



Oceana sues NOAA, claims agency FOIA fees are 'prohibitively high'; Industry has had similar experiences for years

NEW BEDFORD, Mass. and WASHINGTON -- Dec. 28, 2010 - In a federal lawsuit filed just before Christmas, the National Oceanic and Atmospheric Administration is accused of violating the Freedom of Information Act by charging the environmental group Oceana Inc. exorbitant fees to fulfill its document requests.

"The (National Marine) Fisheries Service told Oceana that it would only provide the unclassified, non-commercial documents to which Oceana is entitled if Oceana paid \$16,338.60 in advance," says the suit filed in federal district court in Washington, D.C.

"This happens all the time," Pamela Lafreniere, a New Bedford lawyer who deals with fisheries cases, told The Standard-Times. She said she is being billed some \$600 for the answer to a single question about the use of the asset forfeiture fund within NOAA.

This is not the first time issues have arisen surrounding NOAA's handling of FOIA requests. In a [February 26, 2009 letter to the late Senator Edward Kennedy of Massachusetts](#), the Commerce Department Inspector General found that "NMFS did not comply with its own procedures" in handling a 2008 FOIA request from scallop industry representatives. In that case, "NOAA did not meet required FOIA deadlines and overestimated the fees associated with the FOIA request." The Inspector General found that "NOAA's poor handling" of the request "contributes to its reputation in the Northeast Region as an agency that is unconcerned with transparency." According to the Inspector General, industry representatives found "NOAA's mishandling" of the FOIA request "frustrating to them, yet not surprising given previous exchanges with the agency."

The Inspector General said "it is apparent to us that the responsible officials were not held accountable for following FOIA procedures" and observed that "Interactions like this will only serve to further erode the industry's confidence in NOAA. For each interaction with the industry, NOAA would benefit by emphasizing transparency and openness." The Inspector General concluded "We suspect there may be further problems with the FOIA process at NOAA, but those issues are beyond the scope of this review."

Even after the Inspector General's findings were reported to Senator Kennedy, industry requests for information have received similar responses. In 2009, a letter signed by an assistant for Mark Paterni, Assistant Director of Law Enforcement, stated that filling a

request for documents detailing fines collected by the NOAA Fisheries Office of Law Enforcement in the Northeast would require a payment of more than \$17,000. These fines later became the subject of an inquiry by the Commerce Department Inspector General.

In 2010, an industry request for correspondence between a policy director of the Ocean Conservancy and NOAA officials; NOAA Director Jane Lubchenco and her deputy Monica Medina; Ms. Medina and Ron Klain, Chief of Staff to Vice President Joseph Biden and Ms. Medina's husband; and correspondence between Mr. Klain and Dr. Lubchenco was met with an agency estimate of over \$17,500 in "processing fees".

New Bedford Mayor Scott W. Lang said it is ironic that Oceana is complaining about withholding documents when environmental groups [such as the [Conservation Law Foundation](#)] are [siding with NOAA](#) and opposing the disclosure of documents and the [taking of depositions](#) in the city's lawsuit challenging catch shares and sector management of the fishery.

NOAA is slow to produce documents even when it is willing, Lang said. He said only now is the city receiving a few documents it sought in spring when it filed a FOIA request for information about scallop quotas.

Lang said it would be best if all parties would just be transparent about what they are doing. "This isn't the START treaty, this is fisheries management, for heaven's sake," he said.

Oceana, based in Washington, D.C., contends that it is entitled to a waiver of fees on the grounds that it qualifies as a media company because it publishes government information to inform the public about environmental issues. Media outlets are exempt from charges associated with FOIA requests.

Oceana, which filed an earlier lawsuit in May accusing fisheries regulators of being too lax, was asking NOAA for the documents used to establish agency policy on sea turtles.