

Exhibit A



Sea Shepherd Legal

Saving marine wildlife and habitats by enforcing, strengthening and developing protective laws, treaties, policies and practices worldwide

July 26, 2018

Submitted via Email

Ms. Clarice Julka
Office of the Secretary FOIA Contact
United States Department of the Interior
1849 C Street NW
Washington, DC 20240
os_foia@ios.doi.gov

Re: Freedom of Information Act Request for Records Regarding Review of Four Marine National Monuments (Pacific Remote Islands Marine National Monument, Rose Atoll Marine National Monument, Marianas Trench Marine National Monument, and Papahānaumokuākea Marine National Monument) Under Executive Orders 13792 and 13795

Dear Ms. Julka:

I am writing on behalf of Sea Shepherd Legal (“SSL”) with a request for records maintained by the Department of Interior (“DOI”) regarding DOI’s review of the Pacific Remote Islands Marine National Monument, the Rose Atoll Marine National Monument, the Marianas Trench Marine National Monument, and the Papahānaumokuākea Marine National Monument (collectively, the “Pacific Marine National Monuments”) pursuant to Executive Orders 13792 and 13795. Consistent with SSL’s mission and pursuant to 43 C.F.R. Part 2 and the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, I respectfully request the following records from the DOI:

- 1. All records relating to the DOI’s consultation and/or review, whether completed or ongoing, regarding the Pacific Marine National Monuments pursuant to Executive Order 13792 (entitled “Review of Designations Under the Antiquities Act”).¹ This request includes records relating to cost-benefit analysis, environmental considerations, legal analysis, communications with other federal agencies and state, tribal, and local governments, and any other records bearing a connection to review of the Pacific Marine National Monuments under Executive Order 13792. This request also includes any DOI findings, conclusions, reports, or recommendations, whether final or tentative, relating to the Pacific Marine National Monuments under Executive Order 13792.**

¹ Executive Order 13792, *Review of Designations Under the Antiquities Act*, 82 FR 20429 (April 26, 2017).

- 2. All records relating to the DOI's consultation and/or review, whether completed or ongoing, regarding the Pacific Marine National Monuments pursuant to Executive Order 13795 (entitled "Implementing An America-First Offshore Energy Strategy").² This request includes records relating to cost-benefit analysis, environmental considerations, legal analysis, communications with state, tribal, and local governments, and any other records bearing a connection to review of the Pacific Marine National Monuments under Executive Order 13795. This request also includes any DOI findings, conclusions, reports, or recommendations, whether final or tentative, relating to the Pacific Marine National Monuments under Executive Order 13795.**

The items specifically requested are not meant to be exclusive of any other documents that, although not specially requested, have a reasonable relationship to the subject matter of this request. "Documents" and "records" include, but are not limited to, all permits, agreements, contracts, surveys, field notes, correspondence, minutes, memoranda, maps, plans, drawings, emails, reports, databases, emails, faxes, and notes. This request includes all documents that have ever been within your custody or control, including all inter- and intra-agency documents, whether they exist in agency working, investigative, retired, electronic mail, or other files currently or at any other time.

REQUEST FOR FEE WAIVER

SSL requests that the DOI waive all fees in connection with the procurement of this information pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). As demonstrated below, the nature of this request meets the test for fee waiver as expressed in FOIA, 5 U.S.C. § 552(a)(4)(A)(iii).

In deciding whether the fee waiver criteria are satisfied, SSL respectfully reminds the DOI that FOIA is inclined toward disclosure and that the fee waiver amendments were enacted to allow further disclosure to nonprofit, public interest organizations. *See* 132 Cong. Rec. S. 14270-01 (statement of Sen. Leahy) ("[A]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information."). Furthermore, the federal appellate courts have interpreted this fee waiver section broadly, holding that the section is to be "liberally construed in favor of waivers for noncommercial requesters." *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (quoting *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir.1987) (citing Sen. Leahy)); *accord Forest Guardians v. U.S. Dep't of Interior*, 416 F.3d 1173, 1178 (10th Cir. 2005).

- I. The present disclosure is in the public interest because it will significantly contribute to public understanding of the operations or activities of government.**

The requested disclosure will contribute to public understanding of the operations or activities of the government. 5 U.S.C. § 552(a)(4)(A)(iii).

² Executive Order 13795, *Implementing an America-First Offshore Energy Strategy*, 82 FR 20815 (April 28, 2017).



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

The requested information pertains to the DOI’s consultation and review regarding four Marine National Monuments pursuant to two Executive Orders signed by President Trump. The Marine National Monuments at issue—the Pacific Remote Islands Marine National Monument, the Rose Atoll Marine National Monument, the Marianas Trench Marine National Monument, and the Papahānaumokuākea Marine National Monument—cover diverse areas of U.S. territory throughout the Pacific. These Monuments share a bipartisan legacy. While President George W. Bush established all four Monuments, President Obama supported their continuity and expanded two of the four (the Papahānaumokuākea Marine National Monument and the Pacific Remote Islands Marine National Monument).

There can be no question that the DOI’s analyses of these Marine National Monuments qualify as “operations and activities of the government.” In Executive Order 13792, President Trump claimed that Monument designations “have a substantial impact” on public lands and waters, while emphasizing the importance of “public outreach and proper coordination” in making such designations.³ With this in mind, the President asked the Secretary of the Interior, coordinating with the Secretary of Commerce in the case of Marine National Monuments, to “conduct a review of all Presidential designations or expansions of designations under the Antiquities Act made since January 1, 1996.”⁴ In Executive Order 13795, President Trump described the review of Marine National Monuments and National Marine Sanctuaries as necessary to “implementing a plan that ensures energy security and economic vitality for decades to come.”⁵ Among other things, President Trump directed DOI to consult with the Secretary of Commerce in an effort to “conduct a review of all designations and expansions of National Marine Sanctuaries, and of all designations and expansions of Marine National Monuments under the Antiquities Act of 1906[.]”⁶ Agency actions pursuant to Executive Order are clearly “operations and activities of the government.” The consultations and reviews here are no exception.

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

The present disclosure by the DOI will provide the public a better understanding of how the DOI and other government actors perceive the relative benefits and costs of the Pacific Marine National

³ *Supra* n. 1 at § 1.

⁴ *Id.* at § 2.

⁵ *Supra* n. 2 at § 1.

⁶ *Id.* at § 4.

Monuments. The requested records will also facilitate an understanding of whether the DOI, as currently constituted, perceives any legal infirmity regarding these Monuments' creation and expansion.

SSL is a public interest organization that will utilize this information to gain a better understanding of how the DOI approaches the Antiquities Act and the marine areas created under that legislation. We inform, educate and counsel the public—via legal action, our website, our weblog, and ongoing training and capacity-building activities—on risks to marine wildlife and habitat. SSL works to achieve its goals through policy work, education, and litigation. Accordingly, SSL is an effective vehicle to disseminate information on the DOI's consultation and review of the Pacific Marine National Monuments.

Perhaps most importantly, this FOIA request will help SSL fulfill its well-established function of public oversight of government action. Public oversight of agency action is a vital component in our democratic system and is the bedrock principle upon which FOIA is built. As the DOI knows, Executive Orders 13792 and 13795 have garnered significant attention in the press and no small amount of concern among conservation organizations. The present request responds to the public's call for more information.

II. Obtaining the information is of no commercial interest to SSL.

SSL is a 501(c)(3) nonprofit, public interest environmental law firm with a mission to save marine wildlife and habitats by enforcing, strengthening, and developing protective laws, treaties, policies, and practices worldwide. SSL works on a range of matters from ensuring proper governmental agency action to developing innovative policy approaches to encourage greater protections for marine wildlife and ecosystems.

Under FOIA, a commercial interest is one that furthers a commercial, trade, or profit interest as those terms are commonly understood. *See, e.g.*, OMB Fee Guidelines, 52 Fed. Reg. 10017-18. Such interests are not present in this request. In no manner does SSL seek information from the DOI for commercial gain or interest. Upon request and free of charge, SSL will provide members of the public with relevant information obtained from the DOI.

Based upon the foregoing, SSL asks that this FOIA request be classified within the DOI's fee waiver category and that the DOI send the requested information as required by law.

We look forward to your reply within twenty working days as required by FOIA. 5 U.S.C. § 552(a)(6)(A)(i). If the responsive records are voluminous, please contact me to discuss the proper scope of the response.

If any exemption from FOIA's disclosure requirement is claimed, please describe in writing the general nature of the document and the particular legal basis upon which the exemption is claimed. We respectfully remind DOI that, pursuant to the FOIA Improvement Act of 2016, Congress amended FOIA



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to authorize withholding “only if the agency reasonably foresees that disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.”⁷ In other words, the technical application of an exemption is no longer sufficient to justify withholding; the agency must also identify a foreseeable harm or make a determination that disclosure is affirmatively illegal.

Should any document be redacted, please indicate the location of the redaction through the use of black ink and provide a ledger with as much information as possible regarding the redacted information. Please provide any and all non-exempt portions of any document that may be partially exempt, as required by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973).

To expedite our review of the records, we kindly ask that you upload responsive documents to FOIA Online or send responsive documents via electronic mail to the address listed below. Should physical delivery be necessary, please send all materials to 2226 Eastlake Avenue East, #108, Seattle, WA 98102.

You may call me at (206) 504-1600 if you have any further questions about this request. Thank you for your prompt attention to this matter.

Sincerely,

s/Nicholas Fromherz

Nicholas Fromherz

Senior Attorney

Sea Shepherd Legal

(206) 504-1600

nick@seashepherdlegal.org

⁷ FOIA Improvement Act of 2016 (Public Law No. 114-185) (codified at 5 U.S.C. § 552 (a)(8)(A)(i)(I)).