



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northeast Fisheries Science Center
166 Water Street
Woods Hole, MA 02543-1026

August 23, 2012

MEMORANDUM FOR: Northeast Fisheries Observers & At Sea Monitors

FROM: Amy Van Atten,
Branch Chief, FSB 

SUBJECT: Freedom of Information Act -
Release of Observer Photos

NMFS received two Freedom of Information Act (FOIA) requests from the environmental non-profit organization, Oceana. One requested copies of photographs and videos of incidentally taken marine mammals documented by Northeast Fisheries Observer Program (NEFOP) observers in state managed fisheries from January 2005 through present, collected under statutory requirements of the Agency (2012-00314). The second requested the same information with regard to sea turtles (2012-00313). This is an excerpt from the FOIA submitted by Oceana:

“Oceana intends to convey information to the public about the incidental catch of marine mammals [and sea turtles] because it is relevant to its advocacy campaigns. Oceana is engaged in a national campaign to reduce the catching and killing of sea turtles, including catching and killing in the United States fisheries of the Northeast Atlantic Ocean. Monitoring the impacts of sea turtle interaction with fishing gear is crucial in the effort to reduce the catching and killing of sea turtles. In support of its campaigns, Oceana will analyze the visual records provided by the agency in response to this FOIA request to gain greater insight into the incidental catches of marine mammals [and sea turtles]. It will also share the records and/or results of its analysis with scientists, non-profit regional and national environmental organizations, government managers and policymakers, its members and supporters, and/or the general public. The visual records will be particularly helpful to Oceana's goals, as visual evidence best conveys the impact of fishing gear on marine mammals [and sea turtles]. Members of the public who support protecting sea turtles from the adverse effects of fishing will directly and indirectly benefit from Oceana's information sharing and advocacy. In this way, Oceana will contribute previously undisclosed information to a public understanding of the impact fishing gear can have on marine mammals and sea turtles, and of government efforts to monitor interactions with fisheries. Oceana therefore possesses and will use its institutional abilities to educate the public about the information contained in documents responsive to this FOIA request.”

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NMFS General Counsel has informed us that the photos and videos are releasable, provided no identifying vessel characteristics or individuals appear in the photograph. NEFOP is in the process of providing the materials in response to these two requests, which involve hundreds of records. We remain concerned about the possible ramifications to the program and staff, with regard to our observers in the field potentially facing elevated levels of animosity and conflict. We realize this action may be controversial, but our response is required under Federal law and regulation. The documentation of bycatch of fish and protected species remains vital to NMFS' mission to conserve and manage the nation's marine living resources.

Please feel free to contact Jack Moakley (NEFSC, Jack.Moakley@noaa.gov) or Michael Justen (NMFS, Mike.Justen@noaa.gov) if you have any additional questions on the FOIA's or Amy Van Atten (NEFSC, Amy.Van.Atten@noaa.gov) for NEFOP information.

The Freedom of Information Act (FOIA) is a law that provides a requester access to government records that are not exempt under one of the FOIA exemptions. It is often described as the law that keeps citizens in the know about their government. In Fiscal Year 2011, NOAA received over 700 FOIA requests. For more information: <http://www.foia.gov/index.html>

