

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MAINE**

STATE OF MAINE,

Plaintiff

v.

Civil No. 00-122-B-C

UNITED STATES DEPARTMENT OF THE  
INTERIOR, UNITED STATES  
GEOLOGICAL SURVEY, UNITED STATES  
FISH AND WILDLIFE SERVICE, UNITED  
STATES DEPARTMENT OF COMMERCE,  
and NATIONAL MARINE FISHERIES  
SERVICE,

Defendants

GENE CARTER, District Judge

**ORDER**

Pursuant to the Court's December 26, 2000, Memorandum of Decision and Order (Docket No. 29), amended by the order of January 2, 2001 (Docket No. 33), in this dispute between Plaintiff, the State of Maine, and Defendants, United States Department of the Interior ("DOI"), United States Geological Survey ("USGS"), United States Fish and Wildlife Service ("USFWS"), United States Department of Commerce ("DOC"), and National Marine Fisheries Service ("NMFS"), over Defendants' obligation under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, to disclose information regarding the listing of the Atlantic Salmon population in eight Maine rivers as a discrete population segment eligible for protection under the Endangered Species Act ("ESA"), 16, U.S.C. § 1531-1543, the Defendants have now submitted to the Court

documents for *in camera* review. Specifically, the Department of Commerce Defendants (“DOC Defendants”), DOC and NMFS, have submitted four documents to the Court and the Department of Interior Defendants (“DOI Defendants”), DOI, USFWS, and USGS, have submitted forty documents to the Court.

The DOI Defendants have appealed the Court’s December 26 Order, amended by the order of January 2, 2000. The Court, therefore, no longer has jurisdiction to conduct *in camera* review of the documents they have submitted. *See United States v. Distasio*, 820 F.2d 20, 23 (1<sup>st</sup> Cir. 1987) (“As a general rule with only limited exceptions, the entry of a notice of appeal divests the district court of jurisdiction to adjudicate any matters related to the appeal.”). The DOC Defendants have not filed a notice of appeal. Thus, the Court continues to have jurisdiction to conduct *in camera* review of the DOC Defendants’ documents, numbered 6, 15, 19, and 20 on the DOC Defendants’ Vaughn Index. *See id.*; Defendants’ Statement of Material Facts With Respect to Which There Is No Genuine Issue (Docket No. 13), Exhibit 9. Applying the principles set forth in its December 26, 2000, Memorandum of Decision and Order, the Court has determined that each of these documents, claimed exempt under the deliberative process privilege, do contain some segregable factual information. The Court finds that this factual material is not so “inextricably intertwined” with the deliberative material contained in the documents that its disclosure would compromise the confidentiality of the deliberative material. *Hopkins v. United States Dep’t of Housing and Urban Dev.*, 929 F.2d 81, 85 (2d Cir. 1991) (citing *Envtl. Prot. Agency v. Mink*, 410 U.S. 73, 92, 93 S. Ct. 827, 838 (1973)). The Court has filed under seal the portions of the documents that it has determined must be disclosed to

Plaintiff as nonexempt under 5 U.S.C. § 552(b)(5). The Court **ORDERS** the disclosure of this material to Plaintiff within ten (10) days from the entry of this order.

GENE CARTER  
District Judge

Dated at Portland, Maine this 29th day of January, 2001.

MAINE, STATE OF  
    plaintiff

CHRISTOPHER C. TAUB, ASST ATTY  
GENERAL  
[COR LD NTC]  
SIX STATE HOUSE STATION  
AUGUSTA, ME 04333-0006  
626-8800

v.

INTERIOR, US DEPT  
    defendant

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GEOLOGICAL SURVEY, US  
    defendant

HALSEY B. FRANK, ESQ.  
(See above)  
[COR LD NTC]

FISH AND WILDLIFE SERVICE, US  
    defendant

HALSEY B. FRANK, ESQ.  
(See above)  
[COR LD NTC]

COMMERCE, US DEPT  
    defendant

HALSEY B. FRANK, ESQ.  
(See above)  
[COR LD NTC]

NATIONAL MARINE FISHERIES  
SERVICE  
    defendant

HALSEY B. FRANK, ESQ.  
(See above)  
[COR LD NTC]