



October 31, 2016

VIA CERTIFIED MAIL

Mr. Mark Graff
FOIA Officer
National Oceanic and Atmospheric Administration
Public Reference Facility (SOU1000)
1315 East-West Highway (SSMC3)
Room 9719
Silver Spring, Maryland 20910

Re: Freedom of Information Act Request

Dear Mr. Graff:

We write on behalf of Cause of Action Institute (“CoA Institute”), a nonprofit strategic oversight group committed to ensuring that government decision-making is open, honest, and fair.¹ In carrying out its mission, CoA Institute uses various investigative and legal tools to educate the public about the importance of government transparency and accountability. To that end, we are examining the Administration’s designations of new national monuments and expansion of existing monuments under the Antiquities Act of 1906, 54 U.S.C. § 320301 (“Antiquities Act” or the “Act”). In addition, we are looking into current and potential proposals for the President to exercise his authority under that Act. The Administration’s broad and frequent use of the Antiquities Act raises questions about the lack of transparency and consultation with local stakeholders leading up to the President’s designation of national monuments.² As relevant here, we are seeking to better understand the process leading to the President’s issuance of Proclamation 9496 of September 15, 2016, 81 Fed. Reg. 65,161 (Sept. 21, 2016), which established the Northeast Canyons and Seamounts Marine National Monument.³

¹ See CAUSE OF ACTION INSTITUTE, *About*, www.causeofaction.org/about/.

² President Obama has used the Antiquities Act to establish more new national monuments than any other president. See Douglas Brinkley, Op-Ed., *Obama the Monument Maker*, N.Y. TIMES, Aug. 27, 2016, available at <http://www.nytimes.com/2016/08/28/opinion/sunday/obama-the-monument-maker.html>.

³ The national monument is comprised of two separate units, the “Canyons Unit” covering approximately 941 square miles, and the “Seamounts Unit” covering 3,972 square miles. Proclamation No. 9496, 81 Fed. Reg. 65,161 (Sept. 21, 2016).

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), CoA Institute hereby requests access to the following records for the time period of January 1, 2014, to the present:⁴

1. All records or communications produced to the U.S. House of Representatives Committee on Natural Resources in response to the Committee’s October 7, 2015, document request (attached as Exhibit 1 to this FOIA request).
2. All records or communications referring or relating to the U.S. House of Representatives Committee on Natural Resources October 7, 2015, document request (attached as Exhibit 1 to this FOIA request).
3. All records or communications responsive to the U.S. House of Representatives Committee on Natural Resources October 7, 2015, document request (attached as Exhibit 1 to this FOIA request).
4. All records or communications (including but not limited to emails and voicemails) received from or sent to any member of the United States Congress or his or her staff and/or a congressional Committee and/or its staff referring or relating to the Northeast Canyons and Seamounts Marine National Monument.
5. All records or communications (including but not limited to emails and voicemails) received from or sent to any member of the United States Congress or his or her staff and/or a congressional Committee and/or its staff referring or relating to the use of the Antiquities Act to create a national monument in the Atlantic Ocean.
6. All records or communications referring or relating to an Oversight Hearing on Marine National Monument Designations held by the U.S. House of Representatives Committee on Natural Resources, Subcommittee on Water, Power and Oceans on September 29, 2015.

Request for a Public Interest Fee Waiver

CoA Institute requests a waiver of any and all applicable fees. FOIA and applicable regulations provide that the agency shall furnish requested records without or at reduced charge 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

⁴ For purposes of this request, the term “present” should be construed as the date on which the agency begins its search for responsive records. *See Pub. Citizen v. Dep’t of State*, 276 F.3d 634 (D.C. Cir. 2002). The term “record” means the entirety of the record any portion of which contains responsive information. *See Am. Immigration Lawyers Ass’n v. Exec. Office for Immigration Review*, No. 15-5201, 2016 WL 4056405, at *7-9 (D.C. Cir. July 29, 2016) (admonishing agency for withholding information as “non-responsive” because “nothing in the statute suggests that the agency may parse a responsive record to redact specific information within it even if none of the statutory exemptions shields that information from disclosure”).

primarily in the commercial interest of the requester.”⁵ In this case, particularly given concerns that the Antiquities Act process lacks transparency and any meaningful opportunity for public participation, as well as related concerns about collusion between favored outside special interest groups and Administration officials, there is significant public interest educating the public at large about the Administration’s use of the Antiquities Act of 1906. The broad public interest in better understanding the Administration’s Antiquities Act process is underscored by the extensive media coverage its Presidential Proclamations have received,⁶ as well as numerous congressional hearings relating to the Administration’s expansive interpretation and aggressive use of the Antiquities Act.

CoA Institute has both the intent and ability to make the results of this request available to a reasonably broad public audience through various media. Its staff has significant experience and expertise in government oversight, investigative reporting, and federal public interest litigation. These professionals will analyze the information responsive to this request, use their editorial skills to turn raw materials into a distinct work, and share the resulting analysis with the public, whether through the Institute’s regularly published online newsletter, memoranda, reports, or press releases.⁷ In addition, as CoA Institute is a non-profit organization as defined under Section 501(c)(3) of the Internal Revenue Code, it has no commercial interest in making this request.

Request To Be Classified as a Representative of the News Media

For fee status purposes, CoA Institute also qualifies as a “representative of the news media” under FOIA.⁸ As the D.C. Circuit recently held, the “representative of the news media” test is properly focused on the requestor, not the specific FOIA request at issue.⁹ CoA Institute satisfies this test because it gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience.¹⁰ Although it is not required by the statute, CoA Institute gathers the news it regularly

⁵ 5 U.S.C. § 552(a)(4)(A)(iii); *see also Cause of Action v. Fed. Trade Comm’n*, 799 F.3d 1108, 1115-19 (D.C. Cir. 2015) (discussing proper application of public-interest fee waiver test).

⁶ *See, e.g.*, Richard Perez-Pena, “Obama Designates National Monument in Maine, to Dismay of Some,” *New York Times* (Aug. 24, 2016), http://www.nytimes.com/2016/08/25/us/obama-maine-katahdin-woods-and-waters.html?_r=0 (last visited Oct. 3, 2016); Cynthia Barnett, “Obama Creates Connecticut-Size Ocean park, First in Atlantic,” *National Geographic* (Sept. 15, 2016), at <http://news.nationalgeographic.com/2016/09/obama-creates-a-monument-bigger-than-connecticut-in-the-atlantic/> (last visited Oct. 3, 2016); “The Antiquities Act and America’s National Parks,” *U.S. News* (Aug. 19, 2016), at <http://www.usnews.com/news/articles/2016-08-19/the-antiquities-act-and-americas-national-parks> (Oct. 3, 2016); Donald J. Kochan, “Midnight Monuments,” *The Hill* (Oct. 3, 2016), at <http://64.147.104.30/blogs/congress-blog/energy-environment/298916-midnight-monuments> (last visited Oct. 3, 2016).

⁷ *See also Cause of Action*, 799 F.3d at 1125-26 (holding that public interest advocacy organizations may partner with others to disseminate their work).

⁸ 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 16 C.F.R. § 4.11(b)(6).

⁹ *See Cause of Action*, 799 F.3d at 1121.

¹⁰ CoA Institute notes that the agency’s definition of “representative of the news media” (16 C.F.R. § 4.11(b)(6)) is in conflict with the statutory definition and controlling case law. The agency has improperly retained the outdated “organized and operated” standard that Congress abrogated when it provided a statutory definition in the OPEN Government Act of 2007. *See Cause of Action*, 799 F.3d at 1125 (“Congress . . .

publishes from a variety of sources, including FOIA requests, whistleblowers/insiders, and scholarly works. It does not merely make raw information available to the public, but rather distributes distinct work products, including articles, blog posts, investigative reports, newsletters, and congressional testimony and statements for the record.¹¹ These distinct works are distributed to the public through various media, including the Institute's website, Twitter, and Facebook. CoA Institute also provides news updates to subscribers via e-mail.

The statutory definition of a "representative of the news media" contemplates that organizations such as CoA Institute, which electronically disseminate information and publications via "alternative media[,] shall be considered to be news-media entities."¹² In light of the foregoing, numerous federal agencies have appropriately recognized the Institute's news media status in connection with its FOIA requests.¹³

omitted the 'organized and operated' language when it enacted the statutory definition in 2007. . . . [Therefore,] there is no basis for adding an 'organized and operated' requirement to the statutory definition." Under either definition, however, CoA Institute qualifies as a representative of the news media.

¹¹ See, e.g., *Cause of Action Testifies Before Congress on Questionable White House Detail Program* (May 19, 2015), available at <http://coainst.org/2aJ8UAA>; COA INSTITUTE, 2015 GRADING THE GOVERNMENT REPORT CARD (Mar. 16, 2015), available at <http://coainst.org/2as088a>; *Cause of Action Launches Online Resource: ExecutiveBranchEarmarks.com* (Sept. 8, 2014), available at <http://coainst.org/2aJ8sm5>; COA INSTITUTE, GRADING THE GOVERNMENT: HOW THE WHITE HOUSE TARGETS DOCUMENT REQUESTERS (Mar. 18, 2014), available at <http://coainst.org/2aFWxUZ>; COA INSTITUTE, GREENTECH AUTOMOTIVE: A VENTURE CAPITALIZED BY CRONYISM (Sept. 23, 2013), available at <http://coainst.org/2apTwqP>; COA INSTITUTE, POLITICAL PROFITEERING: HOW FOREST CITY ENTERPRISES MAKES PRIVATE PROFITS AT THE EXPENSE OF AMERICAN TAXPAYERS PART I (Aug. 2, 2013), available at <http://coainst.org/2aJh901>.

¹² 5 U.S.C. § 552(a)(4)(A)(ii)(II).

¹³ See, e.g., FOIA Request 1355038-000, Fed. Bureau of Investigation, Dep't of Justice (Aug. 2, 2016); FOIA Request CFPB-2016-222-F, Consumer Fin. Prot. Bureau (Apr. 20, 2016); FOIA Request CFPB-2016-207-F, Consumer Fin. Prot. Bureau (Apr. 14, 2016); FOIA Request 796939, Dep't of Labor (Mar. 7, 2016); FOIA Request 2015-HQFO-00691, Dep't of Homeland Sec. (Sept. 22, 2015); FOIA Request F-2015-12930, Dept. of State (Sept. 2, 2015); FOIA Request 14-401-F, Dep't of Educ. (Aug. 13, 2015); FOIA Request HQ-2015-01689-F, Dep't of Energy (Aug. 7, 2015); FOIA Request 2015-OSEC-04996-F, Dep't of Agric. (Aug. 6, 2015); FOIA Request OS-2015-00419, Dep't of Interior (Aug. 3, 2015); FOIA Request 780831, Dep't of Labor (Jul 23, 2015); FOIA Request 15-05002, Sec. & Exch. Comm'n (July 23, 2015); FOIA Request 145-FOI-13785, Dep't of Justice (Jun. 16, 2015); FOIA Request 15-00326-F, Dep't of Educ. (Apr. 08, 2015); FOIA Request 2015-26, Fed. Energy Regulatory Comm'n (Feb. 13, 2015); FOIA Request HQ-2015-00248, Dep't of Energy (Nat'l Headquarters) (Dec. 15, 2014); FOIA Request F-2015-106, Fed. Commc'n Comm'n (Dec. 12, 2014); FOIA Request HQ-2015-00245-F, Dep't of Energy (Dec. 4, 2014); FOIA Request F-2014-21360, Dep't of State, (Dec. 3, 2014); FOIA Request LR-2015-0115, Nat'l Labor Relations Bd. (Dec. 1, 2014); FOIA Request 201500009F, Exp.-Imp. Bank (Nov. 21, 2014); FOIA Request 2015-OSEC-00771-F, Dep't of Agric. (OCIO) (Nov. 21, 2014); FOIA Request OS-2015-00068, Dep't of Interior (Office of Sec'y) (Nov. 20, 2014); FOIA Request CFPB-2015-049-F, Consumer Fin. Prot. Bureau (Nov. 19, 2014); FOIA Request GO-14-307, Dep't of Energy (Nat'l Renewable Energy Lab.) (Aug. 28, 2014); FOIA Request HQ-2014-01580-F, Dep't of Energy (Nat'l Headquarters) (Aug. 14, 2014); FOIA Request LR-20140441, Nat'l Labor Relations Bd. (June 4, 2014); FOIA Request 14-01095, Sec. & Exch. Comm'n (May 7, 2014); FOIA Request 2014-4QFO-00236, Dep't of Homeland Sec. (Jan. 8, 2014); FOIA Request DOC-OS-2014-000304, Dep't of Commerce (Dec. 30, 2013); FOIA Request 14F-036, Health Res. & Serv. Admin. (Dec. 6, 2013); FOIA Request 2013-073, Dep't of Homeland Sec. (Apr. 5, 2013); FOIA Request 2012-RMA-02563F, Dep't of

Record Preservation Requirement

CoA Institute requests that the disclosure officer responsible for the processing of this request issue an immediate hold on all records responsive, or potentially responsive, to this request, so as to prevent their disposal until such time as a final determination has been issued on the request and any administrative remedies for appeal have been exhausted. It is unlawful for an agency to destroy or dispose of any record subject to a FOIA request.¹⁴

Record Production and Contact Information

In an effort to facilitate document review, please provide the responsive documents in electronic form in lieu of a paper production. If a certain portion of responsive records can be produced more readily, CoA Institute requests that those records be produced first and the remaining records be produced on a rolling basis as circumstances permit.

If you have any questions about this request, please contact us by telephone at (202) 499-4232 or by email at kara.mckenna@causeofaction.org or michael.pepson@causeofaction.org. Thank you for your attention to this matter.

CAUSE OF ACTION INSTITUTE



MICHAEL PEPSON
COUNSEL



KARA E. MCKENNA
COUNSEL

Agric. (May 3, 2012); FOIA Request 2012-00270, Dep't of Interior (Feb. 17, 2012); FOIA Request 12-00455-F, Dep't of Educ. (Jan. 20, 2012).

¹⁴ See 15 C.F.R. § 4.3(d) ("Components shall not dispose of records while they are the subject of a pending request, appeal, or lawsuit under the FOIA."); 36 C.F.R. § 1230.3(b) ("Unlawful or accidental destruction (also called unauthorized destruction) means . . . disposal of a record subject to a FOIA request, litigation hold, or any other hold requirement to retain the records."); *Chambers v. Dep't of the Interior*, 568 F.3d 998, 1004-05 (D.C. Cir. 2009) ("[A]n agency is not shielded from liability if it intentionally transfers or destroys a document after it has been requested under the FOIA or the Privacy Act."); *Judicial Watch, Inc. v. Dep't of Commerce*, 34 F. Supp. 2d 28, 41-44 (D.D.C. 1998).

Exhibit 1

ROB BISHOP, UT
CHAIRMAN
DON YOUNG, AK
LOUIE GOHMERT, TX
DOUG LAMBORN, CO
ROBERT J. WITTMAN, VA
JOHN FLEMING, LA
TOM McCLINTOCK, CA
GLENN THOMPSON, PA
CYNTHIA LUMMIS, WY
DAN BENISHEK, MI
JEFF DUNCAN, SC
PAUL A. GOSAR, AZ
RAÚL R. LABRADOR, ID
DOUG LAMALFA, CA
JEFF DENHAM, CA
PAUL COOK, CA
BRUCE WESTERMAN, AR
GARRET GRAVES, LA
DAN NEWHOUSE, WA
RYAN ZINKE, MT
JODY HICE, GA
AUMUA AMATA COLEMAN RADEWAGEN, AS
TOM MACARTHUR, NJ
ALEX MOONEY, WV
CRESENT HARDY, NV
DARIN LAHOOD, IL

JASON KNOX
STAFF DIRECTOR

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

October 7, 2015

RAÚL M. GRIJALVA, AZ
RANKING MEMBER
GRACE F. NAPOLITANO, CA
MADELEINE Z. BORDALLO, GU
JIM COSTA, CA
GREGORIO KILILI CAMACHO SABLAN, CNMI
NIKI TSONGAS, MA
PEDRO R. PIERLUISI, PR
JARED HUFFMAN, CA
RAUL RUIZ, CA
ALAN LOWENTHAL, CA
MATTHEW CARTWRIGHT, PA
DON BEYER, VA
NORMA J. TORRES, CA
DEBBIE DINGELL, MI
RUBEN GALLEGO, AZ
LOIS CAPPS, CA
JARED POLIS, CO
WM. LACY CLAY, MO

DAVID WATKINS
DEMOCRATIC STAFF DIRECTOR

Ms. Christy Goldfuss
Managing Director
Council on Environmental Quality
730 Jackson Place, NW
Washington, D.C. 20460

Ms. Eileen Sobeck
Assistant Administrator for NOAA Fisheries
1315 East-West Highway
Silver Spring, MD 20910

Dear Ms. Goldfuss and Ms. Sobeck:

The House Natural Resources Water, Power and Oceans Subcommittee recently held an oversight hearing on the potential designation of marine national monuments, including one off of the coast of New England.¹ We are sending this letter to request further information about the Administration's designation of new marine monuments or expansion of existing marine monuments.

It is concerning that the Administration has made available very little information about the number or scope of these potential future designations. During the aforementioned hearing, one witness criticized the National Oceanic and Atmospheric Administration's (NOAA) September 15, 2015 town hall meeting on the potential designation off of New England as a "charade,"² because so few details regarding the potential monument designation were provided at that meeting. NOAA officials limited stakeholders opportunities to express their concerns about the permanent impacts of the designation to just two minutes.³ When asked at the Subcommittee's hearing if there were any plans to hold additional public stakeholder meetings

¹ The House Water, Power and Oceans Subcommittee held an oversight hearing entitled "*The Potential Implications of Pending Marine National Monument Designations*" on September 29, 2015

² Testimony of Mr. Jon Williams, Owner, The Atlantic Red Crab Company, New Bedford, Massachusetts before the House Water, Power and Oceans Subcommittee Oversight Hearing on "*The Potential Implications of Pending Marine National Monument Designations*", p. 1

³ Id

on the possible marine national monument designation, a NOAA official bluntly responded that the agency is not required to gather any public input under the Antiquities Act.⁴

Further, the day after the Subcommittee's hearing, a chain of emails were publicly released which raise serious questions regarding the Administration's plans for a new marine monument designation and the potential involvement of a number of outside interests. Specifically, the emails show representatives from the Conservation Law Foundation (CLF), the Natural Resources Defense Council, and Pew warning their members to avoid talking to the "outside world" about the organizations' efforts to influence the Administration to announce a Marine National Monument off of New England during the "Our Ocean Conference" in Chile.⁵ After these emails were publicized, the President of the Conservation Law Foundation defended the communications, stating they did not want to "give the opposition more of an advantage" and that "[t]he more time they had, the more opportunity [the opposition] would have...to organize against it."⁶

The CLF President's statements, along with the potential collusion suggested in the emails, are very troubling and speak to the Administration's need for greater transparency regarding potential future marine monument designations or revisions. In order to foster such transparency, please provide the following no later than October 30, 2015:

1. A complete list of the names, positions, and agencies of all Executive branch staff who have been assigned to work on any and all current and future national marine monuments, including the potential New England designation;
2. Records of all meetings regarding the designation or revision of national monuments between the Executive branch staff identified in Request 1 and any third-party organizations or individuals;
3. A full and complete accounting of the direct and indirect costs incurred as a result of all such meetings described in Request 2, as well as activities, including correspondence, related to such potential future designations;
4. All communications, documents, emails, correspondence, and/or Memoranda related to such designations (or other revisions or expansions) to and from Executive branch agency staff;

⁴ Statement made by Dr. Holly Bamford, Acting Assistant Secretary for Conservation and Management, National Ocean Service, before the House Water, Power and Oceans Subcommittee Oversight Hearing on "*The Potential Implications of Pending Marine National Monument Designations*".

⁵ <http://www.eenews.net/stories/1060025612>

⁶ Id.

5. All internal and external Executive branch communications, including, but not limited to, communications with non-governmental organizations, related to the September 15, 2015 NOAA Town Hall meeting in Providence, Rhode Island;
6. All internal and external Executive branch communications and documents related to proposed national marine monuments and the "Our Oceans Conference."

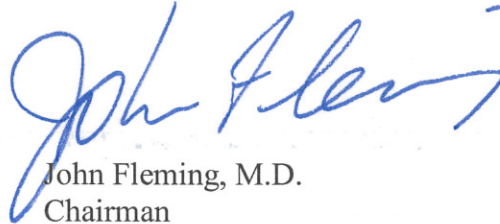
As witnesses indicated in testimony before the Water, Power and Oceans Subcommittee hearing, the public input process surrounding the designation or expansion of national marine monuments has been woefully inadequate, or even nonexistent. The American people and those impacted by such potential designations deserve the right to know now what the federal government is or has been doing behind closed doors, given that a true public process simply does not exist under current law or practice. We hope you agree and stand ready to work with you to remedy this alarming situation.

Enclosed are instructions for complying with Committee requests. Please have your staff contact Kiel Weaver, Staff Director for the Water, Power and Oceans Subcommittee, at (202) 225-8331 with any questions.

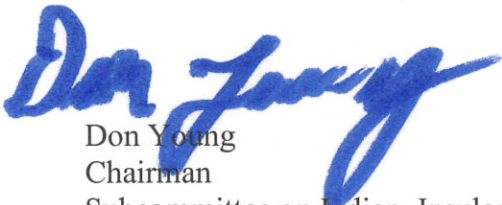
Sincerely,



Rob Bishop
Chairman
House Natural Resources Committee



John Fleming, M.D.
Chairman
Subcommittee on Water, Power and Oceans



Don Young
Chairman
Subcommittee on Indian, Insular, and
Alaska Native Affairs



Aumua Amata Coleman Radewagen
Vice-Chairman
Subcommittee on Indian, Insular, and
Alaska Native Affairs

cc: The Honorable Raul Grijalva, Ranking Member, Committee on Natural Resources