



August 27, 2024

Ranita Jackson, FOIA Officer
United States Fish and Wildlife Service
5275 Leesburg Pike, MS:IRTM
Falls Church, VA 22041

Submitted via U.S Department of Interior Freedom of Information Act Public Access Link (PAL)

Re: Freedom of Information Act Records Request

Dear Ms. Willis,

On behalf of the Humane Society of the United States (“HSUS”) and its members and supporters, pursuant to the federal Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, I am requesting copies of the following records made or received in the course of the operation of the United States Fish and Wildlife Service (“FWS”):

1. All permits issued under the Endangered Species Act, 16 U.S.C. § 1531 *et seq.*, authorizing the states of Idaho, Wyoming, or Montana—including, but not limited to, permits issued to the Idaho Department of Fish and Game; the Wyoming Game and Fish Department; or the Montana Fish, Wildlife, and Parks agency—to capture, handle, kill, or otherwise “take” grizzly bears during the years 2022, 2023, and 2024.
2. All documents, records, and communications related to or referencing any and all grizzly bears killed by management removal in Idaho, Wyoming, Montana, or the Greater Yellowstone Ecosystem from June 21, 2022, through the date this request is fulfilled. This request includes, but is not limited to, documents, records, and communications constituting and/or referencing grizzly bear incident reports, discussion or consideration of non-lethal interventions, implementation of non-lethal interventions, “nuisance bear” designations, lethal interventions, grizzly bear mortality reports, and application of the Interagency Grizzly Bear Guidelines. This request includes documents, records, and communications related to or referencing grizzly bears both prior to and after their deaths. This request includes, but is not limited to, documents, records, and communications related to the following grizzly bears:
 - Female subadult grizzly bear killed on June 21, 2022, at Beartooth Creek, SNF, Wyoming by “management capture and removal for food conditioned behavior,” ID No. 202224;
 - Male Adult grizzly bear killed on June 24, 2022, at Sheep Creek, PR, Wyoming by “management capture and removal for cattle depredations,” ID No. 202225;
 - Male subadult grizzly bear killed on July 12, 2022, at Boulder Creek, PR, Wyoming by “management capture and removal for food conditioned behavior,” ID No. 202226;
 - Male subadult grizzly bear killed on July 13, 2022, at Slab Creek, PR, Wyoming by “management capture and removal for sheep depredations,” ID No. 202227;
 - Male subadult grizzly bear killed on August 1, 2022, at Slab Creek, PR, Wyoming by “management capture and removal for sheep depredations,” ID No. 202228;
 - Female subadult grizzly bear killed on August 19, 2022, at Tom Miner Creek, ST, Montana, by “management capture and removal for cattle depredations,” ID No. 202229;

- Male adult grizzly bear killed on August 30, 2022, at Meadow Creek, PR, Wyoming, by “management capture and removal for cattle depredations,” ID No. 202230;
- Male adult grizzly bear killed on September 10, 2022, at Pacific Creek, BTNF, Wyoming, by “management capture and removal for food conditioned behavior and site related conflicts,” ID No. 202232;
- Female adult grizzly bear killed on September 20, 2022, at Yellowstone River, PR, Montana, by “management capture and removal for habituation, property damage, depredations, and human safety concerns,” ID No. 202233;
- Female cub grizzly bear killed on September 21, 2022, at Yellowstone River, PR, Montana, by “management capture and live removal to zoo for habituation, property damage, depredations, and human safety concerns,” ID No. 202234;
- Female adult grizzly bear killed on September 27, 2022, at Greybull River, PR, Wyoming, by “management capture and removal for bold behavior and nuisance activity in agricultural fields,” ID No. 202236;
- Male cub grizzly bear killed on September 27, 2022, at Greybull River, PR, Wyoming, by “management capture and removal for bold behavior and nuisance activity in agricultural fields,” ID No. 202237;
- Male cub grizzly bear killed on September 27, 2022, at Greybull River, PR, Wyoming, by “management capture and removal for bold behavior and nuisance activity in agricultural fields,” ID No. 202238;
- Male adult grizzly bear killed on October 5, 2022, at South Fork Shoshone River, PR, Wyoming, by “management capture and removal for property damage, poultry depredation, and obtaining livestock feed,” ID No. 202239;
- Male adult grizzly bear killed on October 8, 2022, at Greybull River, PR, Wyoming, by “management capture and removal for bold behavior and nuisance activity in agricultural fields,” ID No. 202240;
- Female adult grizzly bear killed on October 21, 2022, at Gallatin River, PR, Montana, by “management capture and removal for nuisance activity and obtaining food rewards,” ID No. 202241;
- Female adult grizzly bear killed on November 9, 2022, at Middle Leigh Creek, PR, Idaho, by “management removal for frequenting the vicinity of residences and public safety concerns,” ID No. 202243;
- Male cub grizzly bear killed on November 9, 2022, at Middle Leigh Creek, PR, Idaho, by “management removal for frequenting the vicinity of residences and public safety concerns,” ID No. 202244;
- Male cub grizzly bear killed on November 10, 2022, at Middle Leigh Creek, PR, Idaho, by “management removal for frequenting the vicinity of residences and public safety concerns,” ID No. 202245;
- Male adult grizzly bear killed on December 5, 2022, at Greybull River, PR, Wyoming, by “management capture and removal for crop damage, beehive damage, and nuisance activity in agricultural areas,” ID No. 202247;
- Male adult grizzly bear killed on May 13, 2023, at South Fork Shoshone River, PR, Wyoming, by “management capture and removal for cattle depredation,” ID No. 202305;
- Male adult grizzly bear killed on June 29, 2023, at Cottonwood Creek, BDNF, Montana, by “management removal for chronic livestock depredation,” ID No. 202312;

- Male adult grizzly bear killed on July 3, 2023, at Green River, PR, Wyoming, by “management capture and removal for cattle depredation,” ID No. 202313;
- Male adult grizzly bear killed on July 5, 2023, at Henrys Fork, CTNF, Idaho, by “management capture and removal for cattle depredation,” ID No. 202314;
- Female adult grizzly bear killed on July 8, 2023, at Breteche Creek, PR, Wyoming, by “management capture and removal for cattle depredation,” ID No. 202316;
- Female subadult grizzly bear killed on July 14, 2023, at Little Bear Creek, SNF, Wyoming, by “management removal for bold, food conditioned behavior around people,” ID No. 202318;
- Male adult grizzly bear killed on July 20, 2023, at Crow Creek, BTNF, Wyoming, by “management capture and removal for cattle depredation,” ID No. 202322;
- Male adult grizzly bear killed on July 25, 2023, at Crow Creek, BTNF, Wyoming, by “management capture and removal for cattle depredation,” ID No. 202323;
- Male adult grizzly bear killed on July 29, 2023, at Wood River, PR, Wyoming, by “management capture and removal for property damage and food conditioning,” ID No. 202324;
- Female adult grizzly bear killed on August 6, 2023, at Jack Creek, PR, Wyoming, by “management capture and removal for human food conditioning,” ID No. 202325;
- Female subadult grizzly bear killed on August 6, 2023, at Meadow Creek, PR, Wyoming, by “management capture and removal for cattle depredation,” ID No. 202326;
- Male adult grizzly bear killed on August 10, 2023, at Horse Creek, PR, Montana, by “management capture and removal for cattle depredation,” ID No. 202327;
- Male adult grizzly bear killed on August 12, 2023, at Owl Creek, PR, Wyoming, by “management capture and removal for cattle depredation,” ID No. 202329;
- Male subadult grizzly bear killed on August 17, 2023, at Owl Creek, PR, Wyoming, by “management capture and removal for cattle depredation,” ID No. 202330;
- Female adult grizzly bear killed on August 18, 2023, at Moss Creek, BDNF, Montana, by “management removal for cattle depredation,” ID No. 202331;
- Female adult grizzly bear killed on August 29, 2023, at Clarks Fork of the Yellowstone River, PR, Wyoming, by “management capture and removal for crop damage and nuisance activity,” ID No. 202332;
- Female yearling grizzly bear killed on August 30, 2023, at Falls River, PR, Idaho, by “management capture and removal for human food conditioning, habituation, and aggression,” ID No. 202334;
- Male yearling grizzly bear killed on August 30, 2023, at Falls River, PR, Idaho, by “management capture and removal for human food conditioning, habituation, and aggression,” ID No. 202335;
- Male adult grizzly bear killed on September 1, 2023, at Clarks Fork of the Yellowstone River, PR, Wyoming, by “management capture and removal for crop damage, apiary damage, and nuisance activity,” ID No. 202336;
- Female adult grizzly bear killed on September 3, 2023, at Buttermilk Creek, PR, Montana, by “management removal for human safety and property damage,” ID No. 202337;
- Male cub grizzly bear killed on September 3, 2023, at Buttermilk Creek, PR, Montana, by “management removal for human safety and property damage,” ID No. 202338;



- Male subadult grizzly bear killed on September 10, 2023, at Iron Creek, PR, Wyoming, by “management capture and removal for crop damage and nuisance activity,” ID No. 202340;
- Male adult grizzly bear killed on September 30, 2023, at June Creek, SNF, Wyoming, by “management capture and removal for human food conditioning, habituation, and safety,” ID No. 202346;
- Male subadult grizzly bear killed on April 15, 2024, at Redbank Creek, PR, Wyoming, by “management capture and removal for cattle depredation,” ID No. 202401;
- Male adult grizzly bear killed on April 25, 2024, at Gooseberry Creek, BLM, Wyoming, by “management capture and removal for cattle depredation,” ID No. 202402;
- Male adult grizzly bear killed on April 27, 2024, at South Fork Shoshone River, PR, Wyoming, by “management capture and removal for cattle depredation,” ID No. 202403;
- Male adult grizzly bear killed on May 7, 2024, at South Fork Shoshone River, PR, Wyoming, by “management capture and removal for cattle depredation,” ID No. 202404;
- Male subadult grizzly bear killed on May 9, 2024, at Marquette Creek, PR, Wyoming, by “management capture and removal for cattle depredation,” ID No. 202405;
- Female adult grizzly bear killed on June 18, 2024, at Paradise Creek, ST, Wyoming, by “management capture and removal for cattle depredation,” ID No. 202409;
- Female adult grizzly bear killed on June 24, 2024, at Paradise Creek, ST, Wyoming, by “management capture and removal for cattle depredation,” ID No. 202411;
- Male adult grizzly bear killed on June 29, 2024, at Little Horse Creek, PR, Wyoming, by “management capture and removal for cattle depredation,” ID No. 202412;
- Male subadult grizzly bear killed on July 2, 2024, at Carter Creek, PR, Wyoming, by “management capture and removal for cattle depredation,” ID No. 202413;
- Female adult grizzly bear killed on July 7, 2024, at Gypsum Creek, BTNF, Wyoming, by “management capture and removal for repeated depredation,” ID No. 202415;
- Male adult grizzly bear killed on July 18, 2024, at Dry Creek, BLM, Wyoming, by “management capture and removal for repeated depredation,” ID No. 202417;
- Male adult grizzly bear killed on July 18, 2024, at Yellowstone River, PR, Montana, by “management free-range removal for extreme habituation, food conditioning, property damage, and human safety,” ID No. 202418;
- Male adult grizzly bear killed on July 23, 2024, at Granite Creek, CTNF, Idaho, by “management capture and removal for cattle depredation,” ID No. 202421;
- Male adult grizzly bear killed on July 27, 2024, at Tepee Creek, BTNF, Wyoming, by “management capture and removal for cattle depredation,” ID No. 202422;
- Male adult grizzly bear killed on August 3, 2024, at Henrys Fork, CTNF, Idaho, by “management capture and removal for cattle depredation,” ID No. 202423;
- Male subadult grizzly bear killed on August 6, 2024, at Tepee Creek, BTNF, Wyoming, by “management capture and removal for cattle depredation,” ID No. 202424; and
- Any other grizzly bears killed by management removal in in Idaho, Wyoming, Montana, or the Greater Yellowstone Ecosystem from June 21, 2022, through the date this request is fulfilled.

We request to receive this information in electronic format if practicable. If you determine that portions of the records requested are exempt from disclosure, we request that you: (1) identify each such record



with specificity (including date, author, recipient, and parties copied); (2) explain in full the basis for withholding responsive material; and (3) segregate the exempt portions and deliver the remaining records to me within the statutory time limit. *See* 5 U.S.C. § 552(b).

Fee Waiver Request

HSUS is prepared to pay lawful search and duplication fees incurred in connection with this request. However, because this FOIA request satisfies the criteria for a waiver of all search and reproduction fees, HSUS requests a waiver of those fees as provided by FOIA and the Department of the Interior's implementing regulations. 5 U.S.C. § 552(a)(4)(a)(iii); 43 C.F.R. § 2.45(a). HSUS is a charitable, non-profit organization and makes this request as part of its ongoing efforts to promote the humane care and treatment of all animals. Information obtained by HSUS is routinely compiled, analyzed and disseminated to both our national membership and the general public.

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 Just. V. Reps Comm. For Freedom of Press*, 489 U.S. 749, 772-73 (1989) (internal quotation and citations omitted). In order 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 "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 government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). If the organization is a "representative of the news media," the organization is charged no more than reasonable duplication fees. 5 U.S.C. § 552 (a)(4)(A)(ii)(II). FOIA's fee waiver provision is to be "liberally construed." *Jud. Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1310 (D.C. Cir. 2003).

Here, the requested records pertain to the "operations and activities of the federal government" because they reveal crucial information about how the Fish and Wildlife Service ("FWS") administers and enforces its statutory directives under the Endangered Species Act ("ESA") and coordinates with other federal and state administrative agencies to implement the Interagency Grizzly Bear Guidelines. *See* 43 C.F.R. §§ 2.48(a)(1). The requested records will reveal important, unique details regarding when and on what basis FWS is authorizing the take of grizzly bears under the ESA and how it is documenting those activities.

FWS' operations and activities relating to the management of, including authorization to take, imperiled wildlife such as grizzly bears are of national concern. The United States is home to most of the world's remaining grizzly bears, and information about FWS' implementation of laws regulating the management of the species under the ESA would contribute uniquely and significantly to public understanding of this matter of significant national concern. These records have not previously been made public. *See id.* §§ 2.48(a)(2)(i)-(ii), (vi)-(vii).

HSUS can undeniably contribute to the public's understanding of federal agencies' operations and activities relating to wildlife conservation due to the organization's size, broad reach, and proven ability to disseminate information to a large segment of the public. *See id.* §§ 2.48(a)(2)(iii)-(v). HSUS is particularly well-suited to distribute information to the public because of its longstanding dedication and ongoing efforts to promote the humane care and treatment of animals in the wild and captivity, and to advocate for the humane management of wildlife, particularly of imperiled species such as grizzly bears. HSUS provides its members, the public, and the press with information on a broad spectrum of wildlife



issues, including conservation, trophy hunting, the exotic pet trade, the fur trade, and poaching. HSUS also actively monitors the actions of federal agencies, including FWS, to ensure that they are complying with the law and upholding the conservation mandates of the laws they administer and enforce. Up-to-date information regarding FWS' management decisions for this species is critical to inform HSUS' activities regarding greater protection of grizzly bears and determining whether FWS complies with the law in making management decisions pertaining to the species. It is also critical to HSUS' ability to keep the public informed on issues such as trends in wildlife and endangered species management and what takes under the ESA that FWS is authorizing. *See id.* § 2.48(a)(2).

Moreover, HSUS routinely distributes information, reports, and copies of original documents to members of the media to generate articles. *See id.* §§ 2.48(a)(2)(iii)-(v), (vii); *see, e.g.,* Kitty Block and Sara Amundson, *This is No Time to Strip Endangered Species Protections from Grizzly Bears*, A HUMANE WORLD BLOG (Feb. 9, 2023), <https://www.humanesociety.org/blog/no-time-strip-endangered-species-protections-grizzly-bears>; HSUS, *Crucial Grizzly Bear Habitats Gain Permanent Protection* (Oct. 14, 2021), <https://www.humanesociety.org/news/crucial-grizzly-bear-habitat-gains-permanent-protection>; HSUS, *Government Data Confirm that Grizzly Bears Have a Negligible Effect on U.S. Cattle and Sheep Industries* (Mar. 6 2019), https://www.humanesociety.org/sites/default/files/docs/HSUS-Grizzly-Livestock_6.Mar_19Final.pdf. HSUS also routinely distributes, at no charge, its own information and information obtained from other sources regarding the management of endangered species and the government's policies and activities relating to wildlife to anyone requesting such information. This includes distribution to the public, media, students, and scientists of articles and reports on topics of national and international significance. HSUS continually adds reports, comments, action alerts, press releases, and other materials relating to imperiled species and other wildlife to its home page (<https://www.humanesociety.org/>) to ensure around-the-clock access to information. In sum, HSUS is well positioned to contribute significantly to the public understanding of federal agencies' policies and activities relating to the conservation and management of wildlife once it receives and digests the requested information. *See* 43 C.F.R. §§ 2.48(a)(2)(iii)-(v), (vii).

In addition to HSUS' demonstrated qualification for a fee waiver due to the significance of the material requested, HSUS alternatively qualifies for a fee waiver under the fee exemption provided for "representative[s] of the news media." 5 U.S.C. § 552(a)(4)(A)(ii)(II). FOIA uses the term "representative of the news media" to include "any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii). This definition stems from Congress' understanding that the term "representative of the news media" must be "broadly interpreted if [FOIA] is to work as expected" and extend to "any person or organization which regularly disseminates information to the public." *Nat'l Sec. Archive v. U.S. Dep't of Def.*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) *citing* 132 Cong.Rec. S14298 (daily ed. Sept. 30, 1986) (statement of Sen. Leahy)).

Under this definition and interpretation, HSUS is unquestionably a "representative of the news media." HSUS has extensive and well-exercised means to keep the public informed on the operations and activities of the United States government. HSUS does not merely obtain information and then contact members of the press to relate that information; rather, HSUS independently analyzes the information, drafts its own reports and articles on the issues, and disseminates the information broadly through its own publications to members and other interested persons. *See, e.g.,* HSUS, *Government Data Confirm that Grizzly Bears Have a Negligible Effect on U.S. Cattle and Sheep Industries* (Mar. 6, 2019), https://www.humanesociety.org/sites/default/files/docs/HSUS-Grizzly-Livestock_6.Mar_19Final.pdf;



HSUS, *Under the Gun* (July 1, 2016), <https://www.humanesociety.org/news/grizzly-bears-under-the-gun>; HSUS, *Sharing the Land* (Mar. 1, 2010), <https://www.humanesociety.org/news/sharing-land>. This is achieved by state and nationally distributed newsletters, statewide membership mailings, information available electronically via the internet, and extensive and reliable media contacts.

Thus, HSUS has shown a “firm intention . . . to publish” this important information and to make it easily accessible. *Nat’l Sec. Archive*, 880 F.2d at 1386. As a result of its longstanding interest in policies and activities relating to the management of imperiled wildlife in the United States, HSUS has developed a substantial level of expertise on such issues which commands public attention when it disseminates such information. Its extensive, independent public dissemination of information pertaining to policies and activities relating to state and federal management of imperiled species, including grizzly bears, qualifies HSUS as a “representative of the news media” and thus entitles it to a fee waiver within the meaning of FOIA. *See* 43 C.F.R. §§ 2.48(a).

Furthermore, HSUS is a non-profit public interest organization whose tax-exempt number is 53-0225390 and that does not have a commercial interest in the requested records. Rather, as explained above, HSUS utilizes these records to track the activities of the federal government, pursue its mission of furthering wildlife conservation and humane treatment of animals, and keep the public informed on these important issues. *See id.* §§ 2.45(a)(2), 2.48(b).

In summary, this request satisfies the criteria for a fee waiver or reduction, as disclosing the information is likely to contribute significantly to public understanding of government operations or activities and is therefore in the public interest, disclosing the information is not primarily in HSUS’ commercial interest, and HSUS is a member of the news media. *See* 5 U.S.C. § 552(a)(4)(A); 43 C.F.R. §§ 2.45(a), (b). If, however, you deny this request for a waiver, and if fees will exceed \$50.00, please notify me so that I may decide whether to authorize a larger expenditure or appeal your decision. *See* 43 C.F.R. § 2.57(a)(6). Furthermore, if FWS fails to comply with the statutory timelines prescribed by FOIA, it must waive fees. *See id.* § 2.37(f)(1).

Thank you for your assistance. I look forward to a response within twenty working days, as required by law. 5 U.S.C. § 552(a)(6)(A)(i); 43 C.F.R. § 2.16(a).

If you have any questions or need additional information regarding this request, please contact me by email at khendrix@humanesociety.org rather than by mail in order to expedite timely disclosure. I look forward to receiving your response, including the estimated date when the records will be made available.

Sincerely,

Kate Hendrix
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The Humane Society of the United States
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