

# EXHIBIT D



**National Headquarters**

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*Submitted electronically to [os.foia@ios.doi.gov](mailto:os.foia@ios.doi.gov)*

July 27, 2018

Claurice Julka  
Office of the Secretary  
U.S. Department of the Interior  
MS-7328, MIB  
1849 C Street, NW  
Washington, DC 20240

**Re: Freedom of Information Act Request for Records Related to Seismic Exploration in the Arctic National Wildlife Refuge; Request for Fee Waiver**

Dear FOIA Officer:

On behalf of Defenders of Wildlife (Defenders), I respectfully submit the following request pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and its implementing regulations, 43 C.F.R. §§ 2.1–2.34, seeking records generated, obtained or received by the U.S. Department of the Interior (Interior Department) **regarding seismic exploration for oil and gas reserves in the coastal plain (Section 1002 Area) of the Arctic National Wildlife Refuge since April 1, 2018**. Please note that the Interior Department may exclude records solely related to the environmental impact statement for the Coastal Plain Oil and Gas Leasing Program, if it facilitates quicker collection and provision of responsive documents.

The requested seismic exploration records are those generated, obtained or received by the Interior Department since April 1, 2018, including but not limited to:

- All records related to SAExploration, Inc.'s Marsh Creek 3-D Plan of Operations and request for permits to conduct seismic exploration on the coastal plain, as well as any proposals to conduct seismic exploration from the state of Alaska or other entities.
- All records related to environmental assessments, analyses, authorizations, planning and permitting for seismic surveys in the Arctic Refuge.
- All records related to discussion, preparation and issuance of Incidental Take Regulations, Incidental Harassment Authorizations and/or Letters of Authorization for seismic exploration on the coastal plain to comply with laws and regulations to protect polar bears.
- All records regarding the impacts of seismic testing to Arctic Refuge wildlife and habitat.

For purposes of this request, “records” is consistent with the meaning of the term under FOIA. This includes, but is not limited to, documents of any type, including both electronic and paper documents, electronic mail, writings (handwritten, typed, electronic or otherwise produced, reproduced or stored), correspondence, letters, memoranda, reports, consultations, papers, studies, notes, field notes, recordings, telephone conversation recordings, voice mails, telephone logs, messages, instant messages, G-chats, text messages, chats, telefaxes, data, databases, drawings,

surveys, graphs, charts, photographs, videos, meeting notes or minutes, electronic and magnetic recordings of meetings, maps, Geographic Information System data, GPS, UTM, LiDAR, CDs, and any other compilations of data from which information can be obtained.

### REQUEST FOR EXPEDITED PROCESSING

Defenders requests “expedited processing” under 5 U.S.C. §552(a)(6)(E). This information is essential to public understanding of pending government activities that affect public lands and resources. The Department of the Interior and the Bureau of Land Management (BLM) are currently planning for controversial fluid minerals development in the Arctic Refuge. *See attached story* by Steven Mufson & Juliet Eilperin, “Companies take first steps to drill for oil in Arctic National Wildlife Refuge,” *Washington Post* (May 31, 2018), and BLM’s “eplanning” website regarding the SAExploration Inc. Seismic Application at <https://eplanning.blm.gov/epl-front-office/eplanning/projectSummary.do?methodName=renderDefaultProjectSummary&projectId=111085>.

*Time is of the essence* as the value of the requested information will be lost if not disseminated quickly to the public. Pursuant to 5 U.S.C. §552(a)(6)(E)(vi), I certify, as true and correct to the best of my knowledge, that there is a “compelling need,” 5 U.S.C. §552(a)(6)(E)(v), for Defenders to acquire these records on an expedited basis so that we can employ our communications resources (described in Section B under Request for Fee Waiver below) to immediately disseminate the information to the public and to local and national news organizations. The documents requested qualify under 43 C.F.R. § 2.20(a)(2)(iii) as information that news organizations would consider “breaking news” due to the imminent threat that seismic exploration would have on the sensitive resources of the coastal plain. We expect that you will make a decision regarding our request for expedited processing within 10 days, as required by 43 C.F.R. § 2.20(d).

### ONLINE POSTING OF FREQUENTLY REQUESTED RECORDS

The FOIA’s “frequently requested record” provision was enacted as part of the 1996 Electronic Freedom of Information Act Amendments, and requires all federal agencies to give “reading room” treatment to any FOIA-processed records that, “because of the nature of their subject matter, the agency determines have become the subject of subsequent requests for substantially the same records.” *See* 5 U.S.C. § 552(a)(2)(D)(ii)(I). Also, enacted as part of the 2016 FOIA Improvement Act, FOIA’s Rule of 3 requires all federal agencies to proactively “make available for public inspection in an electronic format” “copies of records, regardless of form or format ... that have been released to any person ... and ... that have been requested 3 or more times.” *Id.* § 552(a)(2)(D)(ii)(II). Therefore, we respectfully urge you to post responses to this and parallel FOIA requests for substantially the same records on the Internet in accordance with 5 U.S.C. § 552(a)(2)(D)(ii). We anticipate that the requested documents will be subject to the Rule of 3 and should thus be made publicly available.

### WITHHELD DOCUMENTS

Under the FOIA Improvement Act of 2016, agencies are prohibited from denying requests for information pursuant to FOIA unless prohibited by law or the agency reasonably believes release of the information will harm an interest that is protected by a FOIA exemption. 5 U.S.C. § 552(a)(8)(A). Should you decide to invoke a FOIA exemption, please include in your response a

description of which responsive documents are withheld with sufficient information for us to assess the basis for the exemption, including any interest(s) that would be harmed by their release. Please include a detailed index identifying:

1. Basic factual material about each withheld record, including the originator, date, length, general subject matter, and location of each item; and
2. Complete explanation and justification for withholding each record, including the specific exemption(s) under which the record (or portion thereof) is withheld and a full explanation of how each exemption applies to the withheld material. Such statements will be helpful in deciding whether to appeal an adverse determination and/or may help to avoid unnecessary litigation.

If you determine that portions of responsive records are exempt from disclosure, please segregate or redact the exempt portions and provide the non-exempt portions within the statutory time limit. 5 U.S.C. § 552(b).

#### FORMAT OF REQUESTED RECORDS

Defenders prefers receiving electronic copies of all responsive documents. Under FOIA, you are obligated to provide records in a readily accessible electronic format, if possible, and as requested here. *See, e.g.*, 5 U.S.C. § 552(a)(3)(B) (“In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.”). As used here, “readily reproducible” electronic documents should include text-searchable and OCR-formatted.

Additionally, please provide the records in .pdf file format, without any “portfolios” or “embedded files” Portfolios and embedded files are not readily accessible. *Please do not provide the records in a single, or “batched,” .pdf file.* We also appreciate the inclusion of an index of responsive records.

#### RECORD DELIVERY

We appreciate your assistance in expeditiously responding to this request. As mandated under FOIA, we anticipate a response within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i); 43 C.F.R. § 2.16(a). Defenders is pleased to receive records on a rolling basis if it facilitates the Interior Department’s response.

You may email or mail copies of the requested records to:

Jenny Keatinge  
Defenders of Wildlife  
1130 17<sup>th</sup> Street, N.W.  
Washington, D.C. 20036  
[jkeatinge@defenders.org](mailto:jkeatinge@defenders.org)

If you find that this request is unclear, or if responsive records are voluminous, please call me at (202) 772-0270 to discuss the scope of this request.

REQUEST FOR FEE WAIVER

Pursuant to FOIA, 5 U.S.C. § 552(a)(4)(A)(iii), and the Department of the Interior's implementing regulations, 43 C.F.R. §§ 2.45–2.48, Defenders requests a waiver of all charges (*i.e.*, search, review, and duplication fees) incurred in connection with this request.

FOIA was designed to provide citizens a broad right to access government records. FOIA's basic purpose is to “open agency action to the light of public scrutiny,” with a focus on the public's “right to be informed about what their government is up to.” *U.S. Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773-74 (1989) (internal quotation and citations omitted). To provide public access to this information, FOIA's fee waiver provision requires that “[d]ocuments shall be furnished without any charge or at a [reduced] charge” if the request satisfies the standard. 5 U.S.C. § 552(a)(4)(A)(iii). FOIA's fee waiver requirement is “liberally construed in favor of waivers for noncommercial requesters.” *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987); *accord Forest Guardians v. U.S. Dep't of the Interior*, 416 F.3d 1173, 1177–78 (10th Cir. 2005); *Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003); *Community Legal Servs. v. U.S. Dep't of Hous. and Urban Dev.*, 405 F. Supp. 2d 553, 555 (E.D. Pa. 2005).

Congress specifically designed FOIA's 1986 fee waiver amendments to provide non-profit organizations such as Defenders access to government records without payment of fees. Indeed, the fee waiver provision was intended to “explicitly recognize[] the importance and the difficulty of access to governmental documents for such typically under-funded organizations and individuals,” including nonprofit public interest groups. *Better Gov't Ass'n v. Dep't of State*, 780 F.2d 86, 94 (D.C. Cir. 1986). FOIA “should not be interpreted to allow federal agencies to set up roadblocks to prevent noncommercial entities from receiving a fee waiver.” *W. Watersheds Project v. Brown*, 318 F. Supp. 2d 1036, 1039 (D. Idaho 2004).

**Defenders Satisfies the Qualifications for a Fee Waiver**

Under FOIA, a requester is entitled to a fee waiver when “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the [federal] government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 43 C.F.R. § 2.45(a)(1). The Interior Department's implementing regulations at 43 C.F.R. § 2.48 establish the same standard, setting forth four factors to consider in determining whether a request meets the FOIA requirement.

Consequently, the Interior Department must consider the following factors to determine whether a request is in the public interest: (1) “[h]ow the requested records concern the operations or activities of the Federal government,” (2) “[h]ow disclosure is likely to contribute to public understanding of those operations or activities,” (3) “[h]ow disclosure is likely to significantly contribute to the understanding of a reasonably broad audience of persons interested in the subject,” and (4) [h]ow the public's understanding of the subject in question will be enhanced to a significant extent by the disclosure.” 43 C.F. R. § 2.48. As presented below, Defenders satisfies each of these four criteria.

Defenders therefore qualifies for a fee waiver. Disclosure of the requested records is in the public interest because it will contribute significantly to public understanding of the operations or activities of the government, particularly as they relate to fluid minerals development on federal lands within the National Wildlife Refuge System. In addition, release of the documents is not for commercial

use. Founded in 1947, Defenders is a 501(c)(3) nonprofit conservation organization with 1.2 million members and supporters dedicated to the protection of all native animals and plants in their natural communities. Access to government records through FOIA requests is essential to Defenders' role of educating the general public about government activities related to wildlife conservation. We have no commercial interest in and will realize no commercial benefit from the release of the requested records.

Please note that the U.S. Fish and Wildlife Service, U.S. Forest Service, Bureau of Land Management and National Park Service have previously granted requests for fee waivers in their provision of documents to Defenders.

A. The Requested Records Concern Operations or Activities of the Federal Government

In accordance with 43 C.F. R. § 2.48(a)(1), the requested records concern the operations and activities of the federal government, namely an executive branch agency, the U.S. Department of the Interior. Responsive materials were generated regarding exploration for oil and gas reserves on federal public lands. The requested records describe the Interior Department's views and actions related to rules, regulations, policies, plans and other federal activities concerning management of fluid minerals exploration within the National Wildlife Refuge System. *See Judicial Watch*, 326 F.3d at 1313 (“[R]easonable specificity is all that FOIA requires with regard to this factor”) (internal quotations omitted).

B. Disclosure of the Requested Records is Likely to Contribute to Public Understanding of Government Operations or Activities

In accordance with 43 C.F. R. § 2.48(a)(2), the requested records are meaningfully informative about government operations or activities, there is a logical connection between their contents and those operations or activities, and disclosure will contribute to an increased public understanding of the subject matter because Defenders has the expertise to analyze and publicize the information in a manner that is useful to a broad audience of persons interested in national wildlife refuges, oil and gas development and management on federal public lands.

The information about government operations and activities contained in the requested records will meaningfully inform public understanding of the Interior Department's management of oil and gas related activities within the National Wildlife Refuge System. It will also aid public understanding of department actions that affect energy exploration on other public lands. This information is highly relevant to Defenders and our members because we are deeply concerned about these issues. Our review and analysis of responsive records will provide the public with critical information about current and future federal policy for managing and protecting vital public lands nationwide.

Once the information is made available, we will share it with our 1.2 million members, supporters, activists, partners and the general public in a manner that will contribute to their understanding of government activities. Defenders' record of active participation in oversight of governmental activities and decision-making, and our consistent contribution to the public's understanding of those activities is well established.

Defenders is a national non-profit organization focused on wildlife and habitat conservation and the safeguarding of biodiversity. We inform, educate and counsel the public regarding environmental

issues, policies and laws relating to wildlife protection and public lands. We represent our members' interests in ensuring that imperiled species and their habitat receive the full protections due under federal law. We frequently communicate with our members, supporters, partner organizations, and the interested public on news and information relevant to oil and gas development on federal public lands and waters, its impacts on species, and the adequacy of measures to mitigate for those impacts.

Defenders will rely on its own legal and scientific experts, as well as outside experts, to analyze the information contained in records produced in response to this FOIA request. We have used, and will continue to use, a full array of tools to ensure our members' interests are vindicated and the general public is informed through our synthesis of the information gleaned from the requested records.

Defenders will ensure that the information produced in response to this request, and our analysis thereof, is disseminated to a reasonably broad audience of persons interested in federal lands management and wildlife conservation. In disseminating the information, Defenders will assure that it is made available for the benefit of the interested persons beyond our membership, such as members of other conservation advocacy organizations, the media, the academic community, and the general public.

Defenders has the ability to disseminate information obtained from the requested records in a number of ways to a broad audience. We actively communicate with our members, supporters and the general public through direct mail and email campaigns. We broadcast action alerts notifying the public of opportunities to comment on agency proposals; publish information on and frequently update our website (797,055+ visitors per month) and blog (21,000+ monthly readership) to educate the public on wildlife conservation issues; distribute a quarterly print magazine with a circulation of approximately 350,000; communicate with partner organizations both nationally and internationally; maintain an active online presence through Facebook (652,000+ followers), Twitter (109,000+ followers), and YouTube (6900+ subscribers); distribute press releases directly to media contacts and through our website and RSS feed; and educate lawmakers and advocates on conservation law at the federal, state and local level.

C. Disclosure of the Requested Records is Likely to Significantly Contribute to the Understanding of a Reasonably Broad Audience of Persons Interested in the Subject

In accordance with 43 C.F. R. § 2.48(a)(3), the requested information is new, not already publicly available, and its disclosure will increase the level of public understanding that existed prior to disclosure. Through Defenders analysis and dissemination, disclosure of the information contained in the requested records will contribute to the understanding of a broad audience of persons that are interested in oil and gas exploration and development on federal public lands, as stated above.

The requested records will enable Defenders to provide information to the public at large regarding the current Interior Department views and activities related to rules, policies, plans and other agency actions concerning assessment, exploration and development of fluid minerals on national wildlife refuges and other public lands. This information is essential to inform the public about potential changes to public lands policy. Indeed, the public does not currently have an ability to easily evaluate the requested records, which are new and not currently in the public domain. *See Cmty. Legal Servs. V. HUD*, 405 F.Supp.2d 553, 560 (D. Pa. 2005) (because requested records "clarify important facts")

about agency policy, the request “would likely shed light on information that is new to the interested public.”).

Disclosing the requested records to Defenders is not only “likely to contribute,” but is certain to contribute, to public understanding of oil and gas related activities on federal public lands and the potential impacts to imperiled species and their habitat. At present, the public has no information about how the Interior Department, Bureau of Land Management and U.S. Fish and Wildlife Service are proceeding with evaluating and authorizing plans for oil and gas exploration in the Section 1002 Area of the Arctic National Wildlife Refuge. Defenders’ dissemination of this information will therefore provide new insight to a broad audience of persons interested in how the Arctic Refuge is managed and protected, the consequences for wildlife and implications for public lands nationwide. *See id.* at § 2.48(a)(3).

D. The Public’s Understanding of the Subject in Question will be Significantly Enhanced by the Disclosure of Requested Records.

In accordance with 43 C.F.R. § 2.48(a)(4), the public’s understanding of the subject of this FOIA request will be enhanced to a *significant extent* by disclosure of the requested records. FOIA’s legislative history makes clear that the ‘significance’ test is met where, as here, the information requested will support “public oversight of agency operations”:

A requester is likely to contribute significantly to the public understanding if the information disclosed is new; supports public oversight of agency operations; or otherwise confirms or clarifies data on past or present operations of the government.

132 Cong. Rec. H9464 (Reps. English and Kindness); *see also McClellan Ecological Seepage Situation*, 835 F.2d at 1284–86.

Disclosure of the requested records will significantly enhance the public’s understanding of the Interior Department’s management of oil and gas exploration within the National Wildlife Refuge System, as compared to the level of understanding that exists prior to disclosure. Disclosure will provide the public with information about an otherwise closed-door process where the Trump administration has not conducted any public review or allowed for any public input on seismic exploration within the Section 1002 Area of the Arctic Refuge specifically. The requested records are new information that have not previously been disclosed, and disclosing them will support public oversight of agency operations regarding federal management of public lands, wildlife and fluid minerals development.

The conservation of federal public lands and waters and the wildlife that depend on them are an ongoing concern for Defenders’ members, supporters, partner organizations, and the interested public. The requested records are essential to Defenders efforts to educate our members and the general public about conservation of imperiled species and their habitat. Our analysis of the records and broad dissemination of the synthesized information will support public participation in government, and help ensure that the impacts of oil and gas exploration are properly mitigated to protect the public interest in federal public lands, waters and wildlife. It will improve the ability of the public to evaluate and supervise the Interior Department’s current and future plans for the Arctic National Wildlife Refuge and energy development on the public domain.



CONCLUSION

For all the foregoing reasons, Defenders of Wildlife satisfies the statutory and regulatory requirements for a fee waiver under FOIA and the Interior Department's implementing regulations. We hope that you will immediately grant this request and tender responsive records.

However, if a fee waiver is denied, Defenders is willing to pay up to \$100.00 in reasonable search time and/or duplication costs exceeding two hours and 100 pages, or equivalent volume. Please contact me to discuss any costs prior to fulfilling this FOIA request.

If you determine that this FOIA request will require longer than ten business days to process, please notify me of the request's individualized tracking number and how to obtain status updates via telephone, email or on the Internet. 5 U.S.C. § 552(a)(7). If you anticipate needing more than the 20 working days allotted under FOIA to fully process this request, please also notify me of the expected delay. I appreciate the opportunity to work with the Interior Department to limit our request to expedite your response.

Thank you for your assistance.

Very sincerely,

A handwritten signature in black ink, appearing to read 'Jennifer L. Keatinge', written in a cursive style.

Jennifer L. Keatinge  
Senior Federal Lands Policy Analyst  
Defenders of Wildlife