From: Bean, Michael
To: Pat Deibert
Cc: Bret Birdsong
Subject: data confidentiality
Date: Thursday, July 17, 2014 1:53:12 PM

Pat: I was questioned about the Garton study when I testified before a congressional committee earlier this year. Below is a follow-up question I received, together with my answer. This exchange does not address the particular matter you posed to me, where FWS contracts for a limited period of time for access to data from a commercial supplier. I have talked t (b) (5) [redacted]

1. It is widely documented that taxpayer funded studies and data are used by the Fish and Wildlife Service (FWS) when making its endangered species determinations. Current FWS practices preclude the sharing of studies and data related to ESA listings, even though public funding was used. Please describe the internal policy, guidance, regulations, and/or statute that allow FWS to keep publicly funded data from the public.

Answer: Current FWS practices do not keep publicly funded data from the public. Rather, FWS routinely provides requested data that it creates or obtains with respect to endangered species determinations. Under Federal Acquisition Regulations the government may contract for access and distribution rights with respect to data first produced in the performance of a contract. Often, however, as was the case with the study by Garton et al. that was discussed at the hearing (and undertaken by researchers affiliated with the Idaho, Oregon and Washington State wildlife agencies), FWS contracts for studies to analyze data that were first produced by, and are under the control of, the States. In the case of such studies, FWS neither obtains, nor has any right to release, the underlying State data. State law regarding release of wildlife data can sometimes be quite restrictive. For example, Texas Government Code Section 403.454 prohibits the disclosure to any person of information that "relates to the specific location, species identification, or quantity of any animal or plant life" for which a conservation plan is in place or even under consideration.

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