2010-00482 — W: 8-11

NATURAL RESOURCES DEFENSE COUNCIL

Via Federal Express (with enclosures) and Electronic Mail to:

FOIA Officer
National Oceanic and Atmospheric Administration
Public Reference Facility (OFA56)
1315 East West Highway (SSMC3)
Room 10730
Silver Spring, MD 20910
FOIA@noaa.gov

NOAA Fisheries Service
Southeast Regional Office
263 13th Avenue South
Saint Petersburg, Florida 33701
Phone: (727) 824-5301
Beverly.Smith@noaa.gov

July 13, 2010

Re: FOIA Request for Records Relating to the BP/Deepwater Horizon Gulf of Mexico Oil Spill

Dear FOIA Officer:

On behalf of the Natural Resources Defense Council ("NRDC"), I write to request disclosure of records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and applicable Department of Commerce ("DOC") regulations at 15 C.F.R. pt. 4.

I. Description of Records Sought

(a) Please produce records[1] of the following types in the National Oceanic and Atmospheric Administration's ("NOAA's") possession, custody or control:

[1] The term "records" is used herein to mean anything denoted by the use of that word or its singular form in the text of FOIA. The term includes correspondence, minutes of meetings, memoranda, notes, emails, notices, facsimiles, charts, tables, presentations, orders, filings, and other writings (handwritten, typed, electronic, or otherwise produced, reproduced, or stored). It also includes "electronic records and information, audiotapes, videotapes, and photographs." 15 C.F.R. § 4.3(a). This request seeks responsive records in the custody of any NOAA office, including, but not limited to, NOAA Headquarters offices, and specifically including NOAA offices in possession of records relating to the BP/Deepwater Horizon Gulf of Mexico oil spill. This request also applies to responsive records provided by or exchanged with BP in relation to the BP/Deepwater Horizon Gulf of Mexico oil spill.

1. Data and monitoring records (including without limitation records reflecting sampling dates, locations, sampling equipment, constituents sampled, sampling results, and applicable detection limits)
    a. Regarding sampling data of Louisiana crude oil from the Deepwater Horizon well;
    b. Regarding sampling data of Louisiana crude oil mixed with dispersant Corexit 9500 and 9527 located on surface and in subsea waters;
    c. Regarding air and water sampling data of dispersants Corexit 9500 and 9527;
    d. Regarding air sampling data conducted offshore;
    e. Regarding sampling data of water, soil (including benthic sediment), fish and invertebrate tissue in response to the spill;
    f. Regarding sampling data of fish and seafood for oil contamination
    g. Related to modeling of wind patterns to estimate air contaminant dispersion patterns and trajectories;
2. Procedures, policies and plans
    a. Related to monitoring fish and seafood for oil contamination;
    b. Related to assessing health risks posed by consumption of fish and seafood caught in the Gulf of Mexico;
    c. Related to procedures for declaring fishing and seafood area closures;
    d. Related to coordinating federal and state jurisdictions for fishing and seafood monitoring and criteria for area closures.
    e. Related to water column, sediment and soil monitoring;
    f. Related to conducting air monitoring in offshore areas;
    g. Related to health and safety assessments for NOAA employees and contractors working in offshore areas.

II. Request for a Fee Waiver

NRDC requests that NOAA waive the fee that it would otherwise charge for search and production of the records described above. FOIA dictates that requested records be provided without 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 primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 15 C.F.R. § 4.11(k)(1)(i)-(ii). The requested disclosure would meet both of these requirements. In addition, NRDC qualifies as "a representative of the news media" entitled to a reduction of fees under FOIA. 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* 15 C.F.R. § 4.11(b)(6), (c)(1)(iii).

A. NRDC Satisfies the First Fee Waiver Requirement

The disclosure requested here would be "likely to contribute significantly to public understanding of the operations or activities of the government." 5 U.S.C. § 552(a)(4)(A)(iii); 15 C.F.R. § 4.11(k)(1)(i). Each of the four factors used by NOAA to evaluate the first fee waiver requirement indicates that a fee waiver is appropriate for this request. *See* 15 C.F.R. § 4.11(k)(2).

1. Subject of the request

The records requested here will shed light on NOAA's involvement in and oversight over the BP/Deepwater Horizon Gulf of Mexico oil spill. The requests in this letter are designed to seek materials that will contribute significantly to public understanding of the extent of the spill, the known and potential impacts of the spill and the mitigation measures that have been taken, and planning for the response to the spill, and the nature and adequacy of the government's response to the spill. The requested records thus directly "concern[ ] the operations or activities of the Government." *Id.* § 4.11(k)(2)(i).

2. Informative value of the information to be disclosed

The requested records are "'likely to contribute to'" the public's understanding of government operations and activities, *Id.* § 4.11(k)(2)(ii). The public does not currently possess comprehensive information regarding the government's role in addressing public health and environmental concerns related to the BP/Deepwater Horizon Gulf of Mexico oil spill and the response to the spill. The records requested are not currently in the public domain, and their disclosure would therefore be meaningfully informative with respect to the BP/Deepwater Horizon Gulf of Mexico oil spill and the response to the spill.

3. Contribution to an understanding of the subject by the public is likely to result from disclosure.

Because NRDC is a "representative of the news media," as explained in Part II.C below, NOAA must presume that this disclosure is likely to contribute to public understanding of its subject. *Id.* § 4.11(k)(2)(iii). In any event, however, NRDC's extensive communications capabilities and proven history of dissemination of information of public interest obtained from FOIA records requests indicate that NRDC is likely to reach a broad audience of interested persons with any relevant and newsworthy information obtained from the present request.

NRDC intends to disseminate any newsworthy information in the released records and its analysis of such records to its member base and to the broader public, through one or more of the many communications channels referenced below. NRDC's more than 1.3 million members and online activists are a "broad audience of persons interested in the

subject" of the BP/Deepwater Horizon Gulf of Mexico oil spill and the response to the spill, *id.*, and when combined with NRDC's communications to the public at large, the likely audience of interested persons to be reached is certainly "reasonably broad." *Id.* As NRDC's long history of incorporating information obtained through FOIA into reports, articles and other communications illustrates, NRDC is well prepared to convey to the public any relevant information it obtains through this records request.

NRDC has the ability to disseminate information on the BP/Deepwater Horizon Gulf of Mexico oil spill through its website (http://www.nrdc.org) (homepage at Attachment 1), which is updated daily and draws approximately 2.7 million page views and 800,000 visits per month; future issues of *OnEarth* magazine (excerpts from sample issue at Attachment 2), which is read by approximately 450,000 individuals through subscriptions, sales at newsstands and bookstores, and access free of charge at http://www.nrdc.org/onearth; its *Nature's Voice* newsletter on current environmental issues, distributed five times a year to NRDC's more than one million members and online activists and available online at http://www.nrdc.org/naturesvoice/default.asp (sample issue at Attachment 3); and other newsletters and alerts, including the following. NRDC's *Earth Action* email list has more than 145,000 subscribers who receive biweekly information on urgent environmental issues (sample email at Attachment 4). Information disseminated to *Earth Action* email subscribers is also available online at NRDC's Action Center, http://www.nrdc.org/action/default.asp (Attachment 5). *This Green Life* is NRDC's electronic newsletter on environmentally sustainable living. It is distributed by email to 63,000 subscribers (sample email at Attachment 6) and made available online at http://www.nrdc.org/thisgreenlife/default.asp (Attachment 7). *NRDC Online* is a semimonthly electronic environmental newsletter distributed by e-mail to 35,000 subscribers, at http://www.nrdc.org/newsletter (Attachment 8). NRDC also maintains a staff blogging site, "Switchboard," at http://switchboard.nrdc.org (Attachment 9), which is updated daily and features more than 100 bloggers writing about current environmental issues. The blogs draw approximately 75,000 page views and 45,000 visits per month; Switchboard's RSS feeds have approximately 2,500 subscribers; and Switchboard posts appear on websites of other major internet media outlets, such as "The Huffington Post," at http://www.huffingtonpost.com (sample post at Attachment 10). NRDC's profiles on "Facebook," at http://www.facebook.com/nrdc.org (Attachment 11), and "Twitter," at http://www.twitter.com/nrdc (Attachment 12), are updated daily and have approximately 62,000 fans and 8,900 followers, respectively.

NRDC issues press releases; participates in press conferences and interviews with reporters and editorial writers; and has nearly thirty staff members dedicated to communications work, *see* "Communications" staff list at http://www.nrdc.org/about/staff.asp (Attachment 13). NRDC employees provide Congressional testimony; appear on television, radio and web broadcasts and at conferences; and contribute to numerous national newspapers, magazines, academic journals, other periodicals, and books. *See, e.g.*, Attachments 14 (testimony of David Doniger, NRDC Climate Center Policy Director, before United States House Subcommittee on Energy and Environment, Apr. 24, 2009), 15 (transcript, "Pollution Still a Hazard to U.S. Beaches," CBS, *CBS NEWS*, July 29, 2009 (featuring NRDC Water

Program Co-Director Nancy Stoner)), 16 (transcript, "Companies Quit U.S. Chamber Over Climate Policy," National Public Radio, Oct. 6, 2009 (featuring NRDC Climate Campaign Director Pete Altman)), 17 (List of KCRW appearances by NRDC China Program Director Barbara Finamore, NRDC Water Program Senior Policy Analyst Barry Nelson, and NRDC Climate Center Director Dan Lashof), 18 (conference brochure, "World Business Summit on Climate Change," May 24-26, 2009 (featuring NRDC Director for Market Innovation Rick Duke at 9)), 19 (article, "For climate pact, a step back is sold as first step," *Chicago Tribune*, Nov. 22, 2009 (featuring NRDC International Climate Policy Director Jake Schmidt)), 20 (article, "Court Showdown Looms for NYC Electronics Recycling Law," *New York Times*, Jan. 5, 2010 (featuring NRDC Attorney Kate Sinding)), 21 (article, "Environmental groups try to block parts of California's green building code," *Los Angeles Times*, Jan. 11, 2010), 22 (article, "An Inconceivable Truth," *Vogue*, Aug. 2007 (featuring NRDC Public Health Scientist Sarah Janssen)), 23 (article, "Green State of the Union," *Deliver Magazine*, Sept. 2009 (written by NRDC communications staff member Francesca Koe)), 24 (article, "Is there a 'proper level' of compliance with environmental law?" *Trends: ABA Section of Environment, Energy, and Resources Newsletter*, Jan./Feb. 2008 (authored by NRDC Senior Attorney Michael Wall)), 25 (Research article, "Outcomes of the California Ban on Pharmaceutical Lindane: Clinical and Ecological Impacts," *Environmental Health Perspectives*, March 2008 (co-authored by NRDC Public Health Scientist Sarah Janssen and NRDC Public Health Senior Scientist Gina Solomon)), 26 (publisher's notes to *Clean Energy Common Sense: An American Call to Action on Global Climate Change* (Rowman & Littlefield Publishers, Inc. 2009), by NRDC President Frances Beinecke), and 27 (http://www.nrdc.org/publications, NRDC: Publications in Print, Jan. 12, 2010); *see also* Attachments 28-50, discussed below.

NRDC routinely uses FOIA to obtain information from federal agencies that NRDC legal and scientific experts analyze in order to inform the public about a variety of issues, including energy policy, climate change, wildlife protection, nuclear weapons, pesticides, drinking water safety, and air and water quality. Some specific examples are provided below.

(1) In October 2008, NRDC issued a report assessing the degree of enforcement of California's environmental and public health laws. This report, *An Uneven Shield: The Record of Enforcement and Violations Under California's Environmental, Health, and Workplace Safety Laws*, examined data on known violations and law enforcement responses under six critical pollution, health, and workplace safety programs (Attachment 28). Much of the data analyzed in the study was obtained through formal FOIA requests. *See id.* at pp. 4, 16.

(2) NRDC obtained, through a court-enforced FOIA request, records of the operations of the Bush administration's Energy Task Force, headed by Vice President Dick Cheney. It made those records available, along with analysis of selected excerpts and links to the administration's index of withheld documents, on NRDC's website at

http://www.nrdc.org/air/energy/taskforce/tfinx.asp (Attachment 29). NRDC's efforts helped to inform the public about an issue that, even before the records' release, had attracted considerable attention. *See, e.g.*, Elizabeth Shogren, "Bush Gets One-Two Punch on Energy," *L.A. Times*, Mar. 28, 2002, at A22 (Attachment 30); Bennett Roth, "Houston Energy-Drilling Firm Appears in Documents from Energy Department," *Houston Chronicle*, Apr. 12, 2002, (Attachment 31).

(3) NRDC obtained, through a FOIA request, a memorandum by ExxonMobil advocating the replacement of a highly respected atmospheric scientist, Dr. Robert Watson, as the head of the Intergovernmental Panel on Climate Change. NRDC used this memorandum to help inform the public about what may have been behind the decision by the Bush administration to replace Dr. Watson. *See* NRDC Press Release and attached Exxon memorandum, "Confidential Papers Show Exxon Hand in White House Move to Oust Top Scientist from International Global Warming Panel," Apr. 3, 2002, (Attachment 32); Elizabeth Shogren, "Charges Fly Over Science Panel Pick," *L.A. Times*, Apr. 4, 2002, at A19 (Attachment 33).

(4) NRDC incorporated information obtained through FOIA into a 2005 report, published and provided free of charge at NRDC's website, *see* http://www.nrdc.org/wildlife/marine/sound/contents.asp, on the impacts of military sonar and other industrial noise pollution on marine life. *See Sounding the Depths II: The Rising Toll of Sonar, Shipping and Industrial Ocean Noise on Marine Life* (Nov. 2005) (update to 1999 report) (Attachment 34). Since the report's publication, the sonar issue has continued to attract widespread public attention. *See, e.g.*, "Protest Raised over New Tests of Naval Sonar," National Public Radio, *All Things Considered*, July 24, 2007 (transcript at Attachment 35).

(5) NRDC scientists have used information obtained through FOIA to publish analyses of the United States' and other nations' nuclear weapons programs. In 2004, for example, NRDC scientists incorporated information obtained through FOIA into a feature article on the United States' plans to deploy a ballistic missile system and the implications for global security. *See* Hans M. Kristensen, Matthew G. McKinzie, and Robert S. Norris, "The Protection Paradox," *Bulletin of Atomic Scientists*, Mar./Apr. 2004 (Attachment 36).

(6) NRDC has used White House documents obtained through FOIA to inform the public about EPA's failures to protect wildlife and workers from the pesticide atrazine in the face of industry pressure to keep atrazine on the market. *See* http://www.nrdc.org/health/pesticides/natrazine.asp (Attachment 37); *see also* William Souder, "It's Not Easy Being Green: Are Weed-Killers Turning Frogs Into Hermaphrodites?," *Harper's*

Bazaar, Aug. 1, 2006 (referencing documents obtained and posted online by NRDC) (Attachment 38).

(7) NRDC has obtained, through FOIA, information on the levels of arsenic in drinking water supplies across the country. NRDC incorporated much of the information into a report, *Arsenic and Old Laws* (2000), printed and made available online through NRDC's website, *see* http://www.nrdc.org/water/drinking/arsenic/aolinx.asp (Attachment 39), and provided analysis describing its significance and guiding interested members of the public on how to learn more about arsenic in their own drinking water supplies. *Id.*; *see also* Steve LaRue, "EPA Aims to Cut Levels of Arsenic in Well Water," *San Diego Union-Tribune*, June 5, 2000, at B1 (referencing NRDC report) (Attachment 40).

(8) In 2000, NRDC used information obtained through FOIA to publish a report analyzing the impacts of manure pollution from large livestock feedlots on human health, fish and wildlife. *See* NRDC, *Spills & Kills*, Aug. 2000, (Attachment 41).

(9) In 1999, NRDC obtained, through FOIA, a Defense Department document, *History of the Custody and Deployment of Nuclear Weapons: July 1945 through September 1977*. The document attracted significant press attention once it was disclosed. *See, e.g.*, Walter Pincus, "Study Says U.S. Secretly Placed Bombs; Cold War Deployments Affected Mostly Allies," *Washington Post* (Oct. 20, 1999) at A3 (Attachment 42). One of NRDC's nuclear scientists, Robert Norris, published a detailed analysis of this document explaining its significance to the public. *See* Robert S. Norris, William M. Arkin, and William Burr, "Where They Were," *Bulletin of Atomic Scientists*, Nov./Dec. 1999 (Attachment 43).

(10) In 1996, NRDC obtained, through FOIA, test results regarding lead levels in the District of Columbia's drinking water supplies. NRDC made the test results public along with analysis explaining the significance of the results. *See* D'Vera Cohn, "Tap Water Safeguards Still Stalled; City Failed to Tell Some Residents of Excess Lead Contamination," *Washington Post*, Apr. 18, 1996, at J1 (Attachment 44).

(11) In 1989, NRDC obtained, through FOIA, testimony previously suppressed by the first Bush administration, by federal experts who opposed oil drilling off the coasts of California and Florida. *See* Larry Liebert, "Oil Testimony Reportedly Quashed; Environmentalists say Federal Experts Pressured by Bush," *Orange County Register*, Oct. 5, 1989, at A6 (Attachment 45).

(12) In 1988, NRDC obtained, through FOIA, a report by the U.S. Fish and Wildlife Service that declared that the government's review of offshore oil

drilling in Northern California was incomplete and overly optimistic. Reagan administration officials had tried to keep the report secret and then repudiated it upon its release. *See* Eric Lichtblau, "Federal Report Blasts Offshore Oil Studies," *L.A. Times*, June 4, 1988, at A32 (Attachment 46).

(13) In 1982, NRDC obtained, through a FOIA request, an EPA memorandum stating that most air pollution monitors have repeatedly underestimated levels of toxic lead in the air. NRDC used the memorandum to inform the public about the consequences of EPA's proposal to relax restrictions on lead in gasoline. *See* Sandra Sugawara, "Lead in Air is Undermeasured, EPA Section Chief's Memo Says," *Washington Post*, July 11, 1982, at A6 (Attachment 47).[2]

As these examples demonstrate, NRDC has a proven ability to digest and quickly disseminate information gleaned from FOIA requests to a broad audience of interested persons. NRDC intends to use a mix of the techniques it has used before to do just that with respect to the requested information about the BP/Deepwater Horizon Gulf of Mexico oil spill. Therefore, the requested records disclosure is likely to contribute to the public's understanding of the subject.

4. Significance of the contribution to public understanding

The records requested shed light on a matter of considerable public interest and concern: the recent BP/Deepwater Horizon Gulf of Mexico oil spill. The oil spill and the response to it have been the subject of extensive media coverage, including coverage that reflects NRDC experts' analysis of the health and ecological risks posed by the spill and the government's spill repsonse. *E.g.*, Exhibit A (Justin Gillis, *Plumes of Oil Below Surface Raise New Concerns*, N.Y. Times, June 9, 2010, at A14 (describing newly released analyses, funded in part by NOAA, of deep sea water from the Gulf of Mexico)); Exhibit B (Joel Auchenbach & Jerry Markon, *Obama Administration Moves to Distance Itself from BP on Oil Spill Response*, Wash. Post, June 1, 2010, at A1 (describing possibility of criminal investigation into BP and problems with response to "crisis")); Exhibit C (James C. McKinley Jr. & Leslie Kaufman, *New Ways to Drill, Old Methods for Cleanup*, N.Y. Times, May 11, 2010, at A12 (describing risks of deepwater drilling and plans to investigate extent of precautions taken against them)). NRDC has already contributed to the public's understanding of issues including the human health risks of exposure to oil and dispersants, the impacts of oil on ecosystems and the food chain, and the regulations that govern the federal government's response to the spill. *E.g.*, Exhibit D (Rob Stein, *Attention Turns to Spill-Related Health Risks*, Wash. Post, May 30, 2010, at A5 (quoting Gina Solomon, Senior Scientist at NRDC, in story about human health risks posed by oil spill cleanup and by impacts of oil spill on food chain)); Exhibit E (Lisa

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[2] Information NRDC obtained through FOIA requests resulted in the following articles, in addition to those referenced above: Felicity Barringer, "Science Panel Issues Report on Exposure to Pollutant," *New York Times*, Jan. 11, 2005, (Attachment 48); Katharine Q. Seelye, "Draft of Air Rule is Said to Exempt Many Old Plants," *New York Times*, Aug. 22, 2003 (Attachment 49); Don Van Natta, Jr., "E-Mail Suggests Energy Official Encouraged Lobbyist on Policy," *New York Times*, Apr. 27, 2002 (Attachment 50).

Speer, Op-Ed, *After the Spill, Clean Up Regulations Too*, Politico, May 19, 2010, http://www.politico.com/news/stories/0510/37441.html (opinion piece by NRDC Oceans Director)); Exhibit F (Marisa Taylor & Renee Schoof, *BP Withholds Oil Spill Facts – and Government Lets It*, McClatchy, May 18, 2010, *available at* http://www.mcclatchydc.com/2010/05/18/94415/bps-secrecy-keep-facts-on-gulf.html (quoting Gina Solomon, Senior Scientist at NRDC); Exhibit G (Elizabeth Weise, *Experts Weigh Risks of Chemical Ammo Against Oil in Gulf*, USA Today, May 31, 2010, http://www.usatoday.com/news/health/2010-05-31-oil-dispersants_N.htm (quoting Gina Solomon and Lisa Suatoni, Senior Scientists at NRDC, in story about human health risks of oil and dispersants)).

Given the paucity of publicly available data about impacts of the oil spill, particularly regarding contaminant levels, *see, e.g.*, Exhibit F, public understanding would be significantly enhanced by disclosure of the requested records. Disclosure would help the public to more effectively evaluate the environmental and public health impacts of the BP/Deepwater Horizon Gulf of Mexico oil spill in the near and long-term by providing specific information on levels and distribution of contamination. Disclosure would also help the public to better understand and evaluate NOAA's actions (or inaction) in response to the BP/Deepwater Horizon Gulf of Mexico oil spill.

B. NRDC Satisfies the Second Fee Waiver Requirement

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because NRDC does not have any commercial interest that would be furthered by the requested disclosure. 5 U.S.C. § 552(a)(4)(A)(iii); 15 C.F.R. § 4.11(k)(3). NRDC is a not-for-profit organization. "Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requesters,'" *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (internal citation omitted); *see Natural Res. Def. Council v. U.S. Envtl. Prot. Agency*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). NRDC wishes to serve the public by reviewing, analyzing and disclosing newsworthy and presently non-public information about the BP/Deepwater Horizon Gulf of Mexico oil spill. As noted at Part II.A, any work done by NOAA on the BP/Deepwater Horizon Gulf of Mexico oil spill relates to a matter of considerable public interest and concern. Disclosure of the requested records will contribute significantly to public understanding of the oil spill and associated threats to human health and the environment.

C. NRDC is a Media Requester

Even if NOAA denies a public interest waiver of all costs and fees, NRDC is a representative of the news media entitled to a reduction of fees under FOIA, 5 U.S.C. § 552(a)(4)(A)(ii), and DOC's FOIA regulations, 15 C.F.R. § 4.11(c)(1)(iii); *see also id.* § 4.11(b)(6) (defining "[r]epresentative of the news media"). *See Elec. Privacy Info. Ctr. v. U.S. Dep't of Def.*, 241 F. Supp. 2d 5, 6, 11-15 (D.D.C. 2003) (a "non-profit public interest organization" qualifies as a representative of the news media under FOIA where it publishes books and newsletters on issues of current interest to the public); Letter from Alexander C. Morris, FOIA Officer, United States Dep't of Energy, to Joshua Berman,

NRDC (Oct. 8, 2009) (Attachment 51) (granting NRDC media requester status). As described earlier in this request, NRDC publishes a quarterly magazine, *OnEarth*, which has approximately 150,000 subscribers and is available at newsstands and bookstores; publishes a regular newsletter for its more than one million members and online activists; issues other electronic newsletters, action alerts, public reports and analyses; and maintains free online libraries of these publications. These publications routinely include information about current events of interest to the readership and the public. NRDC staff members are also regular contributors to numerous periodicals and books; television, radio, and web programs; and hearings and conferences. Finally, as described above, NRDC maintains a significant additional communications presence on the internet through staff blogs and secondary coverage of NRDC communications on websites not affiliated with NRDC. *See* OPEN Government Act of 2007, Pub. L. No. 110-175, § 3, 121 Stat. 2524 (2007) (codified at 5 U.S.C. § 552(a)(4)(A)(ii)) (clarifying that "as methods of news delivery evolve . . . such alternative media shall be considered to be news-media entities"). As previously noted, information obtained as a result of this request will, if appropriately newsworthy, be disseminated through one or more of NRDC's publications or other suitable media channels.

III. Willingness to Pay Fees Under Protest

Please provide the records requested above irrespective of the status and outcome of your evaluation of NRDC's fee category assertion and fee waiver request. In order to prevent delay in NOAA's provision of the requested records, NRDC states that it will, if necessary and under protest, pay fees in accordance with DOC's FOIA regulations at 15 C.F.R. § 4.11(c)(1)(iv) for all or a portion of the requested records. *See* 15 C.F.R. § 4.11(k)(4). Please consult with NRDC, however, before undertaking any action that would cause the fee to exceed $250. Such payment will not constitute any waiver of NRDC's right to seek administrative or judicial review of any denial of its fee waiver request and/or rejection of its fee category assertion.

IV. Conclusion

We trust that, in responding to this request, NOAA will comply with all relevant deadlines and other obligations set forth in FOIA and DOC's FOIA regulations. *See, e.g.*, 15 C.F.R. § 4.6 (describing response deadlines).

Please produce the records above by emailing or mailing them to me at the NRDC office address listed below. Please produce them on a rolling basis; at no point should NOAA's search for—or deliberations concerning—certain records delay the production of others that NOAA has already retrieved and elected to produce. In the event that NOAA concludes that some of the records requested above may already be publicly available, we will be happy to discuss those conclusions. Please do not hesitate to call or email with questions.

Thank you for your prompt attention to this request.

Sincerely,

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Enclosures (sent via Federal Express on DVD):

Attachments 1 through 51 (single .pdf file)
Exhibits A through G (single .pdf file)

Exhibits:

Exhibit A	Article from *The New York Times*, "Plumes of Oil Below Surface Raise New Concerns," by Justin Gillis, published June 9, 2010
Exhibit B	Article from the *Washington Post*, "Obama Administration Moves to Distance Itself from BP on Oil Spill Response," by Joel Auchenbach and Jerry Markon, published June 1, 2010
Exhibit C	Article from *The New York Times*, "New Ways to Drill, Old Methods for Cleanup," by James C. McKinley Jr. and Leslie Kaufman, published May 11, 2010
Exhibit D	Article from the *Washington Post*, "Attention Turns to Spill-Related Health Risks," by Rob Stein, published May 30, 2010
Exhibit E	Opinion article from Politico, "After the Spill, Clean Up Regulations Too," by Lisa Speer, published May 19, 2010
Exhibit F	Article from McClatchy Newspapers, "BP Withholds Oil Spill Facts – and Government Lets It," by Marisa Taylor and Renee Schoof, published May 18, 2010
Exhibit G	Article from *USA Today*, "Experts Weigh Risks of Chemical Ammo Against Oil in Gulf," by Elizabeth Weise, published May 31, 2010