

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

DEFENDERS OF WILDLIFE,)
1130 17th Street, N.W.)
Washington, D.C. 20036,)
)
Plaintiff,)
)
v.)
)
U.S. DEPARTMENT OF THE INTERIOR,)
1849 C Street, NW)
Washington, DC 20240,)
)
U.S. FISH AND WILDLIFE SERVICE,)
1849 C Street, NW)
Washington, DC 20240,)
)
U.S. BUREAU OF LAND MANAGEMENT,)
1849 C Street, NW)
Washington, DC 20240,)
)
Defendants.)

CASE NO: 18-2572

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Defenders of Wildlife (“Defenders”) brings this action pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, as amended, and the Department of the Interior’s regulations implementing FOIA (“DOI’s FOIA regulations”), 43 C.F.R. § 2.1 *et seq.*

2. The federal government is currently engaged in environmental planning processes and other activities related to proposed exploration and leasing of oil and gas resources on the Coastal Plain of the Arctic National Wildlife Refuge (“Arctic Refuge”) in Alaska, which serves

as crucial habitat for hundreds of species. Despite being a matter of significant public interest, the public has very little information about what these planning processes and activities entail. Defenders, therefore, submitted FOIA requests to the three defendants in this matter, the U.S. Department of the Interior, the U.S. Fish and Wildlife Service, and the U.S. Bureau of Land Management, to obtain information necessary to increase public understanding of government operations related to fossil fuel development in the Arctic Refuge.

3. Defendants, however, have failed to produce any records in response to these FOIA requests, in violation of the mandatory time limits established by FOIA and DOI's FOIA regulations. *See* 5 U.S.C. § 552(a)(6)(A)(i), (a)(6)(B)(i); 43 C.F.R. §§ 2.16(a), 2.19(a). Defendants have also violated FOIA and DOI's FOIA regulations because they failed to notify Plaintiff of any future dates by which they expect to complete processing these requests. *See* 5 U.S.C. § 552(a)(6)(B)(i); 43 C.F.R. § 2.19(a)(2).

4. Therefore, Plaintiff respectfully requests this Court declare that Defendants are in violation of FOIA, compel Defendants to immediately produce by a date certain all non-exempt records responsive to Plaintiff's six FOIA requests, award Plaintiff costs and reasonable attorneys' fees in this action, and grant such other relief as this Court may deem just and proper.

JURISDICTION AND VENUE

5. Pursuant to 5 U.S.C. § 552(a)(4)(B), this Court has jurisdiction and venue over this action.

PARTIES

6. Plaintiff Defenders is a non-profit membership organization that is one of the nation's leading advocates for endangered species and wildlife conservation. Founded in 1947, Defenders is headquartered in Washington, D.C. and maintains six regional field offices

throughout the country. Defenders is a science-based conservation organization with more than 1.8 million members and supporters nationwide and around the world, including approximately 4,900 members, donors, and activists in Washington, D.C. and 6,300 in Alaska. Defenders is dedicated to the protection of all native wild animals and plants in their natural communities and the preservation of the habitats upon which they depend. Defenders uses education, public outreach, science, policy, and litigation, along with legislative and administrative advocacy, to defend the species, ecosystems, and habitats that are central to the organization's mission, including with respect to the Arctic National Wildlife Refuge. Defenders has worked for decades to safeguard the Arctic Refuge from destructive oil and gas development. Protecting this vital unit of the National Wildlife Refuge System is key to implementing Defenders' vision to ensure that diverse wildlife populations are secure and thriving, sustained by a healthy and intact network of lands and waters.

7. Defendant U.S. Department of the Interior ("DOI") is ultimately responsible for the administration and implementation of the Department's FOIA obligations, for managing the National Wildlife Refuge System through the U.S. Fish and Wildlife Service, including the Arctic Refuge, and for administering the congressionally legislated oil and gas program on the Coastal Plain.

8. Defendant U.S. Fish and Wildlife Service ("FWS" or "the Service") is a federal agency within DOI that is responsible for the administration and implementation of the Service's FOIA obligations, and for the administration of the National Wildlife Refuge System and the Endangered Species Act on behalf of DOI.

9. Defendant U.S. Bureau of Land Management ("BLM" or "the Bureau") is a federal agency within DOI that is responsible for the administration and implementation of the

Bureau's FOIA obligations, and for management of certain activities related to an oil and gas program on the Coastal Plain of the Arctic Refuge.

STATUTORY BACKGROUND

10. The Freedom of Information Act requires federal agencies to provide agency records to the public upon request, except for agency records that are exempt from disclosure. 5 U.S.C. § 552(a)(3)(A), (b).

11. FOIA requires an agency to determine within 20 working days following the receipt of a FOIA request “whether to comply with such request” and to “immediately notify the person making such request of... such determination and the reasons therefor.” *Id.* § 552(a)(6)(A)(i), (a)(6)(A)(i)(I).

12. If “unusual circumstances” exist, the agency may extend the response time for a period that ordinarily may not exceed an additional ten working days. *Id.* § 552(a)(6)(B)(i). When an agency does so, it must provide a requester with notice, along with “the date on which a determination is expected to be dispatched.” *Id.*

13. Under DOI's FOIA regulations “[o]rdinarily, the bureau has 20 workdays... to determine whether to comply with a request...” 43 C.F.R. § 2.16(a).

14. DOI's FOIA regulations also provide that a bureau within the agency “may extend the basic time limit, if unusual circumstances exist,” but it must notify the requester of the unusual circumstances and “[t]he date by which it expects to complete processing the request.” *Id.* § 2.19(a).

STATEMENT OF FACTS

Arctic Refuge Background

15. Located in northeastern Alaska, the Arctic National Wildlife Refuge is known for “its wildness and naturalness—a place of undisturbed wildlife and wild landscapes.” FWS, *A Sense of the Refuge: Arctic National Wildlife Refuge* 3 (2011), https://www.fws.gov/uploadedFiles/Region_7/NWRS/Zone_1/Arctic/PDF/Sense%20of%20the%20Refuge%20booklet%20web.pdf. This wildlife haven is home to hundreds of species, boasting the greatest biodiversity of any protected area north of the Arctic Circle. FWS, *Arctic National Wildlife Refuge: Revised Comprehensive Conservation Plan: Final Environmental Impact Statement* app. F (2015), <https://www.fws.gov/home/arctic-ccp/> [hereinafter *Revised Comprehensive Conservation Plan*]. The Arctic Refuge is an exceptional unit of the National Wildlife Refuge System, the only federal network of lands and waters dedicated to “the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats...” 16 U.S.C. § 668dd(a)(2).

16. The Arctic Refuge’s 1.57 million-acre Coastal Plain, also referred to as “the Section 1002 Area,” provides critical denning habitat for federally protected polar bears, resting, feeding and breeding habitat for more than 100 species of migratory birds, and supports an array of other wildlife. *Revised Comprehensive Conservation Plan* ch. 4 at 4 - 2, 4 - 118, app. F. It is also the principal calving and post-calving ground for more than 200,000 animals that comprise the Porcupine caribou herd, and an area sacred to the indigenous Gwich’in people who depend on the caribou for subsistence and as part of their cultural identity. *Id.* ch. 4 at 4 - 99, 4 - 178; Press Release, Alaska Department of Fish and Game, Porcupine Caribou Herd Grows to Record

High Numbers (Jan. 2, 2018),

http://www.adfg.alaska.gov/index.cfm?adfg=pressreleases.pr&release=2018_01_02.

17. The Arctic Refuge and its Coastal Plain were first protected in 1960 by the Eisenhower administration as the Arctic National Wildlife Range “[f]or the purpose of preserving unique wildlife, wilderness and recreational values...” *Establishing the Arctic National Wildlife Range*, Public Land Order 2214, F.R. Doc. 60-11510 (Dec. 8, 1960). In 1980, Congress expanded and re-designated the area as a national wildlife refuge for the conservation of fish, wildlife and habitats in their natural diversity, fulfillment of international wildlife treaty obligations, provision of subsistence opportunities, and preservation of refuge water resources. Alaska National Interest Lands Conservation Act, Pub. L. No. 96-487, § 303(2)(A)-(B), 94 Stat. 2390 (1980). In 2015, after an extensive scientific assessment of refuge resources that included significant public input, the U.S. Fish and Wildlife Service recommended congressional Wilderness designation for the Coastal Plain as part of its Revised Comprehensive Conservation Plan for the Arctic Refuge. FWS, *Record of Decision: Revised Comprehensive Conservation Plan: Arctic National Wildlife Refuge* 13 (Apr. 3, 2015), <https://www.fws.gov/home/arctic-ccp/> [hereinafter *Record of Decision*].

18. Legislative efforts to open the Coastal Plain to oil and gas development were repeatedly defeated for decades until Congress included a controversial provision in the budget reconciliation process for the tax reform bill last year. On December 22, 2017, President Donald J. Trump signed the legislation into law, directing the Secretary of the Interior, acting through the BLM, to “establish and administer a competitive oil and gas program for the leasing, development, production, and transportation of oil and gas” on the Coastal Plain of the Arctic Refuge. To Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution

on the Budget for Fiscal Year 2018, Pub. L. No. 115-97, § 20001(a)(2), (b)(2)(A), 131 Stat. 2236 (Dec. 22, 2017). This act further required the Secretary, through the BLM, to hold at least two lease sales in this area within ten years. *Id.* § 20001(c)(1)(A).

19. The BLM is currently preparing an Environmental Impact Statement for the Coastal Plain Oil and Gas Leasing Program, which is a study that would in part analyze various alternative lease sale plans and their potential environmental impacts on the Arctic Refuge. BLM, *Coastal Plain Oil and Gas Leasing Program EIS* (last visited Nov. 5, 2018), <https://www.blm.gov/programs/planning-and-nepa/plans-in-development/alaska/coastal-plain-eis>.

20. The agency is also currently evaluating SAExploration Inc.'s proposal to conduct seismic exploration across the entire Coastal Plain beginning this winter. BLM, *SAExploration Inc. Seismic Application* (last updated Aug. 10, 2018), <https://eplanning.blm.gov/epl-front-office/eplanning/projectSummary.do?methodName=renderDefaultProjectSummary&projectId=111085>.

21. Oil and gas activities on the Coastal Plain would threaten sensitive species, irreplaceable public lands and the Gwich'in way of life. FWS, *Arctic National Wildlife Refuge: Potential Impacts of Proposed Oil and Gas Development on the Arctic Refuge's Coastal Plain: Historical Overview and Issues of Concern* 8-10 (2001), https://training.fws.gov/Pubs7/arctic_oilandgas_impact.pdf [hereinafter *Potential Impacts of Proposed Oil and Gas Development*]; Gwich'in Steering Committee et al., *A Moral Choice for the United States: The Human Rights Implications for the Gwich'in of Drilling in the Arctic National Wildlife Refuge* iii (2005), <http://ourarcticrefuge.org/wp-content/uploads/2012/10/GSChumanrightsreport.pdf>. Scientists have expressed their concerns

that exploration and drilling would upset ecological processes and impact entire wildlife populations. *See, e.g.* Letter from R. Terry Bowyer, Ph.D., Professor Emeritus, Wildlife Ecology, Univ. of Alaska Fairbanks et al. to the Honorable Lisa Murkowski, Chair, Comm. on Energy and Natural Res., U.S. Senate & the Honorable Maria Cantwell, Ranking Member, Comm. on Energy and Natural Res., U.S. Senate (Nov. 9, 2017), https://www.audubon.org/sites/default/files/arctic_refuge_science_letter_2017_11_09_final_00000003.pdf. Seismic testing would scar the fragile tundra and affect imperiled polar bears, potentially sending the species into further decline. *Potential Impacts of Proposed Oil and Gas Development* at 10-12. Industrial development would alter the landscape, turning habitat into a steel spider's web of pipelines from a large number of drill pads, along with airstrips, gravel pits, power plants, landfills and other infrastructure, with consequences for caribou and other species. *Id.* at 7-8, 13. Oil spills could devastate refuge ecosystems. These threats would be compounded in an area that is already ground zero for climate change – the Arctic is warming at more than twice the rate as the rest of the planet. Jeff Tollefson, *Huge Arctic Report Ups Estimates of Sea-Level Rise: Report Prompts Warnings That the Polar Region is “Unraveling,”* *Nature* (Apr. 28, 2017), <https://www.nature.com/news/huge-arctic-report-ups-estimates-of-sea-level-rise-1.21911>.

22. Oil and gas development in the Arctic Refuge is a matter of significant public interest. The Service received 612,285 individual communications on the refuge's Draft Revised Comprehensive Conservation Plan and Draft Environmental Impact Statement in 2011, nearly all of which called for protection of the Coastal Plain of the Arctic Refuge. *Record of Decision* at 10-11. Polling in 2017 found that 70 percent of American voters are opposed to drilling in the refuge. Anthony Leiserowitz et al., *Americans Oppose Drilling in Arctic National Wildlife Refuge*, Yale Program on Climate Change Communication (Dec. 4, 2017),

<http://climatecommunication.yale.edu/publications/americans-oppose-drilling-arctic-national-wildlife-refuge/>. More than 750,000 public scoping comments were submitted on the BLM's recent Notice of Intent to Prepare an Environmental Impact Statement for the Coastal Plain Oil and Gas Leasing Program. BLM, *Coastal Plain Oil and Gas Leasing Program: Environmental Impact Statement: Final Scoping Report* ch. 2 at 2 - 1 (July 2018), https://eplanning.blm.gov/epl-front-office/projects/nepa/102555/152084/186300/Coastal_Plain_Leasing_EIS_Final_Scoping_Report_508.pdf. Legislation is currently pending in Congress to repeal the Arctic Refuge oil and gas program and restore protections for the Coastal Plain. *See* Arctic Cultural and Coastal Plain Protection Act, H.R. 5911, 115th Cong. § 4 (2018).

23. FWS, DOI, and BLM have released little information to the public regarding the environmental planning processes and other activities related to the proposed exploration, leasing and extraction of oil and gas resources in the Coastal Plain and the impacts that development will have on Arctic Refuge wildlife and habitat.

FWS FOIA Requests

A. February 2018 FWS FOIA Request

24. On February 5, 2018, Defenders submitted a FOIA request via email to the Alaska Region of FWS (“the February 2018 FWS FOIA Request”). *See* Letter from Jennifer L. Keatinge, Senior Federal Lands Policy Analyst, Defenders, to Lynne Santos, FOIA Coordinator, Division of Administrative Services, FWS (Feb. 5, 2018) (attached hereto as Exhibit A). The February 2018 FWS FOIA Request sought “records generated, obtained or received by [the Alaska Region of FWS] since November 3, 2017 related to assessment, exploration and potential

development of oil and gas resources in the Coastal Plain (Section 1002 Area) of the Arctic National Wildlife Refuge.” *Id.* at 1.

25. To date, FWS has not provided any records responsive to the February 2018 FWS FOIA Request.

26. On February 6, 2018 the Alaska Region of FWS, otherwise known as “Region 7,” sent Defenders an email that acknowledged that the agency received the February 2018 FWS FOIA Request on February 5, 2018, assigning it tracking number FWS-2018-00436. The email furthermore notified Defenders that the Service would take a 10-workday extension pursuant to 43 C.F.R. § 2.19 in order to consult about this request with another agency or with other components of DOI. FWS stated in this email that it expected to “dispatch a determination to you no later than March 19, 2018.” FWS failed to dispatch a determination by March 19, 2018.

27. On April 11, 2018, FWS notified Defenders by email that the agency was taking another extension because it would be searching for and collecting records in multiple offices. In this email, FWS asserted that “[w]e anticipate we will be able to complete your request by April 26th, 2018.” FWS failed to complete the request by April 26, 2018.

28. Defenders consistently inquired with FWS about the status of the February 2018 FWS FOIA Request, including on April 6, 2018, May 3, 2018, and June 21, 2018, repeatedly offering to assist the agency in facilitating tender of responsive records.

29. On July 20, 2018, Defenders emailed FWS Region 7, providing it with notice that the agency was in violation of FOIA for failing to meet (1) the determination deadlines established by the Act and (2) the Act’s requirement to provide an estimated date by which the agency would complete the request. In this notice, Defenders stressed that “[*t*]ime is of the *essence* as the requested records are essential to public understanding of government operations,

namely management of oil and gas development on the Coastal Plain of the Arctic National Wildlife Refuge.” (emphasis in original).

30. FWS has not provided Defenders with a future estimate for when it expects to complete processing the February 2018 FWS FOIA Request.

B. July 2018 FWS FOIA Request

31. On July 25, 2018, Defenders submitted a FOIA request via email to the Alaska Region of FWS (“the July 2018 FWS FOIA Request”). *See* Letter from Jennifer L. Keatinge, Senior Federal Lands Policy Analyst, Defenders, to Maria Rivero, FOIA & Records, FWS (July 25, 2018) (attached hereto as Exhibit B). The July 2018 FWS FOIA Request sought a specific set of related documents, that is “records generated, obtained or received by [FWS] regarding seismic exploration for oil and gas reserves in the coastal plain (Section 1002 Area) of the Arctic National Wildlife Refuge since April 1, 2018.” *Id.* at 1. Explaining the “compelling need” for the records at issue in the July 2018 FWS FOIA Request, Plaintiff asked that FWS grant the request “expedited processing” pursuant to 5 U.S.C. § 552(a)(6)(E) and 43 C.F.R. § 2.20. *Id.* at 2.

32. To date, FWS has not provided any records responsive to the July 2018 FWS FOIA Request.

33. FWS has not provided any formal acknowledgement letter in response to this request, nor has it provided Defenders with any letter denying its request for expedited processing. However, following two inquiries from Defenders, FWS stated via telephone call on August 28, 2018 that it had received the July 2018 FWS FOIA Request and assigned it tracking number FWS-2018-01159.

34. Defenders consistently inquired with FWS about the status of the July 2018 FWS FOIA Request, including on August 23, 2018, August 28, 2018, and October 22, 2018, repeatedly offering to assist the agency in facilitating tender of responsive records.

35. On October 30, 2018, Defenders emailed FWS Region 7, providing it with notice that the agency was in violation of FOIA for failing to meet (1) the determination deadlines established by the Act and (2) the Act's requirement to provide an estimated date by which the agency would complete the request. In this notice, Defenders stressed that “[*t*]ime is of the *essence* as the requested records are essential to public understanding of government operations, namely management of seismic exploration on the Coastal Plain of the Arctic National Wildlife Refuge.” (emphasis in original).

36. FWS has not provided Defenders with a future estimate for when it expects to complete processing the July 2018 FWS FOIA Request.

DOI FOIA Requests

A. April 2018 DOI FOIA Request

37. On April 3, 2018 Defenders submitted a FOIA request via email to the Office of the Secretary of DOI (“the April 2018 DOI FOIA Request”) “seeking records generated, obtained or received by [DOI] related to planning, exploration, leasing and development of oil and gas resources on the Coastal Plain (Section 1002 Area) since November 15, 2017.” *See* Letter from Jennifer Keatinge, Senior Federal Lands Policy Analyst, Defenders, to Clarice Julka, Office of the Secretary, DOI (April 3, 2018) (attached hereto as Exhibit C).

38. To date, DOI has not provided Defenders with any records responsive to the April 2018 DOI FOIA Request.

39. On June 12, 2018 the Office of the Secretary of DOI (“Office of the Secretary”) responded to the April 2018 DOI FOIA Request by email acknowledging that it received the request on April 3, 2018, and assigned it tracking number OS-2018-00978. The response furthermore notified Defenders that the Department would take a 10-workday extension pursuant to 43 C.F.R. § 2.19 in order to consult with one or more other bureaus in the Department.

40. Defenders consistently inquired with the Office of the Secretary about the status of the April 2018 DOI FOIA Request, including on June 12, 2018 and June 21, 2018, offering to assist the Department in facilitating tender of responsive documents.

41. On September 12, 2018 Defenders contacted the Office of the Secretary by email, providing it with notice that the Department was in violation of FOIA for failing to meet (1) the determination deadlines established by the Act and (2) the Act’s requirement that the agency provide an estimated date by when it would complete the request. In this notice, Defenders stressed that “[t]ime is of the essence as the requested records are essential to public understanding of government operations, namely management of oil and gas development on the Coastal Plain of the Arctic National Wildlife Refuge.” (emphasis in original).

42. DOI has not provided Defenders with an estimated date by when it expects to complete processing the April 2018 DOI FOIA Request.

B. July 2018 DOI FOIA Request

43. On July 27, 2018 Defenders submitted a FOIA request via email to the Office of the Secretary of DOI (“the July 2018 DOI FOIA Request”) seeking a specific set of related documents, that is “records generated, obtained or received by [DOI] regarding seismic exploration for oil and gas reserves in the coastal plain (Section 1002 Area) of the Arctic National Wildlife Refuge since April 1, 2018.” See Letter from Jennifer Keatinge, Senior Federal

Lands Policy Analyst, Defenders, to Clarice Julka, Office of the Secretary, DOI (July 27, 2018) (attached hereto as Exhibit D). Explaining the “compelling need” for the records at issue in the July 2018 DOI FOIA Request, Plaintiff asked that DOI grant the request for “expedited processing” pursuant to 5 U.S.C. § 552(a)(6)(E) and 43 C.F.R. § 2.20. *Id.* at 2.

44. To date, DOI has not provided Defenders with any records responsive to the July 2018 DOI FOIA Request.

45. On August 10, 2018 the Office of the Secretary responded to the July 2018 DOI FOIA Request by email with an acknowledgment letter stating that it had received the request on July 27, 2018, and assigned it tracking number OS-2018-01447. This acknowledgement furthermore stated that DOI was declining to grant Plaintiff’s request for expedited processing. The response also notified Defenders that the Department would take a 10-workday extension pursuant to 43 C.F.R. § 2.19 in order to consult with one or more other bureaus in the Department. Finally, this letter stated “[y]ou can expect to hear from us promptly regarding the outcome of this search.”

46. Defenders consistently inquired with the Office of the Secretary about the status of the July 2018 DOI FOIA Request, including on August 30, 2018 and October 22, 2018, offering to assist the Department in facilitating tender of responsive documents.

47. On October 30, 2018 Defenders contacted the Office of the Secretary by email, providing it with notice that the Department was in violation of FOIA for failing to meet (1) the determination deadlines established by the Act and (2) the Act’s requirement that the agency provide an estimated date by when it would complete the request. In this notice, Defenders stressed that “[t]ime is of the essence as the requested records are essential to public

understanding of government operations, namely management of seismic exploration on the Coastal Plain of the Arctic National Wildlife Refuge.” (emphasis in original).

48. DOI has not provided Defenders with an estimated date by when it expects to complete processing the July 2018 DOI FOIA Request.

BLM FOIA Requests

A. April 2018 BLM FOIA Request

49. On April 3, 2018 Defenders submitted a FOIA request via email to the Alaska State Office of BLM (“the April 2018 BLM FOIA Request”) “seeking records generated, obtained or received by the Alaska State Office of [BLM] related to planning, exploration, leasing and development of oil and gas resources on the Coastal Plain (Section 1002 Area) since November 15, 2017.” *See* Letter from Jennifer Keatinge, Senior Federal Lands Policy Analyst, Defenders, to Heidi Wanner, FOIA Coordinator, Alaska State Office, BLM (April 3, 2018) (attached hereto as Exhibit E).

50. To date, BLM has not provided Defenders with any records responsive to the April 2018 BLM FOIA Request.

51. On April 25, 2018 the Alaska State Office of BLM responded to the April 2018 BLM FOIA Request by email acknowledging that it received the request on April 3, 2018, assigning it tracking number BLM-2018-00691. The agency provided no estimated date by when it would complete processing the April 2018 BLM FOIA Request. However, the response asserted that “[w]e will be providing you with document releases on a rolling basis.” The BLM has never provided Defenders with an interim release of responsive documents.

52. Defenders consistently inquired with the BLM about the status of the April 2018 BLM FOIA Request, including on June 20, 2018, July 20, 2018, July 24, 2018, August 22, 2018,

and August 28, 2018, repeatedly offering to assist the agency to facilitate release of responsive records.

53. On September 12, 2018 Defenders emailed the Alaska State Office of BLM to provide the agency with notice that it was in violation of FOIA for failing to meet (1) the determination deadlines established by the Act and (2) the Act's requirement that the agency provide an estimated date by when it would complete the request. In this notice, Defenders stressed that "*Time is of the essence* as the requested records are essential to public understanding of government operations, namely management of oil and gas development on the Coastal Plain of the Arctic National Wildlife Refuge." (emphasis in original).

54. The BLM has not provided Defenders with an estimated date by when it expects to complete processing the April 2018 BLM FOIA Request

B. July 2018 BLM FOIA Request

55. On July 27, 2018 Defenders submitted a FOIA request via email to the Alaska State Office of BLM ("the July 2018 BLM FOIA Request") seeking a specific set of related documents, that is "records generated, obtained or received by the [BLM] regarding seismic exploration for oil and gas reserves in the coastal plain (Section 1002 Area) of the Arctic National Wildlife Refuge since April 1, 2018." *See* Letter from Jennifer Keatinge, Senior Federal Lands Policy Analyst, Defenders, to Heidi Wanner, FOIA Coordinator, Alaska State Office, BLM (July 27, 2018) (attached hereto as Exhibit F). Explaining the "compelling need" for the records at issue in the July 2018 BLM FOIA Request, Plaintiff asked that the BLM grant the request "expedited processing" pursuant to 5 U.S.C. § 552(a)(6)(E) and 43 C.F.R. § 2.20. *Id.* at 2.

56. To date, BLM has not provided Defenders with any records responsive to the July 2018 BLM FOIA Request.

57. On August 6, 2018 the Alaska State Office of BLM responded to the July 2018 BLM FOIA Request with an acknowledgement letter stating that it received the request on July 27, 2018, assigning it tracking number BLM-2018-01137. This acknowledgement furthermore stated that the BLM was declining to grant Plaintiff's request for expedited processing of the July 2018 BLM FOIA Request, but provided no estimated date by when the agency would complete processing of the request.

58. Defenders consistently inquired with the BLM about the status of the July 2018 BLM FOIA Request, including on August 28, 2018 and October 22, 2018, offering to assist the agency in facilitating tender of responsive documents.

59. On October 30, 2018 Defenders emailed the Alaska State Office of BLM to provide the agency with notice that it was in violation of FOIA for failing to meet (1) the determination deadlines established by the Act and (2) the Act's requirement that the agency provide an estimated date by when it would complete the request. In this notice, Defenders stressed that “[*t*]ime is of the essence as the requested records are essential to public understanding of government operations, namely management of seismic exploration on the Coastal Plain of the Arctic National Wildlife Refuge.” (emphasis in original).

60. The BLM has not provided Defenders with an estimated date by when it expects to complete processing the July 2018 BLM FOIA Request.

CLAIMS FOR RELIEF

Count One: Violation of FOIA In Responding to the February 2018 FWS FOIA

Request

61. Plaintiff incorporates by reference the allegations set forth in all preceding paragraphs of this Complaint.

62. By failing to produce any records in response to the February 2018 FWS FOIA Request, Defendants FWS and DOI are in violation of the mandatory time limits established under FOIA and DOI's FOIA regulations. *See* 5 U.S.C. § 552(a)(6)(A), (a)(6)(B)(i); 43 C.F.R. §§ 2.16(a), 2.19(a).

63. By failing to set forth any future date by when FWS will complete processing the February 2018 FWS FOIA Request, Defendants FWS and DOI are in violation of FOIA and DOI's FOIA regulations. *See* 5 U.S.C. § 552(a)(6)(B)(i); 43 C.F.R. § 2.19(a).

Count Two: Violation of FOIA In Responding to the July 2018 FWS FOIA Request

64. Plaintiff incorporates by reference the allegations set forth in all preceding paragraphs of this Complaint.

65. By failing to produce any records in response to the July 2018 FOIA Request, Defendants FWS and DOI are in violation of the mandatory time limits established under FOIA and DOI's FOIA regulations. *See* 5 U.S.C. § 552(a)(6)(A), (a)(6)(B)(i); 43 C.F.R. §§ 2.16(a), 2.19(a).

66. By failing to set forth any future date by when FWS will complete processing the July 2018 FWS FOIA Request, Defendants FWS and DOI are in violation of FOIA and DOI's FOIA regulations. *See* 5 U.S.C. § 552(a)(6)(B)(i); 43 C.F.R. § 2.19(a).

Count Three: Violation of FOIA in Responding to the April 2018 DOI FOIA Request

67. Plaintiff incorporates by reference the allegations set forth in all preceding paragraphs of this Complaint.

68. By failing to produce any records in response to the April 2018 DOI FOIA Request, Defendant DOI is in violation of the mandatory time limits established under FOIA and DOI's FOIA regulations. *See* 5 U.S.C. § 552(a)(6)(A), (a)(6)(B)(i); 43 C.F.R. §§ 2.16(a), 2.19(a).

69. By failing to set forth any future date by when DOI will complete processing the April 2018 DOI FOIA Request, Defendant DOI is in violation of FOIA and DOI's FOIA regulations. *See* 5 U.S.C. § 552(a)(6)(B)(i); 43 C.F.R. § 2.19(a).

Count Four: Violation of FOIA in Responding to the July 2018 DOI FOIA Request

70. Plaintiff incorporates by reference the allegations set forth in all preceding paragraphs of this Complaint.

71. By failing to produce any records in response to the July 2018 DOI FOIA Request, Defendant DOI is in violation of the mandatory time limits established under FOIA and DOI's FOIA regulations. *See* 5 U.S.C. § 552(a)(6)(A), (a)(6)(B)(i); 43 C.F.R. §§ 2.16(a), 2.19(a).

72. By failing to set forth any future date by when DOI will complete processing the July 2018 DOI FOIA Request, Defendant DOI is in violation of FOIA and DOI's FOIA regulations. *See* 5 U.S.C. § 552(a)(6)(B)(i); 43 C.F.R. § 2.19(a).

Count Five: Violation of FOIA in Responding to the April 2018 BLM FOIA Request

73. Plaintiff incorporates by reference the allegations set forth in all preceding paragraphs of this Complaint.

74. By failing to produce any records in response to the April 2018 BLM FOIA Request, Defendants BLM and DOI are in violation of the mandatory time limits established

under FOIA and DOI's FOIA regulations. *See* 5 U.S.C. § 552(a)(6)(A), (a)(6)(B)(i); 43 C.F.R. §§ 2.16(a), 2.19(a).

75. By failing to set forth any future date by when the BLM will complete processing the April 2018 BLM FOIA Request, Defendants BLM and DOI are in violation of FOIA and DOI's FOIA regulations. *See* 5 U.S.C. § 552(a)(6)(B)(i); 43 C.F.R. § 2.19(a).

Count Six: Violation of FOIA in Responding to the July 2018 BLM FOIA Request

76. Plaintiff incorporates by reference the allegations set forth in all preceding paragraphs of this Complaint.

77. By failing to produce any records in response to the July 2018 BLM FOIA Request, Defendants BLM and DOI are in violation of the mandatory time limits established under FOIA and DOI's FOIA regulations. *See* 5 U.S.C. § 552(a)(6)(A), (a)(6)(B)(i); 43 C.F.R. §§ 2.16(a), 2.19(a).

78. By failing to set forth any future date by when the BLM will complete processing the July 2018 BLM FOIA Request, Defendants BLM and DOI are in violation of FOIA and DOI's FOIA regulations. *See* 5 U.S.C. § 552(a)(6)(B)(i); 43 C.F.R. § 2.19(a).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests this Court:

1. Declare that Defendants DOI and FWS are in violation of FOIA and DOI's FOIA regulations with respect to FWS's ongoing failure to process the February 2018 FWS FOIA Request and July 2018 FWS FOIA Request;

2. Order Defendants DOI and FWS to immediately produce by a date certain all non-exempt records responsive to the February 2018 FWS FOIA Request and July 2018 FWS FOIA Request;

3. Declare that Defendant DOI is in violation of FOIA and DOI's FOIA regulations with respect to its ongoing failure to process the April 2018 DOI FOIA Request and July 2018 DOI FOIA Request;

4. Order Defendant DOI to immediately produce by a date certain all non-exempt records responsive to the April 2018 DOI FOIA Request and July 2018 DOI FOIA Request;

5. Declare that Defendants DOI and BLM are in violation of FOIA and DOI's FOIA regulations with respect to the BLM's ongoing failure to process the April 2018 BLM FOIA Request and July 2018 BLM FOIA Request;

6. Order Defendants DOI and BLM to immediately produce by a date certain all non-exempt records responsive to the April 2018 BLM FOIA Request and July 2018 BLM FOIA Request;

7. Award Plaintiff costs and reasonable attorneys' fees in this action pursuant to U.S.C. § 552(a)(4)(E); and

8. Grant such other and further relief as this Court may deem just and proper.

November 8, 2018

Respectfully submitted,

/s/ Michael P. Senatore
Michael P. Senatore (D.C. Bar No. 453116)
DEFENDERS OF WILDLIFE
1130 17th Street, N.W.
Washington, D.C. 20036
Telephone: (202) 772-3221
Facsimile: (202) 682-1331
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/s/ Jason C. Rylander
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Attorneys for Defenders of Wildlife

EXHIBIT A



National Headquarters

1130 17th Street, N.W. | Washington, D.C. 20036-4604 | tel 202.682.9400 | fax 202.682.1331
www.defenders.org

Submitted electronically to Lynn.Santos@fws.gov

February 5, 2018

Lynne Santos
FOIA Coordinator
U.S. Fish and Wildlife Service
Division of Administrative Services
Mail Stop 385, 1011 E. Tudor Road
Anchorage, Alaska 99503

Re: Freedom of Information Act Request for Records Relating to Oil and Gas Assessment, Exploration and Potential Development in the Coastal Plain of the Arctic National Wildlife Refuge; Request for Fee Waiver

Dear FOIA Officer:

On behalf of Defenders of Wildlife (Defenders), I respectfully submit the following request pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and its implementing regulations, 43 C.F.R. §§ 2.1–2.34, seeking records generated, obtained or received by the Alaska Region (Region 7) of the U.S. Fish and Wildlife Service (Service) since November 3, 2017 **related to assessment, exploration and potential development of oil and gas resources in the Coastal Plain (Section 1002 Area) of the Arctic National Wildlife Refuge.**

The requested records are those generated, obtained or received by Region 7 since the November 3, 2017 date of our previous FOIA request (FWS-2018-00134) and include, but are not limited to:

- All records related to implementation of Title II, Section 20001 of H.R. 1, “An Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Year 2018,” regarding development of an oil and gas program in the Coastal Plain of the Arctic National Wildlife Refuge.
- All records regarding proposed new Arctic National Wildlife Refuge policies, plans, regulations, environmental impact statements, assessments and technical reports in compliance with Title II, Section 20001 of H.R. 1.
- All records regarding proposed changes to existing refuge management direction including 50 C.F.R. Part 37, “Geological and Geophysical Exploration of the Coastal Plain,” and the Arctic National Wildlife Refuge Comprehensive Conservation Plan.
- All records regarding development of private lands within the boundaries of the Coastal Plain of the Arctic National Wildlife Refuge owned by Arctic Slope Regional Corporation and Kaktovik Inupiat Corporation.
- All records related to the above described documents and any other records concerning potential oil and gas exploration and development in the Section 1002 Area of the Arctic National Wildlife Refuge since November 3, 2017.

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 type, including both electronic and paper documents, electronic mail, 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, databases, drawings, surveys, graphs, charts, photographs, videos, meeting notes or minutes, electronic and magnetic recordings of meetings, maps, Geographic Information System data, GPS, UTM, LiDAR, CDs, and any other compilations of data from which information can be obtained.

WITHHELD DOCUMENTS

Under the FOIA Improvement Act of 2016, agencies are prohibited from denying requests for information pursuant to FOIA unless prohibited by law or the agency reasonably believes release of the information will harm an interest that is protected by a FOIA exemption. 5 U.S.C. § 552(a)(8)(A). Should you decide to invoke a FOIA exemption, please include in your response a description of which responsive documents are withheld with sufficient information for us to assess the basis for the exemption, including any interest(s) that would be harmed by their release. Please include a detailed index identifying:

1. Basic factual material about each withheld record, including the originator, date, length, general subject matter, and location of each item; and
2. Complete explanation and justification for withholding each record, including the specific exemption(s) under which the record (or portion thereof) is 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 and/or may help to avoid unnecessary litigation.

If you determine that portions of responsive records are exempt from disclosure, please segregate or redact the exempt portions and provide the non-exempt portions within the statutory time limit. 5 U.S.C. § 552(b).

FORMAT OF REQUESTED RECORDS

Defenders prefers receiving electronic copies of all responsive documents. Under FOIA, you are obligated to provide records in a readily accessible electronic format, if possible, and as requested here. *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.”). As used here, “readily reproducible” electronic documents should include text-searchable and OCR-formatted.

Additionally, please provide the records in .pdf file format, without any “portfolios” or “embedded files” Portfolios and embedded files are not readily accessible. *Please do not provide the records in a single, or “batched,” .pdf file.* We also appreciate the inclusion of an index of responsive records.

RECORD DELIVERY

We appreciate your assistance in expeditiously responding to this request. As mandated under FOIA, we anticipate a response within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i); 43 C.F.R. § 2.16(a). We respectfully urge you to post responses to this and parallel FOIA requests online in accordance with 5 U.S.C. § 552(a)(2)(D)(ii)(II). Defenders is pleased to receive records on a rolling basis if it facilitates the agency's response.

You may email or mail copies of the requested records to:

Jenny Keatinge
Defenders of Wildlife
1130 17th Street, N.W.
Washington, D.C. 20036
jkeatinge@defenders.org

If you find that this request is unclear, or if responsive records are voluminous, please call me at (202) 772-0270 to discuss the scope of this request.

REQUEST FOR FEE WAIVER

Pursuant to FOIA, 5 U.S.C. § 552(a)(4)(A)(iii), and the Department of the Interior's implementing regulations, 43 C.F.R. §§ 2.45–2.48, Defenders requests a waiver of all charges (*i.e.*, search, review, and duplication fees) incurred in connection with this request.

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). 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 in favor of waivers for noncommercial requesters." *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987); *accord Forest Guardians v. U.S. Dep't of the Interior*, 416 F.3d 1173, 1177–78 (10th Cir. 2005); *Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003); *Community Legal Servs. v. U.S. Dep't of Hous. and Urban Dev.*, 405 F. Supp. 2d 553, 555 (E.D. Pa. 2005).

Congress specifically designed FOIA's 1986 fee waiver amendments to provide non-profit organizations such as Defenders access to government records without payment of fees. Indeed, the fee waiver provision was intended to "explicitly recognize[] the importance and the difficulty of access to governmental documents for such typically under-funded organizations and individuals," including nonprofit public interest groups. *Better Gov't Ass'n v. Dep't of State*, 780 F.2d 86, 94 (D.C. Cir. 1986). FOIA "should not be interpreted to allow federal agencies to set up roadblocks to prevent noncommercial entities from receiving a fee waiver." *W. Watersheds Project v. Brown*, 318 F. Supp. 2d 1036, 1039 (D. Idaho 2004).

Defenders Satisfies the Qualifications for a Fee Waiver

Under FOIA, a requester 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); *see also* 43 C.F.R. § 2.45(a)(1). The Department of the Interior’s (DOI) implementing regulations at 43 C.F.R. § 2.48 establish the same standard, setting forth four factors to consider in determining whether a request meets the FOIA requirement.

Consequently, the Service must consider the following factors to determine whether a request is in the public interest: (1) “[h]ow the requested records concern the operations or activities of the Federal government,” (2) “[h]ow disclosure is likely to contribute to public understanding of those operations or activities,” (3) “[h]ow disclosure is likely to significantly contribute to the understanding of a reasonably broad audience of persons interested in the subject,” and (4) [h]ow the public’s understanding of the subject in question will be enhanced to a significant extent by the disclosure.” 43 C.F. R. § 2.48. As presented below, Defenders satisfies each of these four criteria.

Defenders therefore qualifies for a fee waiver. Disclosure of the requested records is in the public interest because it will contribute significantly to public understanding of the operations or activities of the government, particularly as they relate to fluid minerals development on federal lands within the National Wildlife Refuge System. In addition, release of the documents is not for commercial use. Founded in 1947, Defenders is a 501(c)(3) nonprofit conservation organization with 1.2 million members and supporters dedicated to the protection of all native animals and plants in their natural communities. Access to government records through FOIA requests is essential to Defenders’ role of educating the general public about government activities related to wildlife conservation. We have no commercial interest in and will realize no commercial benefit from the release of the requested records.

Please note that the U.S. Fish and Wildlife Service, U.S. Forest Service, Bureau of Land Management and National Park Service have previously granted requests for fee waivers in their provision of documents to Defenders.

A. The Requested Records Concern Operations or Activities of the Federal Government

In accordance with 43 C.F. R. § 2.48(a)(1), the requested records concern the operations and activities of the federal government, namely an executive branch agency, the U.S. Fish and Wildlife Service. Responsive materials were generated regarding assessment, exploration and potential development of oil and gas on federal public lands. The requested records describe the agency’s views and actions related to rules, regulations, policies, plans and other federal activities concerning management of fluid minerals development within the National Wildlife Refuge System. *See Judicial Watch*, 326 F.3d at 1313 (“[R]easonable specificity is all that FOIA requires with regard to this factor”) (internal quotations omitted).

B. Disclosure of the Requested Records is Likely to Contribute to Public Understanding of Government Operations or Activities

In accordance with 43 C.F. R. § 2.48(a)(2), the requested records are meaningfully informative about government operations or activities, there is a logical connection between their contents and those

operations or activities, and disclosure will contribute to an increased public understanding of the subject matter because Defenders has the expertise to analyze and publicize the information in a manner that is useful to a broad audience of persons interested in national wildlife refuges, oil and gas development and management on federal public lands.

The information about government operations and activities contained in the requested records will meaningfully inform public understanding of the Service's management of oil and gas related activities within the National Wildlife Refuge System. It will also aid public understanding of department actions that affect energy development on other public lands. This information is highly relevant to Defenders and our members because we are deeply concerned about these issues. Our review and analysis of responsive records will provide the public with critical information about current and future federal policy for managing and protecting vital public lands nationwide.

Once the information is made available, we will share it with our 1.2 million members, supporters, activists, partners and the general public in a manner that will contribute to their understanding of government activities. Defenders' record of active participation in oversight of governmental activities and decision-making, and our consistent contribution to the public's understanding of those activities is well established.

Defenders is a national non-profit organization focused on wildlife and habitat conservation and the safeguarding of biodiversity. We inform, educate and counsel the public regarding environmental issues, policies and laws relating to wildlife protection and public lands. We represent our members' interests in ensuring that imperiled species and their habitat receive the full protections due under federal law. We frequently communicate with our members, supporters, partner organizations, and the interested public on news and information relevant to oil and gas development on federal public lands and waters, its impacts on species, and the adequacy of measures to mitigate for those impacts.

Defenders will rely on its own legal and scientific experts, as well as outside experts, to analyze the information contained in records produced in response to this FOIA request. We have used, and will continue to use, a full array of tools to ensure our members' interests are vindicated and the general public is informed through our synthesis of the information gleaned from the requested records.

Defenders will ensure that the information produced in response to this request, and our analysis thereof, is disseminated to a reasonably broad audience of persons interested in federal lands management and wildlife conservation. In disseminating the information, Defenders will assure that it is made available for the benefit of the interested persons beyond our membership, such as members of other conservation advocacy organizations, the media, the academic community, and the general public.

Defenders has the ability to disseminate information obtained from the requested records in a number of ways to a broad audience. We actively communicate with our members, supporters and the general public through direct mail and email campaigns. We broadcast action alerts notifying the public of opportunities to comment on agency proposals; publish information on and frequently update our website (797,055+ visitors per month) and blog (21,000+ monthly readership) to educate the public on wildlife conservation issues; distribute a quarterly print magazine with a circulation of approximately 350,000; communicate with partner organizations both nationally and internationally; maintain an active online presence through Facebook (652,000+ followers), Twitter (109,000+

followers), and YouTube (6900+ subscribers); distribute press releases directly to media contacts and through our website and RSS feed; and educate lawmakers and advocates on conservation law at the federal, state and local level.

C. Disclosure of the Requested Records is Likely to Significantly Contribute to the Understanding of a Reasonably Broad Audience of Persons Interested in the Subject

In accordance with 43 C.F. R. § 2.48(a)(3), the requested information is new, not already publicly available, and its disclosure will increase the level of public understanding that existed prior to disclosure. Through Defenders analysis and dissemination, disclosure of the information contained in the requested records will contribute to the understanding of a broad audience of persons that are interested in oil and gas development on federal public lands, as stated above.

The requested records will enable Defenders to provide information to the public at large regarding the current agency views and activities related to rules, policies, plans and other agency actions concerning assessment, exploration and development of fluid minerals on national wildlife refuges and other public lands. This information is essential to inform the public about potential changes to public lands policy. Indeed, the public does not currently have an ability to easily evaluate the requested records, which are new and not currently in the public domain. *See Cmty. Legal Servs. V. HUD*, 405 F.Supp.2d 553, 560 (D. Pa. 2005) (because requested records “clarify important facts” about agency policy, the request “would likely shed light on information that is new to the interested public.”).

Disclosing the requested records to Defenders is not only “likely to contribute,” but is certain to contribute, to public understanding of oil and gas related activities on federal public lands and the potential impacts to imperiled species and their habitat. At present, the public has no information about how DOI and the Service are applying and interpreting H.R. 1, or how they would proceed with plans for oil and gas assessment, exploration and potential development in the Section 1002 Area of the Arctic National Wildlife Refuge. Defenders’ dissemination of this information will therefore provide new insight to a broad audience of persons interested in how the Arctic Refuge is managed and protected, the consequences for wildlife and implications for public lands nationwide. *See id.* at § 2.48(a)(3).

D. The Public’s Understanding of the Subject in Question will be Significantly Enhanced by the Disclosure of Requested Records.

In accordance with 43 C.F.R. § 2.48(a)(4), the public’s understanding of the subject of this FOIA request will be enhanced to a *significant extent* by disclosure of the requested records. FOIA’s legislative history makes clear that the ‘significance’ test is met where, as here, the information requested will support “public oversight of agency operations”:

A requester is likely to contribute significantly to the public understanding if the information disclosed is new; supports public oversight of agency operations; or otherwise confirms or clarifies data on past or present operations of the government.

132 Cong. Rec. H9464 (Reps. English and Kindness); *see also McClellan Ecological Seepage Situation*, 835 F.2d at 1284–86.

Disclosure of the requested records will significantly enhance the public's understanding of the agency's management of oil and gas assessment, exploration and development within the National Wildlife Refuge System, as compared to the level of understanding that exists prior to disclosure. Disclosure will provide the public with information about an otherwise closed-door process where the Trump administration has not conducted any public review or allowed for any public input on the information generated in response to the Secretarial Order or on potential development within the Section 1002 Area of the Arctic Refuge more generally. The requested records are new information that have not previously been disclosed, and disclosing them will support public oversight of agency operations regarding federal management of public lands, wildlife and fluid minerals development.

The conservation of federal public lands and waters and the wildlife that depend on them are an ongoing concern for Defenders' members, supporters, partner organizations, and the interested public. The requested records are essential to Defenders efforts to educate our members and the general public about conservation of imperiled species and their habitat. Our analysis of the records and broad dissemination of the synthesized information will support public participation in government, and help ensure that the impacts of oil and gas development are properly mitigated to protect the public interest in federal public lands, waters and wildlife. It will improve the ability of the public to evaluate and supervise the agency and DOI's current and future plans for the Arctic National Wildlife Refuge and energy development on the public domain.

CONCLUSION

For all the foregoing reasons, Defenders of Wildlife satisfies the statutory and regulatory requirements for a fee waiver under FOIA and DOI's implementing regulations. We hope that you will immediately grant this request and tender responsive records.

However, if a fee waiver is denied, Defenders is willing to pay up to \$100.00 in reasonable search time and/or duplication costs exceeding two hours and 100 pages, or equivalent volume. Please contact me to discuss any costs prior to fulfilling this FOIA request.

If you determine that this FOIA request will require longer than ten business days to process, please notify me of the request's individualized tracking number and how to obtain status updates via telephone, email or on the Internet. 5 U.S.C. § 552(a)(7). If you anticipate needing more than the 20 working days allotted under FOIA to fully process this request, please also notify me of the expected delay. I appreciate the opportunity to work with the Service to limit our request to expedite your response.

Thank you for your assistance.

Very sincerely,



Jennifer L. Keatinge
Senior Federal Lands Policy Analyst
Defenders of Wildlife

EXHIBIT B



National Headquarters

1130 17th Street, N.W. | Washington, D.C. 20036-4604 | tel 202.682.9400 | fax 202.682.1331
www.defenders.org

Submitted electronically to fw7_foia@fws.gov

July 25, 2018

Maria Rivero
FOIA & Records
U.S. Fish and Wildlife Service
Office Direct
1011 E. Tudor Road, MS: 245
Anchorage, Alaska 99503

Re: Freedom of Information Act Request for Records Related to Seismic Exploration in the Arctic National Wildlife Refuge; Request for Fee Waiver

Dear FOIA Officer:

On behalf of Defenders of Wildlife (Defenders), I respectfully submit the following request pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and its implementing regulations, 43 C.F.R. §§ 2.1–2.34, seeking records generated, obtained or received by the U.S. Fish and Wildlife Service (Service) **regarding seismic exploration for oil and gas reserves in the coastal plain (Section 1002 Area) of the Arctic National Wildlife Refuge since April 1, 2018.** Please note that the Service may exclude records solely related to the environmental impact statement for the Coastal Plain Oil and Gas Leasing Program, if it facilitates quicker collection and provision of responsive documents.

The requested seismic exploration records are those generated, obtained or received by the Service since April 1, 2018, including but not limited to:

- All records related to SAExploration, Inc.'s Marsh Creek 3-D Plan of Operations and request for permits to conduct seismic exploration on the coastal plain, as well as any proposals to conduct seismic exploration from the state of Alaska or other entities.
- All records related to environmental assessments, analyses, authorizations, planning and permitting for seismic surveys in the Arctic Refuge.
- All records related to discussion, preparation and issuance of Incidental Take Regulations, Incidental Harassment Authorizations and/or Letters of Authorization for seismic exploration on the coastal plain to comply with laws and regulations to protect polar bears.
- All records regarding the impacts of seismic testing to Arctic Refuge wildlife and habitat.

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 type, including both electronic and paper documents, electronic mail, 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, databases, drawings,

Exhibit B

surveys, graphs, charts, photographs, videos, meeting notes or minutes, electronic and magnetic recordings of meetings, maps, Geographic Information System data, GPS, UTM, LiDAR, CDs, and any other compilations of data from which information can be obtained.

REQUEST FOR EXPEDITED PROCESSING

Defenders requests “expedited processing” under 5 U.S.C. §552(a)(6)(E). This information is essential to public understanding of pending government activities that affect public lands and resources. The Department of the Interior and the Bureau of Land Management (BLM) are currently planning for controversial fluid minerals development in the Arctic Refuge. *See attached story* by Steven Mufson & Juliet Eilperin, “Companies take first steps to drill for oil in Arctic National Wildlife Refuge,” *Washington Post* (May 31, 2018), and BLM’s “eplanning” website regarding the SAExploration Inc. Seismic Application at <https://eplanning.blm.gov/epl-front-office/eplanning/projectSummary.do?methodName=renderDefaultProjectSummary&projectId=111085>.

Time is of the essence as the value of the requested information will be lost if not disseminated quickly to the public. Pursuant to 5 U.S.C. §552(a)(6)(E)(vi), I certify, as true and correct to the best of my knowledge, that there is a “compelling need,” 5 U.S.C. §552(a)(6)(E)(v), for Defenders to acquire these records on an expedited basis so that we can employ our communications resources (described in Section B under Request for Fee Waiver below) to immediately disseminate the information to the public and to local and national news organizations. The documents requested qualify under 43 C.F.R. § 2.20(a)(2)(iii) as information that news organizations would consider “breaking news” due to the imminent threat that seismic exploration would have on the sensitive resources of the coastal plain. We expect that you will make a decision regarding our request for expedited processing within 10 days, as required by 43 C.F.R. § 2.20(d).

ONLINE POSTING OF FREQUENTLY REQUESTED RECORDS

The FOIA’s “frequently requested record” provision was enacted as part of the 1996 Electronic Freedom of Information Act Amendments, and requires all federal agencies to give “reading room” treatment to any FOIA-processed records that, “because of the nature of their subject matter, the agency determines have become the subject of subsequent requests for substantially the same records.” *See* 5 U.S.C. § 552(a)(2)(D)(ii)(I). Also, enacted as part of the 2016 FOIA Improvement Act, FOIA’s Rule of 3 requires all federal agencies to proactively “make available for public inspection in an electronic format” “copies of records, regardless of form or format ... that have been released to any person ... and ... that have been requested 3 or more times.” *Id.* § 552(a)(2)(D)(ii)(II). Therefore, we respectfully urge you to post responses to this and parallel FOIA requests for substantially the same records on the Internet in accordance with 5 U.S.C. § 552(a)(2)(D)(ii). We anticipate that the requested documents will be subject to the Rule of 3 and should thus be made publicly available.

WITHHELD DOCUMENTS

Under the FOIA Improvement Act of 2016, agencies are prohibited from denying requests for information pursuant to FOIA unless prohibited by law or the agency reasonably believes release of the information will harm an interest that is protected by a FOIA exemption. 5 U.S.C. § 552(a)(8)(A). Should you decide to invoke a FOIA exemption, please include in your response a

description of which responsive documents are withheld with sufficient information for us to assess the basis for the exemption, including any interest(s) that would be harmed by their release. Please include a detailed index identifying:

1. Basic factual material about each withheld record, including the originator, date, length, general subject matter, and location of each item; and
2. Complete explanation and justification for withholding each record, including the specific exemption(s) under which the record (or portion thereof) is 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 and/or may help to avoid unnecessary litigation.

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FORMAT OF REQUESTED RECORDS

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Additionally, please provide the records in .pdf file format, without any “portfolios” or “embedded files” Portfolios and embedded files are not readily accessible. *Please do not provide the records in a single, or “batched,” .pdf file.* We also appreciate the inclusion of an index of responsive records.

RECORD DELIVERY

We appreciate your assistance in expeditiously responding to this request. As mandated under FOIA, we anticipate a response within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i); 43 C.F.R. § 2.16(a). Defenders is pleased to receive records on a rolling basis if it facilitates the agency’s response.

You may email or mail copies of the requested records to:

Jenny Keatinge
Defenders of Wildlife
1130 17th Street, N.W.
Washington, D.C. 20036
jkeatinge@defenders.org

If you find that this request is unclear, or if responsive records are voluminous, please call me at (202) 772-0270 to discuss the scope of this request.

REQUEST FOR FEE WAIVER

Pursuant to FOIA, 5 U.S.C. § 552(a)(4)(A)(iii), and the Department of the Interior's implementing regulations, 43 C.F.R. §§ 2.45–2.48, Defenders requests a waiver of all charges (*i.e.*, search, review, and duplication fees) incurred in connection with this request.

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). 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 in favor of waivers for noncommercial requesters." *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987); *accord Forest Guardians v. U.S. Dep't of the Interior*, 416 F.3d 1173, 1177–78 (10th Cir. 2005); *Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003); *Community Legal Servs. v. U.S. Dep't of Hous. and Urban Dev.*, 405 F. Supp. 2d 553, 555 (E.D. Pa. 2005).

Congress specifically designed FOIA's 1986 fee waiver amendments to provide non-profit organizations such as Defenders access to government records without payment of fees. Indeed, the fee waiver provision was intended to "explicitly recognize[] the importance and the difficulty of access to governmental documents for such typically under-funded organizations and individuals," including nonprofit public interest groups. *Better Gov't Ass'n v. Dep't of State*, 780 F.2d 86, 94 (D.C. Cir. 1986). FOIA "should not be interpreted to allow federal agencies to set up roadblocks to prevent noncommercial entities from receiving a fee waiver." *W. Watersheds Project v. Brown*, 318 F. Supp. 2d 1036, 1039 (D. Idaho 2004).

Defenders Satisfies the Qualifications for a Fee Waiver

Under FOIA, a requester 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); *see also* 43 C.F.R. § 2.45(a)(1). The Department of the Interior's (DOI) implementing regulations at 43 C.F.R. § 2.48 establish the same standard, setting forth four factors to consider in determining whether a request meets the FOIA requirement.

Consequently, the Service must consider the following factors to determine whether a request is in the public interest: (1) "[h]ow the requested records concern the operations or activities of the Federal government," (2) "[h]ow disclosure is likely to contribute to public understanding of those operations or activities," (3) "[h]ow disclosure is likely to significantly contribute to the understanding of a reasonably broad audience of persons interested in the subject," and (4) [h]ow the public's understanding of the subject in question will be enhanced to a significant extent by the disclosure." 43 C.F. R. § 2.48. As presented below, Defenders satisfies each of these four criteria.

Defenders therefore qualifies for a fee waiver. Disclosure of the requested records is in the public interest because it will contribute significantly to public understanding of the operations or activities of the government, particularly as they relate to fluid minerals development on federal lands within the National Wildlife Refuge System. In addition, release of the documents is not for commercial

use. Founded in 1947, Defenders is a 501(c)(3) nonprofit conservation organization with 1.2 million members and supporters dedicated to the protection of all native animals and plants in their natural communities. Access to government records through FOIA requests is essential to Defenders' role of educating the general public about government activities related to wildlife conservation. We have no commercial interest in and will realize no commercial benefit from the release of the requested records.

Please note that the U.S. Fish and Wildlife Service, U.S. Forest Service, Bureau of Land Management and National Park Service have previously granted requests for fee waivers in their provision of documents to Defenders.

A. The Requested Records Concern Operations or Activities of the Federal Government

In accordance with 43 C.F. R. § 2.48(a)(1), the requested records concern the operations and activities of the federal government, namely an executive branch agency, the U.S. Fish and Wildlife Service. Responsive materials were generated regarding exploration for oil and gas reserves on federal public lands. The requested records describe the agency's views and actions related to rules, regulations, policies, plans and other federal activities concerning management of fluid minerals exploration within the National Wildlife Refuge System. *See Judicial Watch*, 326 F.3d at 1313 (“[R]easonable specificity is all that FOIA requires with regard to this factor”) (internal quotations omitted).

B. Disclosure of the Requested Records is Likely to Contribute to Public Understanding of Government Operations or Activities

In accordance with 43 C.F. R. § 2.48(a)(2), the requested records are meaningfully informative about government operations or activities, there is a logical connection between their contents and those operations or activities, and disclosure will contribute to an increased public understanding of the subject matter because Defenders has the expertise to analyze and publicize the information in a manner that is useful to a broad audience of persons interested in national wildlife refuges, oil and gas development and management on federal public lands.

The information about government operations and activities contained in the requested records will meaningfully inform public understanding of the Service's management of oil and gas related activities within the National Wildlife Refuge System. It will also aid public understanding of department actions that affect energy exploration on other public lands. This information is highly relevant to Defenders and our members because we are deeply concerned about these issues. Our review and analysis of responsive records will provide the public with critical information about current and future federal policy for managing and protecting vital public lands nationwide.

Once the information is made available, we will share it with our 1.2 million members, supporters, activists, partners and the general public in a manner that will contribute to their understanding of government activities. Defenders' record of active participation in oversight of governmental activities and decision-making, and our consistent contribution to the public's understanding of those activities is well established.

Defenders is a national non-profit organization focused on wildlife and habitat conservation and the safeguarding of biodiversity. We inform, educate and counsel the public regarding environmental

issues, policies and laws relating to wildlife protection and public lands. We represent our members' interests in ensuring that imperiled species and their habitat receive the full protections due under federal law. We frequently communicate with our members, supporters, partner organizations, and the interested public on news and information relevant to oil and gas development on federal public lands and waters, its impacts on species, and the adequacy of measures to mitigate for those impacts.

Defenders will rely on its own legal and scientific experts, as well as outside experts, to analyze the information contained in records produced in response to this FOIA request. We have used, and will continue to use, a full array of tools to ensure our members' interests are vindicated and the general public is informed through our synthesis of the information gleaned from the requested records.

Defenders will ensure that the information produced in response to this request, and our analysis thereof, is disseminated to a reasonably broad audience of persons interested in federal lands management and wildlife conservation. In disseminating the information, Defenders will assure that it is made available for the benefit of the interested persons beyond our membership, such as members of other conservation advocacy organizations, the media, the academic community, and the general public.

Defenders has the ability to disseminate information obtained from the requested records in a number of ways to a broad audience. We actively communicate with our members, supporters and the general public through direct mail and email campaigns. We broadcast action alerts notifying the public of opportunities to comment on agency proposals; publish information on and frequently update our website (797,055+ visitors per month) and blog (21,000+ monthly readership) to educate the public on wildlife conservation issues; distribute a quarterly print magazine with a circulation of approximately 350,000; communicate with partner organizations both nationally and internationally; maintain an active online presence through Facebook (652,000+ followers), Twitter (109,000+ followers), and YouTube (6900+ subscribers); distribute press releases directly to media contacts and through our website and RSS feed; and educate lawmakers and advocates on conservation law at the federal, state and local level.

C. Disclosure of the Requested Records is Likely to Significantly Contribute to the Understanding of a Reasonably Broad Audience of Persons Interested in the Subject

In accordance with 43 C.F. R. § 2.48(a)(3), the requested information is new, not already publicly available, and its disclosure will increase the level of public understanding that existed prior to disclosure. Through Defenders analysis and dissemination, disclosure of the information contained in the requested records will contribute to the understanding of a broad audience of persons that are interested in oil and gas exploration and development on federal public lands, as stated above.

The requested records will enable Defenders to provide information to the public at large regarding the current agency views and activities related to rules, policies, plans and other agency actions concerning assessment, exploration and development of fluid minerals on national wildlife refuges and other public lands. This information is essential to inform the public about potential changes to public lands policy. Indeed, the public does not currently have an ability to easily evaluate the requested records, which are new and not currently in the public domain. *See Cmty. Legal Servs. V. HUD*, 405 F.Supp.2d 553, 560 (D. Pa. 2005) (because requested records “clarify important facts”

about agency policy, the request “would likely shed light on information that is new to the interested public.”).

Disclosing the requested records to Defenders is not only “likely to contribute,” but is certain to contribute, to public understanding of oil and gas related activities on federal public lands and the potential impacts to imperiled species and their habitat. At present, the public has no information about how DOI and the Service are proceeding with evaluating and authorizing plans for oil and gas exploration in the Section 1002 Area of the Arctic National Wildlife Refuge. Defenders’ dissemination of this information will therefore provide new insight to a broad audience of persons interested in how the Arctic Refuge is managed and protected, the consequences for wildlife and implications for public lands nationwide. *See id.* at § 2.48(a)(3).

D. The Public’s Understanding of the Subject in Question will be Significantly Enhanced by the Disclosure of Requested Records.

In accordance with 43 C.F.R. § 2.48(a)(4), the public’s understanding of the subject of this FOIA request will be enhanced to a *significant extent* by disclosure of the requested records. FOIA’s legislative history makes clear that the ‘significance’ test is met where, as here, the information requested will support “public oversight of agency operations”:

A requester is likely to contribute significantly to the public understanding if the information disclosed is new; supports public oversight of agency operations; or otherwise confirms or clarifies data on past or present operations of the government.

132 Cong. Rec. H9464 (Reps. English and Kindness); *see also McClellan Ecological Seepage Situation*, 835 F.2d at 1284–86.

Disclosure of the requested records will significantly enhance the public’s understanding of the agency’s management of oil and gas exploration within the National Wildlife Refuge System, as compared to the level of understanding that exists prior to disclosure. Disclosure will provide the public with information about an otherwise closed-door process where the Trump administration has not conducted any public review or allowed for any public input on seismic exploration within the Section 1002 Area of the Arctic Refuge specifically. The requested records are new information that have not previously been disclosed, and disclosing them will support public oversight of agency operations regarding federal management of public lands, wildlife and fluid minerals development.

The conservation of federal public lands and waters and the wildlife that depend on them are an ongoing concern for Defenders’ members, supporters, partner organizations, and the interested public. The requested records are essential to Defenders efforts to educate our members and the general public about conservation of imperiled species and their habitat. Our analysis of the records and broad dissemination of the synthesized information will support public participation in government, and help ensure that the impacts of oil and gas exploration are properly mitigated to protect the public interest in federal public lands, waters and wildlife. It will improve the ability of the public to evaluate and supervise the agency and DOI’s current and future plans for the Arctic National Wildlife Refuge and energy development on the public domain.

CONCLUSION

For all the foregoing reasons, Defenders of Wildlife satisfies the statutory and regulatory requirements for a fee waiver under FOIA and DOI's implementing regulations. We hope that you will immediately grant this request and tender responsive records.

However, if a fee waiver is denied, Defenders is willing to pay up to \$100.00 in reasonable search time and/or duplication costs exceeding two hours and 100 pages, or equivalent volume. Please contact me to discuss any costs prior to fulfilling this FOIA request.

If you determine that this FOIA request will require longer than ten business days to process, please notify me of the request's individualized tracking number and how to obtain status updates via telephone, email or on the Internet. 5 U.S.C. § 552(a)(7). If you anticipate needing more than the 20 working days allotted under FOIA to fully process this request, please also notify me of the expected delay. I appreciate the opportunity to work with the Service to limit our request to expedite your response.

Thank you for your assistance.

Very sincerely,

A handwritten signature in black ink, appearing to read "Jennifer L. Keatinge". The signature is fluid and cursive, with a large initial "J" and "K".

Jennifer L. Keatinge
Senior Federal Lands Policy Analyst
Defenders of Wildlife

EXHIBIT C



National Headquarters

1130 17th Street, N.W. | Washington, D.C. 20036-4604 | tel 202.682.9400 | fax 202.682.1331
www.defenders.org

Submitted electronically to os.foia@ios.doi.gov

April 3, 2018

Claurice Julka
Office of the Secretary
U.S. Department of the Interior
MS-7328, MIB
1849 C Street, NW
Washington, DC 20240

Re: Freedom of Information Act Request for Records Relating to Oil and Gas Planning, Exploration, Leasing and Development on the Coastal Plain of the Arctic National Wildlife Refuge; Request for Fee Waiver

Dear Ms. Julka:

On behalf of Defenders of Wildlife (Defenders), I respectfully submit the following request pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and its implementing regulations, 43 C.F.R. §§ 2.1–2.34, seeking records generated, obtained or received by the U.S. Department of the Interior (Interior Department) **related to planning, exploration, leasing and development of oil and gas resources on the Coastal Plain (Section 1002 Area) of the Arctic National Wildlife Refuge since November 15, 2017.**

The requested records include, but are not limited to:

- All records related to development and implementation of an oil and gas program on the Coastal Plain of the Arctic National Wildlife Refuge pursuant to Title II, Section 20001 of Public Law 115-97, including policies, plans, technical or scientific documents, assessments, regulations or regulatory documents, and any other documents related to Section 20001.
- All records since November 15, 2017 related to development of private lands within the Arctic National Wildlife Refuge owned by the Arctic Slope Regional Corporation and the Kaktovik Inupiat Corporation.
- Any other records concerning oil and gas planning, exploration, leasing and development on the Coastal Plain of the Arctic National Wildlife Refuge since November 15, 2017.

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 type, including both electronic and paper documents, electronic mail, 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, databases, drawings, surveys, graphs, charts, photographs, videos, meeting notes or minutes, electronic and magnetic

recordings of meetings, maps, Geographic Information System data, GPS, UTM, LiDAR, CDs, and any other compilations of data from which information can be obtained.

WITHHELD DOCUMENTS

Under the FOIA Improvement Act of 2016, agencies are prohibited from denying requests for information pursuant to FOIA unless prohibited by law or the agency reasonably believes release of the information will harm an interest that is protected by a FOIA exemption. 5 U.S.C. § 552(a)(8)(A). Should you decide to invoke a FOIA exemption, please include in your response a description of which responsive documents are withheld with sufficient information for us to assess the basis for the exemption, including any interest(s) that would be harmed by their release. Please include a detailed index identifying:

1. Basic factual material about each withheld record, including the originator, date, length, general subject matter, and location of each item; and
2. Complete explanation and justification for withholding each record, including the specific exemption(s) under which the record (or portion thereof) is 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 and/or may help to avoid unnecessary litigation.

If you determine that portions of responsive records are exempt from disclosure, please segregate or redact the exempt portions and provide the non-exempt portions within the statutory time limit. 5 U.S.C. § 552(b).

FORMAT OF REQUESTED RECORDS

Defenders prefers receiving electronic copies of all responsive documents. Under FOIA, you are obligated to provide records in a readily accessible electronic format, if possible, and as requested here. *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.”). As used here, “readily reproducible” electronic documents should include text-searchable and OCR-formatted.

Additionally, please provide the records in .pdf file format, without any “portfolios” or “embedded files” Portfolios and embedded files are not readily accessible. *Please do not provide the records in a single, or “batched,” .pdf file.* We also appreciate the inclusion of an index of responsive records.

RECORD DELIVERY

We appreciate your assistance in expeditiously responding to this request. As mandated under FOIA, we anticipate a response within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i); 43 C.F.R. § 2.16(a). We respectfully urge you to post responses to this and parallel FOIA requests online in accordance with 5 U.S.C. § 552(a)(2)(D)(ii)(II). Defenders is pleased to receive records on a rolling basis if it facilitates the Interior Department’s response.

You may email or mail copies of the requested records to:

Jenny Keatinge
Defenders of Wildlife
1130 17th Street, N.W.
Washington, D.C. 20036
jkeatinge@defenders.org

If you find that this request is unclear, or if responsive records are voluminous, please call me at (202) 772-0270 to discuss the scope of this request.

REQUEST FOR FEE WAIVER

Pursuant to FOIA, 5 U.S.C. § 552(a)(4)(A)(iii), and the Department of the Interior's implementing regulations, 43 C.F.R. §§ 2.45–2.48, Defenders requests a waiver of all charges (*i.e.*, search, review, and duplication fees) incurred in connection with this request.

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). 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 in favor of waivers for noncommercial requesters.” *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987); *accord Forest Guardians v. U.S. Dep't of the Interior*, 416 F.3d 1173, 1177–78 (10th Cir. 2005); *Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003); *Community Legal Servs. v. U.S. Dep't of Hous. and Urban Dev.*, 405 F. Supp. 2d 553, 555 (E.D. Pa. 2005).

Congress specifically designed FOIA's 1986 fee waiver amendments to provide non-profit organizations such as Defenders access to government records without payment of fees. Indeed, the fee waiver provision was intended to “explicitly recognize[] the importance and the difficulty of access to governmental documents for such typically under-funded organizations and individuals,” including nonprofit public interest groups. *Better Gov't Ass'n v. Dep't of State*, 780 F.2d 86, 94 (D.C. Cir. 1986). FOIA “should not be interpreted to allow federal agencies to set up roadblocks to prevent noncommercial entities from receiving a fee waiver.” *W. Watersheds Project v. Brown*, 318 F. Supp. 2d 1036, 1039 (D. Idaho 2004).

Defenders Satisfies the Qualifications for a Fee Waiver

Under FOIA, a requester 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); *see also* 43 C.F.R. § 2.45(a)(1). The Interior Department's implementing regulations at 43 C.F.R. § 2.48 establish the same standard, setting forth four factors to consider in determining whether a request meets the FOIA requirement.

Consequently, the Interior Department must consider the following factors to determine whether a request is in the public interest: (1) “[h]ow the requested records concern the operations or activities of the Federal government,” (2) “[h]ow disclosure is likely to contribute to public understanding of those operations or activities,” (3) “[h]ow disclosure is likely to significantly contribute to the understanding of a reasonably broad audience of persons interested in the subject,” and (4) [h]ow the public’s understanding of the subject in question will be enhanced to a significant extent by the disclosure.” 43 C.F. R. § 2.48. As presented below, Defenders satisfies each of these four criteria.

Defenders therefore qualifies for a fee waiver. Disclosure of the requested records is in the public interest because it will contribute significantly to public understanding of the operations or activities of the government, particularly as they relate to fluid minerals development on federal lands within the National Wildlife Refuge System. In addition, release of the documents is not for commercial use. Founded in 1947, Defenders is a 501(c)(3) nonprofit conservation organization with 1.8 million members and supporters dedicated to the protection of all native animals and plants in their natural communities. Access to government records through FOIA requests is essential to Defenders’ role of educating the general public about government activities related to wildlife conservation. We have no commercial interest in and will realize no commercial benefit from the release of the requested records.

Please note that multiple federal departments and agencies have previously granted requests for fee waivers in their provision of documents to Defenders.

A. The Requested Records Concern Operations or Activities of the Federal Government

In accordance with 43 C.F. R. § 2.48(a)(1), the requested records concern the operations and activities of the federal government, namely an executive branch agency, the U.S. Department of the Interior. Responsive materials were generated regarding planning, exploration, leasing and development of oil and gas on federal public lands and implementation of Title II, Section 20001 of Public Law 115-97. The requested records describe the Interior Department’s views and actions related to rules, regulations, policies, plans, assessments and other federal activities concerning management of fluid minerals development within the National Wildlife Refuge System. *See Judicial Watch*, 326 F.3d at 1313 (“[R]easonable specificity is all that FOIA requires with regard to this factor”) (internal quotations omitted).

B. Disclosure of the Requested Records is Likely to Contribute to Public Understanding of Government Operations or Activities

In accordance with 43 C.F. R. § 2.48(a)(2), the requested records are meaningfully informative about government operations or activities, there is a logical connection between their contents and those operations or activities, and disclosure will contribute to an increased public understanding of the subject matter because Defenders has the expertise to analyze and publicize the information in a manner that is useful to a broad audience of persons interested in national wildlife refuges, oil and gas development and management on federal public lands.

The information about government operations and activities contained in the requested records will meaningfully inform public understanding of the Interior Department’s management of oil and gas related activities within the Arctic National Wildlife Refuge. It will also aid public understanding of department actions that affect energy development within the National Wildlife Refuge System and

on other federal public lands. This information is highly relevant to Defenders and our members because we are deeply concerned about these issues. Our review and analysis of responsive records will provide the public with critical information about current and future federal policy for managing and protecting vital public lands nationwide.

Once the information is made available, we will share it with our 1.8 million members, supporters, activists, partners and the general public in a manner that will contribute to their understanding of government activities. Defenders' record of active participation in oversight of governmental activities and decision-making, and our consistent contribution to the public's understanding of those activities is well established.

Defenders is a national non-profit organization focused on wildlife and habitat conservation and the safeguarding of biodiversity. We inform, educate and counsel the public regarding environmental issues, policies and laws relating to wildlife protection and public lands. We represent our members' interests in ensuring that imperiled species and their habitat receive the full protections due under federal law. We frequently communicate with our members, supporters, partner organizations, and the interested public on news and information relevant to oil and gas development on federal public lands and waters, its impacts on species, and the adequacy of measures to mitigate for those impacts.

Defenders will rely on its own legal and scientific experts, as well as outside experts, to analyze the information contained in records produced in response to this FOIA request. We have used, and will continue to use, a full array of tools to ensure our members' interests are vindicated and the general public is informed through our synthesis of the information gleaned from the requested records.

Defenders will ensure that the information produced in response to this request, and our analysis thereof, is disseminated to a reasonably broad audience of persons interested in federal lands management and wildlife conservation. In disseminating the information, Defenders will assure that it is made available for the benefit of the interested persons beyond our membership, such as members of other conservation advocacy organizations, the media, the academic community, and the general public.

Defenders has the ability to disseminate information obtained from the requested records in a number of ways to a broad audience. We actively communicate with our members, supporters and the general public through direct mail and email campaigns. We broadcast action alerts notifying the public of opportunities to comment on federal agency and department proposals; publish information on and frequently update our website (797,055+ visitors per month) and blog (21,000+ monthly readership) to educate the public on wildlife conservation issues; distribute a quarterly print magazine with a circulation of approximately 350,000; communicate with partner organizations both nationally and internationally; maintain an active online presence through Facebook (652,000+ followers), Twitter (109,000+ followers), and YouTube (6900+ subscribers); distribute press releases directly to media contacts and through our website and RSS feed; and educate lawmakers and advocates on conservation law at the federal, state and local level.

C. Disclosure of the Requested Records is Likely to Significantly Contribute to the Understanding of a Reasonably Broad Audience of Persons Interested in the Subject

In accordance with 43 C.F. R. § 2.48(a)(3), the requested information is new, not already publicly available, and its disclosure will increase the level of public understanding that existed prior to disclosure. Through Defenders analysis and dissemination, disclosure of the information contained in the requested records will contribute to the understanding of a broad audience of persons that are interested in oil and gas development on public lands, as stated above.

The requested records will enable Defenders to provide information to the public at large regarding current Interior Department views and activities related to rules, policies, plans and other department actions concerning assessment, exploration, leasing and development of fluid minerals in the Arctic National Wildlife Refuge and other public lands. This information is essential to inform the public about potential changes to public lands policy. Indeed, the public does not currently have an ability to easily evaluate the requested records, which are new and not currently in the public domain. *See Cmty. Legal Servs. V. HUD*, 405 F.Supp.2d 553, 560 (D. Pa. 2005) (because requested records “clarify important facts” about agency policy, the request “would likely shed light on information that is new to the interested public.”).

Disclosing the requested records to Defenders is not only “likely to contribute,” but is certain to contribute, to public understanding of oil and gas related activities on federal public lands and the potential impacts to imperiled species and their habitat. At present, the public has no information about how the Interior Department, Bureau of Land Management and the U.S. Fish and Wildlife Service are interpreting and applying Public Law 115-97, or how they will proceed with plans for oil and gas exploration, leasing and development in the Section 1002 Area of the Arctic National Wildlife Refuge. Defenders’ dissemination of this information will therefore provide new insight to a broad audience of persons interested in how the Arctic National Wildlife Refuge is managed and protected, the consequences for wildlife and implications for public lands nationwide. *See id.* at § 2.48(a)(3).

D. The Public’s Understanding of the Subject in Question will be Significantly Enhanced by the Disclosure of Requested Records.

In accordance with 43 C.F.R. § 2.48(a)(4), the public’s understanding of the subject of this FOIA request will be enhanced to a *significant extent* by disclosure of the requested records. FOIA’s legislative history makes clear that the ‘significance’ test is met where, as here, the information requested will support “public oversight of agency operations”:

A requester is likely to contribute significantly to the public understanding if the information disclosed is new; supports public oversight of agency operations; or otherwise confirms or clarifies data on past or present operations of the government.

132 Cong. Rec. H9464 (Reps. English and Kindness); *see also McClellan Ecological Seepage Situation*, 835 F.2d at 1284–86.

Disclosure of the requested records will significantly enhance the public’s understanding of the Interior Department’s development and implementation of an oil and gas program within the Arctic National Wildlife Refuge, as compared to the level of understanding that exists prior to disclosure.

Disclosure will provide the public with information about an otherwise closed-door process where the Trump administration has not revealed any specific information regarding the management of oil and gas exploration, leasing and production in the Section 1002 Area of the Arctic National Wildlife Refuge, or the activities of the Interior Department regarding application of Title II of Public Law 115-97 to the Arctic Refuge more generally. The requested records are new information that have not previously been disclosed, and disclosing them will support public oversight of department operations regarding federal management of public lands, wildlife and fluid minerals development.

The conservation of federal public lands and waters and the wildlife that depend on them are an ongoing concern for Defenders' members, supporters, partner organizations, and the interested public. The requested records are essential to Defenders efforts to educate our members and the general public about conservation of imperiled species and their habitat. Our analysis of the records and broad dissemination of the synthesized information will support public participation in government, and help ensure that the impacts of oil and gas development are properly mitigated to protect the public interest in federal public lands, waters and wildlife. It will improve the ability of the public to evaluate and supervise the Interior Department's current and future plans for the Arctic National Wildlife Refuge and energy development on the public domain.

CONCLUSION

For all the foregoing reasons, Defenders of Wildlife satisfies the statutory and regulatory requirements for a fee waiver under FOIA and the Interior Department's implementing regulations. We hope that you will immediately grant this request and tender responsive records.

However, if a fee waiver is denied, Defenders is willing to pay up to \$100.00 in reasonable search time and/or duplication costs exceeding two hours and 100 pages, or equivalent volume. Please contact me to discuss any costs prior to fulfilling this FOIA request.

If you determine that this FOIA request will require longer than ten business days to process, please notify me of the request's individualized tracking number and how to obtain status updates via telephone, email or on the Internet. 5 U.S.C. § 552(a)(7). If you anticipate needing more than the 20 working days allotted under FOIA to fully process this request, please also notify me of the expected delay. I appreciate the opportunity to work with the Interior Department to limit our request to expedite your response.

Thank you for your assistance.

Very sincerely,



Jennifer L. Keatinge
Senior Federal Lands Policy Analyst
Defenders of Wildlife

EXHIBIT D



National Headquarters

1130 17th Street, N.W. | Washington, D.C. 20036-4604 | tel 202.682.9400 | fax 202.682.1331
www.defenders.org

Submitted electronically to os.foia@ios.doi.gov

July 27, 2018

Claurice Julka
Office of the Secretary
U.S. Department of the Interior
MS-7328, MIB
1849 C Street, NW
Washington, DC 20240

Re: Freedom of Information Act Request for Records Related to Seismic Exploration in the Arctic National Wildlife Refuge; Request for Fee Waiver

Dear FOIA Officer:

On behalf of Defenders of Wildlife (Defenders), I respectfully submit the following request pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and its implementing regulations, 43 C.F.R. §§ 2.1–2.34, seeking records generated, obtained or received by the U.S. Department of the Interior (Interior Department) **regarding seismic exploration for oil and gas reserves in the coastal plain (Section 1002 Area) of the Arctic National Wildlife Refuge since April 1, 2018**. Please note that the Interior Department may exclude records solely related to the environmental impact statement for the Coastal Plain Oil and Gas Leasing Program, if it facilitates quicker collection and provision of responsive documents.

The requested seismic exploration records are those generated, obtained or received by the Interior Department since April 1, 2018, including but not limited to:

- All records related to SAExploration, Inc.'s Marsh Creek 3-D Plan of Operations and request for permits to conduct seismic exploration on the coastal plain, as well as any proposals to conduct seismic exploration from the state of Alaska or other entities.
- All records related to environmental assessments, analyses, authorizations, planning and permitting for seismic surveys in the Arctic Refuge.
- All records related to discussion, preparation and issuance of Incidental Take Regulations, Incidental Harassment Authorizations and/or Letters of Authorization for seismic exploration on the coastal plain to comply with laws and regulations to protect polar bears.
- All records regarding the impacts of seismic testing to Arctic Refuge wildlife and habitat.

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 type, including both electronic and paper documents, electronic mail, 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, databases, drawings,

surveys, graphs, charts, photographs, videos, meeting notes or minutes, electronic and magnetic recordings of meetings, maps, Geographic Information System data, GPS, UTM, LiDAR, CDs, and any other compilations of data from which information can be obtained.

REQUEST FOR EXPEDITED PROCESSING

Defenders requests “expedited processing” under 5 U.S.C. §552(a)(6)(E). This information is essential to public understanding of pending government activities that affect public lands and resources. The Department of the Interior and the Bureau of Land Management (BLM) are currently planning for controversial fluid minerals development in the Arctic Refuge. *See attached story* by Steven Mufson & Juliet Eilperin, “Companies take first steps to drill for oil in Arctic National Wildlife Refuge,” *Washington Post* (May 31, 2018), and BLM’s “eplanning” website regarding the SAExploration Inc. Seismic Application at <https://eplanning.blm.gov/epl-front-office/eplanning/projectSummary.do?methodName=renderDefaultProjectSummary&projectId=111085>.

Time is of the essence as the value of the requested information will be lost if not disseminated quickly to the public. Pursuant to 5 U.S.C. §552(a)(6)(E)(vi), I certify, as true and correct to the best of my knowledge, that there is a “compelling need,” 5 U.S.C. §552(a)(6)(E)(v), for Defenders to acquire these records on an expedited basis so that we can employ our communications resources (described in Section B under Request for Fee Waiver below) to immediately disseminate the information to the public and to local and national news organizations. The documents requested qualify under 43 C.F.R. § 2.20(a)(2)(iii) as information that news organizations would consider “breaking news” due to the imminent threat that seismic exploration would have on the sensitive resources of the coastal plain. We expect that you will make a decision regarding our request for expedited processing within 10 days, as required by 43 C.F.R. § 2.20(d).

ONLINE POSTING OF FREQUENTLY REQUESTED RECORDS

The FOIA’s “frequently requested record” provision was enacted as part of the 1996 Electronic Freedom of Information Act Amendments, and requires all federal agencies to give “reading room” treatment to any FOIA-processed records that, “because of the nature of their subject matter, the agency determines have become the subject of subsequent requests for substantially the same records.” *See* 5 U.S.C. § 552(a)(2)(D)(ii)(I). Also, enacted as part of the 2016 FOIA Improvement Act, FOIA’s Rule of 3 requires all federal agencies to proactively “make available for public inspection in an electronic format” “copies of records, regardless of form or format ... that have been released to any person ... and ... that have been requested 3 or more times.” *Id.* § 552(a)(2)(D)(ii)(II). Therefore, we respectfully urge you to post responses to this and parallel FOIA requests for substantially the same records on the Internet in accordance with 5 U.S.C. § 552(a)(2)(D)(ii). We anticipate that the requested documents will be subject to the Rule of 3 and should thus be made publicly available.

WITHHELD DOCUMENTS

Under the FOIA Improvement Act of 2016, agencies are prohibited from denying requests for information pursuant to FOIA unless prohibited by law or the agency reasonably believes release of the information will harm an interest that is protected by a FOIA exemption. 5 U.S.C. § 552(a)(8)(A). Should you decide to invoke a FOIA exemption, please include in your response a

description of which responsive documents are withheld with sufficient information for us to assess the basis for the exemption, including any interest(s) that would be harmed by their release. Please include a detailed index identifying:

1. Basic factual material about each withheld record, including the originator, date, length, general subject matter, and location of each item; and
2. Complete explanation and justification for withholding each record, including the specific exemption(s) under which the record (or portion thereof) is 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 and/or may help to avoid unnecessary litigation.

If you determine that portions of responsive records are exempt from disclosure, please segregate or redact the exempt portions and provide the non-exempt portions within the statutory time limit. 5 U.S.C. § 552(b).

FORMAT OF REQUESTED RECORDS

Defenders prefers receiving electronic copies of all responsive documents. Under FOIA, you are obligated to provide records in a readily accessible electronic format, if possible, and as requested here. *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.”). As used here, “readily reproducible” electronic documents should include text-searchable and OCR-formatted.

Additionally, please provide the records in .pdf file format, without any “portfolios” or “embedded files” Portfolios and embedded files are not readily accessible. *Please do not provide the records in a single, or “batched,” .pdf file.* We also appreciate the inclusion of an index of responsive records.

RECORD DELIVERY

We appreciate your assistance in expeditiously responding to this request. As mandated under FOIA, we anticipate a response within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i); 43 C.F.R. § 2.16(a). Defenders is pleased to receive records on a rolling basis if it facilitates the Interior Department’s response.

You may email or mail copies of the requested records to:

Jenny Keatinge
Defenders of Wildlife
1130 17th Street, N.W.
Washington, D.C. 20036
jkeatinge@defenders.org

If you find that this request is unclear, or if responsive records are voluminous, please call me at (202) 772-0270 to discuss the scope of this request.

REQUEST FOR FEE WAIVER

Pursuant to FOIA, 5 U.S.C. § 552(a)(4)(A)(iii), and the Department of the Interior's implementing regulations, 43 C.F.R. §§ 2.45–2.48, Defenders requests a waiver of all charges (*i.e.*, search, review, and duplication fees) incurred in connection with this request.

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). 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 in favor of waivers for noncommercial requesters." *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987); *accord Forest Guardians v. U.S. Dep't of the Interior*, 416 F.3d 1173, 1177–78 (10th Cir. 2005); *Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003); *Community Legal Servs. v. U.S. Dep't of Hous. and Urban Dev.*, 405 F. Supp. 2d 553, 555 (E.D. Pa. 2005).

Congress specifically designed FOIA's 1986 fee waiver amendments to provide non-profit organizations such as Defenders access to government records without payment of fees. Indeed, the fee waiver provision was intended to "explicitly recognize[] the importance and the difficulty of access to governmental documents for such typically under-funded organizations and individuals," including nonprofit public interest groups. *Better Gov't Ass'n v. Dep't of State*, 780 F.2d 86, 94 (D.C. Cir. 1986). FOIA "should not be interpreted to allow federal agencies to set up roadblocks to prevent noncommercial entities from receiving a fee waiver." *W. Watersheds Project v. Brown*, 318 F. Supp. 2d 1036, 1039 (D. Idaho 2004).

Defenders Satisfies the Qualifications for a Fee Waiver

Under FOIA, a requester 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); *see also* 43 C.F.R. § 2.45(a)(1). The Interior Department's implementing regulations at 43 C.F.R. § 2.48 establish the same standard, setting forth four factors to consider in determining whether a request meets the FOIA requirement.

Consequently, the Interior Department must consider the following factors to determine whether a request is in the public interest: (1) "[h]ow the requested records concern the operations or activities of the Federal government," (2) "[h]ow disclosure is likely to contribute to public understanding of those operations or activities," (3) "[h]ow disclosure is likely to significantly contribute to the understanding of a reasonably broad audience of persons interested in the subject," and (4) [h]ow the public's understanding of the subject in question will be enhanced to a significant extent by the disclosure." 43 C.F. R. § 2.48. As presented below, Defenders satisfies each of these four criteria.

Defenders therefore qualifies for a fee waiver. Disclosure of the requested records is in the public interest because it will contribute significantly to public understanding of the operations or activities of the government, particularly as they relate to fluid minerals development on federal lands within the National Wildlife Refuge System. In addition, release of the documents is not for commercial

use. Founded in 1947, Defenders is a 501(c)(3) nonprofit conservation organization with 1.2 million members and supporters dedicated to the protection of all native animals and plants in their natural communities. Access to government records through FOIA requests is essential to Defenders' role of educating the general public about government activities related to wildlife conservation. We have no commercial interest in and will realize no commercial benefit from the release of the requested records.

Please note that the U.S. Fish and Wildlife Service, U.S. Forest Service, Bureau of Land Management and National Park Service have previously granted requests for fee waivers in their provision of documents to Defenders.

A. The Requested Records Concern Operations or Activities of the Federal Government

In accordance with 43 C.F. R. § 2.48(a)(1), the requested records concern the operations and activities of the federal government, namely an executive branch agency, the U.S. Department of the Interior. Responsive materials were generated regarding exploration for oil and gas reserves on federal public lands. The requested records describe the Interior Department's views and actions related to rules, regulations, policies, plans and other federal activities concerning management of fluid minerals exploration within the National Wildlife Refuge System. *See Judicial Watch*, 326 F.3d at 1313 (“[R]easonable specificity is all that FOIA requires with regard to this factor”) (internal quotations omitted).

B. Disclosure of the Requested Records is Likely to Contribute to Public Understanding of Government Operations or Activities

In accordance with 43 C.F. R. § 2.48(a)(2), the requested records are meaningfully informative about government operations or activities, there is a logical connection between their contents and those operations or activities, and disclosure will contribute to an increased public understanding of the subject matter because Defenders has the expertise to analyze and publicize the information in a manner that is useful to a broad audience of persons interested in national wildlife refuges, oil and gas development and management on federal public lands.

The information about government operations and activities contained in the requested records will meaningfully inform public understanding of the Interior Department's management of oil and gas related activities within the National Wildlife Refuge System. It will also aid public understanding of department actions that affect energy exploration on other public lands. This information is highly relevant to Defenders and our members because we are deeply concerned about these issues. Our review and analysis of responsive records will provide the public with critical information about current and future federal policy for managing and protecting vital public lands nationwide.

Once the information is made available, we will share it with our 1.2 million members, supporters, activists, partners and the general public in a manner that will contribute to their understanding of government activities. Defenders' record of active participation in oversight of governmental activities and decision-making, and our consistent contribution to the public's understanding of those activities is well established.

Defenders is a national non-profit organization focused on wildlife and habitat conservation and the safeguarding of biodiversity. We inform, educate and counsel the public regarding environmental

issues, policies and laws relating to wildlife protection and public lands. We represent our members' interests in ensuring that imperiled species and their habitat receive the full protections due under federal law. We frequently communicate with our members, supporters, partner organizations, and the interested public on news and information relevant to oil and gas development on federal public lands and waters, its impacts on species, and the adequacy of measures to mitigate for those impacts.

Defenders will rely on its own legal and scientific experts, as well as outside experts, to analyze the information contained in records produced in response to this FOIA request. We have used, and will continue to use, a full array of tools to ensure our members' interests are vindicated and the general public is informed through our synthesis of the information gleaned from the requested records.

Defenders will ensure that the information produced in response to this request, and our analysis thereof, is disseminated to a reasonably broad audience of persons interested in federal lands management and wildlife conservation. In disseminating the information, Defenders will assure that it is made available for the benefit of the interested persons beyond our membership, such as members of other conservation advocacy organizations, the media, the academic community, and the general public.

Defenders has the ability to disseminate information obtained from the requested records in a number of ways to a broad audience. We actively communicate with our members, supporters and the general public through direct mail and email campaigns. We broadcast action alerts notifying the public of opportunities to comment on agency proposals; publish information on and frequently update our website (797,055+ visitors per month) and blog (21,000+ monthly readership) to educate the public on wildlife conservation issues; distribute a quarterly print magazine with a circulation of approximately 350,000; communicate with partner organizations both nationally and internationally; maintain an active online presence through Facebook (652,000+ followers), Twitter (109,000+ followers), and YouTube (6900+ subscribers); distribute press releases directly to media contacts and through our website and RSS feed; and educate lawmakers and advocates on conservation law at the federal, state and local level.

C. Disclosure of the Requested Records is Likely to Significantly Contribute to the Understanding of a Reasonably Broad Audience of Persons Interested in the Subject

In accordance with 43 C.F. R. § 2.48(a)(3), the requested information is new, not already publicly available, and its disclosure will increase the level of public understanding that existed prior to disclosure. Through Defenders analysis and dissemination, disclosure of the information contained in the requested records will contribute to the understanding of a broad audience of persons that are interested in oil and gas exploration and development on federal public lands, as stated above.

The requested records will enable Defenders to provide information to the public at large regarding the current Interior Department views and activities related to rules, policies, plans and other agency actions concerning assessment, exploration and development of fluid minerals on national wildlife refuges and other public lands. This information is essential to inform the public about potential changes to public lands policy. Indeed, the public does not currently have an ability to easily evaluate the requested records, which are new and not currently in the public domain. *See Cmty. Legal Servs. V. HUD*, 405 F.Supp.2d 553, 560 (D. Pa. 2005) (because requested records "clarify important facts")

about agency policy, the request “would likely shed light on information that is new to the interested public.”).

Disclosing the requested records to Defenders is not only “likely to contribute,” but is certain to contribute, to public understanding of oil and gas related activities on federal public lands and the potential impacts to imperiled species and their habitat. At present, the public has no information about how the Interior Department, Bureau of Land Management and U.S. Fish and Wildlife Service are proceeding with evaluating and authorizing plans for oil and gas exploration in the Section 1002 Area of the Arctic National Wildlife Refuge. Defenders’ dissemination of this information will therefore provide new insight to a broad audience of persons interested in how the Arctic Refuge is managed and protected, the consequences for wildlife and implications for public lands nationwide. *See id.* at § 2.48(a)(3).

D. The Public’s Understanding of the Subject in Question will be Significantly Enhanced by the Disclosure of Requested Records.

In accordance with 43 C.F.R. § 2.48(a)(4), the public’s understanding of the subject of this FOIA request will be enhanced to a *significant extent* by disclosure of the requested records. FOIA’s legislative history makes clear that the ‘significance’ test is met where, as here, the information requested will support “public oversight of agency operations”:

A requester is likely to contribute significantly to the public understanding if the information disclosed is new; supports public oversight of agency operations; or otherwise confirms or clarifies data on past or present operations of the government.

132 Cong. Rec. H9464 (Reps. English and Kindness); *see also McClellan Ecological Seepage Situation*, 835 F.2d at 1284–86.

Disclosure of the requested records will significantly enhance the public’s understanding of the Interior Department’s management of oil and gas exploration within the National Wildlife Refuge System, as compared to the level of understanding that exists prior to disclosure. Disclosure will provide the public with information about an otherwise closed-door process where the Trump administration has not conducted any public review or allowed for any public input on seismic exploration within the Section 1002 Area of the Arctic Refuge specifically. The requested records are new information that have not previously been disclosed, and disclosing them will support public oversight of agency operations regarding federal management of public lands, wildlife and fluid minerals development.

The conservation of federal public lands and waters and the wildlife that depend on them are an ongoing concern for Defenders’ members, supporters, partner organizations, and the interested public. The requested records are essential to Defenders efforts to educate our members and the general public about conservation of imperiled species and their habitat. Our analysis of the records and broad dissemination of the synthesized information will support public participation in government, and help ensure that the impacts of oil and gas exploration are properly mitigated to protect the public interest in federal public lands, waters and wildlife. It will improve the ability of the public to evaluate and supervise the Interior Department’s current and future plans for the Arctic National Wildlife Refuge and energy development on the public domain.

CONCLUSION

For all the foregoing reasons, Defenders of Wildlife satisfies the statutory and regulatory requirements for a fee waiver under FOIA and the Interior Department's implementing regulations. We hope that you will immediately grant this request and tender responsive records.

However, if a fee waiver is denied, Defenders is willing to pay up to \$100.00 in reasonable search time and/or duplication costs exceeding two hours and 100 pages, or equivalent volume. Please contact me to discuss any costs prior to fulfilling this FOIA request.

If you determine that this FOIA request will require longer than ten business days to process, please notify me of the request's individualized tracking number and how to obtain status updates via telephone, email or on the Internet. 5 U.S.C. § 552(a)(7). If you anticipate needing more than the 20 working days allotted under FOIA to fully process this request, please also notify me of the expected delay. I appreciate the opportunity to work with the Interior Department to limit our request to expedite your response.

Thank you for your assistance.

Very sincerely,

A handwritten signature in black ink, appearing to read "Jennifer L. Keatinge". The signature is fluid and cursive, with a large initial "J" and "K".

Jennifer L. Keatinge
Senior Federal Lands Policy Analyst
Defenders of Wildlife

EXHIBIT E



National Headquarters

1130 17th Street, N.W. | Washington, D.C. 20036-4604 | tel 202.682.9400 | fax 202.682.1331
www.defenders.org

Submitted electronically to hwanner@blm.gov

April 3, 2018

Heidi Wanner
FOIA Coordinator
Bureau of Land Management
Alaska State Office
222 W 7th Avenue #13
Anchorage, Alaska 99513

Re: Freedom of Information Act Request for Records Relating to Oil and Gas Planning, Exploration, Leasing and Development on the Coastal Plain of the Arctic National Wildlife Refuge; Request for Fee Waiver

Dear Ms. Wanner:

On behalf of Defenders of Wildlife (Defenders), I respectfully submit the following request pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and its implementing regulations, 43 C.F.R. §§ 2.1–2.34, seeking records generated, obtained or received by the Alaska State Office of the Bureau of Land Management (BLM) **related to planning, exploration, leasing and development of oil and gas resources on the Coastal Plain (Section 1002 Area) of the Arctic National Wildlife Refuge since November 15, 2017.**

The requested records include, but are not limited to:

- All records related to development and implementation of an oil and gas program on the Coastal Plain of the Arctic National Wildlife Refuge pursuant to Title II, Section 20001 of Public Law 115-97, including policies, plans, technical or scientific documents, assessments, regulations or regulatory documents, and any other documents related to Section 20001.
- All records since November 15, 2017 related to development of private lands within the Arctic National Wildlife Refuge owned by the Arctic Slope Regional Corporation and the Kaktovik Inupiat Corporation.
- Any other records concerning oil and gas planning, exploration, leasing and development on the Coastal Plain of the Arctic National Wildlife Refuge since November 15, 2017.

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 type, including both electronic and paper documents, electronic mail, 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, databases, drawings, surveys, graphs, charts, photographs, videos, meeting notes or minutes, electronic and magnetic

recordings of meetings, maps, Geographic Information System data, GPS, UTM, LiDAR, CDs, and any other compilations of data from which information can be obtained.

WITHHELD DOCUMENTS

Under the FOIA Improvement Act of 2016, agencies are prohibited from denying requests for information pursuant to FOIA unless prohibited by law or the agency reasonably believes release of the information will harm an interest that is protected by a FOIA exemption. 5 U.S.C. § 552(a)(8)(A). Should you decide to invoke a FOIA exemption, please include in your response a description of which responsive documents are withheld with sufficient information for us to assess the basis for the exemption, including any interest(s) that would be harmed by their release. Please include a detailed index identifying:

1. Basic factual material about each withheld record, including the originator, date, length, general subject matter, and location of each item; and
2. Complete explanation and justification for withholding each record, including the specific exemption(s) under which the record (or portion thereof) is 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 and/or may help to avoid unnecessary litigation.

If you determine that portions of responsive records are exempt from disclosure, please segregate or redact the exempt portions and provide the non-exempt portions within the statutory time limit. 5 U.S.C. § 552(b).

FORMAT OF REQUESTED RECORDS

Defenders prefers receiving electronic copies of all responsive documents. Under FOIA, you are obligated to provide records in a readily accessible electronic format, if possible, and as requested here. *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.”). As used here, “readily reproducible” electronic documents should include text-searchable and OCR-formatted.

Additionally, please provide the records in .pdf file format, without any “portfolios” or “embedded files” Portfolios and embedded files are not readily accessible. *Please do not provide the records in a single, or “batched,” .pdf file.* We also appreciate the inclusion of an index of responsive records.

RECORD DELIVERY

We appreciate your assistance in expeditiously responding to this request. As mandated under FOIA, we anticipate a response within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i); 43 C.F.R. § 2.16(a). We respectfully urge you to post responses to this and parallel FOIA requests online in accordance with 5 U.S.C. § 552(a)(2)(D)(ii)(II). Defenders is pleased to receive records on a rolling basis if it facilitates the agency’s response.

You may email or mail copies of the requested records to:

Jenny Keatinge
Defenders of Wildlife
1130 17th Street, N.W.
Washington, D.C. 20036
jkeatinge@defenders.org

If you find that this request is unclear, or if responsive records are voluminous, please call me at (202) 772-0270 to discuss the scope of this request.

REQUEST FOR FEE WAIVER

Pursuant to FOIA, 5 U.S.C. § 552(a)(4)(A)(iii), and the Department of the Interior's implementing regulations, 43 C.F.R. §§ 2.45–2.48, Defenders requests a waiver of all charges (*i.e.*, search, review, and duplication fees) incurred in connection with this request.

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). 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 in favor of waivers for noncommercial requesters." *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987); *accord Forest Guardians v. U.S. Dep't of the Interior*, 416 F.3d 1173, 1177–78 (10th Cir. 2005); *Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003); *Community Legal Servs. v. U.S. Dep't of Hous. and Urban Dev.*, 405 F. Supp. 2d 553, 555 (E.D. Pa. 2005).

Congress specifically designed FOIA's 1986 fee waiver amendments to provide non-profit organizations such as Defenders access to government records without payment of fees. Indeed, the fee waiver provision was intended to "explicitly recognize[] the importance and the difficulty of access to governmental documents for such typically under-funded organizations and individuals," including nonprofit public interest groups. *Better Gov't Ass'n v. Dep't of State*, 780 F.2d 86, 94 (D.C. Cir. 1986). FOIA "should not be interpreted to allow federal agencies to set up roadblocks to prevent noncommercial entities from receiving a fee waiver." *W. Watersheds Project v. Brown*, 318 F. Supp. 2d 1036, 1039 (D. Idaho 2004).

Defenders Satisfies the Qualifications for a Fee Waiver

Under FOIA, a requester 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); *see also* 43 C.F.R. § 2.45(a)(1). The Department of the Interior's (DOI) implementing regulations at 43 C.F.R. § 2.48 establish the same standard, setting forth four factors to consider in determining whether a request meets the FOIA requirement.

Consequently, the BLM must consider the following factors to determine whether a request is in the public interest: (1) “[h]ow the requested records concern the operations or activities of the Federal government,” (2) “[h]ow disclosure is likely to contribute to public understanding of those operations or activities,” (3) “[h]ow disclosure is likely to significantly contribute to the understanding of a reasonably broad audience of persons interested in the subject,” and (4) [h]ow the public’s understanding of the subject in question will be enhanced to a significant extent by the disclosure.” 43 C.F. R. § 2.48. As presented below, Defenders satisfies each of these four criteria.

Defenders therefore qualifies for a fee waiver. Disclosure of the requested records is in the public interest because it will contribute significantly to public understanding of the operations or activities of the government, particularly as they relate to fluid minerals development on federal lands within the National Wildlife Refuge System. In addition, release of the documents is not for commercial use. Founded in 1947, Defenders is a 501(c)(3) nonprofit conservation organization with 1.8 million members and supporters dedicated to the protection of all native animals and plants in their natural communities. Access to government records through FOIA requests is essential to Defenders’ role of educating the general public about government activities related to wildlife conservation. We have no commercial interest in and will realize no commercial benefit from the release of the requested records.

Please note that the Bureau of Land Management, U.S. Fish and Wildlife Service, U.S. Forest Service and National Park Service have previously granted requests for fee waivers in their provision of documents to Defenders.

A. The Requested Records Concern Operations or Activities of the Federal Government

In accordance with 43 C.F. R. § 2.48(a)(1), the requested records concern the operations and activities of the federal government, namely an executive branch agency, the Bureau of Land Management. Responsive materials were generated regarding planning, exploration, leasing and development of oil and gas on federal public lands and implementation of Title II, Section 20001 of Public Law 115-97. The requested records describe the agency’s views and actions related to rules, regulations, policies, plans, assessments and other federal activities concerning management of fluid minerals development within the National Wildlife Refuge System. *See Judicial Watch*, 326 F.3d at 1313 (“[R]easonable specificity is all that FOIA requires with regard to this factor”) (internal quotations omitted).

B. Disclosure of the Requested Records is Likely to Contribute to Public Understanding of Government Operations or Activities

In accordance with 43 C.F. R. § 2.48(a)(2), the requested records are meaningfully informative about government operations or activities, there is a logical connection between their contents and those operations or activities, and disclosure will contribute to an increased public understanding of the subject matter because Defenders has the expertise to analyze and publicize the information in a manner that is useful to a broad audience of persons interested in national wildlife refuges, oil and gas development and management on federal public lands.

The information about government operations and activities contained in the requested records will meaningfully inform public understanding of the BLM’s management of oil and gas related activities within the Arctic National Wildlife Refuge. It will also aid public understanding of agency actions

that affect energy development within the National Wildlife Refuge System and on other federal public lands. This information is highly relevant to Defenders and our members because we are deeply concerned about these issues. Our review and analysis of responsive records will provide the public with critical information about current and future federal policy for managing and protecting vital public lands nationwide.

Once the information is made available, we will share it with our 1.8 million members, supporters, activists, partners and the general public in a manner that will contribute to their understanding of government activities. Defenders' record of active participation in oversight of governmental activities and decision-making, and our consistent contribution to the public's understanding of those activities is well established.

Defenders is a national non-profit organization focused on wildlife and habitat conservation and the safeguarding of biodiversity. We inform, educate and counsel the public regarding environmental issues, policies and laws relating to wildlife protection and public lands. We represent our members' interests in ensuring that imperiled species and their habitat receive the full protections due under federal law. We frequently communicate with our members, supporters, partner organizations, and the interested public on news and information relevant to oil and gas development on federal public lands and waters, its impacts on species, and the adequacy of measures to mitigate for those impacts.

Defenders will rely on its own legal and scientific experts, as well as outside experts, to analyze the information contained in records produced in response to this FOIA request. We have used, and will continue to use, a full array of tools to ensure our members' interests are vindicated and the general public is informed through our synthesis of the information gleaned from the requested records.

Defenders will ensure that the information produced in response to this request, and our analysis thereof, is disseminated to a reasonably broad audience of persons interested in federal lands management and wildlife conservation. In disseminating the information, Defenders will assure that it is made available for the benefit of the interested persons beyond our membership, such as members of other conservation advocacy organizations, the media, the academic community, and the general public.

Defenders has the ability to disseminate information obtained from the requested records in a number of ways to a broad audience. We actively communicate with our members, supporters and the general public through direct mail and email campaigns. We broadcast action alerts notifying the public of opportunities to comment on agency proposals; publish information on and frequently update our website (797,055+ visitors per month) and blog (21,000+ monthly readership) to educate the public on wildlife conservation issues; distribute a quarterly print magazine with a circulation of approximately 350,000; communicate with partner organizations both nationally and internationally; maintain an active online presence through Facebook (652,000+ followers), Twitter (109,000+ followers), and YouTube (6900+ subscribers); distribute press releases directly to media contacts and through our website and RSS feed; and educate lawmakers and advocates on conservation law at the federal, state and local level.

C. Disclosure of the Requested Records is Likely to Significantly Contribute to the Understanding of a Reasonably Broad Audience of Persons Interested in the Subject

In accordance with 43 C.F. R. § 2.48(a)(3), the requested information is new, not already publicly available, and its disclosure will increase the level of public understanding that existed prior to disclosure. Through Defenders analysis and dissemination, disclosure of the information contained in the requested records will contribute to the understanding of a broad audience of persons that are interested in oil and gas development on public lands, as stated above.

The requested records will enable Defenders to provide information to the public at large regarding the current agency views and activities related to rules, policies, plans and other agency actions concerning assessment, exploration, leasing and development of fluid minerals on the Arctic National Wildlife Refuge and other public lands. This information is essential to inform the public about potential changes to public lands policy. Indeed, the public does not currently have an ability to easily evaluate the requested records, which are new and not currently in the public domain. *See Cmty. Legal Servs. V. HUD*, 405 F.Supp.2d 553, 560 (D. Pa. 2005) (because requested records “clarify important facts” about agency policy, the request “would likely shed light on information that is new to the interested public.”).

Disclosing the requested records to Defenders is not only “likely to contribute,” but is certain to contribute, to public understanding of oil and gas related activities on federal public lands and the potential impacts to imperiled species and their habitat. At present, the public has no information about how DOI, BLM and the U.S. Fish and Wildlife Service are interpreting and applying Public Law 115-97, or how they will proceed with plans for oil and gas exploration, leasing and development in the Section 1002 Area of the Arctic National Wildlife Refuge. Defenders’ dissemination of this information will therefore provide new insight to a broad audience of persons interested in how the Arctic National Wildlife Refuge is managed and protected, the consequences for wildlife and implications for public lands nationwide. *See id.* at § 2.48(a)(3).

D. The Public’s Understanding of the Subject in Question will be Significantly Enhanced by the Disclosure of Requested Records.

In accordance with 43 C.F.R. § 2.48(a)(4), the public’s understanding of the subject of this FOIA request will be enhanced to a *significant extent* by disclosure of the requested records. FOIA’s legislative history makes clear that the ‘significance’ test is met where, as here, the information requested will support “public oversight of agency operations”:

A requester is likely to contribute significantly to the public understanding if the information disclosed is new; supports public oversight of agency operations; or otherwise confirms or clarifies data on past or present operations of the government.

132 Cong. Rec. H9464 (Reps. English and Kindness); *see also McClellan Ecological Seepage Situation*, 835 F.2d at 1284–86.

Disclosure of the requested records will significantly enhance the public’s understanding of the agency’s development and implementation of an oil and gas program within the Arctic National Wildlife Refuge, as compared to the level of understanding that exists prior to disclosure. Disclosure will provide the public with information about an otherwise closed-door process where the Trump

administration has not revealed any specific information regarding the management of oil and gas exploration, leasing and production in the Section 1002 Area of the Arctic National Wildlife Refuge, the role and activities of the BLM, or application of Title II of Public Law 115-97 to the Arctic Refuge more generally. The requested records are new information that have not previously been disclosed, and disclosing them will support public oversight of agency operations regarding federal management of public lands, wildlife and fluid minerals development.

The conservation of federal public lands and waters and the wildlife that depend on them are an ongoing concern for Defenders' members, supporters, partner organizations, and the interested public. The requested records are essential to Defenders efforts to educate our members and the general public about conservation of imperiled species and their habitat. Our analysis of the records and broad dissemination of the synthesized information will support public participation in government, and help ensure that the impacts of oil and gas development are properly mitigated to protect the public interest in federal public lands, waters and wildlife. It will improve the ability of the public to evaluate and supervise the BLM and DOI's current and future plans for the Arctic National Wildlife Refuge and energy development on the public domain.

CONCLUSION

For all the foregoing reasons, Defenders of Wildlife satisfies the statutory and regulatory requirements for a fee waiver under FOIA and DOI's implementing regulations. We hope that you will immediately grant this request and tender responsive records.

However, if a fee waiver is denied, Defenders is willing to pay up to \$100.00 in reasonable search time and/or duplication costs exceeding two hours and 100 pages, or equivalent volume. Please contact me to discuss any costs prior to fulfilling this FOIA request.

If you determine that this FOIA request will require longer than ten business days to process, please notify me of the request's individualized tracking number and how to obtain status updates via telephone, email or on the Internet. 5 U.S.C. § 552(a)(7). If you anticipate needing more than the 20 working days allotted under FOIA to fully process this request, please also notify me of the expected delay. I appreciate the opportunity to work with the BLM to limit our request to expedite your response.

Thank you for your assistance.

Very sincerely,



Jennifer L. Keatinge
Senior Federal Lands Policy Analyst
Defenders of Wildlife

EXHIBIT F



National Headquarters

1130 17th Street, N.W. | Washington, D.C. 20036-4604 | tel 202.682.9400 | fax 202.682.1331
www.defenders.org

Submitted electronically to blm_ak_foia@blm.gov

July 27, 2018

Heidi Wanner
FOIA Coordinator
Bureau of Land Management
Alaska State Office
222 W 7th Avenue #13
Anchorage, Alaska 99513

Re: Freedom of Information Act Request for Records Related to Seismic Exploration in the Arctic National Wildlife Refuge; Request for Fee Waiver

Dear Ms. Wanner:

On behalf of Defenders of Wildlife (Defenders), I respectfully submit the following request pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and its implementing regulations, 43 C.F.R. §§ 2.1–2.34, seeking records generated, obtained or received by the Bureau of Land Management (BLM) **regarding seismic exploration for oil and gas reserves in the coastal plain (Section 1002 Area) of the Arctic National Wildlife Refuge since April 1, 2018**. Please note that the BLM may exclude records solely related to the environmental impact statement for the Coastal Plain Oil and Gas Leasing Program, if it facilitates quicker collection and provision of responsive documents.

The requested seismic exploration records are those generated, obtained or received by the BLM since April 1, 2018, including but not limited to:

- All records related to SAExploration, Inc.'s Marsh Creek 3-D Plan of Operations and request for permits to conduct seismic exploration on the coastal plain, as well as any proposals to conduct seismic exploration from the state of Alaska or other entities.
- All records related to environmental assessments, analyses, authorizations, planning and permitting for seismic surveys in the Arctic Refuge.
- All records related to discussion, preparation and issuance of Incidental Take Regulations, Incidental Harassment Authorizations and/or Letters of Authorization for seismic exploration on the coastal plain to comply with laws and regulations to protect polar bears.
- All records regarding the impacts of seismic testing to Arctic Refuge wildlife and habitat.

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 type, including both electronic and paper documents, electronic mail, 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, databases, drawings,

surveys, graphs, charts, photographs, videos, meeting notes or minutes, electronic and magnetic recordings of meetings, maps, Geographic Information System data, GPS, UTM, LiDAR, CDs, and any other compilations of data from which information can be obtained.

REQUEST FOR EXPEDITED PROCESSING

Defenders requests “expedited processing” under 5 U.S.C. §552(a)(6)(E). This information is essential to public understanding of pending government activities that affect public lands and resources. The U.S. Department of the Interior and the BLM are currently planning for controversial fluid minerals development in the Arctic Refuge. *See attached story* by Steven Mufson & Juliet Eilperin, “Companies take first steps to drill for oil in Arctic National Wildlife Refuge,” *Washington Post* (May 31, 2018), and BLM’s “eplanning” website regarding the SAExploration Inc. Seismic Application at <https://eplanning.blm.gov/epl-front-office/eplanning/projectSummary.do?methodName=renderDefaultProjectSummary&projectId=111085>.

Time is of the essence as the value of the requested information will be lost if not disseminated quickly to the public. Pursuant to 5 U.S.C. §552(a)(6)(E)(vi), I certify, as true and correct to the best of my knowledge, that there is a “compelling need,” 5 U.S.C. §552(a)(6)(E)(v), for Defenders to acquire these records on an expedited basis so that we can employ our communications resources (described in Section B under Request for Fee Waiver below) to immediately disseminate the information to the public and to local and national news organizations. The documents requested qualify under 43 C.F.R. § 2.20(a)(2)(iii) as information that news organizations would consider “breaking news” due to the imminent threat that seismic exploration would have on the sensitive resources of the coastal plain. We expect that you will make a decision regarding our request for expedited processing within 10 days, as required by 43 C.F.R. § 2.20(d).

ONLINE POSTING OF FREQUENTLY REQUESTED RECORDS

The FOIA’s “frequently requested record” provision was enacted as part of the 1996 Electronic Freedom of Information Act Amendments, and requires all federal agencies to give “reading room” treatment to any FOIA-processed records that, “because of the nature of their subject matter, the agency determines have become the subject of subsequent requests for substantially the same records.” *See* 5 U.S.C. § 552(a)(2)(D)(ii)(I). Also, enacted as part of the 2016 FOIA Improvement Act, FOIA’s Rule of 3 requires all federal agencies to proactively “make available for public inspection in an electronic format” “copies of records, regardless of form or format ... that have been released to any person ... and ... that have been requested 3 or more times.” *Id.* § 552(a)(2)(D)(ii)(II). Therefore, we respectfully urge you to post responses to this and parallel FOIA requests for substantially the same records on the Internet in accordance with 5 U.S.C. § 552(a)(2)(D)(ii). We anticipate that the requested documents will be subject to the Rule of 3 and should thus be made publicly available.

WITHHELD DOCUMENTS

Under the FOIA Improvement Act of 2016, agencies are prohibited from denying requests for information pursuant to FOIA unless prohibited by law or the agency reasonably believes release of the information will harm an interest that is protected by a FOIA exemption. 5 U.S.C. § 552(a)(8)(A). Should you decide to invoke a FOIA exemption, please include in your response a

description of which responsive documents are withheld with sufficient information for us to assess the basis for the exemption, including any interest(s) that would be harmed by their release. Please include a detailed index identifying:

1. Basic factual material about each withheld record, including the originator, date, length, general subject matter, and location of each item; and
2. Complete explanation and justification for withholding each record, including the specific exemption(s) under which the record (or portion thereof) is 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 and/or may help to avoid unnecessary litigation.

If you determine that portions of responsive records are exempt from disclosure, please segregate or redact the exempt portions and provide the non-exempt portions within the statutory time limit. 5 U.S.C. § 552(b).

FORMAT OF REQUESTED RECORDS

Defenders prefers receiving electronic copies of all responsive documents. Under FOIA, you are obligated to provide records in a readily accessible electronic format, if possible, and as requested here. *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.”). As used here, “readily reproducible” electronic documents should include text-searchable and OCR-formatted.

Additionally, please provide the records in .pdf file format, without any “portfolios” or “embedded files” Portfolios and embedded files are not readily accessible. *Please do not provide the records in a single, or “batched,” .pdf file.* We also appreciate the inclusion of an index of responsive records.

RECORD DELIVERY

We appreciate your assistance in expeditiously responding to this request. As mandated under FOIA, we anticipate a response within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i); 43 C.F.R. § 2.16(a). Defenders is pleased to receive records on a rolling basis if it facilitates the agency’s response.

You may email or mail copies of the requested records to:

Jenny Keatinge
Defenders of Wildlife
1130 17th Street, N.W.
Washington, D.C. 20036
jkeatinge@defenders.org

If you find that this request is unclear, or if responsive records are voluminous, please call me at (202) 772-0270 to discuss the scope of this request.

REQUEST FOR FEE WAIVER

Pursuant to FOIA, 5 U.S.C. § 552(a)(4)(A)(iii), and the Department of the Interior's implementing regulations, 43 C.F.R. §§ 2.45–2.48, Defenders requests a waiver of all charges (*i.e.*, search, review, and duplication fees) incurred in connection with this request.

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). 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 in favor of waivers for noncommercial requesters.” *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987); *accord Forest Guardians v. U.S. Dep't of the Interior*, 416 F.3d 1173, 1177–78 (10th Cir. 2005); *Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003); *Community Legal Servs. v. U.S. Dep't of Hous. and Urban Dev.*, 405 F. Supp. 2d 553, 555 (E.D. Pa. 2005).

Congress specifically designed FOIA's 1986 fee waiver amendments to provide non-profit organizations such as Defenders access to government records without payment of fees. Indeed, the fee waiver provision was intended to “explicitly recognize[] the importance and the difficulty of access to governmental documents for such typically under-funded organizations and individuals,” including nonprofit public interest groups. *Better Gov't Ass'n v. Dep't of State*, 780 F.2d 86, 94 (D.C. Cir. 1986). FOIA “should not be interpreted to allow federal agencies to set up roadblocks to prevent noncommercial entities from receiving a fee waiver.” *W. Watersheds Project v. Brown*, 318 F. Supp. 2d 1036, 1039 (D. Idaho 2004).

Defenders Satisfies the Qualifications for a Fee Waiver

Under FOIA, a requester 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); *see also* 43 C.F.R. § 2.45(a)(1). The Department of the Interior's (DOI) implementing regulations at 43 C.F.R. § 2.48 establish the same standard, setting forth four factors to consider in determining whether a request meets the FOIA requirement.

Consequently, the BLM must consider the following factors to determine whether a request is in the public interest: (1) “[h]ow the requested records concern the operations or activities of the Federal government,” (2) “[h]ow disclosure is likely to contribute to public understanding of those operations or activities,” (3) “[h]ow disclosure is likely to significantly contribute to the understanding of a reasonably broad audience of persons interested in the subject,” and (4) [h]ow the public's understanding of the subject in question will be enhanced to a significant extent by the disclosure.” 43 C.F. R. § 2.48. As presented below, Defenders satisfies each of these four criteria.

Defenders therefore qualifies for a fee waiver. Disclosure of the requested records is in the public interest because it will contribute significantly to public understanding of the operations or activities of the government, particularly as they relate to fluid minerals development on federal lands within the National Wildlife Refuge System. In addition, release of the documents is not for commercial

use. Founded in 1947, Defenders is a 501(c)(3) nonprofit conservation organization with 1.2 million members and supporters dedicated to the protection of all native animals and plants in their natural communities. Access to government records through FOIA requests is essential to Defenders' role of educating the general public about government activities related to wildlife conservation. We have no commercial interest in and will realize no commercial benefit from the release of the requested records.

Please note that the Bureau of Land Management, U.S. Fish and Wildlife Service, U.S. Forest Service and National Park Service have previously granted requests for fee waivers in their provision of documents to Defenders.

A. The Requested Records Concern Operations or Activities of the Federal Government

In accordance with 43 C.F. R. § 2.48(a)(1), the requested records concern the operations and activities of the federal government, namely an executive branch agency, the Bureau of Land Management. Responsive materials were generated regarding exploration for oil and gas reserves on federal public lands. The requested records describe the agency's views and actions related to rules, regulations, policies, plans and other federal activities concerning management of fluid minerals exploration within the National Wildlife Refuge System. *See Judicial Watch*, 326 F.3d at 1313 (“[R]easonable specificity is all that FOIA requires with regard to this factor”) (internal quotations omitted).

B. Disclosure of the Requested Records is Likely to Contribute to Public Understanding of Government Operations or Activities

In accordance with 43 C.F. R. § 2.48(a)(2), the requested records are meaningfully informative about government operations or activities, there is a logical connection between their contents and those operations or activities, and disclosure will contribute to an increased public understanding of the subject matter because Defenders has the expertise to analyze and publicize the information in a manner that is useful to a broad audience of persons interested in national wildlife refuges, oil and gas development and management on federal public lands.

The information about government operations and activities contained in the requested records will meaningfully inform public understanding of the BLM's management of oil and gas related activities within the Arctic National Wildlife Refuge. It will also aid public understanding of department actions that affect energy exploration on other federal public lands. This information is highly relevant to Defenders and our members because we are deeply concerned about these issues. Our review and analysis of responsive records will provide the public with critical information about current and future federal policy for managing and protecting vital public lands nationwide.

Once the information is made available, we will share it with our 1.2 million members, supporters, activists, partners and the general public in a manner that will contribute to their understanding of government activities. Defenders' record of active participation in oversight of governmental activities and decision-making, and our consistent contribution to the public's understanding of those activities is well established.

Defenders is a national non-profit organization focused on wildlife and habitat conservation and the safeguarding of biodiversity. We inform, educate and counsel the public regarding environmental

issues, policies and laws relating to wildlife protection and public lands. We represent our members' interests in ensuring that imperiled species and their habitat receive the full protections due under federal law. We frequently communicate with our members, supporters, partner organizations, and the interested public on news and information relevant to oil and gas development on federal public lands and waters, its impacts on species, and the adequacy of measures to mitigate for those impacts.

Defenders will rely on its own legal and scientific experts, as well as outside experts, to analyze the information contained in records produced in response to this FOIA request. We have used, and will continue to use, a full array of tools to ensure our members' interests are vindicated and the general public is informed through our synthesis of the information gleaned from the requested records.

Defenders will ensure that the information produced in response to this request, and our analysis thereof, is disseminated to a reasonably broad audience of persons interested in federal lands management and wildlife conservation. In disseminating the information, Defenders will assure that it is made available for the benefit of the interested persons beyond our membership, such as members of other conservation advocacy organizations, the media, the academic community, and the general public.

Defenders has the ability to disseminate information obtained from the requested records in a number of ways to a broad audience. We actively communicate with our members, supporters and the general public through direct mail and email campaigns. We broadcast action alerts notifying the public of opportunities to comment on agency proposals; publish information on and frequently update our website (797,055+ visitors per month) and blog (21,000+ monthly readership) to educate the public on wildlife conservation issues; distribute a quarterly print magazine with a circulation of approximately 350,000; communicate with partner organizations both nationally and internationally; maintain an active online presence through Facebook (652,000+ followers), Twitter (109,000+ followers), and YouTube (6900+ subscribers); distribute press releases directly to media contacts and through our website and RSS feed; and educate lawmakers and advocates on conservation law at the federal, state and local level.

C. Disclosure of the Requested Records is Likely to Significantly Contribute to the Understanding of a Reasonably Broad Audience of Persons Interested in the Subject

In accordance with 43 C.F. R. § 2.48(a)(3), the requested information is new, not already publicly available, and its disclosure will increase the level of public understanding that existed prior to disclosure. Through Defenders analysis and dissemination, disclosure of the information contained in the requested records will contribute to the understanding of a broad audience of persons that are interested in oil and gas exploration and development on federal public lands, as stated above.

The requested records will enable Defenders to provide information to the public at large regarding the current agency views and activities related to rules, policies, plans and other agency actions concerning assessment, exploration and development of fluid minerals on national wildlife refuges and other public lands. This information is essential to inform the public about potential changes to public lands policy. Indeed, the public does not currently have an ability to easily evaluate the requested records, which are new and not currently in the public domain. *See Cmty. Legal Servs. V. HUD*, 405 F.Supp.2d 553, 560 (D. Pa. 2005) (because requested records "clarify important facts")

about agency policy, the request “would likely shed light on information that is new to the interested public.”).

Disclosing the requested records to Defenders is not only “likely to contribute,” but is certain to contribute, to public understanding of oil and gas related activities on federal public lands and the potential impacts to imperiled species and their habitat. At present, the public has no information about how DOI and the BLM are proceeding with evaluating and authorizing plans for oil and gas exploration in the Section 1002 Area of the Arctic National Wildlife Refuge. Defenders’ dissemination of this information will therefore provide new insight to a broad audience of persons interested in how the Arctic Refuge is managed and protected, the consequences for wildlife and implications for public lands nationwide. *See id.* at § 2.48(a)(3).

D. The Public’s Understanding of the Subject in Question will be Significantly Enhanced by the Disclosure of Requested Records.

In accordance with 43 C.F.R. § 2.48(a)(4), the public’s understanding of the subject of this FOIA request will be enhanced to a *significant extent* by disclosure of the requested records. FOIA’s legislative history makes clear that the ‘significance’ test is met where, as here, the information requested will support “public oversight of agency operations”:

A requester is likely to contribute significantly to the public understanding if the information disclosed is new; supports public oversight of agency operations; or otherwise confirms or clarifies data on past or present operations of the government.

132 Cong. Rec. H9464 (Reps. English and Kindness); *see also McClellan Ecological Seepage Situation*, 835 F.2d at 1284–86.

Disclosure of the requested records will significantly enhance the public’s understanding of the agency’s management of oil and gas exploration within the Arctic National Wildlife Refuge, as compared to the level of understanding that exists prior to disclosure. Disclosure will provide the public with information about an otherwise closed-door process where the Trump administration has not conducted any public review or allowed for any public input on seismic exploration within the Section 1002 Area of the Arctic Refuge specifically. The requested records are new information that have not previously been disclosed, and disclosing them will support public oversight of agency operations regarding federal management of public lands, wildlife and fluid minerals development.

The conservation of federal public lands and waters and the wildlife that depend on them are an ongoing concern for Defenders’ members, supporters, partner organizations, and the interested public. The requested records are essential to Defenders efforts to educate our members and the general public about conservation of imperiled species and their habitat. Our analysis of the records and broad dissemination of the synthesized information will support public participation in government, and help ensure that the impacts of oil and gas exploration are properly mitigated to protect the public interest in federal public lands, waters and wildlife. It will improve the ability of the public to evaluate and supervise the BLM and DOI’s current and future plans for the Arctic National Wildlife Refuge and energy development on the public domain.

CONCLUSION

For all the foregoing reasons, Defenders of Wildlife satisfies the statutory and regulatory requirements for a fee waiver under FOIA and DOI's implementing regulations. We hope that you will immediately grant this request and tender responsive records.

However, if a fee waiver is denied, Defenders is willing to pay up to \$100.00 in reasonable search time and/or duplication costs exceeding two hours and 100 pages, or equivalent volume. Please contact me to discuss any costs prior to fulfilling this FOIA request.

If you determine that this FOIA request will require longer than ten business days to process, please notify me of the request's individualized tracking number and how to obtain status updates via telephone, email or on the Internet. 5 U.S.C. § 552(a)(7). If you anticipate needing more than the 20 working days allotted under FOIA to fully process this request, please also notify me of the expected delay. I appreciate the opportunity to work with the BLM to limit our request to expedite your response.

Thank you for your assistance.

Very sincerely,

A handwritten signature in black ink, appearing to read 'Jennifer L. Keatinge', written in a cursive style.

Jennifer L. Keatinge
Senior Federal Lands Policy Analyst
Defenders of Wildlife