FYI - Kelly Carlson
cc

HARDY MYERS
ATTORNEY GENERAL

PETER D. SHEPHERD
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DEPARTMENT OF JUSTICE

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July 14, 2005

Bill M. Bakke, Director
Native Fish Society
P.O. Box 19570
Portland, OR 97280

Re: Petition for Public Records Disclosure Order:
Oregon Department of Fish and Wildlife Records

Dear Mr. Bakke:

This letter is the Attorney General's order on your petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on July 7, 2005, asks the Attorney General to direct the Oregon Department of Fish and Wildlife (ODFW) to make available for inspection these records:

1. Creel survey data sheets for Nestucca River winter steelhead conducted by ODFW employees for the 2004-2005 season. We are asking for actual records as filled out by employees.

2. Any adjusted or error corrected data including methodology employed pertaining to the above data.

3. Names and contact information of the individuals responsible for conducting the Nestucca creel surveys, including qualifications.

4. Names and contact information of supervisors overseeing creel survey work.

For the reason that follows, we respectfully deny your petition.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.410. The Public Records Law provides that a person denied the right to inspect or receive a copy of a public record by a state agency or official may petition the Attorney General to order the release of the public record. ORS 192.450(1).

We spoke with Robert Bradley, Assistant District Fish Biologist for ODFW in the North Coast Watershed District, about your petition. He told us that the District Office had never received a request from you for the records cited in your petition and that no such request had been forwarded to that office from another ODFW location or from Assistant Attorney General Steve Sanders. According to Mr. Bradley, the District Office had received a request from Les Helgeson, who is also affiliated with the Native Fish Society. Keith Braun of the District Office received the following request from Mr. Helgeson via electronic mail on May 31, 2005:

> Native Fish Society requests data for winter steelhead returns for the year 2004-2005. We would like actual hatchery returns (including percentage of recycled fish), actual creel survey counts and redd counts as of today (a monthly breakdown would be helpful). We would also like a breakdown of "old" stock vs. "broodstock" fish, where possible. Hatchery returns to Cedar Creek for 2001-2003 would also be helpful.
>
> We are interested in raw data only – not "adjusted" or "interpreted" data.

Mr. Bradley responded to Mr. Helgeson's request via electronic mail on June 2, 2005, disclosing a summary of Cedar Creek Hatchery records since 2001, identifying the website where preliminary data for the 2004-05 steelhead redd surveys were accessible, and explaining that the Nestucca River creel survey data was not yet available but that it would be provided to Mr. Helgeson once it had been entered into an electronic format and error checked.

Mr. Bradley told us that he offered to Mr. Helgeson, via electronic mail on July 8th to either provide the creel survey data electronically once the error checking was complete or provide copies of the actual data sheets. With regard to the data sheets, consistent with the terms of the Public Records Law, Mr. Bradley informed Mr. Helgeson that ODFW would assess a fee for providing copies of the records to him.[1]

The ODFW District Office has no record of receiving a request from you for the records cited in your petition, and it has agreed to disclose the only category of records in common between your petition and Mr. Helgeson's requests, namely the creel survey data sheets. Because ODFW has not denied your request, we deny your petition as premature.

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

PDS/gvk:AGS15813
c: Robert Bradley, ODFW, North Coast Watershed District

[1] The Public Records Law authorizes an agency to require payment of a fee reasonably calculated to reimburse it for the actual cost in making requested records available. ORS 192.440(3).