

September 9, 2021

Via Online Portal

Tiffany McClurkin
FOIA Coordinator
U.S. Fish and Wildlife Service
1875 Century Boulevard
Atlanta, GA 30345

<https://foiaonline.gov/foiaonline/action/public/home>

Re: FOIA Request: Records Relating to Hexastylis naniflora – Fee Waiver Request

Dear Ms. McClurkin:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and 43 C.F.R. §§ 2.1-2.70, the Southern Environmental Law Center (“SELC”) respectfully request copies of the records identified below. Because releasing these records is in the public interest, we request a fee waiver for costs associated with conducting this search.

This request seeks records within the custody of Region 4 of the U.S. Fish and Wildlife Service (“the Service”), including all documents received, created, or transmitted by the Service after May 1, 2011 that relate to Hexastylis naniflora (dwarf-flowered heartleaf), including but not limited to:

1. All documents related to the Recommendations for Future Action contained in Part IV of the 5-Year Review of Hexastylis naniflora, which was approved in May 2011, including, but not limited to, the pursuit, accomplishment, monitoring, and/or failure to carry out any and/or all of those Recommendations;
2. All documents related to the proposal to delist Hexastylis naniflora and the preparation of that proposal;
3. All documents related to studies by researchers at Appalachian State concerning Hexastylis naniflora;
4. All communications between USFWS and any agency or employee of the states of North Carolina and South Carolina regarding Hexastylis naniflora;
5. All documents related to any 5-Year Review or Status Review of Hexastylis naniflora, or any consideration of or proposal to conduct a 5-Year or Status Review of Hexastylis naniflora.

For the purposes of this request, the term “records” includes all written, printed, recorded, or electronic materials, communications, correspondence, memoranda, notations, copies, diagrams, charts, books, papers, maps, photographs, data, tables, spreadsheets, formulas,

directives, observations, impressions, contracts, letters, messages, and mail in the possession, custody, or control of FWS. Please provide any electronic records in native file format.

In addition, we request access to each and every version of a record or document, whether it is a draft, has been electronically deleted, has attachments, bears annotations, etc. Please also include all responsive records generated up to the date of the agency's search for records responsive to this request.

FOIA directs a responding agency to make a "determination" on any request within twenty working days of receipt. 5 U.S.C. § 552(a)(6)(A); 43 C.F.R. § 2.16(a). Pursuant to 43 C.F.R. § 2.25, in addition to making responsive documents available for request, should you determine that certain documents are responsive to this request and choose not to produce them on the basis of any claimed privilege or exemption from disclosure, we request that you produce a detailed list of those documents, including: the date of the document; the authors and recipients; the subject matter of the document; and the basis for the claimed privilege or exemption for disclosure. Further, where a document contains specific information that you claim is exempt or privileged, we request that you simply redact the information so claimed and produce the document in redacted form. The redacted information should be included in the list of privileged or exempt information just described.

We request that you waive any search and duplication fees and provide the requested records without charge, or at a reduced charge, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). 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).

SELC qualifies for a fee waiver for this request. 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 the management of endangered and threatened species including the dwarf-flowered heartleaf. Protection of rare species and their habitats is a matter of significant public interest in the Southeast. Disclosure of the requested records will significantly enhance the public's understanding of the agency's management of endangered and threatened species in this region, including decisions made to downlist or delist species like the dwarf-flowered heartleaf. 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 endangered and threatened species. SELC intends to disseminate the information gathered through this request to the general public through press releases, social media, public comment letters, and its website.

In addition, release of the documents is not for commercial use. SELC is a 501(c)(3) nonprofit conservation organization working to protect the Southern environment, including rare species and habitats in Region 4. SELC provides legal representation to other 501(c)(3) non-profits and public advocacy free of charge.

Courts have recognized that Congress intended FOIA's fee waiver to be "liberally construed in favor of waivers for noncommercial requesters." *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987). 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 SELC.

Should our request for reduced or waived fees be denied, we are prepared to bear the reasonable costs necessary to fulfill this request, although we request that you contact us before processing this request to discuss fees. We reserve our right to appeal a denial of our request for a fee waiver or reduction.

Thank you for your prompt attention to this matter. In the event you deny our request, we ask that you inform us of the grounds for denial and the specific administrative appeal rights that are available. Finally, because the volume of records responsive to our request may be large, we are willing to work with your agency to minimize the work necessary to respond. We are available to review documents prior to any duplication and are willing to discuss other ways to facilitate the production of the requested public records, for instance, by narrowing our request if necessary. Please contact me at (919) 967-1450 or fholleman@selcnc.org to arrange for inspection, copying, and electronic transmission of the requested documents.

Sincerely,

A handwritten signature in blue ink that reads "Frank Holleman". The signature is written in a cursive, flowing style.

Frank S. Holleman III
Senior Attorney