August 29, 2022

VIA FOIAONLINE.REGULATIONS.GOV
U.S. Environmental Protection Agency

Re: Freedom of Information Act Request: Notice of Proposed Rulemaking for Ballast Water

Dear FOIA Officer:

This is a request under the Freedom of Information Act[1] ("FOIA"), from the Center for Biological Diversity ("Center"), a non-profit organization that works to secure a future for all species hovering on the brink of extinction through science, law, and creative media, and to fulfill the continuing educational goals of its membership and the general public in the process.

REQUESTED RECORDS

As background, a notice of proposed rulemaking ("NOPR") for vessel discharge[2] referred to "an independent review of BWMS performance and data quality" conducted by the U.S. Environmental Protection Agency ("EPA").[3] A commenter, Dr. Andrew Cohen, asked EPA to make available to the public the report or other documentation of the independent review, since the review "was a key part of the basis for EPA's determination of what discharge limits to propose" in the NOPR.[4] In response EPA added two documents to the public rulemaking document, as stated in a March 31, 2022 email to Dr. Cohen from Brian Frazier, the Director of the Oceans, Wetlands and Communities Division in EPA's Office of Wetlands, Oceans and Watersheds. The two documents are a two-page PDF document (docket number EPA-HQ-OW-2019-0482-0828) and a spreadsheet (docket number EPA-HQ-OW-2019-0482-0829). In Mr. Frazer's email these are referred to, respectively, as "EPA QC Review of AMS BWMS Performance Summary" and "EPA QC Review of AMS BWMS Performance."

In Document EPA-HQ-OW-2019-0482-0828, the two-page PDF, the header at the top of each page is "EPA Working Draft." From internal evidence, these two pages appear to be an excerpt from a larger report.

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[1] 5 U.S.C. § 552, *as amended*.
[2] 85 Fed. Reg. 67818 (Oct. 26, 2020).
[3] *Id.* at p. 67840. No citation is given for this review in the NOPR. The NOPR states that the review used a rating system to assess the quality of the available performance data, but doesn't say what the rating system consisted of. The NOPR states that the review found that the data packages it examined lacked certain information, but doesn't say what data packages were examined by the review. Presumably these and other essential questions about the reviewed would be answered by release of the requested records.
[4] Attachment A (Andrew Cohen email to Elizabeth Cisar, Senior Advisor in EPA's Office of Water, February 7, 2022).

Specifically, the Center is requesting the records outlined below from EPA:

1. A copy of the entire report (that is, the entire EPA Working Draft) from which Document EPA-HQ-OW-2019-0482-0828 was excerpted;

2. A copy of the final draft of that report;

3. A copy of the document cited as "ERG, 2017" in Document EPA-HQ-OW-2019-0482-0828 as the source of Figure 3-1, and in the text in reference to how the review was conducted. Figure 3-1 is "a breakdown of the performance score data" in the review, and as such was a critical element of EPA's decision regarding which discharge limits to include in the NOPR. "ERG" apparently refers to the Eastern Research Group, which we understand is the contractor that EPA hired to conduct the independent review; and

4. The 63 "data packages" for BWMS, which were obtained by the EPA and which the independent review was based on, according to Document EPA-HQ-OW-2019-0482-0828.

This request is not meant to exclude any other records that, although not specially requested, are reasonably related to the subject matter of this request. If you or your office have destroyed or determine to withhold any records that could be reasonably construed to be responsive to this request, I ask that you indicate this fact and the reasons therefore in your response.

Under the FOIA Improvement Act of 2016, agencies are prohibited from denying requests for information under FOIA unless the agency reasonably believes release of the information will harm an interest that is protected by the exemption.[5]

Should you decide to invoke a FOIA exemption, please include sufficient information for us to assess the basis for the exemption, including any interest(s) that would be harmed by release. Please include a detailed ledger which includes:

1. Basic factual material about each withheld record, including the originator, date, length, general subject matter, and location of each item; and

2. Complete explanations and justifications for the withholding, including the specific exemption(s) under which the record (or portion thereof) was withheld and a full explanation of how each exemption applies to the withheld material. Such statements will be helpful in deciding whether to appeal an adverse determination. Your written justification may help to avoid litigation.

If you determine that portions of the records requested are exempt from disclosure, we request that you segregate the exempt portions and mail the non-exempt portions of such records to my attention at the address below within the statutory time limit.[6]

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[5] FOIA Improvement Act of 2016 (Public Law No. 114-185), codified at 5 U.S.C. § 552(a)(8)(A).
[6] 5 U.S.C. § 552(b).

The Center is willing to receive records on a rolling basis.

FOIA's "frequently requested record" provision was enacted as part of the 1996 Electronic Freedom of Information Act Amendments, and requires all federal agencies to give "reading room" treatment to any FOIA-processed records that, "because of the nature of their subject matter, the agency determines have become the subject of subsequent requests for substantially the same records."[7] Also, enacted as part of the 2016 FOIA Improvement Act, FOIA's Rule of 3 requires all federal agencies to proactively "make available for public inspection in an electronic format" "copies of records, regardless of form or format … that have been released to any person … and … that have been requested 3 or more times."[8] Therefore, we respectfully request that you make available online any records that the agency determines will become the subject of subsequent requests for substantially the same records, and records that have been requested three or more times.

Finally, agencies must preserve all the records requested herein while this FOIA is pending or under appeal. The agency shall not destroy any records while they are the subject of a pending request, appeal, or lawsuit under the FOIA.[9] If any of the requested records are destroyed, the agency and responsible officials are subject to attorney fee awards and sanctions, including fines and disciplinary action. A court held an agency in contempt for "contumacious conduct" and ordered the agency to pay plaintiff's costs and fees for destroying "potentially responsive material contained on hard drives and email backup tapes."[10] In another case, in addition to imposing a $10,000 fine and awarding attorneys' fees and costs, the court found that an Assistant United States Attorney prematurely "destroyed records responsive to [the] FOIA request while [the FOIA] litigation was pending" and referred him to the Department of Justice's Office of Professional Responsibility.[11]

FORMAT OF REQUESTED RECORDS

Under FOIA, you are obligated to provide records in a readily accessible electronic format and in the format requested.[12] "Readily accessible" means text-searchable and OCR-formatted.[13] Pursuant to this requirement, we hereby request that you produce all records in an electronic format and in their native file formats. Additionally, please provide the records in a load-ready format with a CSV file index or Excel spreadsheet. If you produce files in .PDF format, then

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[7] *Id*. § 552(a)(2)(D)(ii)(I).
[8] *Id*. § 552(a)(2)(D)(ii)(II).
[9] 40 C.F.R. § 2.106; *see Chambers v. U.S. Dept. of Interior*, 568 F.3d 998, 1004 (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 FOIA or the Privacy Act").
[10] *Landmark Legal Found. v. EPA*, 272 F. Supp.2d 59, 62 (D.D.C. 2003); *see also Judicial Watch, Inc. v. Dept. of Commerce*, 384 F. Supp. 2d 163, 169 (D.D.C. 2005) (awarding attorneys' fees and costs because, among other factors, agency's "initial search was unlawful and egregiously mishandled and …likely responsive documents were destroyed and removed"), *aff'd in relevant part*, 470 F.3d 363, 375 (D.C. Cir. 2006) (remanding in part to recalculate attorney fees assessed).
[11] *Jefferson v. Reno*, 123 F. Supp. 2d 1, 6 (D.D.C. 2000).
[12] 5 U.S.C. § 552(a)(3)(B) ("In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.").
[13] *See id*.

please omit any "portfolios" or "embedded files." Portfolios and embedded files within files are not readily accessible. Please do not provide the records in a single, or "batched," .PDF file. We appreciate the inclusion of an index.

If you should seek to withhold or redact any responsive records, we request that you: (1) identify each such record with specificity (including date, author, recipient, and parties copied); (2) explain in full the basis for withholding responsive material; and (3) provide all segregable portions of the records for which you claim a specific exemption.[14] Please correlate any redactions with specific exemptions under FOIA.

RECORD DELIVERY

We appreciate your help in expeditiously obtaining a determination on the requested records. As mandated in FOIA, we anticipate a reply within 20 working days. *Id*. § 552(a)(6)(A)(i). Failure to comply within the statutory timeframe may result in the Center taking additional steps to ensure timely receipt of the requested materials. Please provide a complete reply as expeditiously as possible. We prefer email, but you may mail copies of records to:

Ann K. Brown
Center for Biological Diversity
P.O. Box 11374
Portland, OR 97211
foia@biologicaldiversity.org

If you find that this request is unclear, or if the responsive records are voluminous, please email me to discuss the scope of this request.

REQUEST FOR FEE WAIVER

FOIA was designed to provide citizens a broad right to access government records. FOIA's basic purpose is to "open agency action to the light of public scrutiny," with a focus on the public's "right to be informed about what their government is up to."[15] In order to provide public access to this information, FOIA's fee waiver provision requires that "[d]ocuments shall be furnished without any charge or at a [reduced] charge," if the request satisfies the standard[16]. FOIA's fee waiver requirement is "liberally construed."[17]

The 1986 fee waiver amendments were designed specifically to provide non-profit organizations such as the Center access to government records without the payment of fees. Indeed, FOIA's fee waiver provision was intended "to prevent government agencies from using high fees to discourage certain types of requesters and requests," which are "consistently associated with

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[14] *Id*. § 552(b).
[15] *NARA v. Favish*, 541 U.S. 157, 171 (2004) quoting *U.S. Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773-74 (1989) (internal quotation and citations omitted).
[16] 5 U.S.C. § 552(a)(4)(A)(iii).
[17] *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1310 (D.C. Cir. 2003); *Forest Guardians v. U.S. Dept. of Interior*, 416 F.3d 1173, 1178 (10th Cir. 2005).

requests from journalists, scholars, and *non-profit public interest groups*."[18] As one Senator stated, "[a]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information ... ."[19]

I. The Center Qualifies for a Fee Waiver.

Under FOIA, a party is entitled to a fee waiver when "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 [Federal] government and is not primarily in the commercial interest of the requester."[20] EPA's regulations establish the same standard[21].

Thus, EPA must consider six factors to determine whether a request is in the public interest: (1) whether the subject of the requested records concerns "the operations or activities of the Federal government," (2) whether the disclosure is "likely to contribute" to an understanding of government operations or activities, (3) whether the disclosure "will contribute to public understanding" of a reasonably broad audience of persons interested in the subject, (4) whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities[22], (5) whether a commercial interest exists and its magnitude, and (6) the primary interest in disclosure. As shown below, the Center meets each of these factors.

A. The Subject of This Request Concerns "The Operations and Activities of the Government."

The subject matter of this request concerns the operations and activities of the EPA. This request asks for (1) A complete copy of the working draft report from which EPA excerpted and added to the public rulemaking docket Document number EPA-HQ-OW-2019-0482-0828, in response to a commenter's request that EPA make available to the public the "independent review of BWMS performance and data quality" conducted by EPA and referenced in the NOPR; (2) A copy of the final draft of that report; (3) The document cited in Document EPA-HQ-OW-2019-0482-0828 as "ERG, 2017;" and (4) The 63 "data packages" containing test data on ballast water treatment systems, which were obtained by the EPA and which the independent review was based on.

This FOIA request will provide the Center and the public with crucial insight into EPA's analysis in developing the Proposed Rule in the NOPR regulating ballast water discharges, implementing the Vessel Incidental Discharge Act ("VIDA") and Clean Water Act ("CWA"). It is clear that a federal agency's oversight of vessel discharge pursuant to federal law is identifiable activity of the government, and in this case it is the executive branch agency of EPA.[23] Thus, the Center meets this factor.

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[18] *Ettlinger v. FBI*, 596 F. Supp. 867, 872 (D. Mass. 1984) (emphasis added).
[19] 132 Cong. Rec. S. 14298 (statement of Senator Leahy).
[20] 5 U.S.C. § 552(a)(4)(A)(iii).
[21] 40 C.F.R. § 2.107(l)(1)-(3).
[22] *Id*. § 2.107(1)(2).
[23] *Judicial Watch*, 326 F.3d at 1313 ("[R]easonable specificity is all that FOIA requires with regard to this factor") (internal quotations omitted).

B. Disclosure is "Likely to Contribute" to an Understanding of Government Operations or Activities.

The requested records are meaningfully informative about government operations or activities and will contribute to an increased understanding of those operations and activities by the public.

Disclosure of the requested records will allow the Center to convey to the public information about EPA's implementation of VIDA and CWA, its regulation of ballast water from vessels, and the agency's protection of water quality from invasive species and disease. Once the information is made available, the Center will analyze it and present it to its over 1.7 million members and online activists and the general public in a manner that will meaningfully enhance the public's understanding of this topic.

Thus, the requested records are likely to contribute to an understanding of EPA's operations and activities.

C. Disclosure of the Requested Records Will Contribute to a Reasonably Broad Audience of Interested Persons' Understanding of EPA's Compliance with Federal Law.

The requested records will contribute to public understanding of whether EPA's actions are consistent with VIDA and CWA, and its mission to "protect human health and the environment."[24] As explained above, the records will contribute to public understanding of this topic.

Activities of EPA generally, and specifically its management of vessels' discharge of ballast water and its implementation of CWA, are areas of interest to a reasonably broad segment of the public. The Center will use the information it obtains from the disclosed records to educate the public at large about this topic.[25]

Through the Center's synthesis and dissemination (by means discussed in Section II, below), disclosure of information contained in and gleaned from the requested records will contribute to a broad audience of persons who are interested in the subject matter.[26] Indeed, the public does not currently have an ability to easily evaluate the requested records, which are not currently in

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[24] EPA, *Our Mission and What We Do*, https://www.epa.gov/aboutepa/our-mission-and-what-we-do (last visited Aug. 29, 2022).

[25] *See W. Watersheds Proj. v. Brown*, 318 F. Supp.2d 1036, 1040 (D. Idaho 2004) (finding that "WWP adequately specified the public interest to be served, that is, educating the public about the ecological conditions of the land managed by the BLM and also how … management strategies employed by the BLM may adversely affect the environment").

[26] *Ettlinger v. FBI*, 596 F. Supp. at 876 (benefit to a population group of some size distinct from the requester alone is sufficient); *Carney v. Dept. of Justice*, 19 F.3d 807, 815 (2d Cir. 1994), *cert. denied*, 513 U.S. 823 (1994) (applying "public" to require a sufficient "breadth of benefit" beyond the requester's own interests); *Cmty. Legal Servs. v. Dep't of Hous. & Urban Dev*., 405 F. Supp.2d 553, 557 (E.D. Pa. 2005) (in granting fee waiver to community legal group, court noted that while the requester's "work by its nature is unlikely to reach a very general audience," "there is a segment of the public that is interested in its work").

the public domain.[27] As the Ninth Circuit observed in *McClellan Ecological Seepage Situation v. Carlucci*, "[FOIA] legislative history suggests that information [has more potential to contribute to public understanding] to the degree that the information is new and supports public oversight of agency operations… ."[28]

Disclosure of these records is not only "likely to contribute," but is certain to contribute, to public understanding of the extent to which EPA is regulating water quality and vessel discharge. The public is always well served when it knows how the government conducts its activities, particularly matters touching on legal questions. Hence, there can be no dispute that disclosure of the requested records to the public will educate the public about this topic.

II. Disclosure is Likely to Contribute Significantly to Public Understanding of Government Operations or Activities.

The Center is not requesting these records merely for their intrinsic informational value. Disclosure of the requested records will significantly enhance the public's understanding of what technologies are available to protect our bodies of water and aquatic life, as compared to the level of public understanding that exists prior to the disclosure. Indeed, public understanding will be *significantly* increased as a result of disclosure because the requested records will help reveal more about this subject matter.

The records are also certain to shed light on EPA's compliance with VIDA and CWA and its own mission. Such public oversight of agency action is vital to our democratic system and clearly envisioned by the drafters of the FOIA. Thus, the Center meets this factor as well.

III. Obtaining the Requested Records is of No Commercial Interest to the Center.

Access to government records, disclosure forms, and similar materials through FOIA requests is essential to the Center's role of educating the general public. Founded in 1994, the Center is a 501(c)(3) nonprofit conservation organization (EIN: 27-3943866) with more than over 1.7 million members and online activists dedicated to the protection of endangered and threatened species and wild places. The Center has no commercial interest and will realize no commercial benefit from the release of the requested records.

IV. The Center's Primary Interest in Disclosure is the Public Interest.

As stated above, the Center has no commercial interest that would be furthered by disclosure. Although even if it did have an interest, the public interest would far outweigh any pecuniary interest.

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[27] *See Cmty. Legal Servs.*, 405 F. Supp.2d at 560 (because requested records "clarify important facts" about agency policy, "the CLS request would likely shed light on information that is new to the interested public.").

[28] *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1286 (9th Cir. 1987. In this connection, it is immaterial whether any portion of the Center's request may currently be in the public domain because the Center requests considerably more than any piece of information that may currently be available to other individuals. *See Judicial Watch*, 326 F.3d at 1315.

The Center is a non-profit organization that informs, educates, and counsels the public regarding environmental issues, policies, and laws relating to environmental issues. The Center has been substantially involved in the activities of numerous government agencies for over 25 years, and has consistently displayed its ability to disseminate information granted to it through FOIA.

In consistently granting the Center's fee waivers, agencies have recognized: (1) that the information requested by the Center contributes significantly to the public's understanding of the government's operations or activities; (2) that the information enhances the public's understanding to a greater degree than currently exists; (3) that the Center possesses the expertise to explain the requested information to the public; (4) that the Center possesses the ability to disseminate the requested information to the general public; (5) and that the news media recognizes the Center as an established expert in the field of imperiled species, biodiversity, and impacts on protected species. The Center's track record of active participation in oversight of governmental activities and decision making, and its consistent contribution to the public's understanding of those activities as compared to the level of public understanding prior to disclosure are well established.

The Center's work appears in over 5,000 news stories online and in print, radio, and TV per month, including regular reporting in such important outlets as *The New York Times*, *Washington Post*, *The Guardian*, *Los Angeles Times*, and *USA Today*. Many media outlets have reported on the pollutants to our water utilizing information obtained by the Center from state and federal agencies. In 2021, more than 3.5 million people visited the Center's extensive website, viewing pages more than 6.3 million times. In 2021, nearly 2.4 million actions were completed by more than 1.7 million members and supporters. Three times a year, the Center sends printed newsletters to more than 89,610 members. More than 606,000 people follow the Center on Facebook, and there are regular postings regarding the protection of oceans and marine life. The Center also regularly tweets to more than 121,000 followers on Twitter, and has more than 40,000 followers on Instagram. The Center intends to use any or all of these far-reaching media outlets to share with the public information obtained as a result of this request. The Center intends to use any or all of these far-reaching media outlets to share with the public information obtained as a result of this request.

Public oversight and enhanced understanding of the EPA's duties is absolutely necessary. In determining whether disclosure of requested information will contribute significantly to public understanding, a guiding test is whether the requester will disseminate the information to a reasonably broad audience of persons interested in the subject.[29] The Center need not show how it intends to distribute the information, because "[n]othing in FOIA, the [agency] regulation, or our case law require[s] such pointless specificity."[30] It is sufficient for the Center to show how it distributes information to the public generally.[31]

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[29] *Carney*, 19 F.3d 807.
[30] *Judicial Watch*, 326 F.3d at 1314.
[31] *Id*.

V. Conclusion

For all of the foregoing reasons, the Center qualifies for a full fee waiver. We hope that EPA will immediately grant this fee waiver request and begin to search and disclose the requested records without any unnecessary delays.

If you have any questions, please contact me at foia@biologicaldiversity.org. All records and any related correspondence should be sent to my attention at the address below.

Sincerely,

Ann K. Brown
Open Government Coordinator
CENTER FOR BIOLOGICAL DIVERSITY
P.O. Box 11374
Portland, OR 97211-0374
foia@biologicaldiversity.org

Attachment

Attachment A (Andrew Cohen email to Elizabeth Cisar, Senior Advisor in EPA's Office of Water, February 7, 2022).

Attachment A

From: **Andrew Cohen** acohen@bioinvasions.org
Subject: followup on document request
Date: February 7, 2022 at 5:46 PM
To: Cisar, Elizabeth cisar.elizabeth@epa.gov
Cc: Best-Wong, Benita Best-Wong.Benita@epa.gov, Marcie Keever mkeever@foe.org, Miyoko Sakashita miyoko@biologicaldiversity.org
Bcc: Deborah Ann Sivas dsivas@stanford.edu, Alison LaPlante laplante@lclark.edu

AC

Hi Elizabeth,

I previously requested 4 documents, or sets of documents, that seem like they should be included in the public docket for the NOPR for vessel incidental discharges.

I'm writing again to ask whether EPA will add these to the docket or otherwise make them available.

(1) The independent review of ballast water treatment system performance data

In my Nov. 25, 2020 public comments on the NOPR I reported that the "independent review of BWMS performance and data quality" that EPA conducted as part of the analysis for the proposed rule (85(207) Federal Register 67840 (Oct. 26, 2020)) was missing from the docket and that no citation was provided in the NOPR that would enable one to find this document elsewhere. I wrote your office requesting a copy of this review on Oct. 12, 2021 and again on Oct. 27, 2021, over 3 months ago. I'm writing again to ask to see this review.

It was on the basis of this review that EPA concluded that the test data in the SAB Report — the same data that the Second Circuit Court of Appeals considered in determining that the ballast water discharge limits currently proposed by EPA do not meet the Clean Water Act's BAT requirement — are not "of sufficient scientific rigor to be appropriate for use in a BAT analysis" (85(207) Federal Register 67841 (Oct. 26, 2020)). This conclusion was in turn a key element in EPA's rationale for ignoring the Court's conclusions and not complying with its orders.

By EPA's own statement, the review was not only considered by the EPA, but was a key part of the basis for EPA's determination of what discharge limits to propose. Clearly, the review should have been included in the rulemaking record and public docket.

Without documentation of how the review was conducted and full information on the data packages that EPA reviewed it is impossible for members of the public to assess whether this critical determination by EPA — that none of the data considered by the Court are of acceptable quality and therefore the Court's conclusions are invalid and can be ignored — has any rational basis.

So I'm asking again for you to provide the report of the independent review or other documentation of the review, and to include these in the public docket.

I suppose that one possible explanation for EPA's failure to provide this documentation or include it in the docket is that it doesn't exist. That is, perhaps the review that was conducted by the EPA and which provided the basis for EPA's rejection of the Court's analysis was an entirely mental exercise, completed without putting anything down on paper or recording any information in any electronic medium. That's not my impression of how federal bureaucracies operate, but if so please tell me, and I'll stop asking for the documentation of the review.

(2) EPA's demontration that it is critical to consider the IMO Ballast Water Convention in developing ballast water discharge standards under the Clean Water Act

Similarly, in my Nov. 25, 2020 comments I noted the absence of any documentation in the public docket supporting EPA's assertion that it had "demonstrated it was critical to consider" the IMO Ballast Water Convention in establishing numeric ballast water effluent limits; and I asked for this documentation in my Oct. 12 and Oct. 27 emails. Obviously, again, this demonstration was material that was considered by the EPA, and it wasn't merely considered but was key since EPA decided to use the discharge limits in the IMO Ballast Water Convention as the US discharge limits; so clearly the documentation of this demonstration should be included in the public docket. I'm asking again that you provide the documentation of this demonstration and add it to the docket.

Again, perhaps no documentation of the demonstration exists beyond the brief discussion in the docket? If so, could you let me know?

(3) Metadata and communications regarding Ballastwater Equipment Manufacturers Association (BEMA) data used by EPA in an analysis in the NOPR

In an analysis discussed in the NOPR, EPA used ballast water treatment system test data selected and provided to EPA by the Ballastwater Equipment Manufacturers Association (BEMA), which are included as a spreadsheet in the docket. Neither the spreadsheet nor the NOPR provide any information on how the data were developed ("metadata") or what ballast water treatment systems they refer to, or the reason for selecting these particular data. In my Oct. 12 and Oct. 27 emails I asked for this information, including any communications between EPA and BEMA or its members about these test data.

I'm asking again for you to provide this information and include it in the public docket.

(4) Metadata and communications regarding Alfa-Laval data used by EPA in an analysis in the NOPR

In an analysis shown in the NOPR, EPA used test data for an Alfa Laval ballast water treatment system that was provided to EPA by Alfa Laval. Again, there are no metadata provided in the NOPR or the docket. The NOPR states that the data came from a type-approval package — which would presumably contain some or all of the relevant metadata — but that package was not included in the docket.

I'm asking again for you to provide this information and include it in the public docket.

These documents are necessary for effective public review of EPA's justification for its proposed ballast water discharge standard. If EPA is not going to make them available, I'd very much appreciate it if you would explain why.

Sincerely,

Andrew Cohen

Center for Research on Aquatic Bioinvasions (CRAB)
5994 McBryde Ave, Richmond CA 94805-1164
internet: www.bioinvasions.com
email: acohen@bioinvasions.com
cell: (510) 367-9825

News Coverage:
Washington Crab Invasion (*KUOW Public Radio*, Feb 1, 2022)
Invasive Mussels and COVID-19 Testing (*NPR Weekend Edition* Jun 15, 2020)
Arctic Invasions and Ballast Water (*Maritime Executive* Apr 20, 2016)
Arctic Invasions and Biofouling (*Maritime Executive* Apr 25, 2016)
Failure of Testing for Ballast Water Bacteria (*Science* Jan 14, 2015)
Ballast Water Tests Fail to Protect Public Health (*New York Times* Jan 14, 2015)

Internet Resources:
The Exotics Guide: Non-Native Marine Species of the North American Pacific Coast