



**Pacific States Marine Fisheries Commission
Recreational Fisheries Information Network**

205 SE Spokane St., Suite 100, Portland, OR 97202

Phone: (503) 595-3100 Fax: (503) 595-3232

Email: recfin@psmfc.org



In order to receive confidential data from RecFIN, you will; 1) understand the Agreement, 2) review the Administrative Order, 3) sign this Certificate and 4) mail the original to PSMFC c/o Steve Williams. You may also fax a signed copy to 503-595-3232 to get your data sooner. Retain a copy of this certificate and the following pages. You will receive a copy of the signed certificate in 2-3 weeks.

Certificate of Understanding and Statement of Non-disclosure of Confidential Data

I have read the Agreement and reviewed the NOAA Administrative Order 216-100 (July 1994) on Confidentiality of Fisheries Statistics and understand their contents.

I will not disclose any data identified as confidential to any person(s), except as directed by the Assistant Administrator for Fisheries, or the Assistant Administrator's designee, in accordance with the law, as authorized by the Office of General Counsel. I am fully aware of the civil and criminal penalties for unauthorized disclosure, misuse, or other violation of the confidentiality of such data.

I understand that I may be subject to criminal and civil penalties under provisions of Title 5 U.S.C. 552 and Title 18 U.S.C. 1905, which are the primary Federal statutes prohibiting unauthorized disclosure of confidential information. I am also subject to criminal and civil penalties under the Magnuson-Stephens Fisheries Conservation and Management Act (MSFCMA), Marine Mammal Protection Act (MMPA), and 50 Code of Federal Regulations (CFR), Parts 620 (Citations) and 621 (Civil Penalties).

I also understand that this confidential data may be used by the undersigned only and may be released only in aggregated form which contains no specific vessel or processor identifiers, and that the data must be aggregated such that landings and revenue for unique vessels and processors cannot be determined either from the information itself or from the present release of information or in combination with other releases. Aggregated information includes consolidated data from three or more unidentified fishermen or vessels and from which it is not possible to learn the identity of individual entities or to associate individual entities with particular harvests or harvest locations.

I also understand that at the conclusion of this specific project that I am obligated to destroy any and all copies of this confidential data, including: electronic, magnetic, or printed hard copy.

This Confidentiality Agreement ("Agreement") is made and effective the signed date below by and between Pacific States Marine Fisheries Commission, 205 SE Spokane St, Ste 100, Portland, Oregon 97202-6487, phone: 503-595-3100 ("Owner") and

Recipient Signature

Date

Supervisor

Department



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Data User:

Please briefly describe the project and your affiliation to the Federal/State agency which requires access to confidential data including: a) the specific types of data required, b) the relevance of the requested RecFIN data to the intended use, c) the duration of time access required (continuous, infrequent, one-time, or a specific range of dates), d) an explanation of why the availability of aggregate or non-confidential summaries of data would not satisfy the requested needs.

Printed Name

Recipient Signature

Date

Organization

Program/Project

Position Title

Address (line 1)

Address (line 2)

Phone Number

Email Address

Witness:

Signature

Date

Printed Name

Title

Organization

DO NOT WRITE BELOW THIS LINE: FOR RECFIN USE ONLY

ACCOUNTS GRANTED

☐ Oracle ☐ Linux ☐ Confidential Website:
Circle (WOC, ADV_USR, ALL, ADMIN)

SINGLE PROJECT? ☐ Yes ☐ No
USER LOGIN:
INITIAL PWD:

DATE ACCOUNTS MADE:
DATE USER RETRIEVED PWD:
DATE ACCOUNTS WERE LOCKED:

SIGNATURE OF RECFIN APPROVING OFFICIAL: _____

CONFIDENTIALITY AGREEMENT

1. Confidential Information. Owner proposes to disclose certain of its confidential and proprietary information (the "Confidential Information") to Recipient. Confidential Information shall include all data, materials, products, technology, computer programs, specifications, manuals, business plans, software, marketing plans, business plans, financial information, and other information disclosed or submitted, orally, in writing, or by any other media, to Recipient by Owner. Confidential Information disclosed orally shall be identified as such within five (5) days of disclosure. Nothing herein shall require Owner to disclose any of its information.
2. Recipient's Obligations. A. Recipient agrees that the Confidential Information is to be considered confidential and proprietary to Owner and Recipient shall hold the same in confidence, shall not use the Confidential Information other than for the purposes of its business with Owner, and shall disclose it only to its officers, directors, or employees with a specific need to know. Recipient will not disclose, publish or otherwise reveal any of the Confidential Information received from Owner to any other party whatsoever except with the specific prior written authorization of Owner. B. Confidential Information furnished in tangible form shall not be duplicated by Recipient except for purposes of this Agreement. Upon the request of Owner, Recipient shall return all Confidential Information received in written or tangible form, including copies, or reproductions or other media containing such Confidential Information, within ten (10) days of such request. At Recipient's option, any documents or other media developed by the Recipient containing Confidential Information may be destroyed by Recipient. Recipient shall provide a written certificate to Owner regarding destruction within ten (10) days thereafter.
3. Term. The obligations of Recipient herein shall be effective from the date Owner last discloses any Confidential Information to Recipient pursuant to this Agreement. Further, the obligation not to disclose shall not be affected by bankruptcy, receivership, assignment, attachment or seizure procedures, whether initiated by or against Recipient, nor by the rejection of any agreement between Owner and Recipient, by a trustee of Recipient in bankruptcy, or by the Recipient as a debtor-in-possession or the equivalent of any of the foregoing under local law.
4. Other Information. Recipient shall have no obligation under this Agreement with respect to Confidential Information which is or becomes publicly available without breach of this Agreement by Recipient; is rightfully received by Recipient without obligations of confidentiality; or is developed by Recipient without breach of this Agreement; provided, however, such Confidential Information shall not be disclosed until thirty (30) days after written notice of intent to disclose is given to Owner along with the asserted grounds for disclosure.
5. No License. Nothing contained herein shall be construed as granting or conferring any rights by license or otherwise in any Confidential Information. It is understood and agreed that neither party solicits any change in the organization, business practice, service or products of the other party, and that the disclosure of Confidential Information shall not be construed as evidencing any intent by a party to purchase any products or services of the other party nor as an encouragement to expend funds in development or research efforts. Confidential Information may pertain to prospective or unannounced products. Recipient agrees not to use any Confidential Information as a basis upon which to develop or have a third party develop a competing or similar product.
6. No Publicity. Recipient agrees not to disclose its participation in this undertaking, the existence or terms and conditions of the Agreement, or the fact that discussions are being held with Owner.
7. Governing Law and Equitable Relief. This Agreement shall be governed and construed in accordance with the laws of the United States and the State of Oregon and Recipient consents to the exclusive jurisdiction of the state courts and U.S. federal courts located there for any dispute arising out of this Agreement. Recipient agrees that in the event of any breach or threatened breach by Recipient, Owner may obtain, in addition to any other legal remedies which may be available, such equitable relief as may be necessary to protect Owner against any such breach or threatened breach.
8. Final Agreement. This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both parties.
9. No Assignment. Recipient may not assign this Agreement or any interests herein without Owner's express prior written consent.
10. Severability. If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.
11. Notices. Any notice required by this Agreement or given in connection with it, shall be in writing and shall be given to the appropriate party by personal delivery or by certified mail, postage prepaid, or recognized overnight delivery services.
12. No Implied Waiver. Either party's failure to insist in any one or more instances upon strict performance by the other party of any of the terms of this Agreement shall not be construed as a waiver of any continuing or subsequent failure to perform or delay in performance of any term hereof.
13. Headings. Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

NOAA Administrative Order 216-100
PROTECTION OF CONFIDENTIAL FISHERIES STATISTICS

Eff: 7/18/94; Iss: 7/26/94

SECTION 1. PURPOSE.

.01 This Order: a. prescribes policies and procedures for protecting the confidentiality of data submitted to and collected by the National Oceanic and Atmospheric Administration (NOAA)/National Marine Fisheries Service (NMFS) as authorized or required by law; b. informs authorized users of their obligations for maintaining the confidentiality of data received by NMFS; c. provides for operational safeguards to maintain the security of data; and d. states the penalties provided by law for disclosure of confidential data.

SECTION 2. SCOPE.

This Order covers all confidential data received, collected, maintained, or used by NMFS.

SECTION 3. DEFINITIONS.

.01 **Access to data** means the freedom or ability to use data, conditioned by a statement of nondisclosure and penalties for unauthorized use.

.02 **Aggregate or summary form** means data structured so that the identity of the submitter cannot be determined either from the present release of the data or in combination with other releases.

.03 **Agreement** refers to all binding forms of mutual commitment under a stated set of conditions to achieve a specific objective.

.04 **Assistant Administrator** means the Assistant Administrator for Fisheries, NOAA, or a designee authorized to have access to confidential data.

.05 **Authorized Use/User.**

a. **Authorized use** is that specific use authorized under the governing statute, regulation, order, contract or agreement.

b. An **authorized user** is any person who, having the need to collect or use confidential data in the performance of an official activity, has read this Order and has signed a statement of nondisclosure affirming the user's understanding of NMFS obligations with respect to confidential data and the penalties for unauthorized use and disclosure.

.06 **Confidential data** means data that are identifiable with any person, accepted by the Secretary, and prohibited by law from being disclosed to the public. The term "as used" does not convey data sensitivity for national security purposes [See Executive Order (E.O.) 12356 dated April 2, 1982].

.07 **Data** refers to information used as a basis for reasoning, discussion, or calculation that a person may submit, either voluntarily or as required by statute or regulation.

.08 **GC** means the Office of General Counsel, NOAA.

.09 **Person** means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of such governments, including Regional Fishery Management Councils (Councils).

.10 **Public** means any person who is not an authorized user.

.11 **Region** means NMFS Regional field offices, Fisheries Science Centers, and associated laboratories.

.12 **Source document** means the document, paper, or electronic format on which data are originally recorded.

.13 **State employee** means any member of a State agency responsible for developing and monitoring the State's program for fisheries or Marine Mammal Protection Act (MMPA) program.

.14 **Submitter** means any person or the agent of any person who provides data to NMFS either voluntarily or as required by statute or regulation.

SECTION 4. POLICY.

For data subject to this Order, it is NMFS policy that: a. confidential data shall only be disclosed to the public if required by the Freedom of Information Act (FOIA), 5 U.S.C. 552, the Privacy Act, 5 U.S.C. 552a, or by court order. Disclosure of data pursuant to a subpoena issued by an agency of competent jurisdiction is a lawful disclosure. Disclosure pursuant to a subpoena must be approved by GC; b. individual identifiers shall be retained with data, unless the permanent deletion is consistent with the needs of NMFS and good scientific practice [See Section 6.02c]; and c. a notice is required on all report forms requesting data and must comply with 5 U.S.C. 552a(e)(3) and Paperwork Reduction Act requirements in NAO 216-8, Information Collections and Requirements Needing Office of Management and Budget Clearance. [See E.O. 12600 of June 23, 1987, for additional information regarding the rights of submitters to designate commercial confidential data at the time of submission.]

SECTION 5. OPERATIONAL RESPONSIBILITIES.

.01 The Regional Director of each region (or, in the case of headquarters, each Office Director) has the responsibility to maintain the confidentiality of all data collected, maintained, and disclosed by the respective region.

.02 Each region shall submit to the Assistant Administrator specific procedures governing the collection, maintenance, and disclosure of confidential data. These documents shall be compiled as regional handbooks following the guidelines and standards: a. handbooks are to be developed in detail to ensure the maintenance of confidential data on a functional basis in each region; and b. handbooks shall be coordinated through the National Data Management Committee (a NMFS group established by the Assistant Administrator to develop data management policies and procedures) and reviewed annually. The regional handbooks will address, at minimum, the contents of Sections 6-7.

SECTION 6. PROCEDURES.

.01 Data Collection. To collect data, the Secretary may use Federal employees, contractor employees, or, pursuant to an agreement, State employees.

a. General Requirements.

1. Personnel authorized to collect Federal data must maintain all documents containing confidential data in secure facilities; and 2. may not disclose confidential data, whether recorded or not, to anyone not authorized to receive and handle such data.

b. Specific Requirements.

1. Each Federal or contractor employee collecting or processing confidential data will be required to read, date, and sign a statement of nondisclosure, that affirms the employee's understanding of NMFS obligations with respect to confidential data and the penalties for unauthorized use and disclosure of the data. Upon signature, the employee's name will be placed on record as an "authorized user," and the employee will be issued certification.

2. Data collected by a contractor must be transferred timely to authorized Federal employees; no copies of these data may be retained by the contractor. NMFS may permit contractors to retain aggregated data. A data return clause shall be included in the agreement. All procedures applicable to Federal employees must be followed by contractor employees collecting data with Federal authority.

3. Under agreements with the State, each State data collector collecting confidential data will sign a statement at least as protective as the one signed by Federal employees, which affirms that the signer understands the applicable procedures and regulations and the penalties for unauthorized disclosure.

.02 Maintenance.

a. Maintenance is defined as the procedures required to keep confidential data secure from the time the source documents are received by NMFS to their ultimate disposition, regardless of format. [See National Institute of Standards and Technology "Computer Security Publications, List 91" for guidance.]

b. Specific procedures in regional handbooks must deal with the following minimum security requirements, as well as any others that may be necessary because of the specific data, equipment, or physical facilities: 1. the establishment of an office or person responsible for evaluating requests for access to data; 2. the identifications of all persons certified as authorized users. These lists shall be kept current and reviewed on an annual basis; 3. the issuance of employee security rules that emphasize the confidential status of certain data and the consequences of unauthorized removal or disclosure; 4. the description of the security procedures used to prevent unauthorized access to and/or removal of confidential data; 5. the development of a catalog/inventory system of all confidential data received including: the type of source document; the authority under which each item of data was collected; any statutory or regulatory restriction(s) which may apply; and routing from the time of receipt until final disposition; and 6. The development of an appropriate coding system for each set of confidential data so that access to data that identifies, or could be used to identify, the person or business of the submitter is controlled by the use of one or more coding system(s). Lists that contain the codes shall be kept secure.

c. The permanent deletion of individual identifiers from a database shall be addressed on a case-by-case basis. Identifiers may only be deleted after: 1. future uses of data have thoroughly been evaluated, e.g., the need for individual landings records for allocating shares under an individual transferable quota program; 2. consultation with the agency(s) collecting data (if other than NMFS), the relevant Council(s), and NMFS Senior Scientist; and 3. concurrence by the Assistant Administrator has been received prior to deletion.

.03 Access to Data Subject to This Order.

a. **General Requirements.** In determining whether to grant a request for access to confidential data, the following information shall be taken into consideration:

1. the specific types of data required; 2. the relevance of the data to the intended uses; 3. whether access will be continuous, infrequent, or one-time; 4. an evaluation of the requester's statement of why aggregate or non-confidential summaries of data would not satisfy the requested needs; and 5. the legal framework for the disclosure, in accordance with GC and this Order.

b. **Within NMFS.** NMFS employees requesting confidential data must have certification as being authorized users for the particular type of data requested.

c. **Councils.** Upon written request by the Council Executive Director:

1. "authorized user" status for confidential data collected under the Magnuson Fishery Conservation and Management Act (Magnuson Act) may be granted to a Council for use by the Council for conservation and management purposes consistent with the approval of the Assistant Administrator as described in 50 CFR 603.5;

2. "authorized user" status for confidential data, collected under the Magnuson Act and MMPA, will be granted to Council employees who are responsible for Fishery Management Plan development and monitoring; and

3. Councils that request access to confidential data must submit, on an annual basis, a copy of their procedures for ensuring the confidentiality of data to the region, or in the case of intercouncil fisheries, regions. The procedures will be evaluated for their effectiveness and, if necessary, changes may be recommended. As part of this procedure, an updated statement of nondisclosure will be included for each employee and member who requires access to confidential data.

d. States.

1. Requests from States for confidential data shall be directed in writing to the NMFS office that maintains the source data.

2. Each request will be processed in accordance with any agreement NMFS may have with the State:

(a) confidential data collected **solely** under Federal authority will be provided to a State by NMFS only if the Assistant Administrator finds that the State has authority to protect the confidentiality of the data comparable to, or more stringent than, NMFS' requirements; and

(b) the State will exercise its authority to limit subsequent access and use of the data to those uses allowed by authorities under which the data was collected.

3. If the State has no agreement with NMFS for the collection and exchange of confidential data, the request shall be treated as a public request and disclosure may be denied subject to FOIA or the Privacy Act.

4. Where a State has entered into a cooperative exchange agreement with another State(s), NMFS will facilitate transfer or exchange of State-collected data in its possession if:

(a) NMFS has written authorization for data transfer from the head of the collecting State agency; and

(b) the collecting State has provided NMFS a list of authorized users in the recipient State(s); and

(c) the collecting State agrees to hold the United States Government harmless for any suit that may arise from the misuse of the data.

e. Contractors.

1. Pursuant to an agreement with NMFS, a NMFS contractor (including universities, Sea Grant investigators, etc.) may be granted "authorized user" status consistent with this Order if the use furthers the mission of NMFS.

2. The region will notify the contractor of its decision on access in writing within 30 calendar days after receipt of the request.

3. Contingent upon approval, the contractor will be provided with details regarding conditions of data access, any costs involved, formats, timing, and security procedures. If the request is denied, the reason(s) for denial will be given by the NMFS office involved. The denial will not preclude NMFS consideration of future requests from the contractor.

4. If access is granted, language in the agreement specifically dealing with confidentiality of data will be required. The language shall include all of the relevant portions of this Order and shall prohibit the further disclosure of the data. No data may be retained beyond the termination date of the agreement; and any disclosure of data derived from the accessed confidential data must be approved by NMFS.

5. Each agreement shall be reviewed by GC prior to its execution, and shall, to the extent possible, be consistent with the model agreement contained in Appendix D (*Not included -- WebEd*).

f. **Submitters.** The Privacy Act allows for data to be released back to the submitter upon receipt and verification of a written request stating the data required.

04. Requests for Confidential Data. NMFS is authorized to collect data under various statutes [See Appendix A (*Not include -- WebEd*)]. Two types of statutes govern the disclosure of confidential data collected by the Federal Government, those that contain specific and non-discretionary language within the Act, and those that provide overall guidance to the Federal Government. Sections of these Acts that deal with exceptions to disclosure may be found in Appendix B (*Not included -- WebEd*).

a. Magnuson Act and MMPA.

1. Data collected under 16 U.S.C. 1853 (a) or (b), and 16 U.S.C. 1383a(c),(d),(e),(f), or (h) will be handled in the following manner:

(a) data will only be disclosed to Federal employees and Council employees who are responsible for management plan development and monitoring; State employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person; a Council for conservation and management purposes [not applicable for MMPA data] or when required by court order. [See 50 CFR 229.10 and part 603];

(b) Council advisory groups are not permitted access to such confidential data [See 50 CFR 601.27(b)];

(c) requests from States that do not have an agreement with the Secretary will be processed in accordance with the Privacy Act or FOIA; and

(d) data collected by an observer under 16 U.S.C. 1853 (a) or (b) are not considered to have been "submitted to the Secretary by any person," and therefore are not confidential under Section 6.04.a of this Order. Data collected by an observer may be withheld from disclosure under the Privacy Act, or subsections (b)(3),(4),(5),(6), or (7) of FOIA.

2. Confidential data submitted to the Secretary under other Sections of the Magnuson Act or MMPA may only be disclosed in accordance with the Privacy Act or FOIA. Types of data and the collection authority may include among others:

(a) Processed Product Data -- 16 U.S.C. 1854(e);

(b) Fish Meal and Oil, Monthly -- 16 U.S.C. 1854(e);

(c) Data Collected Under State Authority and Provided to NMFS -- 16 U.S.C. 1854(e); and

(d) Tuna-Dolphin Observer Program -- 16 U.S.C. 1361 *et seq.*

b. South Pacific Tuna Act. Data collected under South Pacific Tuna Act 16 U.S.C. 973j is protected from disclosure to the public in accordance with section 973j(b).

c. Other Statutes. Confidential data collected under other NMFS programs as authorized by statutes other than South Pacific Tuna Act (16 U.S.C 973j), MMPA (16 U.S.C. 1361 *et seq.*), and Magnuson Act (16 U.S.C. 1801 *et seq.*), may only be disclosed to the public in accordance with the Privacy Act and FOIA. Types of data and the collection authority may include among others:

(1) Monthly Cold Storage Fish Report -- 16 U.S.C. 742(a);

(2) Market News Data -- 16 U.S.C. 742(a); and

(3) Seafood Inspection Data -- 7 U.S.C. 1621 *et seq.*

d. Special Procedures.

1. **Cold Storage Summary Reports.** NMFS publishes monthly cold storage holdings of fishery products. Advance knowledge of the content of these reports could give those who trade in the products an opportunity to gain competitive advantage.

Therefore, in addition to the confidential protection provided to individual reports, the monthly summary report will not be disclosed to the public until 3:00 p.m. Eastern Time of the official release date. Release dates for these data are published 1 year in advance in November, and can be obtained from the NMFS Fisheries Statistics Division.

2. Surplus commodity purchases by USDA. NMFS and the Department of Agriculture (USDA) have an interagency agreement relating to the purchase of surplus fishery products. NMFS is responsible for providing confidential data and recommendations to the USDA regarding these purchases. Advance knowledge of these data could cause a competitive advantage or disadvantage to the general public, fishing industry, and the program. Therefore, all NMFS personnel engaged in the surplus commodity purchase program will be required to sign a specific "USDA Responsibility Statement." A copy will be maintained in the Office of Trade Services.

3. Agreements for Disclosure of Confidential Data. A letter of agreement may authorize the disclosure of confidential data when both the Government and the submitter agree to disclosure of the data. The need to provide security for the data will vary depending on the type of data collected and the form of the disclosure. Disclosure can be undertaken if all the following conditions are met:

(a) the person has agreed in writing to the disclosure and is aware that disclosure is irrevocable; (b) the recipient has been informed in writing of the sensitivity of the data; and (c) the wording of the agreement has been approved by GC.

.05 Disposal. NAO 205-1, NOAA Records Management Program, shall govern the disposition of records covered under this Order.

SECTION 7. PENALTIES.

.01 Civil and Criminal. Persons who make unauthorized disclosure of confidential data may be subject to civil penalties or criminal prosecution under:

a. Trade Secrets Act (18 U.S.C. 1905); b. Privacy Act (5 U.S.C. 552a(i)(1)); c. Magnuson Act (16 U.S.C. 1858); and d. MMPA (16 U.S.C. 1375).

.02 Conflict of Interest. Employees are prohibited by Department of Commerce employee conduct regulations [15 CFR part 0] and by ethics regulations applicable to the Executive Branch [5 CFR 2635.703] from using nonpublic information subject to this Order for personal gain, whether or not there is a disclosure to a third party.

.03 Disciplinary Action. Persons may be subject to disciplinary action, including removal, for failure to comply with this Order. Prohibited activities include, but are not limited to, unlawful disclosure or use of the data, and failure to comply with implementing regulations or statutory prohibitions relating to the collection, maintenance, use and disclosure of data covered by this Order.

SECTION 8. EFFECT ON OTHER ISSUANCES.

None.

SIGNED,

Director, Office of Administration