



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1315 East-West Highway
Silver Spring, Maryland 20810

THE DIRECTOR

FEB 232010

Ms. Elizabeth Mitchell
Association for Professional Observers (APO)
P.O. Box 933
Eugene, OR 97440

RE: FOIA Request # 2010-00153

Dear Ms. Mitchell:

This letter is in response to the Association for Professional Observer's (APO) Freedom of Information Act (FOIA) request # 2010-00153 dated December 25, 2009, and received by our office on January 15, 2010. APO requested 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, APO requested e-mails, agendas, list of attendees, PowerPoint presentations, and handouts given to attendees.

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

- (1) The first meeting in 2003 is posted on the National Observer Program's website, <http://vv'Nw.st.nmfs.noaa.gov/st4/nop/workshops.html>, as having taken place in April of that year for NOAA and United States Coast Guard employees; and,
- (2) The second meeting in 2008 was held in Seattle, Washington at the Alaska Fishery Science Center, which only agency personnel were involved.

You requested that all fees associated with processing this request be waived. In order to determine whether this request qualifies for a fee waiver or reduction in fees, pursuant to 5 C.F.R. § 4.11(k) (2010), NMFS must evaluate whether disclosure of the requested information is: 1) in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, and 2) not primarily in the commercial interest of the requester.

In determining whether your request meets the first fee waiver requirement, NMFS considered the following factors:

1. Whether the subject of the requested records concerns the operations of activities of the Government.
2. Whether the disclosure is "likely to contribute" to an understanding of Government operations or activities.
3. Whether 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 individual understanding of the requester.



4. Whether the disclosure is likely to contribute "significantly" to public understanding of Government operations or activities.

In determining whether your request meets the second fee waiver requirement, NMFS considered the following factors:

1. Whether the requester has a commercial interest that would be furthered by the requested disclosure.
2. Whether any identified commercial interest of the requester is sufficiently great, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

Based on the above criteria, NMFS has determined that a partial fee waiver is warranted for APO's request. NMFS will waive fees associated with processing APO's request for records that concern NMFS workshop materials including agendas, list of attendees, PowerPoint presentations, and handouts given to attendees.

NMFS has determined that a fee waiver is not warranted for e-mails from participants of the workshops. The APO has not demonstrated that these records would contribute to the understanding of a reasonably broad audience of persons interested in the subject. Furthermore, APO has failed to demonstrate how e-mails would contribute significantly to public understanding of NMFS policies concerning data confidentiality of fisheries observer data and information.

Under 15 C.F.R. § 4.11(a) (2010), the National Marine Fisheries Service shall charge for processing requests under the FOIA based on the requester's classification and amount of the cost associated with responding to the request. Under 15 C.F.R. § 4.11(c)(1)(iv) (2010), the APO falls under the "All Other Requesters" Category. Your chargeable fees for this FOIA are: search and duplication (excluding the cost of the first 2 hours of search and 100 pages).

The fee estimate for historical guidelines and/or rules given to the staff of each NMFS Observer Program and the NOP with regard to public access to fisheries observer data and information is as follows:

Search:	\$3,875.39
Duplication:	\$ <u>309.76</u>
TOTAL	\$4,185.15

Pursuant to 15 C.F.R. § Part 4.11(e) (2010), because the cost to process your request exceeds \$250, we need your agreement to pay fees before we proceed. Please make your check or money order payable to the "Treasury of the United States" and send your payment and your signed copy of this letter to:

*National Oceanic and Atmospheric Administration
Public Reference Facility (OFA56)
1315 East West Highway (SSMC3)
Room 10730
Silver Spring, Maryland 20910*

Please note that in compliance with our FOIA regulations, the 20-business-day time frame for completing your request is tolled pending our receipt of the completed enclosed fee agreement. Once your agreement is received, our office will process your FOIA request.

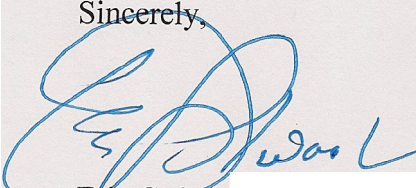
If we do not receive your reply within 30 days, we will assume you do not wish to proceed and will administratively close your request. If you have any questions concerning this process, please contact Chris Rilling, National Observer Program Manager, at 301 713-2363 x171.

Under 15 C.F.R. § 4.10(a) (2010), you have the right to appeal this denial determination. The Assistant General Counsel for Administration must receive your appeal within **30 calendar days** of the date of the initial denial letter. Address and send your appeal to the following office:

**Assistant General Counsel for Administration
U.S. Department of Commerce
Room 5875
14th and Constitution Avenue, NW
Washington, DC 20230**

You may also send your appeal by-mail to FOIAAppeals@doc.gov or by facsimile (fax) to **(202) 482-2552**. The appeal must include a copy of the original request, the response to the request, and a statement of the reasons why withheld records should be made available and why denial of the records was in error. The submission (including e-mail and fax submissions) is not complete without the required enclosures. The appeal, the envelope, the e-mail subject line, and the fax cover sheet should be clearly marked "Freedom of Information Act Appeal." The e-mail, fax machine, and Office of the General Counsel are monitored only on working days during normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday). FOIA appeals posted to the e-mail box, or sent to the fax machine, or received by the Office of General Counsel after normal business hours will be deemed received on the next normal business day.

If you have any questions regarding this request, please contact Chris Rilling at 301 713-2363 x171.

Sincerely,


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Assistant Administrator
for Fisheries