



September 2, 2022

Cathy Willis, FOIA Officer (Acting), MS:IRTM
United States Fish and Wildlife Service
5275 Leesburg Pike
Falls Church, VA 22041

Submitted via online portal

Re: Freedom of Information Act Records Request

Dear Ms. Willis,

On behalf of the Humane Society of the United States (“HSUS”), I am writing you in order to request records under the federal Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. Specifically, the HSUS hereby requests copies of the following records:

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 year 2022.
2. All documents, records, and communications related to the following specific grizzly bears and grizzly bear mortalities, including, but not limited to, grizzly bear incident reports, 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:
 - Adult female grizzly bear killed on May 21, 2022, at Crow Creek, Caribou-Targhee National Forest, Idaho by “management capture and removal for numerous site related conflicts, food rewards and aggressive behavior,” reported May 27, 2022, ID No. 202205;
 - Yearling male grizzly bear killed on May 21, 2022, at Crow Creek, Caribou-Targhee National Forest, Idaho by “management capture and removal for numerous site related conflicts, food rewards and aggressive behavior,” reported May 27, 2022, ID No. 202206;
 - Adult female grizzly bear killed on May 25, 2022, at Crow Creek, Caribou-Targhee National Forest, Idaho by “management capture and removal for numerous site related conflicts, food rewards and aggressive behavior,” reported May 27, 2022, ID No. 202209;
 - Yearling female grizzly bear killed on May 24, 2022, at Crow Creek, Caribou-Targhee National Forest, Idaho by “management capture and removal for numerous site related conflicts, food rewards and aggressive behavior,” reported May 27, 2022, ID No. 202210;
 - Yearling male grizzly bear killed on May 24, 2022, at Crow Creek, Caribou-Targhee National Forest, Idaho by “management capture and removal for numerous site related conflicts, food rewards and aggressive behavior,” reported May 27, 2022, ID No. 202211;
 - Adult male grizzly bear killed on April 25, 2022, at Greybull River, PR, Wyoming by “management capture and removal for cattle depredations,” reported May 18, 2022, ID No. 202203;



- Subadult female grizzly bear killed on June 21, 2022, at Beartooth Creek, Shoshone National Forest, Wyoming by “management capture and removal for food conditioned behavior,” reported June 24, 2022, ID No. 202224;
- Adult male grizzly bear killed on June 24, 2022, at Sheep Creek, PR, Wyoming by “management capture and removal for cattle depredations,” reported July 12, 2022, ID No. 202225;
- Subadult male grizzly bear killed on July 12, 2022, at Boulder Creek, PR, Wyoming by “management capture and removal for food conditioned behavior,” reported July 22, 2022, ID No. 202226;
- Subadult male grizzly bear killed on July 13, 2022, at Slab Creek, PR, Wyoming by “management capture and removal for sheep depredations,” reported July 22, 2022, ID No. 202227;
- Subadult male grizzly bear killed on August 1, 2022, at Slab Creek, PR, Wyoming by “management capture and removal for sheep depredations,” reported August 8, 2022, ID No. 202228; and
- Any other grizzly bears killed by management removal in the year 2022 in Idaho, Wyoming, Montana, or the Greater Yellowstone Ecosystem.

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

The 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, the 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)(i); 43 C.F.R. § 2.45(a). The 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 the 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); 43 C.F.R. § 2.45(a). 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. 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 management, including authorization to take, of imperiled wildlife such as the grizzly bear 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. 43 C.F.R. §§ 2.48(a)(2)(i)-(ii), (vi)-(vii).

The 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. 43 C.F.R. §§ 2.48(a)(1), (2)(i)-(vii). The 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 the grizzly bear. The 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, shark finning, whaling, and poaching. The 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 the 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. *Id.* §§ 2.48(a)(2)(i)-(vii).

Moreover, the HSUS routinely distributes information, reports, and copies of original documents to members of the media to generate articles. *Id.* §§ 2.48(a)(2)(iii)-(v), (vii); see, e.g., 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. The 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. The 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, the 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. 43 C.F.R. §§ 2.48(a)(2)(iii)-(v), (vii).



In addition to the HSUS' demonstrated qualification for a fee waiver due to the significance of the material requested, the 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, the HSUS is unquestionably a "representative of the news media." The HSUS has extensive and well-exercised means to keep the public informed on the operations and activities of the United States government. The HSUS does not merely obtain information and then contact members of the press to relate that information; rather, the 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, the 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, the HSUS has developed a substantial level of expertise on the issues which commands public attention when it disseminates such information. Its extensive, independent public dissemination of information pertaining to policies and activities relating to animal research qualifies the HSUS as a "representative of the news media" and is entitled to a fee waiver within the meaning of FOIA. See 43 C.F.R. §§ 2.48(a)(2)(iii)-(v), (vii).

Furthermore, the HSUS is a non-profit public interest organization whose tax-exempt number is 53-0225390 and does not have a commercial interest in the requested records. Rather, as explained above, the 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. *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. 5 U.S.C. §§ 552(a)(4)(A)(i), (a)(4)(A)(ii)(II); 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(6). Furthermore, if FWS fails to comply with the statutory timelines prescribed by FOIA, it must waive fees. See 43 C.F.R. § 2.37(f)(1).

Thank you for your assistance. The HSUS looks forward to a response within 20 working days, as mandated in FOIA and DOI regulations. 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 (kbarnekow@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.

Thank you for your assistance.

Sincerely,

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The Humane Society of the United States
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