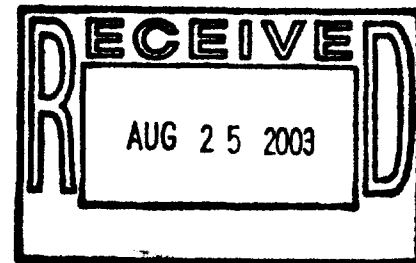


August 20, 2003

FREEDOM OF INFORMATION ACT REQUEST**By Certified Mail/Return Receipt Requested**

Alexandra Mallus, Freedom of Information Officer
Office of Information Resources Management
United States Department of the Interior
1849 C Street, NW
Washington, DC 20240



Johnny Hunt, Freedom of Information Officer
Division of Policy and Directives Management
United States Fish and Wildlife Service
4401 North Fairfax Drive
Room 222, Arlington Square
Arlington, VA 22203

Re: Freedom of Information Act Request for Documents Relating to Notice of Remanded Determination of Status for the Contiguous United States Distinct Population Segment of the Canada Lynx (68 Fed. Reg. 40076, July 3, 2003)

Dear Ms. Mallus and Mr. Hunt:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the United States Department of Interior's ("DOI") implementing regulations, 43 C.F.R. Part 2, Subpart B, Defenders of Wildlife hereby requests records from DOI and the United States Fish and Wildlife Service ("FWS") relating to the FWS's Notice of Remanded Determination of Status for the Contiguous United States Distinct Population Segment of the Canada Lynx; Clarification of Findings ("Clarification of Findings"), as published in the Federal Register on July 3, 2003 (68 Fed. Reg. 40076).

Records Requested

In connection with this request, we are seeking the following records from DOI and FWS:

All documents, including but not limited to studies, memoranda, correspondence, data, meeting notes, records, reports, videos, photographs, computer disks, maps, electronic mail, and any other applicable or relevant information, concerning the Clarification of Findings.

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Fee Waiver Request

Pursuant to FOIA, 5 U.S.C. § 552(a)(4)(A)(iii), and DOI's implementing regulations, 43 C.F.R. § 2.21, we request that all charges (e.g., search, review, and duplication fees) incurred in connection with this request be waived. We are entitled to a fee waiver because, as explained below, disclosure of the requested records is likely to contribute significantly to public understanding of government operations and activities, while the requester has no commercial interest that will be furthered by such disclosure. See Judicial Watch v. Rossotti, No. 02-5154, slip op. at 7 (D.C. Cir. May 2, 2003) (reiterating that the FOIA fee waiver provisions are to be "liberally construed in favor of waivers for noncommercial requesters").

Defenders of Wildlife is a national nonprofit organization dedicated to the protection of native wild animals and plants in their natural communities. Long known for its leadership role on endangered species issues, Defenders uses a combination of education, research, litigation, and advocacy to advance its mission. We intend to use the requested records: (1) to ensure that FWS fully complies with the ESA and Judge Kessler's memorandum opinion and order *Defenders of Wildlife v. Norton* (239 F. Supp.2d 9 (D.D.C. 2002)) in connection with the Canada lynx listing process; and (2) to inform the public, including our more than 450,000 members and supporters, through our website, electronic news bulletins, quarterly magazine, and other publications, all of which are available free of charge to interested parties, about the important role of the ESA in protecting the Canada lynx. Thus, the requested records bear directly on identifiable operations and activities of DOI, FWS, and other government entities, will contribute significantly to a broad public understanding of important matters relating to government functioning and compliance with federal laws, and will not serve any commercial interest on the part of Defenders. Under these circumstances, Defenders fully satisfies the criteria for a fee waiver.

Alternatively, even if Defenders does not qualify for a fee waiver, which we believe it clearly does, Defenders qualifies at a minimum for a reduced fee as a "representative of the news media." Under FOIA, "when records are not sought for commercial use and the request is made by ... a representative of the new media," any fees charged are to be limited to duplication costs only. 5 U.S.C. § 552(a)(4)(A)(ii)(II). In other words, such requests are not subject to search and review fees. Further, DOI regulations provide that, for such requests, the first 100 pages of duplication "shall be provided without charge." 43 C.F.R. § 2.20(d)(1).

The term "representative of the news media" has been interpreted broadly to mean, "in essence, a 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." National Security Archive v. Department of Defense, 880 F.2d 1381, 1387 (D.C. Cir. 1989). Under this definition, Defenders plainly qualifies as a representative of the news media. As described above, Defenders is regularly involved in gathering information about issues affecting endangered species and the ESA, including issues relating to the listing process of endangered species such as the Canada lynx, and disseminating that information to our


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members, as well as to the general public and other interested parties. Such information is distributed through a range of media outlets, including the quarterly publication, *Defenders*, the Defenders' online Defend Environment Network, and published reports. Thus, in the event that Defenders is not entitled to a complete fee waiver, Defenders is entitled, at a minimum, to a reduced fee limited only to the cost of duplication beyond the first 100 pages.

Conclusion

Pursuant to FOIA, DOI and FWS must respond to this request within twenty business days of receipt. 5 U.S.C. § 552(a)(6)(A)(I). Accordingly, we look forward to hearing from you promptly. In the meantime, please feel free to contact us if you have any questions.

Sincerely,



Alexander Robin

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