



April 15, 2022

**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 March 17, 2022 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, 772-74 (1989) (citation and internal

quotation marks 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." *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) (citation omitted).

The 1986 fee waiver amendments 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) (citations omitted). 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. S14,298 (daily ed. Sept. 30, 1986) (statement of Sen. Leahy).

### **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); *see* 43 C.F.R. § 2.45.

Two main criteria are used to determine if a request is in the public interest: (1) whether the requested records "concern the operations or activities of the Federal government," and (2) whether the "disclosure is likely to contribute significantly to public understanding of those operations or activities." 43 C.F.R. § 2.48(a)(1)-(2). The second criterion considers seven factors:

- (i) the informational value of the requested records;
- (ii) the logical connection between the requested records and operations or activities of the federal government;
- (iii) how disclosure will contribute to an understanding of a reasonably broad audience of interested persons;
- (iv) the requester's expertise in the subject area, as well as its ability to disclose the information in an informative way to a reasonably broad, interested audience;
- (v) the requester's ability and intent to disseminate the information to a reasonably broad, interested audience;
- (vi) whether the records would confirm or clarify data that has been previously

released; and

- (vii) the extent to which the public's understanding will be enhanced by the disclosure.

43 C.F.R. § 2.48(a)-(2).

As demonstrated below, the Center's request meets each of these criteria, and moreover, the Center has no commercial interests in obtaining the requested records; thus a fee waiver is appropriate for this request.

#### **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) and the agency's permitting decisions. 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 trophy import applications and how the agency 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, release of the records would contribute significantly to the public's understanding of FWS's operations and activities, as discussed herein, thus the Center meets this factor of FOIA's fee waiver requirements. 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. §§ 2.45(a)-(b), 2.48(a)(1).

#### **B. Disclosure is "Likely to Contribute" to an Understanding of Government Operations or Activities.**

##### **1. The requested data are meaningfully informative**

The requested data contain meaningful information about government operations and activities. How the agency handles, processes, and decides on trophy import applications and the release of this information would significantly increase the public's understanding of these operations and activities. 43 C.F.R. § 2.48(a)(2)(i). Trophy import information has provided valuable information to scientists, journalists, conservation groups, and general public. However, the requested information is not available to the public, and the contents cannot be obtained from a different source or entity. Disclosure of the requested records is crucial to assess the impacts of international trade on trophy hunted species.

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.

## **2. The content of the requested data is logically connected to operations and activities of the government**

The content of the requested data is directly tied to FWS's operations and activities. 43 C.F.R. § 2.48(a)(1), (2)(ii). The requested information reflects the number of applications submitted for sport-hunted trophies and how FWS is handling these applications under the ESA and CITES. The processing and decision-making on trophy import permit applications is subject to FWS's authority and includes imperiled species, which FWS has a statutory duty to protect.

Engaging in the permitting process and making enhancement and non-detriment findings are specific and identifiable activities of the government. *Judicial Watch*, 326 F.3d at 1313 (“[R]easonable specificity is all that FOIA requires with regard to this factor”) (internal quotations marks omitted). The requested information will provide crucial insights into FWS' decision-making regarding trophy trade of imperiled species and release of the requested information meets this requirement of the fee waiver test.

## **3. Disclosure will contribute to the understanding of a reasonably broad audience of interested persons**

A broad range of people are interested in and concerned with the international trophy trade in imperiled species, and disclosure of the requested records will contribute to their understanding of related issues. 43 C.F.R. § 2.48(a)(2)(iii). Interested people include those with professional interests, such as journalists, scientists, and conservationists; they also include citizens from across the United States and the globe who have a wide variety of personal interests in these matters. Everyday citizens—from not only the United States but across the globe—care deeply about the international trophy trade, as evidenced by widespread interest in incidents such as the trophy hunt of “Cecil the lion.”<sup>1</sup>

As discussed herein, the Center is well equipped to disseminate the requested records in an informative manner that will reach a broad, interested audience, thus meeting this requirement for a fee waiver request. *Id.*; *Carney v. Dep't of Justice*, 19 F.3d 807, 814 n.4 (2nd Cir. 1994) (“the term public should be applied so as to require a . . . sufficient breadth of benefit beyond [a requester's] own interests (citation and internal quotation marks omitted)); *W. Watersheds Proj. v. Brown*, 318 F. Supp. 2d 1036, 1040 (D. Idaho 2004) (the organization “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”); *Ettlinger v. FBI*, 596 F.Supp. 867, 876 (D. Mass. 1984) (“Benefit to a population group of some size, which is distinct from the requester alone, is sufficient”).

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<sup>1</sup> Killing of Cecil the lion, Wikipedia.com, [https://en.wikipedia.org/wiki/Killing\\_of\\_Cecil\\_the\\_lion](https://en.wikipedia.org/wiki/Killing_of_Cecil_the_lion) (last visited Mar. 20, 2020).

**4. The Center has the expertise and ability to disseminate the requested information in informative way and reach a broad, interested audience**

The Center's staff and members have the expertise necessary to comprehend and distribute the requested records in a way that informs the understanding of related trade issues among a broad audience of interested people. 43 C.F.R. § 2.48(a)(2)(iv). Our international program routinely analyzes government policies as well as trophy permits and findings and advocates for protections for imperiled wildlife species and their habitat. Our staff includes attorneys and scientists and through our communications with our members and the public we routinely disseminate information we gather under the FOIA. Therefore, the Center is not only able to digest and understand the requested records, but to also convey it to other people in an understandable way. *Id.*

**5. The Center has the ability and intent to disseminate the information to a reasonably broad audience of interested persons**

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 more than 30 years and consistently displays its ability to disseminate information granted to it through FOIA. 43 C.F.R. § 2.48(a)(2)(v).

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 decision making—and its consistent contribution to the public's understanding of those activities as compared to prior to disclosure—are well established.

The Center intends to use the records requested here in a similar way. Each month the Center's work appears in more than 5,000 news stories both online and in print, and on radio and television, including regular reporting in such important outlets as The New York Times, Washington Post, The Guardian, and Los Angeles Times. Many media outlets have reported on trophy trade including utilizing information the Center obtained from FWS. In 2020, three million people visited the Center's extensive website, viewing pages more than 5.3 million times. The Center sends out approximately 300 email newsletters and action alerts per year to more than 1.7 million members and supporters. Three times a year, the Center sends printed newsletters its members. Approximately 579,000 people follow the Center on Facebook, which regularly features postings regarding U.S. imports and exports of species. The Center also regularly shares information with more than 100,000 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, 814-15 (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 1309, 1314 (D.C. Cir. 2003). It is sufficient for the Center to show how it distributes information to the public generally. *Id.*

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 use it in the Center's work including by sharing relevant information with its 1.7 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.

**6. The requested records would confirm or clarify previously released data**

The requested information is important on its own. However, taken together with previous years information, it also helps show trends in species, geographic regions, and imports.

**7. Disclosure of the requested records would enhance the public's understanding of this subject to a significant extent**

The Center is not requesting these records merely for their intrinsic informational value. Disclosure of the requested records will enhance the public's understanding of the international trophy trade as well as enhance the understanding of FWS' decision making on trophy import import permits and the how the agency implements its permitting responsibilities under the ESA and CITES. 43 C.F.R. § 2.48(a)(2)(vii). Indeed, public understanding will be significantly increased as a result of disclosure because the requested records will reveal the agency's conclusions regarding the trade in trophies from the referenced species. The records will also 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 FOIA.

**C. Obtaining the Requested Records Is of No Commercial Interest to the Center**

Access to government records through FOIA is essential to the Center's role of educating the general public. Founded in 1989, the Center has been incorporated as a 501(c)(3) nonprofit conservation organization (EIN: 27-3943866) since 1994, and today it has more than 1.7 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.



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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.

### **CONCLUSION**

If you have any questions, please contact me at (206) 379-7363 or tsanerib at [biologicaldiversity.org](http://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 written over a light gray rectangular background.

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