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25 December 2009

Michael E. Justen, NMFS FOIA Officer
NOAA, NMFS
NMFS Headquarters FOIA Office
1315 East-West Highway
Silver Spring, Maryland 20910

Attn. FOIA REQUEST

Dear Mr. Justen:

Pursuant the Freedom of Information Act, 5 U.S.C. 552, as amended, the Association for Professional Observers (APO) requests the written guidelines and/or rules given to the staff of each National Marine Fisheries Service Observer Program and the National Observer Program with regard to public access to fisheries observer data and information. We request these guidelines and/or rules from the following time frames and should include any updates sent to observer program staff regarding any clarification of the guidelines and/or rules:

1. Prior to 1993
2. 1993-2006
3. 2007 until present

For any documents or portions of documents that you block release due to specific exemption(s) from the requirements of the Freedom of Information Act, please provide an index itemizing and describing the documents or portions of documents withheld. The index should, pursuant to the holding of *Vaughn v. Rosen* (484 F.2d820 [D.C. Cir. 1973] cert. denied, 415 U.S. 977 [1974]), provide a detailed justification for claiming a particular exemption that explains why each such exemption applies to the document or portion of a document withheld.

To the extent that NOAA needs to perform a detailed review, APO requests that all fees be waived because “disclosure of the information is in the public interest...and is not primarily in the commercial interest of the requestor” (5 U.S.C. 552 (a) (4)(A)):

1. The subject matter of the requested records must specifically concern identifiable operations or activities of the government.

Each program should have a series of records of the guideline and/or rules followed by its staff over the years when processing the release of fisheries observer data and information to the public and in response to NMFS implementation of data confidentiality provisions in the updated Magnuson-Stevens Fishery Conservation and Management Act of 2006. According to NOAA National Administrative Order 216-100 and the Magnuson-Stevens Fishery Conservation and Management Act, confidentiality parameters all-inclusive, so we are assuming observer programs develop their own guidelines to follow and that each programs' staff has received over the years written guidelines concerning this.

2. For the disclosure to be "likely to contribute" to the understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request.

The requested material may consist of the records detailing the guidelines and/or rules that observer program staff have followed over the years when responding to requests for fisheries observer data and information and NMFS implementation of data confidentiality provisions in the updated Magnuson-Stevens Fishery Conservation and Management Act of 2006. This is important to understand how the government discloses fisheries observer data in response to specific data and information requests, specific data confidentiality problems and to congressional acts.

3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requestor or a narrow segment of interested persons.

Observer data is used by a wide variety of users throughout the public at large: in academia, non-governmental organizations and a wide spectrum of stakeholders. Observer data is used by the public to analyze effectiveness of a variety of fishery management decisions. The public at large has an interest in knowing how NMFS releases fisheries observer data, given the all-inclusive definition of "confidential" regarding public access restrictions to fisheries observer data and information in both the NAO and the Magnuson-Stevens Fishery Conservation and Management Act.

The APO intends to provide the requested information to the general public through:

- ❖ Release to the news media;
- ❖ Posting on the APO website www.apo-observers.org
- ❖ Publishing a summary article in the APO's quarterly newsletter, the *Mail Buoy*

4. The disclosure must contribute "significantly" to public understanding of government operations or activities.

NMFS currently has only guidelines on how individual FOIA requests for fishery observer data and information requests are processed. This appears to vary from region to region and on a case-by-case basis, which can potentially lead to inequities

between stakeholders, including the public at large, regarding how NMFS is managing the nation's fisheries data. There is no indication that there is currently any agency-wide standard for handling FOIA requests and it might be helpful to know the guidelines each program follows currently, how this has changed over the years and how they are likely to change in the future.

5. The extent to which disclosure will serve the requestor's commercial interest.

Disclosure is in no way connected with any commercial interest of the requestors in that APO is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through the responsible management of our nation's ocean resources and with supporting professional integrity within ocean resource management agencies. To that end, APO is designated as a tax-exempt organization under section 501(c)(5) of the Internal Revenue Code.

6. The extent to which the identified public interest in the disclosure outweighs the requestor's commercial interest.

The disclosure of this information will not benefit either the public or the requestor's commercial interest but will clarify significantly the rules the federal government follows from region to region.

If you have any questions about this FOIA, or if there is an easier way to collect the information that we are not aware of, please let me know, so that I can revise our request. I can be reached at (541) 344-5503. Also, if it is easier and/or more convenient for NMFS, this information can be returned to me electronically at APO@apo-observers.org. **For surface mail, please use the address below.**

Thank you for your consideration of this request. I look forward to receiving the agency's final response within 20 working days.

Sincerely,

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