

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

August 22, 2023

The Honorable Gina Raimondo
Secretary
Department of Commerce
1401 Constitution Ave NW
Attn: Office of the Secretary
Washington, D.C. 20230

The Honorable Richard W. Spinrad, Ph.D.
Administrator
National Oceanic and Atmospheric Administration
1401 Constitution Ave NW
Room 5128
Washington, D.C. 20230

Dear Secretary Raimondo and Administrator Spinrad:

The House Committee on Natural Resources (the “Committee”) is continuing to investigate the National Oceanic and Atmospheric Administration’s (“NOAA”) National Marine Fisheries Service (“NMFS” or “NOAA Fisheries”) regarding NMFS’s recent reversal on supporting the continued operation of four dams on the Lower Snake River: Ice Harbor Dam, Lower Monumental Dam, Little Goose Dam, and Lower Granite Dam (the “Lower Snake River Dams”). On May 1, 2023, we sent you a letter requesting numerous documents and records critical to our investigation (the “Committee Letter”).¹

On June 25, 2023, NOAA’s Office of Legislative Affairs responded to the Committee Letter (the “Response”). The Response provided a superfluous summary of the Columbia River Basin Partnership Task Force (the “Partnership”), the Partnership’s 2019 and 2020 reports, the July 2020 Biological Opinion (the “BiOp”), the 2022 *Rebuilding Interior Columbia Basin Salmon and Steelhead Report* (the “2022 Report”), and the ongoing litigation to breach the Lower Snake River Dams (the “Columbia River Basin Litigation”).² The Response also stated that:

NOAA Fisheries and other participants are considering a durable long-term strategy to restore salmon and other native fish populations to healthy and abundant levels, while also honoring Federal commitments to Tribal Nations, delivering affordable and reliable clean power, and meeting the resilience needs of stakeholders across the region.³

Surprisingly, and much to our dismay, NOAA did not produce any documents or records with the Response.

¹ Letter from Rep. Cliff Bentz, Chairman of Subcomm. on Water, Wildlife & Fisheries, and Rep. Paul A. Gosar, Chairman of Subcomm. on Oversight & Investigations, to the Honorable Richard W. Spinrad, Administrator of National Oceanic and Atmospheric Administration (May 1, 2023), https://naturalresources.house.gov/uploadedfiles/2023_05_01_snake_river_letter.pdf.

² Letter from NOAA’s Office of Legislative Affairs to Rep. Cliff Bentz, Chairman of Subcomm. on Water, Wildlife & Fisheries and Rep. Paul A. Gosar, Chairman of Subcomm. on Oversight & Investigations, H. Comm. on Natural Resources (June 25, 2023), on file with Committee.

³ *Id.*

On July 23, 2023, NOAA staff briefed Committee and member office staff on the Response and NOAA's position on the Lower Snake River Dams (the "Briefing"). While the Committee recognizes the effort from NOAA's staff, the Briefing did not address the Committee's concerns. Moreover, the Briefing quickly became unproductive as NOAA staff displayed an abnormal commitment to evasiveness and refused to answer certain questions, and then refused to address why they couldn't answer certain questions, particularly as it pertains to the role of the White House Council on Environmental Quality in developing the 2022 Report.⁴

Hence, neither the Response nor the Briefing quelled the Committee's deep concerns. Indeed, the Committee is more concerned than ever with NMFS's effort and ability to represent the Federal government's position in favor of the continued operation of the Lower Snake River Dams.

As of this writing, the Committee has yet to receive any documents and communications responsive to our Requests. We look forward to continuing working with you and your staff so that the Committee can receive a fully responsive production. For reference, below are the specific requests in the May 1, 2023, Committee Letter. We expect to receive the following records, documents, and communications, in electronic format, as soon as possible, but no later than September 8, 2023 (nearly four months after the original deadline of May 17, 2023):

1. All documents and communications, from January 20, 2021, to the present, between the Department of Commerce and the White House Council on Environmental Quality regarding the Columbia River Basin;
2. All documents and communications, from January 20, 2021, to the present, between the Department of Commerce and the White House Council on Environmental Quality regarding the Lower Snake River Dams;
3. All documents and communications, from January 20, 2021, to the present, between NOAA and the White House Council on Environmental Quality regarding the Columbia River Basin;
4. All documents and communications, from January 20, 2021, to the present, between NOAA and the White House Council on Environmental Quality regarding the Lower Snake River Dams;
5. All documents and communications, from January 20, 2021, to the present, between the NMFS and the White House Council on Environmental Quality regarding the Columbia River Basin;

⁴ Briefing notes (on file with Committee staff)

6. All documents and communications, from January 20, 2021, to the present, between the NMFS and the White House Council on Environmental Quality regarding the Lower Snake River Dams;
7. All documents and communications, from January 20, 2021, to the present, between the Department of Commerce and non-governmental organizations regarding the Lower Snake River Dams;
8. All documents and communications, from January 20, 2021, to the present, between NOAA and non-governmental organizations regarding the Lower Snake River Dams;
9. All documents and communications, from January 20, 2021, to the present, between the NMFS and non-governmental organizations regarding the Lower Snake River Dams;
10. All documents and communications, from January 20, 2021, to the present, for the legal justification of the 2022 Report;
11. All documents and communications, from January 20, 2021, to the present, regarding the compliance of the 2022 Report with relevant legislation and statutes, including but not limited to NEPA;
12. All documents and communications on the impact of the 2022 Report on the Columbia River Basin Litigation;
13. Documents and communications, from January 20, 2021, to the present, sufficient to show who participated in developing the 2022 Report;
14. Documents and communications, from January 20, 2021, to the present, sufficient to show the public input into the 2022 Report;
15. All documents and communications, from January 20, 2021, to the present, regarding the decision to pursue a new undefined term of “healthy and abundant” fisheries in the Columbia River Basin as referenced in Exhibit 2⁵ of the Joint Motion to Stay Litigation⁶ filed with the District of Oregon in *National Wildlife Federation v. National Marine Fisheries Service* on August 4, 2022; and

⁵ Exhibit 2 of the Joint Motion to Extend the Litigation Stay, *National Wildlife Federation v. National Marine Fisheries Service*, Case No. 3:01-cv-640-SI (D. Or. Aug. 4, 2022), https://earthjustice.org/wp-content/uploads/2423-2_ex_2_us_commitments.pdf

⁶ Joint Motion to Extend the Litigation Stay, *National Wildlife Federation v. National Marine Fisheries Service*, Case No. 3:01-cv-640-SI (D. Or. Aug. 4, 2022), https://earthjustice.org/wp-content/uploads/2423_joint_motion_for_stay_of_litigation.pdf.

16. All documents and communications regarding President Joe Biden's March 21, 2023, remarks to bring "abundant salmon runs back to the [Columbia and Snake] River system."

Additionally, due to the lackluster Response and unproductive Briefing by NOAA staff, the Committee further requests that you provide additional documents, records, communications, and information to the Committee by September 8, 2023:

1. Describe White House Council on Environmental Quality's role in developing the 2022 Report;
2. Describe what NOAA and NMFS view as a "durable long-term strategy" for the continued operation of the Lower Snake River Dams;
3. All documents and communications, from January 20, 2021, to the present, regarding the role of the White House Council on Environmental Quality in shaping the policy priorities and decisions of NOAA and NMFS regarding federal projects in the Columbia River Basin, including, but not limited to, the Lower Snake River Dams;
4. The official position of NOAA and NMFS for defending the September 28, 2020, joint Record of Decision issued by the U.S. Army Corps of Engineers, the Bureau of Reclamation, and the Department of Energy's Bonneville Power regarding the Columbia River System Operations Environmental Impact Statement;
5. The official position of NOAA and NMFS for defending the BiOp;
6. All documents and communications, from January 20, 2021, to the present, regarding the timing the release of the 2022 Report, including, but not limited to, as it relates to releasing the 2022 Report to coincide with the release of any reports by Energy and Environmental Economics, Inc. (E3);
7. All documents and communications, from January 20, 2021, to the present, regarding the genesis of the 2022 Report;
8. All documents and communications, from January 20, 2021, to the present, regarding any drafts of the 2022 Report;
9. All documents and communications, from January 20, 2021, to the present, regarding anyone or any entity who helped draft the 2022 Report;
10. All documents and communications, from January 20, 2021, to the present, regarding who was consulted in drafting the 2022 Report;
11. All documents and communications, from January 20, 2021, to the present, regarding any future reports on the Lower Snake River Dams;

12. All documents and communications, from January 20, 2021, to the present, regarding the impact of ocean conditions, ocean fishing, or ocean predation on Columbia River Basin salmon and steelhead species;
13. All documents and communications, from January 20, 2021, to the present, regarding baseline assessments for federal projects in the Columbia River Basin, including but not limited to, baseline assessments for the Lower Snake River Dams.

To reiterate, we look forward to continuing to work with you and your staff so that the Committee can receive a fully responsive production to all of the Committee's requests. As a reminder, the Supreme Court has long recognized that Congress has the "broad" and "indispensable" power to conduct oversight, which encompasses inquiries into the administration of existing laws, studies of proposed laws, and "surveys in our social, economic or political system for the purpose of enabling Congress to remedy them." *Watkins v. United States*, 354 U. S. 178, 187, 215 (1957). Moreover, and as you know, under House Rule X, the Committee on Natural Resources has "general oversight" of any matter relating to its jurisdiction, including all matters concerning America's water resources, generation of electrical power from federal water projects, and fisheries management.

Your unresponsiveness to the Committee's document requests suggests that NOAA and NMFS are deliberately engaging in obstruction to frustrate the oversight power of Congress. This is unacceptable. The American public deserves transparency, and the Committee will not hesitate to utilize the tools at its disposal to administer effective oversight and fulfill the Committee's responsibility to the American public.

An attachment to this letter provides additional instructions for responding to the requests from the Committee on Natural Resources. Please contact the Majority staff for the Oversight and Investigations Subcommittee at (202) 225-2761 or HNRR.Oversight@mail.house.gov with any questions. Thank you for your cooperation.

Sincerely,



Bruce Westerman
Chairman
Committee on Natural Resources



Cliff Bentz
Chairman
Subcommittee on Water, Wildlife and Fisheries



Paul A. Gosar, D.D.S.
Chairman
Subcommittee on Oversight and Investigations