



Oregon Natural Desert Association

January 7, 2005

VIA EMAIL

National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Northwest Region
7600 Sand Point Way N.E., Bldg. 1
Seattle, WA 98115
FOIA@noaa.gov

Re: FOIA Request, Grazing-Related Consultation Activities

Dear NOAA Fisheries:

This is a request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as amended. I make this request on behalf of the Oregon Natural Desert Association (ONDA). ONDA is a non-profit public interest organization dedicated to preserving and protecting the public lands of eastern Oregon. ONDA has a long history of interest and involvement in federal activities with respect to grazing, riparian areas, and fish and wildlife. ONDA's mission is to protect, defend, and restore forever, the health of Oregon's native deserts.

Pursuant to the FOIA, please send ONDA copies of the following documents:

1. Any and all Endangered Species Act Section 7 consultation documents regarding the effects of livestock grazing on Upper Columbia River Steelhead and Middle Columbia River Steelhead, including informal and formal consultation documents (biological assessments, biological opinions, letters of concurrence, and other related documents), for the period March 2004 to present.¹
2. Any and all trip reports, end-of-year reports, range tour notes, memoranda, emails, letters or other correspondence, monitoring, or documentation regarding the effects of livestock grazing on Upper Columbia River Steelhead and Middle Columbia River Steelhead, for the period March 2004 to present.

¹ Please note that ONDA submitted a similar FOIA request on March 11, 2004. Because NOAA Fisheries only completed its processing of that request on December 20, 2004, ONDA is now requesting responsive documents created in the ten months since the original request. Note also that ONDA has appealed NOAA Fisheries' use of the regulation at 15 C.F.R. § 4.5(b) regarding referring responsive records to other agencies deemed to have the "primary interest" in those records.

3. Any and all notes, memoranda, documents, reports, summaries, correspondence, monitoring and other documentation of meeting or not meeting livestock grazing standards on allotments for which formal or informal consultation was performed or undertaken on the effects of grazing on Upper Columbia River Steelhead and Middle Columbia River Steelhead, for the period March 2004 to present.

Please note that if any of these documents are available in electronic format, whether on the web or by copying onto CD-ROM, I am certainly willing to accept any or all of the requested documents in that format. I am aware that NOAA Fisheries places its biological opinions on its website and would appreciate a list of any biological opinions responsive to this request that may be obtained from that website.

These documents will provide an indication of whether NOAA Fisheries and the action agencies involved in the above consultations have carried out their responsibilities pursuant to the Endangered Species Act. Release of this information will benefit the public, which has an interest in knowing whether and to what extent NOAA Fisheries is satisfying its statutory and regulatory requirements. ONDA will use the requested information to further the public's understanding of the success of NOAA Fisheries' role in the protection and restoration of listed steelhead, by disseminating the information through its newsletter, website, and media contacts to public interest groups, agencies, and private citizens in Oregon and beyond.

These documents will help clarify to ONDA and the general public whether NOAA Fisheries through its activities and operations has carried out its responsibilities under all relevant statutes, regulations, and management plans. Release of this information will benefit the public, which has an interest in knowing whether and to what extent NOAA Fisheries is satisfying its statutory and regulatory requirements with respect to consultation over grazing activities on public lands in eastern Oregon. ONDA will use the requested information to further the public's understanding of the success of NOAA Fisheries' consultations by disseminating the information through its newsletter, website, and media contacts to public interest groups, agencies, and private citizens in Oregon and beyond.

In the event that access to any of the records is denied, please note that FOIA provides that if only portions of a file are exempted from release, the remainder of the file must still be released. ONDA therefore requests that it be provided with all non-exempt portions which are reasonably segregable. ONDA further requests that you describe any deleted material in detail and specify the basis and justification for the denial. Please separately state your reasons for not invoking your discretionary powers to release the requested documents in the public interest. Such statements will help to decide whether to appeal an adverse determination. Please note that your December 20, 2004 letter to me regarding FOIA # 2004-00325 does not provide a reasonably detailed description of the documents withheld pursuant to 5 U.S.C. § 552(b)(5). ONDA will require more detail for any such claims of exemption in this request in order to make an informed decision whether or not to appeal an adverse determination.

ONDA also requests that you waive any applicable fees because the requested material is clearly in the "public interest." This request complies with 5 U.S.C. § 552 because the furnished information will be used to inform the public of how the federal government is managing the public lands. These documents concern the operations and activities of NOAA Fisheries. The

release of these documents will contribute significantly to the public's understanding of NOAA Fisheries' duties and obligations under the ESA, in that the information will enhance the public's understanding of NOAA Fisheries' legal responsibilities and inform the public as to whether the agency has complied with its duties. ONDA disseminates information obtained via the FOIA using a vast array of diverse and highly effective channels. In addition, to the best of our knowledge, this information has not been disclosed before and is therefore "new" information. ONDA has no commercial interest in these documents.

If you have any questions about this request, please feel free to contact me by email, phone, or at the address below. Thank you in advance for your prompt reply.

Sincerely,

s/ Peter M. Lacy

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cc: Bill Marlett, Executive Director
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