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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 all documents from the National Marine Fisheries Service (NMFS) meetings and/or workshops on data confidentiality of fisheries observer data and information that took place in April 2003 and again in January 2008. Specifically, we request the following:

E-mails, agendas, list of attendees, PowerPoint presentations, and handouts given to attendees.

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.

The subject matter of the requested records is identifiable to specific meetings known to have taken place. Specifically, contacts for these meetings are as follows:

The first meeting in 2003, is posted on the National Observer Program's website, <http://www.st.nmfs.noaa.gov/st4/nop/workshops.html>, as having taken place in April of that year; and

The second meeting in 2008 was held in Seattle, Washington at the Alaska Fishery Science Center, at which only agency personnel were involved.

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 how NMFS intends to process FOIA requests for observer data and information, specific data confidentiality problems, and NMFS implementation of data confidentiality provisions in the updated Magnuson-Stevens Act of 2006.

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, various public agencies, and a wide spectrum of stakeholders who use observer data 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.

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
- ❖ 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 are handled. 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, 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 the results and discussions that emerged from these two meetings may shed some light on the problems that NMFS faces in dealing with observer data confidentiality and guidance given to agency personnel.

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.

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 us 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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