



UNITED STATES DEPARTMENT OF COMMERCE
Office of the General Counsel
Washington, DC 20230

VIA E-MAIL

June 25, 2021

Petter Meier
Counselor, Fisheries and Oceans
Royal Norwegian Embassy
2900 K Street NW, Ste. 500
Washington, D.C. 20007
Petter.Meier@mfa.org

Re: Request for Information Regarding the Regulation of Harvesting of Snow Crab in U.S. Waters

Dear Mr. Meier:

This letter responds to your e-mail to Alexa Cole of the U.S. National Oceanic and Atmospheric Administration (NOAA) on May 27, 2021, with the subject line, "The Regulation of Harvesting of Snow Crab in U.S. Waters." Your e-mail seeks a variety of information from NOAA regarding the management of snow crab in the waters around Alaska and the treatment of crab as a sedentary species under U.S. legislation; your e-mail indicates that this information is intended for use in defending an investment claim brought by a Latvian investor against Norway, which is currently pending before an arbitration tribunal of the International Centre for Settlement of Investment Disputes (ICSID). My office handles requests for documents or testimony for use in legal proceedings that are served on the United States Department of Commerce, including NOAA.

Requests for information from the U.S. Department of Commerce, its agencies, or employees, require you to comply with Department regulations, sometimes referred to as our *Touhy* regulations,¹ which establish specific procedures with respect to subpoenas or requests for the production of documents or testimony for use in legal proceedings. See 15 Code of Federal Regulations (C.F.R.) Part 15, Subpart B. The stated policy of the regulations is to conserve Federal employees' time for conducting official business, minimize the possibility of involvement in controversial issues unrelated to the Department's mission, avoid spending the time and money of the United States for private purposes, prevent the possibility that the public will misconstrue variances between personal opinions of Department employees and Department policy, preserve the integrity of administrative and internal deliberative processes, and protect confidential and sensitive information. See 15 C.F.R. secs. 15.13, 15.17.

Every demand, which includes a request, order, or subpoena for documents for use in a legal proceeding, must be made to the Department's General Counsel's Office and be

¹ *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951); a copy of the regulations has been attached.

accompanied by an affidavit or declaration, or, if an affidavit is not feasible, the request may include a clear statement setting forth the title and forum of the legal proceeding, the requester's interest, why the documents or testimony are not available from another source,² the reason for the demand, and the intended use of the documents or testimony. *See id.* sec. 15.14(c)(3). This information assists the General Counsel's office in making an informed decision regarding whether the production of the requested documents should be authorized. *See id.* The regulations require the approval of the General Counsel or appropriate agency counsel prior to any production of agency records or documents. *See id.* sec. 15.14(b).

If you wish to obtain the requested information concerning the management of snow crab in the waters around Alaska and the treatment of crab as a sedentary species under U.S. legislation, please submit those requests with a statement addressing the factors listed above.

In addition, you can also find non-confidential information about some of these subjects, including the management of crab fisheries in waters off Alaska, at the following NOAA websites:

- Overview of Bering Sea and Aleutian Islands (BSAI) Crab Fisheries: <https://www.fisheries.noaa.gov/alaska/sustainable-fisheries/bering-sea-and-aleutian-islands-bsai-crab-fisheries>;
- Bering Sea/Aleutian Islands King and Tanner Crabs Fishery Management Plan, with links to historical actions: <https://www.fisheries.noaa.gov/management-plan/bering-sea-aleutian-islands-king-and-tanner-crabs-management-plan>; and
- Alaska Crab Stock Assessment and Fishery Evaluation Reports from 1998–2019: <https://www.fisheries.noaa.gov/alaska/sustainable-fisheries/alaska-crab-stock-assessment-and-fishery-evaluation-reports>.

We understand the importance of your case, and providing the information required by our regulations allows us to work with you to determine an appropriate path forward on this matter. Thank you for your cooperation. If you have any questions, please feel free to contact Rebecca Hekman at (240) 252-8196 or rhekman@doc.gov.

Sincerely,

Megan Heller
Chief, General Litigation Division

² Other sources for government documents may include requests under the Freedom of Information Act, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a, publicly-available documents, and discovery avenues with opposing parties.