

April 14, 2022

Submitted Via FOIAonline.gov

Cathy Willis, FWS FOIA Officer
U.S. Fish and Wildlife Service
5275 Leesburg Pike, MS: IRTM
Falls Church, VA 22041
Phone: (720) 425-5173
Email: Cathy.Willis@fws.gov

Re: FOIA Request for Records Relating to Use of Brodifacoum at the South Farallon Islands

Dear Ms. Willis,

I am writing on behalf of Friends of Animals to seek the disclosure of documents and records¹ pursuant to 43 C.F.R. Part 2, and the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Friends of Animals requests copies of all documents and records held by the U.S. Fish and Wildlife Service for the time period starting January 1, 2017, and ending April 8, 2022, relating to the proposed use of brodifacoum to eradicate the House Mouse (*Mus Musculus*) on the South Farallon Islands. Specifically,

1. All documents relating to FWS's analysis of the proposed action's compliance with the:

¹ The terms "document(s)" and "records" are used in the broadest sense contemplated by Federal Rule of Civil Procedure 34. It means all written, transcribed, recorded or graphic matters, however produced or reproduced. This definition includes, but is not limited to, any and all original copies or drafts of any and all of the following: records; notes; nonconforming copies that contain deletions, insertions, corrections, handwritten notes or comment summaries; memoranda; schedules; contracts; binders; work papers; logs; diaries; work sheets; files; letters; correspondence; summaries of memoranda; reports or memoranda of telephone conversations or records of personal conversations or interviews; handwritten notes; telephone logs; facsimiles; summaries; invoices; promissory notes; contracts; loan agreements; vouchers; billing statements; tape recordings or transcripts of tape recordings; photographs; videotapes; computerized output or data bases; electronic files; computer disks; computer CDs' electronic mail transmittals; data and all other writings; calculations; and figures or symbols of any kind which, in any manner mentioned, relate to the subjects of the specific requests contained below. This request includes all documents that have ever been within your custody or control, including all inter and intra agency documents, whether they exist in agency working, investigative, retired, electronic mail, or other files currently or at any other time.

- a. Marine Mammal Protection Act (16 U.S.C. § 1251 et seq.);
 - b. Endangered Species Act (16 U.S.C. § 1531 et seq.);
 - c. National Marine Sanctuaries Act (16 U.S.C. § 1433);
 - d. Migratory Bird Treaty Act (16 U.S.C. § 703 et seq.);
 - e. National Wildlife Refuge System Administration Act (16 U.S.C. §§ 668dd-ee); and
 - f. Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136 et seq.).
2. All documents and data relating to the above statutes as they relate to the South Farallon Islands, even if FWS ultimately concluded that a permit was not necessary.
- a. This request includes documents relating to statutes that require FWS to obtain a permit before FWS is authorized to use brodifacoum as proposed on the South Farallon Islands.
 - b. This request includes documents where FWS determines that a permit is not needed, or another agency or organization informs FWS that a permit is not required.

The items specifically requested are not meant to be exclusive of any other documents that, although not specially requested, have a reasonable relationship to the subject matter of this request. Additionally, I would ask that this not be given a set preference.

The Supreme Court has stated that FOIA establishes a "strong presumption in favor of disclosure" of requested information, and that the burden is on the government to substantiate why information may not be released under the act's various exemptions. *Department of State v. Ray*, 502 U.S. 164, 173 (1991). Congress affirmed these tenets of FOIA in the Open Government Act of 2007, finding that "the Government [should] remain open and accessible to the American people" and always be based "not upon the need to know but upon the fundamental right to know." Public Law 110-175, 121 Stat. 2524, 2525 (Dec. 31, 2007) (internal citations omitted). An Executive Order directed that "[t]he presumption of disclosure should be applied to all decisions involving FOIA." 74 Fed. Reg. 4683 (Jan. 26, 2009). Please consider the foregoing before withholding any documents that are responsive to this request.

In the event that access to any of the requested records is denied, please note that FOIA provides that if only portions of a requested file are exempted from

release, the remainder must still be released. Friends of Animals therefore requests that we be provided with all non-exempt portions, which are reasonably segregable. We further request that you describe the deleted material in detail and specify the statutory basis for the denial as well as your reasons for believing that the alleged statutory justification applies in this instance. Please separately state your reasons for not invoking your discretionary powers to release the requested documents in the public interest. Such statements will be helpful in deciding whether to appeal an adverse determination, and in formulating arguments in case an appeal is taken. A written justification might also help to avoid unnecessary litigation. Friends of Animals has the right to appeal the withholding or deletion of any information and expects that you will list the office and address where such an appeal can be sent.

Friends of Animals anticipates that you will make the requested materials available within the statutorily prescribed period. We also request that you waive any applicable fees since disclosure meets the statutory standard for a fee waiver in that it is clearly "in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii).

Fee Waiver Request

FOIA provides that "documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) 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). The legislative history of FOIA, as well as the case law interpreting the Act, indicates that the statute's fee waiver provision is to be liberally construed favoring the public interest. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 Cong. Rec. S14298 (Sept. 30, 1986) (Sen. Leahy)).

This request for information qualifies for a fee waiver under this standard and, accordingly, we request that all fees be waived.

Friends of Animals is a nonprofit international animal advocacy organization headquartered in Darien, Connecticut and incorporated in the state of New York since 1957. It serves the public interest by increasing the general public awareness of animal advocacy issues and how to end animal cruelty and exploitation around the world. Friends of Animals seeks to promote a respectful view of non-human animals, both free-living and domestic. The Internal Revenue Service recognizes Friends of Animals as a 501(c)(3) tax-exempt organization (IRS Employer Identification #: 13-6018549).

Friends of Animals does not have a commercial, trade, or profit interest in the requested records. Friends of Animals seeks information to understand the

analysis that FWS conducted to ensure that their proposed action on the South Farallon Islands complies with numerous statutes. Thus, Friends of Animals is submitting this request to obtain data on how and if FWS's actions comply with the various applicable statutes. This data will help Friends of Animals to further its mission and deepen public understanding of how FWS complies with statutes that govern their actions.

Friends of Animals has the ability to distribute information to its members and other interested members of the public through its website, its quarterly journal *ActionLine*, and through outreach to other media outlets. Friends of Animals regularly publicizes information about wildlife and employs several experts who are able to quickly digest and circulate the information obtained from this request, including attorneys and media correspondents.

Given Friends of Animals' well-orchestrated and demonstrably successful efforts at educating the public on animal advocacy issues, and the fact that Friends of Animals' education program has significantly contributed to an understanding of government operations and activities, Friends of Animals is entitled to a fee waiver.

CONCLUSION

Please produce the records regarding this FOIA request by electronic mail to adam.kreger@friendsofanimals.org or to the physical address listed below:

Friends of Animals
Wildlife Law Program
7500 E. Arapahoe Road, Suite 385
Centennial, CO 80112

Please produce the records on a rolling basis to the extent possible; at no point should the search for—or deliberation concerning—certain records delay the production of others that the federal government has already retrieved and elected to produce.

Thank you for your attention to this request. If you have any questions about the requested documents or the requested fee waiver, please do not hesitate to contact me at 720-949-7791 or at adam.kreger@friendsofanimals.org.

Sincerely,

Adam Kreger
Associate Attorney
Friends of Animals
Wildlife Law Program