



December 16, 2021

VIA Portal

FOIA Officer

United States Fish and Wildlife Service

Headquarters Freedom of Information Act Office

MS: IRTM

5275 Leesburg Pike

Falls Church, VA 22041

<https://www.foiaonline.gov/>

Re: **Freedom of Information Act Request:** Enhancement Findings, NDFs, Permits and Permit Decisions for Imports of Elephant, Lion, and Leopard Hunting Trophies

Dear FOIA Officer:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552, *as amended* (“FOIA”) for all permits to import trophies of leopards, African elephants, and African lions listed as threatened or endangered species under the Endangered Species Act (ESA), any new enhancement determinations made for these species, FWS’s resolution of applications for permits to import trophies, and for all non-detriment findings for species listed the Convention on International Trade of Endangered Species of Flora and Fauna (CITES). This request is made on behalf of the Center for Biological Diversity (“Center”), a non-profit organization that works to secure a future for all species hovering on the brink of extinction through science, law, and creative media, and to fulfill the continuing educational goals of its membership and the general public in the process.

REQUESTED RECORDS

We request the following records pertaining to leopards, African elephants, and African lions, or any combination of species from November 19, 2021 to whenever this request has been processed:

- All non-detriment findings (positive or negative) or general advices made or received by USFWS for imports of sport hunted trophies or a trophy;
- All enhancement findings (positive or negative) or advice for imports of sport hunted trophies or a trophy;
- All permit applications submitted for ESA permits for sport hunted trophies or a trophy;

- All permit applications submitted for CITES permits for sport hunted trophies or a trophy;
- All FWS decisions (positive or negative) on ESA permit applications for sport hunted trophies or a trophy;
- All FWS decisions (positive or negative) on CITES permit applications for sport hunted trophies or a trophy;
- All FWS communications sent to applicants regarding ESA permit applications for sport hunted trophies or a trophy;
- All FWS communications sent to applicants regarding CITES permit applications for sport hunted trophies or a trophy.

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 kind including electronic as well as paper documents, e-mails, 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, data bases, drawings, surveys, graphs, charts, photographs, videos, meeting notes or minutes, electronic and magnetic recordings of meetings, maps, GIS layers, GPS, UTM, LiDAR, CDs, and any other compilations of data from which information can be obtained. All of the foregoing is included in this request if it is in FWS’ possession and control. If such records are no longer under the control of FWS but were at any time, please refer this request to the relevant federal agency or agencies. This request is being sent to the headquarters for FWS with the understanding that it will be forwarded to any other agency offices where responsive records may be located.

This request is not meant to be exclusive of any other records that have a reasonable relationship to the subject matter of this request. If you or your office have destroyed or determine to withhold any records that could be reasonably construed to be responsive to this request, I ask that you indicate this fact and the reasons therefore in your response.

Should you decide to invoke a FOIA exemption, please include in your full or partial denial letter sufficient information for us to appeal the denial. Please include a detailed ledger which includes:

1. Basic factual material about each withheld item, including the originator, date, length, general subject matter, and location of each item; and
2. Complete explanations and justifications for the denial, including the identification of the category within the governing statutory provision under which the record (or portion thereof) was withheld and a full explanation of how each exemption fits the withheld material. Such statements will be helpful in

deciding whether to appeal an adverse determination. Your written justification may help to avoid litigation.

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 mail the remaining records to my attention at the address below location within the statutory time limit. 5 U.S.C. § 552(b).

The Center is willing to receive records on a rolling basis.

FORMAT OF REQUESTED RECORDS

Under FOIA, you are obligated to provide records in a readily-accessible electronic format and in the format requested. *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.”). “Readily-accessible” means text-searchable and OCR-formatted. *See* 5 U.S.C. § 552(a)(3)(B).

Please provide all records in a readily-accessible, electronic .pdf format. Additionally, please provide the records either in (1) load-ready format with a CSV file index or excel spreadsheet, or if that is not possible; (2) in .pdf format, without any “profiles” or “embedded files.” Profiles and embedded files within files are not readily-accessible. *Please do not provide the records in a single, or “batched,” .pdf file.* We appreciate the inclusion of an index.

RECORD DELIVERY

We appreciate your help in expeditiously obtaining a determination on the requested records. As mandated in FOIA, we anticipate a reply within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i); 5 C.F.R. § 1303.10(c). Failure to comply within the statutory timeframe may result in the Center taking additional steps to ensure timely receipt of the requested materials. Please provide a complete reply as expeditiously as possible. Our preference is to receive the requested records by email (but you may mail copies of the requested records to):

Tanya Sanerib
Center for Biological Diversity
2400 NW 80th Street, #146
Seattle, WA 98117
tsanerib@biologicaldiversity.org

If you find that this request is unclear, or if the responsive records are voluminous, please call me at (206) 379-7363 to discuss the scope of this request.

REQUEST FOR FEE WAIVER

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). 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 the request satisfies the standard. 5 U.S.C. § 552(a)(4)(A)(iii). FOIA's fee waiver requirement is "liberally construed." *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1310 (D.C. Cir. 2003); *Forest Guardians v. U.S. Dept. of Interior*, 416 F.3d 1173, 1178 (10th Cir. 2005).

The fee waiver amendments of 1986 were designed specifically to provide non-profit organizations such as the Center access to government records without the payment of fees. Indeed, FOIA's fee waiver provision was intended "to prevent government agencies from using high fees to discourage certain types of requesters and requests," which are "consistently associated with requests from journalists, scholars, and *non-profit public interest groups*." *Ettlinger v. FBI*, 596 F.Supp. 867, 872 (D. Mass. 1984) (emphasis added). As one Senator stated, "[a]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information" 132 Cong. Rec. S. 14298 (statement of Senator Leahy).

I. The Center Qualifies for a Fee Waiver.

Under FOIA, a party 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). FWS's regulations at 43 C.F.R. § 2.45(a) establish the same standard.

Thus, FWS must consider four factors to determine whether a request is in the public interest: (1) whether the subject of the requested records concerns "the operations or activities of the Federal government," (2) whether the disclosure is "likely to contribute" to an understanding of government operations or activities, (3) whether the disclosure "will contribute to public understanding" of a reasonably-broad audience of persons interested in the subject, and (4) whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities. 43 C.F.R. § 2.48(a)(1) – (4). As shown below, the Center meets each of these factors.

A. The Subject of This Request Concerns "The Operations and Activities of the Government."

The subject matter of this request concerns the operations and activities of FWS. This request asks for permit applications submitted to FWS and the agency's findings on those applications (if one is made). These records are critical to understanding how FWS is implementing its permitting authority under the ESA and CITES and how the agency is treating sport hunted trophies under those laws.

This FOIA will provide the Center and the public with crucial insight into how FWS responds to such requests and intends to regulate sport hunted trophies coming into the U.S. It is clear that consideration of permit applications is a specific and identifiable activity of the government, in this case the executive branch agency, the FWS. *Judicial Watch*, 326 F.3d at 1313 (“[R]easonable specificity is all that FOIA requires with regard to this factor”) (internal quotations omitted). Thus, the Center meets this factor.

B. Disclosure is “Likely to Contribute” to an Understanding of Government Operations or Activities.

The requested records are meaningfully informative about government operations or activities and will contribute to an increased understanding of those operations and activities by the public.

Disclosure of the requested records will allow the Center to convey to the public information about the number of applications submitted for sport-hunted trophies and how FWS is handling these applications under the ESA and CITES. Once the information is made available, the Center will analyze it and present it to its 1.2 million members and online activists and the general public in a manner that will meaningfully enhance the public’s understanding of FWS’s regulation of trade in imperiled species and how FWS is treating sport-hunted trophies under the ESA and CITES.

Thus, the requested records are likely to contribute to an understanding of FWS operations and activities.

C. Disclosure of the Requested Records Will Contribute to a Reasonably-Broad Audience of Interested Persons’ Understanding of how FWS regulates trade of endangered, Appendix I species.

The requested records will contribute to public understanding of how FWS is regulating requests to trade in endangered and threatened or Appendix I and II species and how this regulation is consistent with the ESA and CITES. As explained above, the records will contribute to public understanding of how sport-hunted trophies are regulated under the law.

Trade in imperiled species and in sport-hunted trophies are areas of interest to a reasonably-broad segment of the public. The Center will use the information it obtains from the disclosed records to educate the public at large about wildlife trade, trade in black rhinos and their parts, and new and emerging rhino products. *See W. Watersheds Proj. v. Brown*, 318 F.Supp.2d 1036, 1040 (D. Idaho 2004) (“find[ing] that WWP adequately specified the public interest to be served, that is, educating the public about the ecological conditions of the land managed by the BLM and also how . . . management strategies employed by the BLM may adversely affect the environment.”).

Through the Center’s synthesis and dissemination (by means discussed in Section II, below), disclosure of information contained and gleaned from the requested records will contribute to a broad audience of persons who are interested in the subject matter. *Ettlinger v. FBI*, 596 F. Supp. at 876 (benefit to a population group of some size distinct from the requester alone is sufficient);

Carney v. Dep't of Justice, 19 F.3d 807, 815 (2d Cir. 1994), *cert. denied*, 513 U.S. 823 (1994) (applying “public” to require a sufficient “breadth of benefit” beyond the requester’s own interests); *Cnty. Legal Servs. v. Dep't of Hous. & Urban Dev.*, 405 F.Supp.2d 553, 557 (E.D. Pa. 2005) (in granting fee waiver to community legal group, court noted that while the requester’s “work by its nature is unlikely to reach a very general audience,” “there is a segment of the public that is interested in its work”).

Indeed, the public does not currently have an ability to easily evaluate the requested records, since they are not routinely posted by FWS or made available on regulations.gov. *See Cnty. Legal Servs. v. HUD*, 405 F.Supp.2d 553, 560 (D. Pa. 2005) (because requested records “clarify important facts” about agency policy, “the CLS request would likely shed light on information that is new to the interested public.”). As the Ninth Circuit observed in *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1286 (9th Cir. 1987), “[FOIA] legislative history suggests that information [has more potential to contribute to public understanding] to the degree that the information is new and supports public oversight of agency operations... .”¹

Disclosure of these records is not only “likely to contribute,” but is certain to contribute, to public understanding of how FWS is regulating trade in imperiled species and their parts. The public is always well served when it knows how the government conducts its activities, particularly matters touching on legal questions. Hence, there can be no dispute that disclosure of the requested records to the public will educate the public about how FWS is interpreting its obligations under the ESA and CITES with respect to sport hunted trophies.

D. Disclosure is Likely to Contribute Significantly to Public Understanding of Government Operations or Activities.

The Center is not requesting these records merely for their intrinsic informational value. Disclosure of the requested records will significantly enhance the public’s understanding of FWS’s regulation of wildlife trade, as compared to the level of public understanding that exists prior to the disclosure. Indeed, public understanding will be *significantly* increased as a result of disclosure because the requested records will help reveal more about not just trade in wildlife specimens but specifically how the agency is regulating sport hunted trophies.

The records are also certain to shed light on FWS’s compliance with the ESA and CITES. Such public oversight of agency action is vital to our democratic system and clearly envisioned by the drafters of the FOIA. Thus, the Center meets this factor as well.

II. The Center has a Demonstrated Ability to Disseminate the Requested Information Broadly.

¹ In this connection, it is immaterial whether any portion of the Center’s request may currently be in the public domain because the Center requests considerably more than any piece of information that may currently be available to other individuals. *See Judicial Watch*, 326 F.3d at 1315.

The Center is a non-profit organization that informs, educates, and counsels the public regarding environmental issues, policies, and laws relating to environmental issues. The Center has been substantially involved in the activities of numerous government agencies for over twenty-five years, and has consistently displayed its ability to disseminate information granted to it through FOIA.

In consistently granting the Center's fee-waivers, agencies have recognized: (1) that the information requested by the Center contributes significantly to the public's understanding of the government's operations or activities; (2) that the information enhances the public's understanding to a greater degree than currently exists; (3) that the Center possesses the expertise to explain the requested information to the public; (4) that the Center possesses the ability to disseminate the requested information to the general public; (5) and that the news media recognizes the Center as an established expert in the field of imperiled species, biodiversity, and impacts on protected species. The Center's track record of active participation in oversight of governmental activities and decisionmaking, and its consistent contribution to the public's understanding of those activities as compared to the level of public understanding prior to disclosure are well established.

The Center intends to use the records requested here similarly. The Center's work appears in more than 2,000 news stories online and in print, radio and TV per month, including regular reporting in such important outlets as *The New York Times*, *Washington Post*, and *Los Angeles Times*. Many media outlets have reported on wildlife trade and specifically on black rhinos and their plight due to rhino horn trade, utilizing information obtained by the Center from federal agencies including FWS. Last year, more than 1.5 million people visited the Center's extensive website, viewing a total of more than 5.7 million pages. The Center sends out more than 350 email newsletters and action alerts per year to more than 1.2 million members and supporters. Three times a year, the Center sends printed newsletters to more than 40,000 members. More than 200,000 people have "liked" the Center on Facebook, and there are regular postings regarding wildlife trade. The Center also regularly tweets to more than 48,000 followers on Twitter. The Center intends to use any or all of these far-reaching media outlets to share with the public information obtained as a result of this request.

Public oversight and enhanced understanding of FWS's duties is absolutely necessary. In determining whether disclosure of requested information will contribute significantly to public understanding, a guiding test is whether the requester will disseminate the information to a reasonably-broad audience of persons interested in the subject. *Carney v U.S. Dept. of Justice*, 19 F.3d 807 (2nd Cir. 1994). The Center need not show how it intends to distribute the information, because "[n]othing in FOIA, the [agency] regulation, or our case law require[s] such pointless specificity." *Judicial Watch*, 326 F.3d at 1314. It is sufficient for the Center to show how it distributes information to the public generally. *Id.*

III. Obtaining the Requested Records is of No Commercial Interest to the Center.

Access to government records, disclosure forms, and similar materials through FOIA requests is essential to the Center's role of educating the general public. Founded in 1994, the Center is a 501(c)(3) nonprofit conservation organization (EIN: 27-3943866) with more than 1.6 million

members and online activists dedicated to the protection of endangered and threatened species and wild places. The Center has no commercial interest and will realize no commercial benefit from the release of the requested records.

IV. Conclusion

For all of the foregoing reasons, the Center qualifies for a full fee-waiver. We hope that FWS will immediately grant this fee waiver request and begin to search and disclose the requested records without any unnecessary delays.

If you have any questions, please contact me at (206) 379-7363 or tsanerib@biologicaldiversity.org. All records and any related correspondence should be sent to my attention at the address below or ideally provided by email or electronic link – thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tanya Sanerib", is positioned above the printed name.

Tanya Sanerib
Center for Biological Diversity
2400 NW 80th Street, #146
Seattle, WA 98117