



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

October 27, 2003

Janis Searles
Oceana
4117 SE Division Street, #309
Portland, Oregon 97202

Dear Ms. Searles:

Thank you for taking the time last week to discuss your two recent Freedom of Information Act (FOIA) requests on behalf of Oceana and the Ocean Conservancy. Our conversation helped to clarify what types of documents and records you are seeking, and answered many questions for National Marine Fisheries Service (NMFS) staff who will be involved in responding to these requests. The following points summarize NMFS' understanding of the issues discussed during our October 23, 2003 conference call.

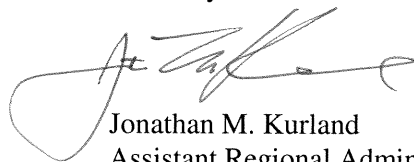
1. Oceana and the Ocean Conservancy submitted two distinct FOIA requests dated October 16, 2003: one seeking records about coral, sponge, bryozoan, and rockfish data (the "data request") and one seeking records related to the development of the Preliminary Draft Environmental Impact Statement (EIS) for Essential Fish Habitat Identification and Conservation in Alaska (the "EIS request"). Records for the data request should be provided to Oceana in Juneau, and records for the EIS request should be sent to your office in Portland.
2. There may be considerable overlap between the two requests. You agreed that NMFS can provide each item only once, and to the extent that certain items are responsive to both requests because they involve data used in the development of the EIS, those items should be provided only to Oceana's Juneau office. NMFS will provide separate indices for the two FOIA requests and will note on the index to the EIS request any records that are responsive but are being provided with the data request.
3. For the data request, you clarified that you are seeking records from the NMFS Resource Assessment and Conservation Engineering Division database, the NMFS fisheries observer database, and other sources that may be in NMFS' possession, such as data from academic research projects. You also clarified that we may provide data in electronic form only, and need not provide paper copies that duplicate electronic files.
4. You clarified that NMFS may exclude from our response any data or records that we have provided to your clients previously, as well as data or records that NMFS is compiling in response to pending requests your clients have made. NMFS will provide a listing of such data and records so you can determine which items NMFS considers to be responsive to your FOIA requests.
5. We discussed confidentiality issues for certain fishery observer data, and you indicated that you would be willing to discuss options for aggregating the data NMFS provides so as to avoid compromising NMFS' standards for maintaining data confidentiality. You indicated that you do not agree with NMFS' approach for data confidentiality, and that depending on the results of further discussions to attempt to resolve this matter, NMFS may need to deny the release of certain records that you do not agree to exclude from your FOIA requests.



6. We discussed your request for video tapes and NMFS staff noted that we have thousands of hours of video tape with no systematic index to help determine which tapes are responsive to your request. You agreed that tapes from three particular studies should be considered responsive: submersible dives undertaken by Bob Stone in 2002 and 2003 to examine coral sites in the Aleutian Islands, and a rockfish survey conducted by Paul Spencer and Rebecca Reuter in 2002. You agreed to inform NMFS if you want copies of other video tapes.
7. We agreed that Jon Warrenchuk from Oceana will confer with NMFS Alaska Fisheries Science Center personnel regarding the most appropriate and informative way for NMFS to provide data regarding corals, sponges, bryozoans, and rockfish. Various aspects of NMFS' data management system may complicate the ability of Oceana or others to query and use the data, so NMFS and Oceana personnel will attempt to reach consensus in the near future regarding the exact data to be released and the appropriate formats. NMFS understands that you are interested in data from 1990 to the present and that you may be amenable to limiting the data request in certain respects, depending on the results of further discussions.
8. Regarding the EIS request, NMFS understands that you are seeking the full administrative record compiled to date for the EIS. NMFS has provided some pertinent documents to Oceana and the Ocean Conservancy in the past, and many documents have been readily available to the public. In such cases, NMFS may note the relevant documents on the index to the EFH request but not provide copies of the documents. If you discover that you do not already have copies of those documents, NMFS will make them available to you.
9. We agreed that you will provide additional information in support of your request for a fee waiver under FOIA.
10. NMFS understands that you intend to use the requested information in the fishery management process. Much of the requested data is integral to ongoing research by NMFS scientists. To respect their research interests and their hard work collecting data, Oceana and the Ocean Conservancy agreed to coordinate with NMFS before publishing any of the responsive data.
11. Finally, NMFS understands that you agree with our proposal to deliver the requested records in segments, as long as we make steady progress toward providing all the responsive material in a timely manner.

Please contact me as soon as possible if the above summary does not reflect your understanding of our agreements regarding the two FOIA requests. Meanwhile, NMFS personnel will continue to work with your clients to resolve the data issues discussed in items 5 and 7 above. We hope to resolve those remaining issues in the very near future so we can begin discussing a mutually acceptable time frame for providing the requested records.

Sincerely,



Jonathan M. Kurland
Assistant Regional Administrator
for Habitat Conservation