

**NATIONAL WILDLIFE FEDERATION®***People and Nature: Our Future Is in the Balance*

Office of Federal and International Affairs

April 14, 2003

VIA FACSIMILE: 703-428-7633

Ms. Linda Selinger  
Freedom of Information Act Officer  
ATTN: CEHEC-OC  
U.S. Army Corps of Engineers  
7701 Telegraph Road  
Alexandria, VA 22315

**RE: FREEDOM OF INFORMATION ACT REQUEST**

Dear Ms. Towers:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. §552, the National Wildlife Federation requests:

1. All records relating to any formal or informal programmatic endangered species consultation concerning the section 404 nationwide permit ("NWP") program. Specifically, we understand that the Corps "initiated formal programmatic [Endangered Species Act] consultation with the U.S. FWS and NMFS for the NWP program in 1999." *See* 67 Fed. Reg. 2028 (Jan. 15, 2002). We would thus like copies of all records relating to this or any other related NWP programmatic consultation.
2. All records relating to the Endangered Species Act section 7(d) determination that the NWP reissuance will not foreclose any options. *See id.*

Please mail copies of these records to:

Randy Sargent  
National Wildlife Federation  
1400 16th St., N.W., Suite 501  
Washington, D.C. 20036-2266

If you determine that portions of the documents requested are exempt from disclosure, please segregate and describe any exempted material and cite the applicable exemption.

### Fee Waiver

Any fees accrued pursuant to this FOIA request should be waived because disclosure of the requested information (i) is in the public interest and (ii) is not primarily in the commercial interest of the requester. *See* 28 U.S.C. §16.11(k).

#### **A. This FOIA request is in the public interest.**

This FOIA request is in the "public interest" because (1) it is likely to contribute (2) significantly (3) to public understanding (4) of the operations and activities of the government. *Id.*

First, the requested records are "likely to contribute" to an understanding of operations and activities of the government. Most of these records are not otherwise in the public domain and are not generally accessible other than through a FOIA request. These documents are "meaningfully informative" with respect to understanding whether the Corps adequately analyzed the impacts from its nationwide permit program on the Florida panther. *See* DOJ Fee Waiver Factor No. 2 at [www.usdoj.gov/oip/foi-act.htm](http://www.usdoj.gov/oip/foi-act.htm).

Second, disclosure of the information requested will also contribute "significantly" to the public's understanding of the Corps' nationwide permit program and the impacts of this program on endangered species, such as the panther. The disclosure of the requested Corps' records is essential to understand and respond to the Corps' NWP program. DOJ Fee Waiver Factor No. 4 at [www.usdoj.gov/oip/foi-act.htm](http://www.usdoj.gov/oip/foi-act.htm).

Third, disclosure of the information requested will contribute to the understanding of the "public at large," as opposed to that of a narrow segment of interested persons. NWF has long-standing interest and expertise in the conservation of wetlands and endangered species, and maintains active environmental education and environmental defense programs toward this end. NWF and its members and affiliates – including the Florida Wildlife Federation ("FWF") – are particularly concerned about wetlands and endangered species protection and about the Corps' administration of section 404 of the Clean Water Act. NWF disseminates the information it receives through FOIA regarding these government operations and activities through analysis and distribution to the media, as well as distribution through mailing, posting on NWF's website, emailing, and listserv distribution to our members, affiliates, and like-minded interested parties nationally and in Florida. In addition, NWF disseminates this information through congressional testimony, comments to administrative agencies, and where necessary, through the judicial system.

Additionally, as the nation's largest non-profit conservation advocacy and education organization, NWF falls into the DOJ FOIA category of "news media, educational, or scientific requester." NWF has over 4 million members and supporters and has affiliate organizations in 46 states and territories, including Florida. NWF's mission is to educate, inspire, and assist individuals and organizations of diverse cultures

to conserve wildlife and other natural resources and to protect the earth's environment in order to achieve a peaceful, equitable, and sustainable future

Furthermore, NWF has the "specialized knowledge" and "ability and intention" to disseminate the information requested in the broad manner outlined above, and to do so in a manner that contributes to the understanding of the "public-at-large." As the DOJ guidance indicates, distribution through media channels, alone, is presumptively sufficient to satisfy this requirement. NWF has demonstrated that the information requested in this case will contribute to the understanding of the public at large. DOJ Fee Waiver Factor No. 3 at [www.usdoj.gov/oip/foi-act.htm](http://www.usdoj.gov/oip/foi-act.htm).

Fourth, the requested records specifically concern "identifiable operations or activities of the government." In particular, NWF seeks these records for their informative value in evaluating both the legality and reasonableness of the NWP program, particularly as it relates to endangered species. The Corps' individual permit authorization decisions, and the Corps' accumulated permit authorization decisions and overall administration of the section 404 program in Southwest Florida, are "identifiable operations or activities of the government." DOJ Fee Waiver Factor No. 1 at [www.usdoj.gov/oip/foi-act.htm](http://www.usdoj.gov/oip/foi-act.htm).

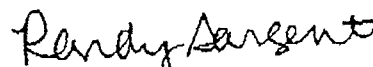
**B. This FOIA request is not primarily in NWF's commercial interest.**

The disclosure of this information is not "primarily," or even secondarily, in the commercial interest of the National Wildlife Federation. NWF has no intention of using this information in a manner that "furthers a commercial, trade, or profit interest as those terms are commonly understood." Any publication of any analysis of the requested information would be for the sole purpose of disseminating the information to the public at large to educate and advocate for the conservation of wetlands, wildlife, and water quality, and for strong implementation of the Clean Water Act by the Corps. DOJ Commercial Interest Factor at [www.usdoj.gov/oip/foi-act.htm](http://www.usdoj.gov/oip/foi-act.htm).

In summary, disclosure of the information requested is in the public interest because it is likely to contribute significantly to the public's understanding of the Corps' section 404 nationwide permitting program and the effects this program has on endangered species such as the Florida panther. The public will be the primary beneficiary of this requested information. Therefore, please waive processing and copying fees.

Thank you for your assistance. If you have any questions, please do not hesitate to call me at (202) 797-6865.

Sincerely,



Randy Sargent  
National Wildlife Federation