



National Headquarters

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

March 9, 2009

FREEDOM OF INFORMATION ACT REQUEST

Via Electronic Mail and Certified Mail / Return Receipt Requested

Ray McInerney
FOIA Officer
U.S. Department of the Interior
MS-116, SIB
1951 Constitution Ave, NW
Washington, DC 20240

Johnny Hunt
Teri Jackson
Division of Information Resources & Technology Management (IRTM)
Arlington Square
4401 North Fairfax Drive
Mailstop #380
Arlington, VA 22203

Re: Removal of the Gray Wolf Northern Rocky Mountain Distinct Population Segment from the List of Endangered Species

Dear FOIA Officers:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 551 *et seq.*, Defenders of Wildlife ("Defenders") respectfully requests copies of records held by the Department of the Interior, including the Office of the Secretary and the U.S. Fish and Wildlife Service ("FWS"), pertaining to the removal of the Gray Wolf Northern Rocky Mountain Distinct Population Segment from the list of endangered species. Interior Secretary Ken Salazar announced on March 6, 2009, that the Obama administration will delist the wolf pursuant to a Bush administration rule, released January 14, 2009, but which had been suspended pending review. We request all documents in the possession of the Department of the Interior generated since January 20, 2009, related to this rule.

Defenders is a nonprofit environmental organization with more than a million total members and supporters. Defenders is dedicated to the protection of all native wild animals and plants in their natural communities and advocate for new approaches to wildlife conservation that will help keep species from becoming endangered. Our programs encourage protection of entire ecosystems and interconnected habitats while protecting species that serve as indicator species for ecosystem health.

REQUESTED RECORDS

As used throughout this letter, the terms “record” and “records” shall mean all writings (handwritten, typed, electronic or otherwise produced, reproduced or stored) in the agency’s possession, including, but not limited to, any correspondence, minutes of meetings, memoranda, notes, e-mails, calendar or daily entries, agendas, notices, and telefaxes.

All records sought pertain to the Bush administration’s January 14, 2009 rule to delist wolves in the Northern Rockies, which Secretary Salazar announced on March 6, 2009 would be finalized. We respectfully request the following records generated between and including January 20, 2009 and the Secretary’s approval of the rule on March 6, 2009:

1. Any record of meetings, briefings or discussions, and any e-mails, or other communications, internal or external, concerning the Department’s review of the Bush administration’s January 14, 2009, rule to delist wolves in the Northern Rockies.
2. Any record of meetings, briefings or discussions, and any e-mails, or other communications, internal or external, concerning the scientific basis for the Bush administration’s January 14, 2009 rule to delist wolves in the Northern Rockies, including any records documenting any independent or additional internal review conducted by the Department of the Interior or by the Secretary of the Interior of the scientific basis for the January 14, 2009, rule.
3. Any record of meetings, briefings, or discussions, and any e-mails, or other communications, with representatives of any affected state or tribe, including federal and state elected officials, concerning the Bush administration’s January 14, 2009 rule to delist wolves in the Northern Rockies.
4. Any record of meetings, briefings or discussions, and any e-mails, or other communications, internal or external, concerning issues or objections raised by conservation organizations regarding the Bush administration’s January 14, 2009, rule to delist wolves in the Northern Rockies, including any records documenting any consideration of meeting with conservation organizations or otherwise considering their views regarding the rule prior to its finalization on March 6, 2006.

EXEMPTED AND NONEXISTENT DOCUMENTS

Please include in your response an explanation of which documents, if any, may be privileged or exempt from this FOIA request and why. If you claim that the records should not be disclosed, please justify your refusal by referring to the specific exemption that you are invoking under the FOIA. Also, please provide those portions of documents with information requested that are not specifically exempted from disclosure.

REQUEST FOR FEE WAIVER

Defenders requests that you waive all fees in connection with this request. FOIA carries a presumption of disclosure and the fee waiver was designed specifically to allow nonprofit, public interest groups, such as Defenders, access to government documents without the payment of fees.

The courts have stated that the statute “is to be liberally construed in favor of waivers for noncommercial requesters.” McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 Cong. Rec. S14298 (Sept. 30, 1986) (Sen. Leahy)). As shown below, Defenders meets the FOIA’s two-pronged test for a fee waiver. 5 U.S.C. § 552(a)(4)(A)(iii); see 43 C.F.R. § 2.19(b).

Under the FOIA and the Department of the Interior’s implementing regulations, the fee associated with the document production is waived if the release of the information is in the “public interest.” 5 U.S.C. § 552(a)(4)(A)(iii) (“documents shall be furnished without any charge . . . if disclosure of the information is in the public interest”); 43 C.F.R. § 2.19(b). To be “in the public interest,” the requested information must be “likely to contribute significantly to public understanding of the operations or activities of the government, and [] not primarily in the commercial interest of the requester.” *Id.* Meeting this standard, Defenders also satisfies each of the six fee waiver factors outlined by the Department of Justice. See U.S. Department of Justice, FREEDOM OF INFORMATION ACT GUIDE & PRIVACY ACT OVERVIEW, 502 (May 2000 Edition).

I. DISCLOSURE OF THIS INFORMATION IS IN THE PUBLIC INTEREST BECAUSE IT WILL SIGNIFICANTLY CONTRIBUTE TO PUBLIC UNDERSTANDING OF THE OPERATIONS OR ACTIVITIES OF THE GOVERNMENT.

Defenders qualifies for the fee waiver because the requested information will contribute significantly to public understanding of the operations or activities of the government. Defenders, which is generally recognized as an established expert in the field of imperiled species and their threatened habitat, possesses the ability to disseminate the requested information to the general public.

Defenders has been a leader in wolf conservation since wolves first appeared on the federal endangered species list. In recent years, Defenders helped restore wolves to the Northern Rockies and played key roles in the reintroduction of gray wolves to the Southwest and red wolves to the Southeast. For more than 30 years, Defenders has been directly involved in making gray wolf recovery a reality in the lower 48 states. Through education, advocacy, litigation and other efforts, Defenders has invested considerable organizational resources in protecting wolves and other species in Montana and maintains a keen interest in the restoration of wolves in the Northern Rockies. Additionally, Defenders helped pioneer the use of economic incentives to promote protection of endangered species on private lands. Defenders created The Bailey Wildlife Foundation Wolf Compensation Trust, which pays livestock owners for losses to wolf predation. Experts credit the trust as the most important factor contributing to the reintroduction of wolves to Yellowstone National Park and the Northern Rockies.

A. The subject of the request concerns “the operations and activities of the government.”

The information requested concerns the operations and activities of the government. Here, Defenders seeks information on how the Secretary and the FWS have fulfilled their obligations to protect and recover gray wolves, pursuant to the Endangered Species Act (“ESA”), 16 U.S.C. § 1533 *et seq.* More specifically, the information requested will shed light on the rigor of the Interior Department’s review of the Bush administration’s January 14, 2009 delisting rule, particularly its consideration of relevant scientific information on the wolf’s conservation status.

B. The disclosure is “likely to contribute” to public understanding of government operations or activities.

This information is also likely to contribute to public understanding of government operations and activities as they relate to the implementation of the Endangered Species Act, the process for delisting a species, the management of wolves generally, and the effect that transferring control of wolf management to the states may have on the species.

Defenders has long-standing interests in how the federal government uses its authority to protect threatened and endangered species, and has developed relationships with an extensive network of persons across the country interested and active in activities related to understanding the actions of the Department of the Interior and FWS in protecting imperiled species, such as the gray wolf. Moreover, there is already an audience eager for more information on the implementation of these policies. Therefore, Defenders will again act as a conduit providing access to information sought by the public, utilizing the various resources for analyzing and disseminating the information discussed below

C. The disclosure of this information will contribute to “public understanding” of the subject.

Defenders will use this information to contribute to public understanding of the conservation status of the gray wolf and the Service’s approach to managing this recovering species. Information that could “support oversight of [an agency’s] operations” is precisely the type of information that Congress considered to have a “high potential for contribution to public understanding.” McClellan Ecological, 835 F.2d at 1286. Defenders, long known for its leadership on endangered species issues, uses a combination of education, research, and advocacy to advance its mission of informing the public on how the government is undertaking to protect threatened and endangered species and the habitat upon which these species depend. Defenders intends to use the requested records to examine how the FWS and the Department of the Interior are fulfilling their conservation obligations with respect to the gray wolf.

After reviewing the information provided, Defenders intends to use its resources and expertise to inform and educate the public regarding the current status of protections for the gray wolf and the Service’s efforts to protect listed species and the environment generally. This information will be shared with our more than 450,000 members and supporters through our website, electronic news bulletins, quarterly magazine, and other publications, all of which are available free of charge to interested parties.

D. The disclosure is likely to contribute “significantly” to public understanding of government operations or activities.

The requested information will significantly contribute to public understanding of the gray wolf and the efforts of the Department of the Interior and FWS to protect the species. Public oversight and enhanced understanding of the Service’s enforcement of environmental laws are absolutely necessary. Here, the Department of the Interior and FWS are obligated under the terms of the Endangered Species Act to protect gray wolves and provide for their recovery. The actions and assessments of the Department of the Interior and FWS regarding the management of the

species and its relationships with the states are of great concern to the public. The actions of the Department of the Interior and FWS with respect to the management of gray wolves—particularly the decision to remove federal protection and return management authority to Idaho and Montana—has major implications for species conservation.

Moreover, in determining whether the disclosure of requested information will contribute significantly to public understanding, a guiding test is “whether the requester will disseminate the disclosed records to a reasonably broad audience of persons interested in the subject.” Carney v U.S. Dep’t of Justice, 19 F.3d 807, 815 (2nd Cir. 1994). Defenders is comprised of professionals with scientific and legal expertise who regularly write, speak and teach on endangered species and other environmental issues. Defenders’ consistent contribution to the public’s understanding of federal agency activities that affect the environment, as compared to the level of public understanding prior to disclosure, is well established. As demonstrated above, Defenders is uniquely qualified to disseminate the information to a large cross-section of the population.

II. OBTAINING THE INFORMATION IS OF NO COMMERCIAL INTEREST TO DEFENDERS.

The second element of the fee waiver analysis addresses the requester’s “commercial interest” in the information. Two questions must be addressed when determining whether the information requested is “primarily in the commercial interest of the requester.” 43 C.F.R. § 2.19(b)(2). The first question is whether the requester has a commercial interest that would be furthered by the requested disclosure. Here, as a 501(c)(3) nonprofit, Defenders has no commercial, trade or profit interest in the material requested. Defenders will not be paid for, or receive other commercial benefits from the publication or dissemination of the material requested.

The second factor hinges on the primary interest in the disclosure. Clearly, there is great public interest in the release of the materials sought because they will allow for a more thorough analysis of the government’s ability to protect species and enforce environmental laws such as the ESA. Thus, even if assuming *arguendo* Defenders had some “commercial” interest in the documents requested, a complete fee waiver would still be appropriate because Defenders’ “primary” interest in the material is to inform the public about the operations and activities of the government that affected the level of protections afforded the critically imperiled species. Therefore, the “disclosure of the information . . . is not primarily in the commercial interest of” Defenders and a fee waiver is appropriate. 5 U.S.C. § 552(a)(4)(A)(iii).

CONCLUSION

As provided by FOIA, 5 U.S.C. § 552(a)(6)(A)(i), we trust that we shall receive a reply to this request within twenty business days of receipt. We thank you for your time and attention in this matter, and look forward to hearing from you shortly. If you have any questions, feel free to call Jason Rylander at 202-772-3245.

Sincerely,



Jason Rylander

Staff Attorney, Defenders of Wildlife