

PENOBSCOT BAY WATCH

People who care about Maine's biggest bay.

Ron Huber
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October 12, 2010

Shari Baloch, FOIA Officer
Bureau of Ocean Energy Management, Regulation and Enforcement
Washington DDC 20240
703-787-1327 shari.baloch@boemre.gov

RE: MMS-2011-0004

Dear Ms. Baloch

The Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE) received our FOIA request on September 27, 2010 on October 1, 2010, and you have assigned it Request No. MMS-2011-0004

In your response you have requested additional information before determining whether to grant our request for a fee waiver. Specifically you requested details on how a waiver on the cost of fulfilling our request would be consistent with your agency's FOIA regulations (43 CFR Part 2, Appendix D).

In your letter you first ask if our request:

(1) "Is likely to contribute significantly to public understanding of the operations or activities of the Government"; and (2) "Is not primarily in the commercial interest of the requester."
You then detail your criteria with five additional questions.

I will answer all seven questions in the order they were asked. Apologies for repetition, but your questions/criteria are very much interrelated.

PART ONE QUESTIONS

(1) "[L]ikely to contribute significantly to public understanding of the operations or activities of the Government"

RESPONSE Yes. Since 1995 frequent use has been made by members of the public, media and other interested parties of the FOIA'd materials that we acquire and make available in a timely manner about specific development proposals or other industrial initiatives that could affect the living marine resources of Penobscot Bay and the Gulf of Maine. FOIA'd agencies have included Federal Highway Administration, US Army Corps of Engineers, US Environmental Protection Agency and NOAA.

In 1995 and again in 2004, sufficient new information was provided to the interested public from our FOIA'd documents received from those agencies during the course of two major port development initiatives in Penobscot Bay to significantly alter the final outcome of the those two new port development projects, which, due in large part to the resultant increase in public and political opposition after the facts revealed in the FOIA'd documents surfaced, were in both cases finally withdrawn from consideration.

The FOIA'd documents received are posted online in their entirety without editing . They are accessed dozens or hundreds of times per month by concerned citizens, journalists, columnists, academics, politicians, wind industry officials and other interested parties, who then use the downloaded documents each in their different ways.

When the issue concerns a presently ongoing activity, such as the founding and establishment of BOEMRE's Maine ocean energy task force earlier this year, viewership is very heavy among all of the above categories, as shown by our web analysis software. Penobscot Bay Watch's free FOIA portals are the most important free source of official documents detailing our federal and state governments' activities relating on Ocean wind power development planning and development off Maine that there is. See list of links to FOA/FOIA portals below.

(2) Is not primarily in your commercial interest.

RESPONSE Penobscot Bay Watch has no commercial interests. It is an all-volunteer organization incorporated in the state of Maine in 2000; there are no paid employees or paid contractors. Penobscot Bay Watch has no property. We offer no trinkets or documents for sale. Our annual budget averages less than a thousand dollars per year. Over the course of 15 years, we have never been charged, or very little, by any of the federal agencies that fulfilled our FOIA requests.

PART 2 QUESTIONS

(1) Explain how the records you are seeking will be meaningfully informative with respect to the bureau's operations and activities. Your identity, vocation, qualifications, and expertise regarding the requested information may be relevant factors.

RESPONSE See earlier #1, above. The information we are seeking will help us and the interested public understand the beginnings of the BOEMRE/State of Maine/ocean wind industry interaction on offshore renewable energy. "Beginnings" defined as the time from passage of

Maine's ocean energy legislation in March of this year, to the first substantial public activity: the interagency task force meeting of September 14, 2010.

The requested documents are especially meaningfully informative for the interested public, because the present operations of the interagency task force, and BOEMRE's relationships with Maine officials and local federal officials, will have been significantly shaped in those first seven months.

With the information we are requesting, the interested public will not need to guess at the interagency dynamics and conceptual differences at play as state officials and federal officials began conjoining their efforts to bring ocean wind and wave energy exploitation forward off Maine. Those initial interactions, the opening and interim positions of the different state and federal participants as this process began in earnest following passage of LD 1810, will be there in these documents for the interested public and other communities to read and learn from.

Qualifications. Since 1995 Penobscot Bay Watch and its predecessor organization Coastal Waters Project, as well as members acting individually have been an interested party or commenter on numerous state and federal agency actions that would affect Penobscot Bay and/or the greater Gulf of Maine, including Environmental Assessments, Environmental Impact Statements, and Supplemental EIS's. These reviews have been pursuant to NEPA and to Maine's "mini-NEPA" - the Site Location of Development Act. As executive director I have reviewed and commented on EIS's and other projects for most of those years.

Central to our successful community outreach over that time has been the frequent acquisition and free dissemination of documents and information acquired from the various relevant agencies pursuant to the Freedom of Information Act. We have always been able to make the information available free, in a timely manner, and in formats available to the greatest number of people. The result has been a significantly informed Maine citizenry, and significantly better decisions in a number of important natural resource decisions of statewide and national significance. Our portals also allow public access to historic documents from the 19th century predecessor to NOAA.

(2) Explain how disclosure of the records will contribute to the understanding of the public at large or a reasonably broad audience as opposed to only enhancing your knowledge.

Because our organization's online FOIA collections of federal documents relating to Penobscot Bay-related and Gulf of Maine related environmental and conservation issues are effectively the only ones available, they are heavily used. The FOIA'd documents digitized and posted there are accessed dozens or hundreds of times per week by interested parties, the frequency depending on whether or not the issue or location boasts a presently ongoing development or licensing activity.

Our free dissemination of the requested materials from BOEMRE relating to its Maine Task Force will be similarly heavily accessed, due to the immediacy of the issue. The requested

documents will greatly broadens the public's understanding of how their federal and state officials have begun their task of implementing the offshore wind mandate. What initial understandings may have come about, what problems or challenges may have been raised then set aside, or remain as sticking points from the present.

(3) Explain how and to whom you intend to disseminate the information and how you intend to use the information to contribute to public understanding.

As noted above, we make FOIA'd materials such as the requested documents available online free of charge via our website and blog, then publicize the information's availability to the many citizens, interests groups, organizations and agencies that might benefit by reading them.

We have done so with hundreds of pages of FOIA'd documents received from federal agencies about issues pertaining to Penobscot Bay and the Gulf of Maine.

Due to strong public interest and concern in Maine about the proposals for offshore wind energy development, we anticipate a similarly heavy viewing and downloading of these documents once supplied us and we have uploaded them. The concerned citizens, journalists, columnists, academics, politicians, wind industry officials and other interested parties who access this information will use the downloaded documents each in their respective ways. We make no judgments about the documents, which generally speak for themselves most eloquently.

We predict a very high level of interest shown in the documents we anticipate uploading after receiving them from your Bureau by students, academics, conservationists, journalists, agencies and wind industry supporters and detractors. Use by the public is projected to be among the highest since 2005, when the state was giving active consideration to siting a Liquid Natural Gas port proposal for Penobscot Bay's Sears Island.

(4) Explain how release of the requested records will contribute significantly to public understanding. For example, is the information being disclosed new, does the information confirm or clarify data released previously, and is the information publicly available? Explain how disclosure will increase the level of public understanding that existed prior to disclosure.

Ocean energy issues are very new for Penobscot Bay and the Gulf of Maine. Beginnings of processes are very important things to understand. Without the requested documents it will not be possible for the public to understand the starting interactions between BOEMRE and our state agencies and officials and other interests. Given the pace of the combined processes laid out at the September 14th meeting, getting this information out and that as quickly as possible, is critical to the public learning where its state and federal officials stand in those processes, in time for them to be able to inform their leaders as to their own positions on these important offshore wind questions.

(5) Explain whether you have a commercial interest that would be furthered by disclosure and if so, whether the public interest in disclosure would be greater than any commercial interest you or your organization would have in the documents.

Penobscot Bay Watch is an all-volunteer organization incorporated in the state of Maine in 2000; there are no paid employees or paid contractors. No property. No items or documents for sale. Our total budget is less than 1,000 dollars per year. We have no commercial interest in the requested documents. The public's response to our previously uploaded FOIA documents has always been enthusiastic and far-reaching.

We will make these documents available free of charge to the interested public. Our review of viewership of other uploaded FOIA'd documents on our website and blog leads us to anticipate heavy downloading of these FOIA'd documents by the public and by interested parties, beginning shortly after they are posted.

Please let me know if the above information satisfies your criteria for waiving costs associated with fulfilling our FOIA request. to the best of my recollection, over the course of 15 years, we have never been charged by a federal agency that was fulfilling one of our FOIA requests. Please be consistent with those other federal agencies and waive your fees.

These documents are very important for the people of Maine to have access to. Just as we make that access possible for all people free of charge and free of commercial gain, we ask that you reciprocate by waiving any fees and sending these requested materials to us free of charge.

If you decide that BOEMRE continues unwilling to fulfill our request for a waiver, please let us know what additional information you would need to reverse such a determination. For with no frame of reference, how are we to specify "the maximum amount that you are willing to pay for the bureau to process your request,"? We haven't the slightest idea of the number of pages at issue, or even your billing criteria. For example, \$50 might be more than enough. Or it might cover but a tiny percentage of the requested documents.

Far better to ensure that you allow Mainers to become informed and able to take part in the important decision making going on regarding their ocean heritage, by waiving fees and sending us the information as quickly as possible. Please let me know if you will be able to meet our request. My phone # is 207-691-7485

Partial list of Penobscot Bay Watch's FOA/FOIA web portals.

1995 US Army Corps of Engineers. Maine Governor Angus King
http://www.penbay.org/searsisland/si_acoe%20memo102095.html
http://www.penbay.org/searsisland/siacoe_ecos1195.html

2004 Maine Governor's office and MDOT

<http://www.penbay.org/searsisland/sifoia1.html>
<http://www.penbay.org/searsisland/searsfoa03.html>

2007-2008 Federal Highway Administration
http://penbay.org/searsisland/2008/sifoia08_fhwa/sifoia_fhwa_07-08.html

2009 Maine Governor Baldacci and MDOT
http://www.penbay.org/searsisland/si_foa_foia.html

2010 Maine DEP
http://penbay.org/wind/ocean/foa_mdep_tidal_energy_0810/

Sincerely

Ron Huber

Ron Huber, executive director
Penobscot Bay Watch

cc.
Representative Chellie Pingree
Representative Mike Michaud
Senator Olympia Snowe
Senator Susan Collins