

June 10, 2019
TO: Cathy Willis
U.S. Fish and Wildlife Service FOIA Officer
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FROM: Roger Dobson
Protect The Wolves
P.O. Box 174
Potrero, CA 91963

**RE: REQUEST FOR MATERIALS ON YELLOWSTONE GRIZZLY BEAR MANAGEMENT
OVERSIGHT SPECIFIC TO RELOCATION AND MORTALITIES**

Dear FOIA Officer,

Protect the Wolves is a non-profit, public interest conservation organization whose mission is to protect our natural resources and in particular our apex predators for future generations, specifically for our children. This includes furthering the continuing educational goals of our membership, the general public and our future generations as well as the general public process.

Consistent with our mission, and consistent with the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), we respectfully request all documents in the possession of the U.S. Fish and Wildlife Service (the "Service") pertaining to policies and procedures used to oversee management, particularly over the relocation policy and procedure, by state wildlife agencies of grizzly bears in the Greater Yellowstone Ecosystem, Tri-State area. This includes any documents, correspondence, or other information related to management of grizzlies specifically and not limited to what rule is there for oversight of the determination of a problem bear? What rule is there for oversight in regard to the appropriate relocation area or site? What rule is there for oversight in regard to the determination of the relocation location in relationship to the specific bear problem? What rule or policy, procedure, protocol is required to determine how a problem bear assessed for a particular location site? Does the service have written policy and procedure to determine oversight of the number of different bears relocated to one specific area in a six-month period, in a one-year period? Is there a rule regarding oversight as to the age and sex of bears relocated to the same site? Is there a rule determining the oversight of how the relocated bears are adapting? Is there a rule or protocol to determined oversight of the season the bear is relocated? Is there a written management plan or procedure that considers the issue of relocating a hyperphagic bear? What written policy of oversight is there in monitoring the relocation of hyperphagic, fall bears? What is the policy or procedure required to determine when relocation is appropriate?

This request also includes any policies and procedures used by the Service to ensure that states are complying with Section 9 of the Endangered Species Act. And also specifically but not limited to aspects of the MOA, Memorandum of Agreement, pursuant to the Wildlife Coordination Act in regard to FWS oversight of state agency management and state agency agreement specifically WGFD about reporting Grizzly Bear Management problem and relocation incidents and the appropriate grizzly bear relocation procedures. We also request any incidental take permits, including the justification of such permits that may apply to management by the states of grizzlies that frequent the roads of relocation sites. This request includes all written documentation of the relocation history of bear 863 from the Muddy Creek Area, North Fork of the Shoshone or other location to Bailey Creek. This request includes all written information regarding the current location or demise of the littermate sub adult bear relocated with bear 863 to Bailey Creek Area.

What is the written policy of the Service in regard to approval each time that the states relocate grizzlies? Provide all written policy and procedure the service provides to the state to ensure that grizzlies are not relocated unnecessarily, inappropriately or harmed in the process?

REQUEST FOR FEE WAIVER

Protect the Wolves requests that you waive all fees in connection with this matter. As shown below, the requesting organization meets the two-pronged test under FOIA for a fee waiver, 5 U.S.C. § 552(a)(4)(A)(iii), as implemented by the Department of Interior's fee waiver regulations at 43 C.F.R. § 2.19.

- I. Disclosure of this information is in the public interest because it will significantly contribute to public understanding of the operations or activities of government.**

This requested information will significantly contribute to public understanding of the issues involved, as defined by the Department of Interior's two factors at § 2.19 (each factor is addressed below). In considering whether Protect the Wolves meet these fee waiver criteria, it is imperative that the Fish and Wildlife Service remember that FOIA, in general, carries a presumption of disclosure and that the fee waiver amendments of 1986 were designed specifically to allow non-profit, public interest groups such as Protect the Wolves access to government documents without the payment of fees.

As stated by Senator Leahy, "agencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information . . ." 132 Cong. Rec. S. 14298. In interpreting this amendment, the Ninth Circuit noted that the amended 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) (citing Sen. Leahy). Both the Ninth Circuit and the D.C. Circuit have stated that the amendment's main purpose was "to remove the roadblocks and technicalities which have been used by various Federal agencies to deny waivers or reductions of fees under the FOIA." *Id.*; *Judicial Watch v. Rossoti*, 326 F.3d 1309,1315 (D.C. Cir. 2014). FOIA's fee waiver provision was added "to prevent government agencies from using high fees to

discourage certain types of requesters and requests,' in clear reference to requests from journalists, scholars, and non-profit public interest groups." *Better Gov't Ass'n v. Department of State*, 780 F.2d 86, 93-94 (D.C. Cir. 1986) (quoting *Ettlinger v. FBI*, 596 F. Supp. 867, 876 (D. Mass. 1984)).

Thus, both Congress and the courts are clear in their interpretation that the main legislative purpose of the amendments is to facilitate access to agency records by "watchdog" organizations, including environmental groups such as Protect the Wolves, which uses FOIA to monitor and challenge government activities, including fiscal policies and activities.

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

As this is a request for documents from an executive branch agency, U.S. Fish and Wildlife Service, it is clear that this request concerns the operations and activities of government. The Service is charged with federal oversight and recovery of threatened grizzly bears under the Endangered Species Act and also the Wildlife Coordination Act.

The requested documents concern about the condition of federally managed resources, the potential effects of proposed and prospective decisions on these resources, and their current and future legal and biological status.

B. The disclosure is "likely to contribute" to a public understanding of government operations or activities (the informative value of the information to be disclosed and ability to disseminate).

The information requested will help provide crucial insight into the policies and decision-making processes of the U.S. Fish and Wildlife Service as they relate to management and recovery of the threatened grizzly bear. This FOIA request will allow Protect the Wolves to gain a better understanding of the Service's policies and programs regarding the management of the threatened grizzly bear.

Protect the Wolves is a non-profit organization that is dedicated to the mission to protect our natural resources, specifically our apex predators and their habitat for future generations. This includes informing the public and members about wildlife

protection policies procedures and requirements. Protect the Wolves cannot gauge the effectiveness of US Fish and Wildlife Service's grizzly bear management program without the requested information.

The Bureau of Indian Affairs a Federal Agency has granted Protect the Wolves a Fee Waiver. In granting fee waivers for Protect the Wolves, this Agency has recognized that (1) our requested information contributes significantly to the public understanding of the operations or activities of the government, (2) our requested information enhances the public's understanding to a greater degree than currently exists, (3) Protect the Wolves possesses the expertise to explain the requested information to the public, (4) Protect the Wolves possesses the ability to disseminate the requested information to the general public, (5) and that the news media recognizes that Protect the Wolves are established experts in the respective areas of operations.

C. The disclosure is likely to contribute "significantly" to public understanding at large of government operations or activities.

Public oversight and enhanced understanding of U.S. Fish and Wildlife Service's compliance with the Endangered Species Act and the Wildlife Coordination Act are absolutely necessary. These materials will shed light on matters of high importance to the public.

Understanding exactly how grizzly bears are protected from illegal take and the effectiveness of U.S. Fish and Wildlife Service's recovery efforts are critical to reducing grizzly bear deaths. And this relates to deaths related to the various and critical factors involved in the relocation of a grizzly bear to a new region.

Protect the Wolves has a track record of active participation in oversight of U.S. Fish and Wildlife Service activities and of contributing to the public's understanding of these agencies' activities, as compared to the level of public understanding prior to disclosure. 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. Dept. of Justice, 19 F.3d 807 (2nd Cir. 1994) (emphasis added).

The information requested in this FOIA request will be used to contribute to one or more of the following: public comment on upcoming decisions, court documents, the legislative process, local and national newsletters, press releases and communications, public presentations, local and national news stories contributed to or written by Protect the Wolves, as well as responses to the many phone calls received from concerned members and the public at large regarding federal actions and federal management of endangered species. In addition to the above channels of dissemination, our informational publications and social media supply information not only to our membership, but also to the memberships of other conservation organizations, locally as well as nationally, and to the general public. Information acquired in this FOIA will be disseminated through such channels.

As an active nonprofit group involved with aspects of grizzly bear management and decision-making, Protect the Wolves provides important contributions to the public's understanding of government operation activities and decisions. Protect the Wolves serve the broader public interest by acquiring, analyzing, and disseminating information and data regarding public lands and federally protected species.

II. Obtaining the information is of no commercial interest to Protect the Wolves.

Access to government documents, disclosure forms, and similar materials through FOIA requests is essential to Protect the Wolves role of educating the general public. Protect the Wolves is a non-profit organization that has no commercial interest and will realize no commercial benefit from the release of the requested information.

Should you decide not to waive fees, we request that you contact us prior to incurring any costs in excess of \$25. Please feel free to request additional information concerning our fee waiver request if you believe it is needed to make a final decision.

If you elect to withhold any documents responsive to this request under Exemption 5 of FOIA, please provide, to the extent allowed by law, the title, date, and description of each exempted document, and further explain, if appropriate:

- 1) Why is each document pre-decisional?
 - a. To what decision is each of the documents leading?
 - b. Has this decision been finalized?
- 2) Why is each document deliberative?
 - a. To what extent does each make a recommendation on a legal or policy matter?
- 3) If the requested record is denied, cite the exemption used to deny the requested record.

We look forward to your reply within twenty working days as required by FOIA. 5 U.S.C. § 552(a)(6)(A)(i). Please call (307) 739 0748 if you have any questions about this request.

Sincerely,



6/10/19

Roger Dobson
Protect the Wolves
P.O. Box 174
Potrero, CA 91963