

# Exhibit B



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
Silver Spring, MD 20910

August 13, 2014

Ms. Stephanie Hsiung  
1650 38<sup>th</sup> Street  
Suite 102W  
Boulder, CO 80301

Dear Ms. Hsiung:

This letter is to acknowledge receipt of your Freedom of Information Act (FOIA) request by National Marine Fisheries Service via FOIA online on August 08, 2014, and assigned to our office August 08, 2014. You requested:

- 1) All NMFS drafts of all or portions of the Endangered Species Act Section 7 Consultation Programmatic Biological Opinion on the U.S. Environmental Protection Agency's Issuance and Implementation of the Final Regulations Section 316(b) of the Clean Water Act (the "BiOp"), Incidental Take Statement and its appendices;
- 2) All documents exchanged between NMFS staff and within NOAA, and between NOAA/NMFS and the Environmental Protection Agency (EPA), or any other governmental agency or official, during interagency review of, and concerning, drafts of the BiOp and/or Incidental Take Statement;
- 3) All documents between NMFS staff and within NOAA, and between NOAA/NMFS and EPA, or any other governmental agency or official, concerning the ESA section 7 consultation on EPA's most recently proposed 316(b) rule;
- 4) All documents serving as the basis for, or which were considered by, NOAA and/or NMFS in connection with its "no jeopardy" and/or "no adverse modification" of critical habitat findings on the ESA section 7 consultation for the most recently proposed 316(b) rule; including but not limited to:
  - a) any and all data, documents, communications and records pertaining to all species of sturgeon, and any opinions by NMFS staff or others on potential impacts to sturgeon;
  - b) any and all data, documents, communications and records of any type reflecting any changes to NMFS' opinions or conclusions concerning its jeopardy determinations for sturgeon or any other species;
  - c) any and all identification by NMFS of any requirements that would have to be met to avoid jeopardy findings for sturgeon or any other species, whether or not it was included in the final BiOp or Incidental Take Statement;



- d) any draft or proposed jeopardy opinion that was sent by NMFS to the U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, or any other agency, for the sturgeon or any other species.
- 5) If not otherwise produced in response to the sections above, all documents or communications of every type between NOAA and/or NMFS and the Office of Management and Budget and/or the Council on Environmental Quality, and any of the agencies' personnel, concerning the ESA section 7 consultation on the 316(b) rule, including but not limited to any records of telephone conversations, emails or meetings between the agencies or their personnel on this subject, any draft (full or partial) BiOp or Incidental Take Statements between NMFS, OMB and/or CEQ on this subject;
- 6) If not otherwise produced in response to the sections above, all documents or communications of every type between NOAA and/or NMFS and the U.S. Fish and Wildlife Service, and any of the agencies' personnel, concerning the ESA section 7 consultation on the 316(b) rule, including but not limited to:
  - a) all communications between NMFS and the FWS with subject lines including the terms 316(b) or Cooling Water Intake;
  - b) all communications between the Protected Resources Division of NMFS and Drew Crane at FWS
- 7) All documents between NMFS staff and between NMFS and EPA, or any other governmental agency or official, concerning any ESA section 7 consultation on EPA's previously proposed 316(b) rule(s), including for new sources as well as existing sources;
- 8) All documents exchanged and all documents related to any meetings, telephone conversations, emails, or any other communications between NOAA and/or NMFS and the utility (i.e., electric generation) industry or manufacturing industry, representatives of the utility or manufacturing industries, trade groups, special interest groups, and/or other non-governmental parties relating to the ESA section 7 consultation on the 316(b) rule.

Your request for a "*fee waiver*" was granted in full; this was communicated to you by the NOAA FOIA Office. The request for "*expedited processing*" is pending, but will also be communicated to you by the NOAA FOIA Office.

Your request was assigned FOIA# **DOC-NOAA-2014-001474** for tracking purposes. Please refer to the assigned tracking number in any future communications regarding this request.

If you have any questions regarding your request, please contact me at (301) 427-8482.

Sincerely,

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Acting, Protected Resources FOIA Coordinator