAL FACT**
9 **THAT WOULD WARRANT A TRIAL.**

10 Although it is true that the rare FOIA case may warrant a trial, "FOIA cases are typically and
11 appropriately decided on motions for summary judgment." *Boyd v. Exec. Office for United States*
12 *Attorneys*, 87 F. Supp. 3d 58, 68 (D.D.C. 2015). In *Animal Legal Defense Fund v. U.S. Food & Drug*
13 *Administration*, 836 F.3d 987, 989 (9th Cir. 2016), upon which plaintiff relies (and over which this
14 Court is presiding), the Ninth Circuit acknowledged that "[m]ost FOIA cases are resolved by the district
15 court on summary judgment, with the district court entering judgment as a matter of law."

16 *Animal Legal Defense Fund* was an unusual FOIA case, however, which involved the trade
17 secret exemption. At the summary judgment stage, "the parties submitted competing declarations
18 concerning the potential competitive effect of releasing egg-production information." *Animal Legal Def.*
19 *Fund v. U.S. Food & Drug Admin.*, 839 F.3d 750, 751 (9th Cir. 2016). The production of this
20 competing, material evidence created a disputed issue of material fact—namely whether release of the
21 subject information could result in competitive harm—warranting further proceedings. *Id.* That was
22 also the situation in *Public Citizen Health Research Group v. Food & Drug Administration*, 953 F.
23 Supp. 400, 403 (D.D.C. 1996), upon which plaintiff also relies. *Public Citizen* also concerned FOIA's
24 trade secret exemption, exemption 4. As in *Animal Legal Defense Fund*, the *Public Citizen* parties had
25 submitted conflicting expert affidavits at the summary judgment stage. 953 F. Supp. at 403.

26 That is not the case here. Only the Services have submitted declarations on the effects of
27 disclosure. In their opening papers, the Services made an evidentiary showing that release of the
28 requested information would discourage future, candid discussions at the agencies. Gary Frazer, FWS's

1 Assistant Director for Ecological Services, who was personally and substantially involved in preparation
 2 of the final Biological Opinion, testified in his declaration that release of the documents at issue would
 3 chill future deliberations:

4 If the candid views of staff contained in the Narrowed Documents were
 5 disclosed, the quality of future internal deliberations on resource issues
 6 would suffer. The working drafts of the biological opinion and the
 7 rulemaking contain comments from personnel on legal or policy matters
 8 related to a complex consultation of national significance. In my view,
 9 FWS personnel may hesitate to provide their frank and forthright opinions
 and recommendations on these draft documents based on fears that candid
 recommendations would be broadcast outside the executive branch and
 misunderstood outside of context. I believe that this material, if disclosed,
 would significantly and adversely impair the integrity and quality of
 decision making process for future FWS consultations.

10 (Frazer Dec. ¶¶ 7, 17.) Samuel D. Rauch, III, NMFS’s Acting Assistant Administrator, who was also
 11 involved in preparation of the biological opinion at issue, also testified in his declaration that he was
 12 concerned that release of the documents at issue could discourage or chill future agency discussions. “In
 13 addition, as some of the[] documents reflect positions that NMFS did not adopt,” he was also concerned
 14 about “creat[ing] confusion with their release[.]” (Rauch Dec. ¶¶ 6, 13.)

15 Plaintiff did not submit any *evidence* disputing the Services’ declarations.⁵ “Once the moving
 16 party carries its initial burden, the adverse party may not rest upon the mere allegations or denials of the
 17 adverse party’s pleading, but must provide affidavits or other sources of evidence that set forth specific
 18 facts showing that there is a genuine issue for trial.” *Devereaux v. Abbey*, 263 F.3d 1070, 1076 (9th Cir.
 19 2001) (internal quotations omitted). Although the memorandum of points and authorities drafted by
 20 plaintiff’s counsel argues that “the likely effects of disclosure is a factually intensive inquiry that often
 21 cannot be done on summary judgment,” that argument is not evidence. *See Sayers v. Automated*
 22 *Transp., Inc.*, 645 F. Supp. 194, 195 (W.D. Pa. 1986) (“Arguments in a brief are not evidence.”).
 23 Plaintiffs have not submitted evidence disputing the declarations of Gary Frazer and Samuel Rauch—
 24 both of whom were personally involved in this complex section 7 ESA consultation. This
 25 uncontradicted evidence establishes that disclosure of the draft biological opinions and associated

26
 27 ⁵ Plaintiff’s discussion about what Services have disclosed in connection with the preparation of
 28 other, unrelated biological opinions (Opp. 14-15) is not evidence of what chilling effect would be caused
 by the disclosure of these draft biological opinions. Only Mr. Frazer and Mr. Rauch, who were involved
 in this complex consultation of national significance, have supplied such evidence.

1 documents at issue would chill future agency deliberations. (Frazer Dec. ¶¶ 7, 17; Rauch Dec. ¶¶ 6, 13.)
 2 The Court must make a decision on the FOIA issues, but there is no basis for setting the matter for trial.

3 **V. *IN CAMERA* REVIEW IS UNWARRANTED.**

4 *In camera* review remains unnecessary and inappropriate for the reasons set forth in the
 5 Services' opening papers. (Motion 14-15.) It is simply not true that the Services' declarations are
 6 "generalized" and "inconsisten[t]." (Opp. at 21.) As a review of Mr. Rauch's 18-page declaration and
 7 Mr. Frazer's 13-page declaration confirms, the declarations are detailed and set forth, on a document-by-
 8 document basis, the reasons the documents were withheld. (Rauch Dec.; Frazer Dec.)

9 *In camera* review is not the norm. "[C]ourts disfavor *in camera* inspection and it is more
 10 appropriate in only the exceptional case." *People for the Am. Way Found. v. Nat'l Park Serv.*, 503 F.
 11 Supp. 2d 284, 307 (D.D.C. 2007). "*In camera* review is a 'last resort,' not a fishing expedition."
 12 *Canning v. United States Dep't of State*, 134 F. Supp. 3d 490, 502 (D.D.C. 2015) (internal citations
 13 omitted). *See also Elec. Frontier Found. v. Cent. Intelligence Agency*, No. C 09-3351 SBA, 2013 WL
 14 5443048, at *26 (N.D. Cal. Sept. 30, 2013) (declining to undertake *in camera* review).

15 This matter is ripe for a ruling without the necessity of *in camera* review. However, in the event
 16 the Court disagrees, Services agrees with plaintiff that an *in camera* review would be a more efficient
 17 method of resolving issues concerning their contents than would other proceedings. (Opp. at 22, 24.)

18 **CONCLUSION**

19 For the foregoing reasons, the Services respectfully request that the Court grant their motion for
 20 summary judgment and deny plaintiff Sierra Club's.

21
 22 DATED: May 5, 2017

Respectfully submitted,

23 BRIAN J. STRETCH
 24 United States Attorney

25 /s/ Wendy M. Garbers
 WENDY M. GARBERS
 26 Assistant United States Attorney

27 Attorneys for Defendants
 NATIONAL MARINE FISHERIES
 SERVICE and U.S. FISH AND
 28 WILDLIFE SERVICE

Tracking Number	Type	Requester	Requester Organization	Submitted
DOC-NOAA-2017-001220	Request	Nathan Eagle	Honolulu Civil Beat	05/16/2017
DOC-NOAA-2017-001219	Request	Nathan Eagle	Honolulu Civil Beat	05/16/2017
DOC-NOAA-2017-001218	Request	Nathan Eagle	Honolulu Civil Beat	05/16/2017
DOC-NOAA-2017-001217	Request	Nathan Eagle	Honolulu Civil Beat	05/16/2017
DOC-NOAA-2017-001210	Request	KC Ashmore		05/15/2017
DOC-NOAA-2017-001203	Request	Zeenat Mian		05/15/2017
DOC-NOAA-2017-001200	Request	Meera Gajjar	National Whistleblower Center	05/11/2017
DOC-NOAA-2017-001198	Request	Nicholas Fromherz		05/11/2017
DOC-NOAA-2017-001196	Request	Kristen L. Boyles	Earthjustice	05/10/2017
DOC-NOAA-2017-001195	Request	David Gotfredson	KFMB CBS News 8	05/10/2017
DOC-NOAA-2017-001188	Request	Jordan Waltz		05/09/2017

Custom Report - 05/17/2017 01:55:05

Received	Assigned To	Case File	Assigned To	Perfect?	Due	Closed Date	Status	Dispositions
05/17/2017	NOAA	NOAA		No	TBD	TBD	Submitted	
05/17/2017	NOAA	NOAA		No	TBD	TBD	Submitted	
05/17/2017	NOAA	NOAA		No	TBD	TBD	Submitted	
05/17/2017	NOAA	NOAA		No	TBD	TBD	Submitted	
05/15/2017	NOAA	NOAA		No	TBD	TBD	Submitted	
05/15/2017	NOAA	NOAA		No	TBD	TBD	Submitted	
05/11/2017	NOAA	NOAA		No	TBD	TBD	Submitted	
05/11/2017	NOAA	NOAA		No	TBD	TBD	Submitted	
05/11/2017	NOAA	NOAA		No	TBD	TBD	Submitted	
05/11/2017	NOAA	NOAA		No	TBD	TBD	Submitted	
05/10/2017	NOAA	NOAA		No	TBD	TBD	Submitted	

Detail

I'd like to request information related to lobbying by the Western Pacific Regional Fishery Management Council (W
I'd like to request information related to the staff, consultants, and members of the Western Pacific Regional Fisher
I'd like to request information relating to special funds of the Western Pacific Regional Fishery Management Council
I'd like to request financial information concerning the Western Pacific Regional Fishery Management Council (WP
Monthly Precipitation records for the area of Kaufman County, Texas from the dates of February 1, 2013 until Pres
- Full and complete content of any and ALL contracts/cooperation agreements/grants signed and dated between H
Please see attachment for full response Under the Freedom of Information Act, 5 U.S.C. § 552, I am requestii
I am writing with a request for records maintained by the National Marine Fisheries Service ("NMFS") regarding the
See attached document. Please send copies of any and all documents, records, communications, correspondence
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

[REDACTED]

PRFMC). Specifically, I'm requesting: 1) Documents sufficient to show the amount of time spent by WPI
ry Management Council (WPRFMC). Specifically, I'm requesting: 1) Documents sufficient to identify the
:il (WPRFMC). Specifically, I'm requesting: 1) The general ledger in the greatest level of detail for the W
'RFMC). Specifically, I'm requesting: 1) The WPRFMC formal books of accounts over the 5 years prece
ent.(the date this order is being processed). and a Business Record Affidavit for the records being requ
MMA and NOAA. - List of all documents and procedures required and mandatory to comply with the MM
ng copies of information as detailed below on behalf of the National Whistleblower Center (NWC), a non
: mass stranding ("Stranding") of nearly 100 false killer whales at Hog Key, on Florida's southwestern co
:, or materials relating in any way to the management of these lands, including but not limited to consider
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 I'ANUI HAI-

[REDACTED]

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 each eastern Pacific Sustainable Fisheries Fund over the 5 years preceding a response to this request. ding a response to this request, including a cash receipts and disbursements journal, a general journal, ; ested. I am an attorney, requesting these records for a client.

IPA and ESA. - A copy of each latest officially approved documents and procedures required and mand; 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 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

[REDACTED]

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
I would like this record provided in electronic format; if the information cannot be exported in an Excel o
and a general ledger, in the greatest level of detail available without need for redaction. I would like this i

atory to comply with the MMPA and ESA.

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
s sentative, or agent of the U.S. Department of Commerce, the National Marine Fisheries Service or NOA
s to be released by NOAA. If you determine that some elements of the reports are exempt from public re
<APUU'S 86 CALF (NOA0000372), False killer whale, Sea Life Park Hawaii, died 3/2/1988; A complete

C letters, testimony, or presentations for federal or state legislators, the President, or state governors for
t limited to whether the individual is a contractor, volunteer, or federal employee and whether the individu
r comma-delimited format, please let me know available formats. 2) To the extent not otherwise produce
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 regard
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:
lease, I request that the exempt material be narrowly redacted, as required by law, and the remainder of
necropsy of KAULANA, (NOA0000204), Bottlenose Dolphin, Sea Life Park Hawaii, died 10/28/1983; A c

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nited format, please let

ding the Fund's creation (including but not limited to the specif
vestigation, whether conducted by NMFS or other
Any member of the White House and/or white hous
f record be released.
complete necropsy of KILAKILA, (NOA0000222), short-finned pi

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Wednesday, May 17, 2017 3:43 PM
To: Glenn Tallia - NOAA Federal; Heather Book - NOAA Federal; Hillary Davidson; Kristen Gustafson - NOAA Federal; Matthew Womble - NOAA Affiliate; Rodney Vieira - NOAA Federal; Rose Stanley - NOAA Federal; Russell Vose - NOAA Federal; Ruth Ann Lowery - NOAA Federal; Tim Owen - NOAA Federal
Cc: Lola Stith - NOAA Affiliate; Robert Swisher - NOAA Federal; Dennis Morgan - NOAA Federal
Subject: Karl-related FOIA requests
Attachments: Karl-related requests extraction 5.17.xls

Good Afternoon,

Attached is the updated spreadsheet for the call at 4:00.

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.

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From: Jackie Rolleri - NOAA Federal <jackie.rolleri@noaa.gov>
Sent: Thursday, May 18, 2017 10:27 AM
To: landelin@beusgilbert.com
Cc: Michael Pallamary; Petrie, Terry (ENRD); Steve.Matula; Ruslan Marmalyukov; Doug Graham - NOAA Federal; joncorn@joncornlaw.com
Subject: Supplemental Release of Records - FOIA-2015-000111
Attachments: Shoreline_01 (1).pdf; t01807_gcs_bes.jgw; t01807_gcs_bes.jpg

Dear Mr. Andelin:

This email is in response to the Freedom of Information Act (FOIA) request your predecessor, Tiffany Cale, submitted to NOAA on October 17, 2014:

All documents pertaining to the post-2010 georeferencing of T-333 (an 1850-era survey of portions of San Diego Bay), including the work and correspondence files of current and former NOAA employees and independent contractors who worked on and/or corresponded about the foregoing project, including, without limitation, David Doyle, Doug Graham, Steve Matula, Nick Perugini, Cindy Craig, Joe Evjen and an unnamed independent contractor, including correspondence with the California State Lands Commission (Steve Lehman) regarding same.

NOAA released several responsive records to Ms. Cale on November 21, 2014, including the attached Shoreline_01.pdf, which is a PDF of the NOAA Cooperative Shoreline Movement Study Imperial Beach-San Pedro CA map that NOAA has in hard copy but is unable to reproduce in hard copy.

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If you have questions regarding this correspondence please contact me at jackie.rolleri@noaa.gov or by phone at 301-713-7387.

Sincerely,

Jackie Rolleri

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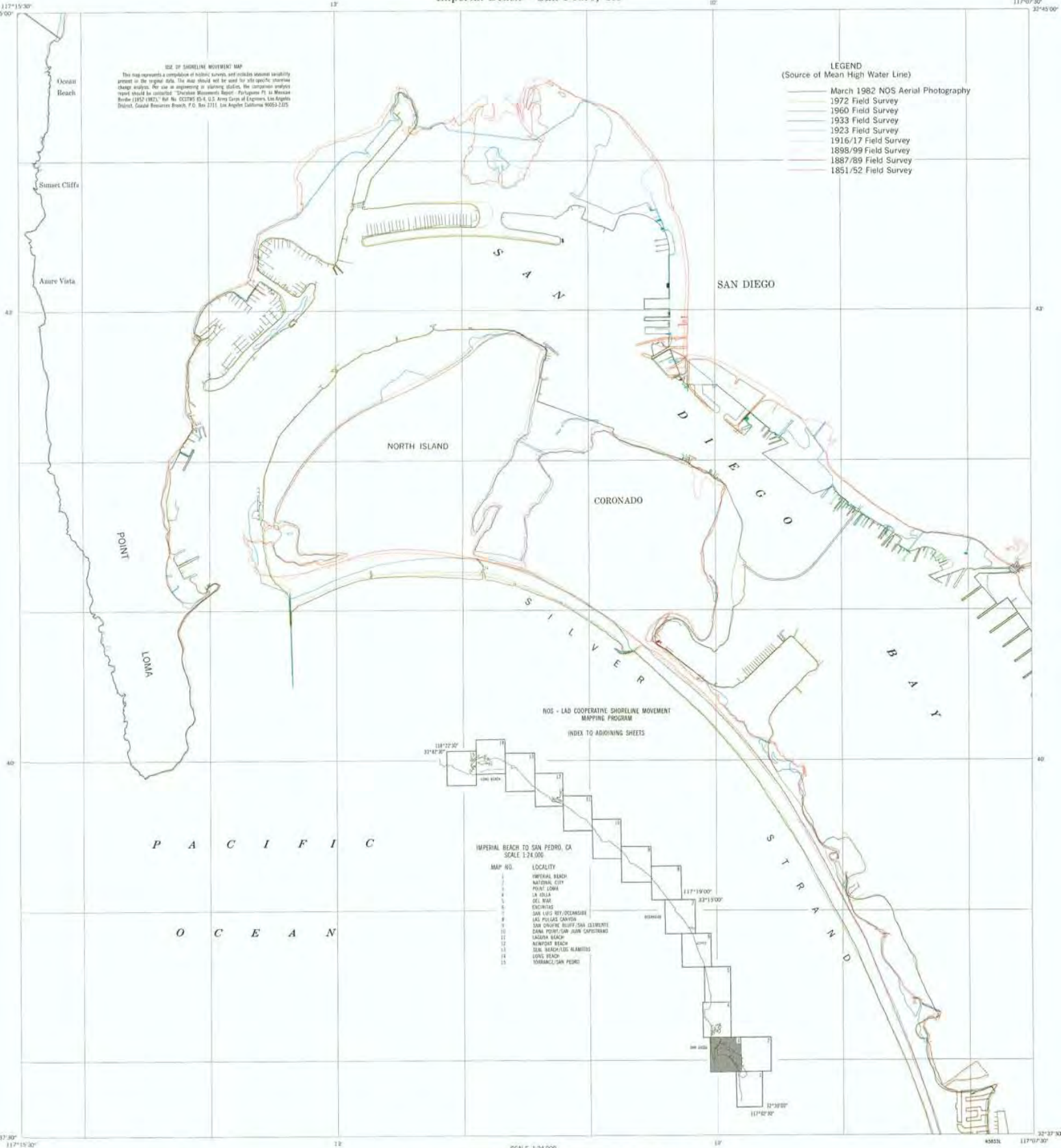
Jackie Rolleri, Attorney-Advisor
Oceans and Coasts Section
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NOAA/NOS - COE/LAD COOPERATIVE
SHORELINE MOVEMENT STUDY
Imperial Beach - San Pedro, CA



USE OF SHORELINE MOVEMENT MAP
This map represents a compilation of historic surveys, and includes seasonal variability present in the original data. The map should not be used for site specific shoreline change analysis. For use as engineering or planning studies, the companion analysis report should be consulted. (Shoreline Movement Report - Fortiethone P1 to Marine Border (1852-1982), Ref. No. OCSTWS 83-4, U.S. Army Corps of Engineers, Los Angeles District, Coastal Resources Branch, P.O. Box 2711, Los Angeles California 90023-2715)

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(Source of Mean High Water Line)
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NOS - LAD COOPERATIVE SHORELINE MOVEMENT MAPPING PROGRAM
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SCALE 1:24,000

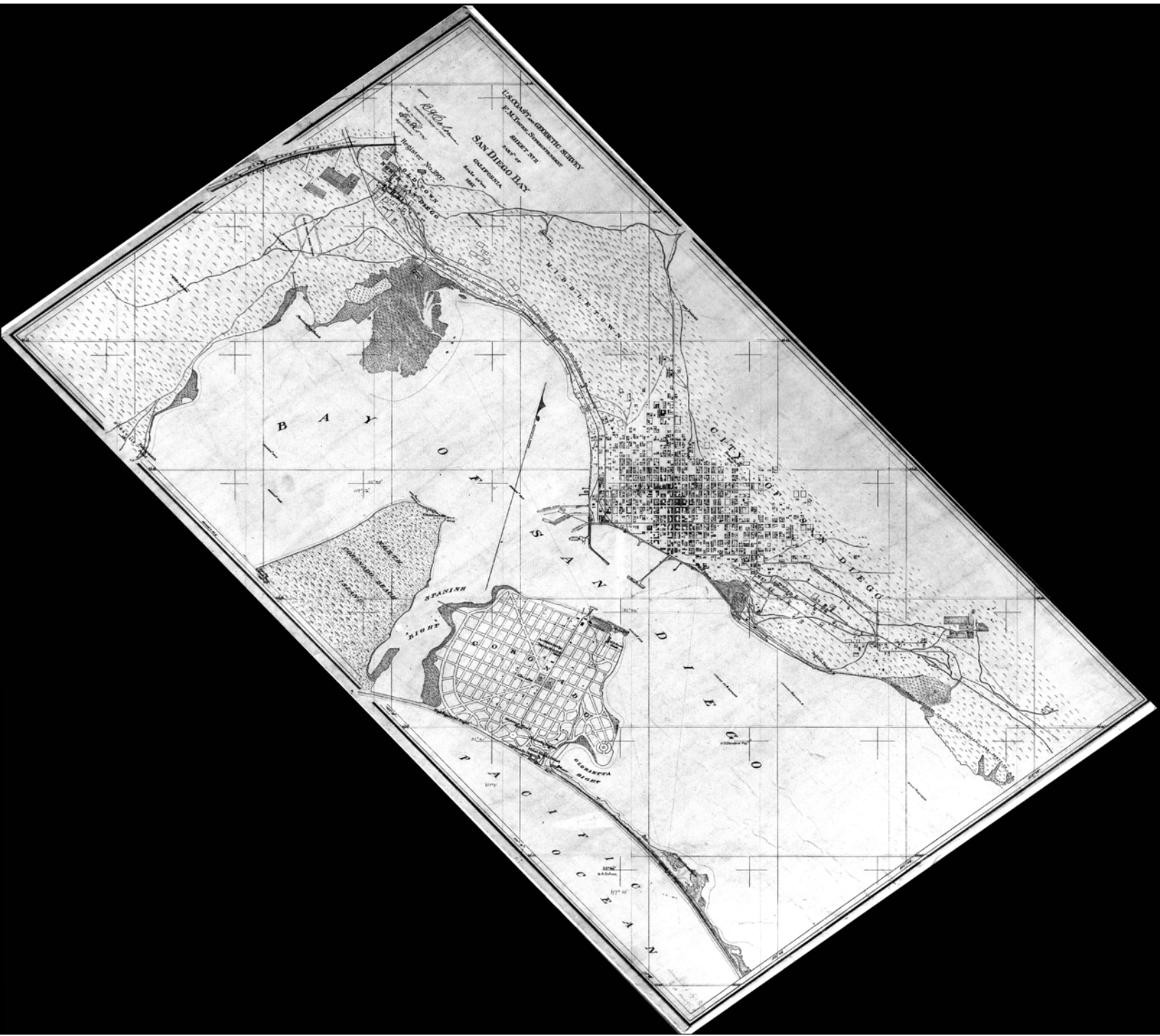
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10	DANA POINT/SAN JUAN CAPISTRANO
11	LAGUNA BEACH
12	MINNETON BEACH
13	SEAL BEACH/LOS ALAMITOS
14	LONG BEACH
15	VORANICE/SAN PEDRO



1927 NORTH AMERICAN DATUM
LAMBERT PROJECTION
Published at Washington, D.C.
U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NATIONAL OCEAN SERVICE

Prepared by the National Ocean Service as part of a cooperative program with the Los Angeles District, U.S. Army Corps of Engineers. Completed from registered historical shoreline surveys of the National Ocean Service and registered to same datum furnished by the U.S. Geological Survey (USGS). The area of the map generally corresponds to the U.S.G.S. quadrangle of the same name. 1982 shoreline compiled from aerial photography taken 1982. This is a general overview map designed for use by the U.S. Army Corps of Engineers, National Oceanic and Atmospheric Administration, and other agencies responsible in the coastal zone.

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-117.25078173082130
32.77709852859810



From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Thursday, May 18, 2017 10:36 AM
To: Lola Stith - NOAA Affiliate
Cc: Jackie Rolleri - NOAA Federal
Subject: Fwd: Supplemental Release of Records - FOIA-2015-000111
Attachments: t01807_gcs_bes.jpg; Shoreline_01 (1).pdf; t01807_gcs_bes.jpg

Hi Lola--

(b)(5)

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

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Date: Thu, May 18, 2017 at 10:27 AM
Subject: Supplemental Release of Records - FOIA-2015-000111
To: landelin@beusgilbert.com
Cc: Michael Pallamary <mpallamary@pipeline.com>, "Petrie, Terry (ENRD)" <Terry.Petrie@usdoj.gov>, "Steve.Matula" <steve.matula@noaa.gov>, Ruslan Marmalyukov <ruslan.marmalyukov@noaa.gov>, Doug Graham - NOAA Federal <doug.graham@noaa.gov>, joncorn@joncornlaw.com

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Sincerely,

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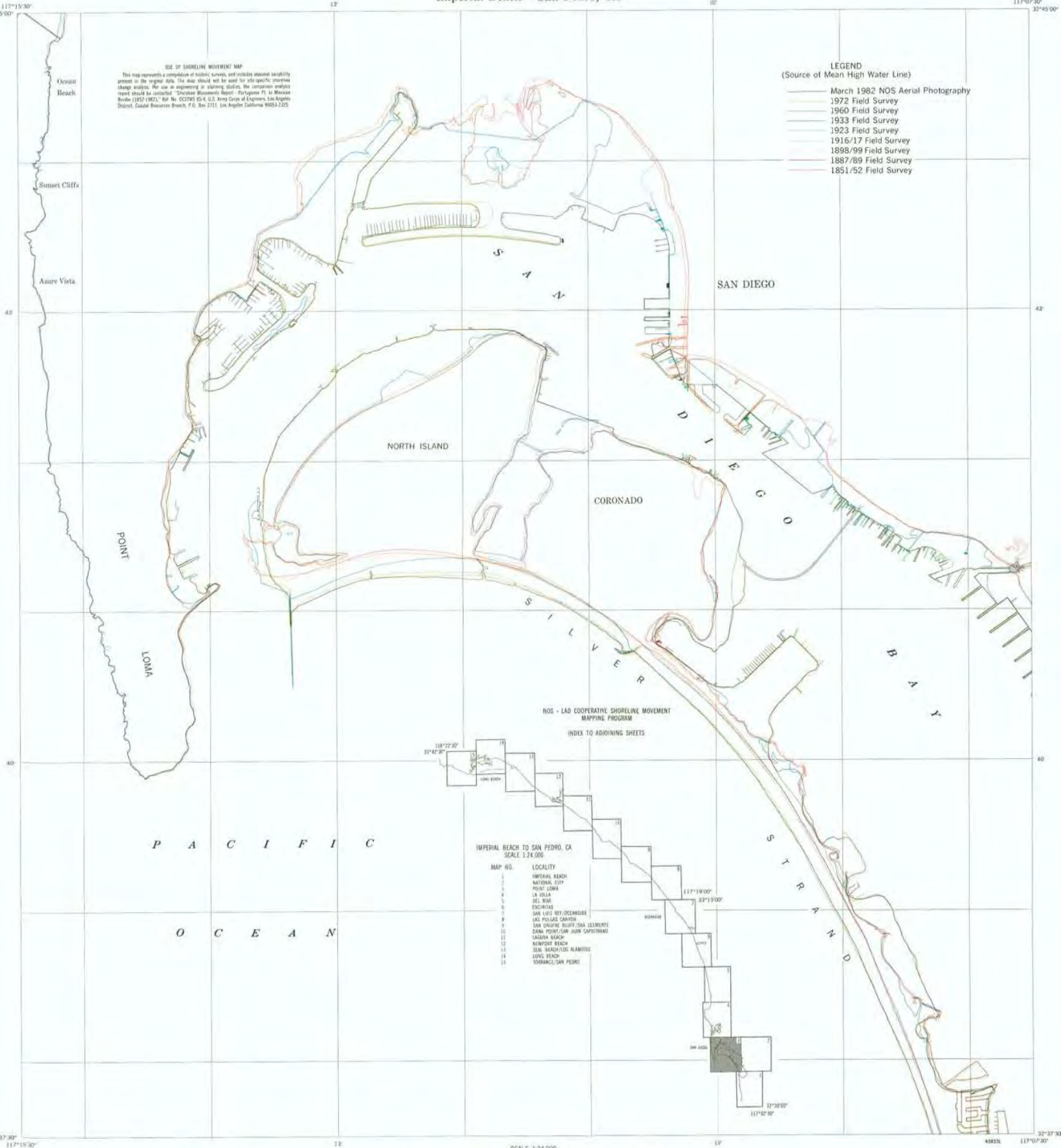
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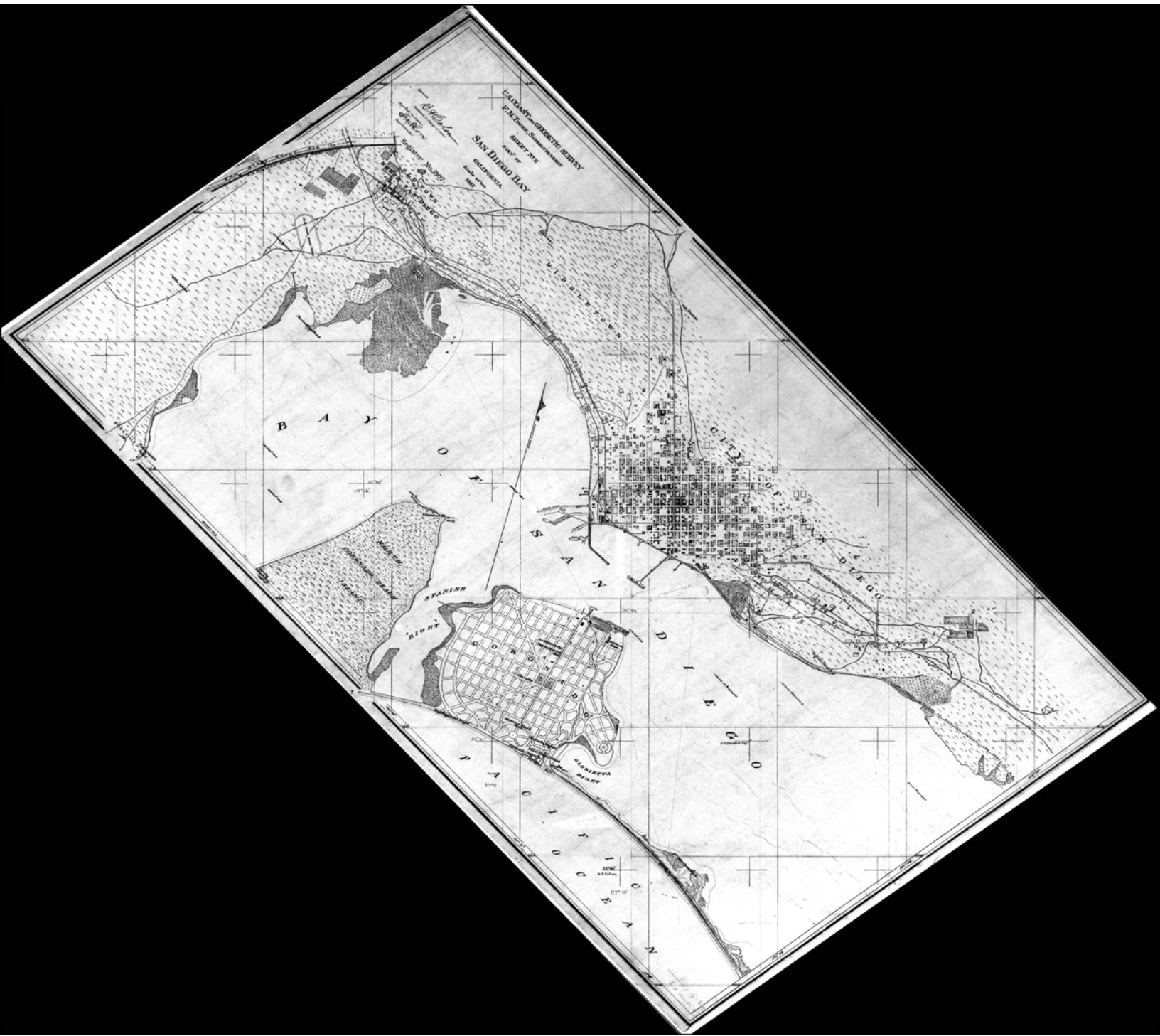
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From: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>
Sent: Thursday, May 18, 2017 10:59 AM
To: Mark Graff - NOAA Federal
Cc: Jackie Rolleri - NOAA Federal
Subject: Re: Supplemental Release of Records - FOIA-2015-000111

Closeout is complete.

Lola

On Thu, May 18, 2017 at 10:36 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:
Hi Lola--

(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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--

Lola Stith

Contractor - The Ambit Group, LLC

NOAA Office of the Chief Information Officer (OCIO)

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

lola.m.stith@noaa.gov

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Thursday, May 18, 2017 11:06 AM
To: Lola Stith - NOAA Affiliate
Cc: Jackie Rolleri - NOAA Federal
Subject: Re: Supplemental Release of Records - FOIA-2015-000111

Awesome--thanks Lola.

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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Lola

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Hi Lola--

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

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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

From: Jackie Rolleri - NOAA Federal <jackie.rolleri@noaa.gov>
Sent: Thursday, May 18, 2017 11:16 AM
To: Mark Graff - NOAA Federal
Cc: Lola Stith - NOAA Affiliate
Subject: Re: Supplemental Release of Records - FOIA-2015-000111

Thank you both!!

On Thu, May 18, 2017 at 11:06 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:
Awesome--thanks Lola.

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 Thu, May 18, 2017 at 10:58 AM, Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov> wrote:
Closeout is complete.

Lola

On Thu, May 18, 2017 at 10:36 AM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:
Hi Lola--

(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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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: **Jackie Rolleri - NOAA Federal** <jackie.rolleri@noaa.gov>

Date: Thu, May 18, 2017 at 10:27 AM

Subject: Supplemental Release of Records - FOIA-2015-000111

To: landelin@beusgilbert.com

Cc: Michael Pallamary <mpallamary@pipeline.com>, "Petrie, Terry (ENRD)" <Terry.Petrie@usdoj.gov>,

"Steve.Matula" <steve.matula@noaa.gov>, Ruslan Marmalyukov <ruslan.marmalyukov@noaa.gov>, Doug

Graham - NOAA Federal <doug.graham@noaa.gov>, joncorn@joncornlaw.com

Dear Mr. Andelin:

This email is in response to the Freedom of Information Act (FOIA) request your predecessor, Tiffany Cale, submitted to NOAA on October 17, 2014:

All documents pertaining to the post-2010 georeferencing of T-333 (an 1850-era survey of portions of San Diego Bay), including the work and correspondence files of current and former NOAA employees and independent contractors who worked on and/or corresponded about the foregoing project, including, without limitation, David Doyle, Doug Graham, Steve Matula, Nick Perugini, Cindy Craig, Joe Evjen and an unnamed independent contractor, including correspondence with the California State Lands Commission (Steve Lehman) regarding same.

NOAA released several responsive records to Ms. Cale on November 21, 2014, including the attached Shoreline_01.pdf, which is a PDF of the NOAA Cooperative Shoreline Movement Study Imperial Beach-San Pedro CA map that NOAA has in hard copy but is unable to reproduce in hard copy.

We have located two additional responsive record that were attachments to an email included in the records released to Ms. Cale on November 21, 2014. The email was sent from Doug Graham to Steve Lehman on February 18, 2014, and included the attachments: t01807_gcs_bes.jgw and t01807_gcs_bes.jpg. You are granted full access to these three records, which are attached.

Although we do not consider this to be a denial of your request, you have the right to file an administrative appeal if you are not satisfied with our response to your FOIA request. All appeals should include a statement of the reasons why you believe the FOIA response was not satisfactory. An appeal based on documents in this release must be received within 90 calendar days of the date of this response letter at the following address:

Assistant General Counsel for Litigation, Employment, and Oversight
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](tel:301-837-1996)

Fax: [301-837-0348](tel:301-837-0348)

Toll-free: [1-877-684-6448](tel:1-877-684-6448)

If you have questions regarding this correspondence please contact me at jackie.rolleri@noaa.gov or by phone at [301-713-7387](tel:301-713-7387).

Sincerely,

Jackie Rolleri

--

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)
[202-494-8963](tel:202-494-8963) (cell)

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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

--

Jackie Rolleri, Attorney-Advisor
Oceans and Coasts Section
Office of the General Counsel
National Oceanic and Atmospheric Administration
1305 East-West Highway

SSMC4, Suite 6111
Silver Spring, MD 20910
301-713-7387 (office)
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From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Thursday, May 18, 2017 4:51 PM
To: smar@omb.eop.gov
Cc: Lola Stith - NOAA Affiliate; Robert Swisher - NOAA Federal
Subject: Re: OMB Fee Guidelines and for Agency Retaining FOIA Fees

Good Afternoon,

I just wanted to follow up on the message below. (b)(5) [redacted]
[redacted]?

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

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On Tue, May 9, 2017 at 5:15 PM, Mark Graff - NOAA Federal <mark.graff@noaa.gov> wrote:
Good Morning,

(b)(5) [redacted]
[redacted]
[redacted]
[redacted]

[redacted]
[redacted]

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

(b)(5)

Thank you in advance.

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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From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Thursday, May 18, 2017 4:50 PM
To: Kimberly Katzenbarger - NOAA FEDERAL
Subject: Fwd: OMB Fee Guidelines and for Agency Retaining FOIA Fees

Hi Kim--

This was the last correspondence I had with OMB, which was after I heard back from Jonathan Breyan at DOJ. No response yet, but I'll send another ping.

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: Tue, May 9, 2017 at 5:15 PM
Subject: OMB Fee Guidelines and for Agency Retaining FOIA Fees
To: smar@omb.eop.gov
Cc: Lola Stith - NOAA Affiliate <lola.m.stith@noaa.gov>, Robert Swisher - NOAA Federal <robert.swisher@noaa.gov>

Good Morning,

(b)(5)
[Redacted]

[Redacted]

[Redacted]

(b)(5)

[Redacted]

. Thank you in advance.

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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From: Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov>
Sent: Friday, May 19, 2017 2:52 PM
To: foia@erulemaking.net; Mark Graff - NOAA Federal; Lola Stith - NOAA Affiliate
Subject: RE: FOIA Assignment for DOC-NOAA-2017-001200

(b)(5) [REDACTED] ?

From: foia@regulations.gov [mailto:foia@regulations.gov]
Sent: Friday, May 19, 2017 9:20 AM
To: arlyn.penaranda@noaa.gov
Subject: FOIA Assignment for DOC-NOAA-2017-001200

You have been assigned to the FOIA request DOC-NOAA-2017-001200. Additional details for this request are as follows:

- Assigned By: Samuel B. Dixon
- Request Tracking Number: DOC-NOAA-2017-001200
- Due Date: 06/16/2017
- Requester: Meera Gajjar
- Request Track: Simple
- Short Description: N/A
- Long Description: Please see attachment for full response Under the Freedom of Information Act, 5 U.S.C. § 552, I am requesting copies of information as detailed below on behalf of the National Whistleblower Center (NWC), a nonprofit organization focused on advocating for whistleblowers. 1. I am requesting any and all documents regarding the Lacey Act Reward Fund and/ or the Lacey Act Reward Account (hereinafter referred to as the “Lacey Act Reward Fund” or “Fund”). In particular, I am requesting: a. Any and all documents regarding the Fund’s creation (including but not limited to the specific information that established the Fund as a lawful entity within the Department of Commerce and/ or the National Marine Fisheries Service. b. The Fund’s annual budget (including all income, all expenses, and all payments for FY2012, FY2013, FY2014, FY2015, and FY2016). We request that all incoming funds and rewards paid, if applicable, be identified for each enforcement action. c. Any rules/ regulations/ guidance documents regarding the administration of the Fund. d. A Copy of any internal report within the Department of Commerce that discusses the Fund. 2. I am also requesting any and all documents regarding NOAA’s Asset Forfeiture Fund (hereinafter referred to as “AFF”). In particular, I am requesting: a. Any and all documents regarding the Fund’s creation (including but not limited to the specific information that established the Fund as a lawful entity within the Department of Commerce and/ or the National Marine Fisheries Service. b. The Fund’s annual budget (including all income, all expenses, and all payments for FY2012, FY2013, FY2014, FY2015, and FY2016). We request that all incoming funds and rewards paid, if applicable, be identified for each enforcement action. c. Any rules/ regulations/ guidance documents regarding the administration of the Fund. d. A Copy of any internal report within the Department of Commerce that discusses the Fund.

From: Deanna Harwood - NOAA Federal <deanna.harwood@noaa.gov>
Sent: Friday, May 19, 2017 6:44 PM
To: Mark Graff - NOAA Federal
Subject: Fwd: referrals
Attachments: Hall v CIA.RTF

Mark - Quick FOIA question for you. (b)(5)

Deanna Harwood
Deputy Chief, Southwest Section
NOAA, Office of General Counsel
U.S. Department of Commerce
501 W. Ocean Blvd., Suite 4470
Long Beach, CA 90802
(562) 980-4068

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

From: Torczon, Andrea (Federal) <aTorczon@doc.gov>
Date: Wed, May 17, 2017 at 11:18 AM
Subject: referrals
To: "Malabanan, Ana Liza (Federal)" <Ana.Liza.Malabanan@noaa.gov>, "Harwood, Deanna (Federal)" <Deanna.Harwood@noaa.gov>

Here is a case on the referral question. (b)(5)

Thank you.

Andrea

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(b)(4)

From: Mark Graff - NOAA Federal <mark.graff@noaa.gov>
Sent: Monday, May 22, 2017 10:15 AM
To: Arlyn Penaranda - NOAA Federal
Cc: foia@erulemaking.net; Lola Stith - NOAA Affiliate
Subject: Re: FOIA Assignment for DOC-NOAA-2017-001200

Looking at the request (b)(5))?

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

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On Fri, May 19, 2017 at 2:52 PM, Arlyn Penaranda - NOAA Federal <arlyn.penaranda@noaa.gov> wrote:

(b)(5) ?

From: foia@regulations.gov [mailto:foia@regulations.gov]
Sent: Friday, May 19, 2017 9:20 AM
To: arlyn.penaranda@noaa.gov
Subject: FOIA Assignment for DOC-NOAA-2017-001200

You have been assigned to the FOIA request DOC-NOAA-2017-001200. Additional details for this request are as follows:

- Assigned By: Samuel B. Dixon
- Request Tracking Number: DOC-NOAA-2017-001200
- Due Date: 06/16/2017
- Requester: Meera Gajjar
- Request Track: Simple
- Short Description: N/A
- Long Description: Please see attachment for full response Under the Freedom of Information Act, 5 U.S.C. § 552, I am requesting copies of information as detailed below on behalf of the National Whistleblower Center (NWC), a nonprofit organization focused on advocating for whistleblowers. 1. I am requesting any and all documents regarding the Lacey Act Reward Fund and/ or the Lacey Act

Reward Account (hereinafter referred to as the “Lacey Act Reward Fund” or “Fund”). In particular, I am requesting: a. Any and all documents regarding the Fund’s creation (including but not limited to the specific information that established the Fund as a lawful entity within the Department of Commerce and/ or the National Marine Fisheries Service. b. The Fund’s annual budget (including all income, all expenses, and all payments for FY2012, FY2013, FY2014, FY2015, and FY2016). We request that all incoming funds and rewards paid, if applicable, be identified for each enforcement action. c. Any rules/ regulations/ guidance documents regarding the administration of the Fund. d. A Copy of any internal report within the Department of Commerce that discusses the Fund. 2. I am also requesting any and all documents regarding NOAA’s Asset Forfeiture Fund (hereinafter referred to as “AFF”). In particular, I am requesting: a. Any and all documents regarding the Fund’s creation (including but not limited to the specific information that established the Fund as a lawful entity within the Department of Commerce and/ or the National Marine Fisheries Service. b. The Fund’s annual budget (including all income, all expenses, and all payments for FY2012, FY2013, FY2014, FY2015, and FY2016). We request that all incoming funds and rewards paid, if applicable, be identified for each enforcement action. c. Any rules/ regulations/ guidance documents regarding the administration of the Fund. d. A Copy of any internal report within the Department of Commerce that discusses the Fund.