

Oregon Department of Fish & Wildlife

NON-DISCLOSURE AGREEMENT GOVERNING CONFIDENTIAL DATA

DISCLOSER: Oregon Department of Fish and Wildlife (hereafter referred to as the “DEPARTMENT”)
ADDRESS: 2040 SE Marine Science DR, Newport, OR 97365

RECEIVER(S):

U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries, Northwest Fishery Science Center (hereafter referred to as the “RECEIVER”)

INDIVIDUALS WHO MAY ACCESS THE DATA:

Jason Cope (NWFSC), Aaron Berger (NWFSC).

EFFECTIVE DATE: This agreement is effective immediately upon signature by all parties.

RECEIVER has requested to use the following data:

All data necessary for the Black Rockfish federal stock assessment for 2023/25 assessment cycle, including, but not limited to:

- Historical commercial and recreational catches
- Reconstructed shore/estuary catches
- Available double-read and special projects ages from recreational and commercial fisheries sampling
- Commercial and recreational data from which to develop indices of abundance, in coordination with ODFW personnel (ORBS, Onboard Observer, Commercial nearshore logbook)
 - Including available biological data for these datasets as well
- Fishery-independent data to develop assessment inputs in coordination with ODFW staff including:
 - Statewide hydroacoustic survey data
 - PIT tagging data
 - Marine reserves hook and line data

The Oregon Department of Fish and Wildlife (DEPARTMENT) recognizes the confidentiality of these data and that this information may be exempt from public disclosure under the Oregon Public Records Law, see Oregon Revised Statutes 192.311 *et seq.*, and may only be disclosed to a federal agency if that agency signs an agreement to maintain the confidentiality of that data. The DEPARTMENT finds that it is in the public interest to allow disclosure of the specified information to the individuals named in this Agreement for the limited purpose described below. Therefore, the DEPARTMENT agrees to allow RECEIVER to receive and use the data described above on the condition that RECEIVER abide by the following terms and conditions:

- (1) The RECEIVER agrees that these data will be used only for the following purpose:

To develop a federal stock assessment for Black Rockfish

- (2) The RECEIVER agrees that the timeframe for the use of these data and results of this project is:

Late 2023. The assessment will be reviewed and finalized during the summer and fall of 2023.

- (3) RECEIVER agrees that these data will be treated as confidential and handled with the utmost security, to the extent permitted by law. The data shall not be disclosed in any manner that identifies the individual or enterprise from which the data were originally collected, to the extent permitted by law.

- (4) RECEIVER agrees not to distribute the data, to the extent permitted by law, and shall limit access to the individuals named on the top of this form. All individuals who are allowed access to the provided data must abide by the conditions set forth in this agreement and by signing this agreement agree to be bound by these conditions.

- (a) This agreement imposes no obligation upon RECEIVER with respect to information that:
- (i) was in RECEIVER's possession before receipt from the DEPARTMENT;
 - (ii) is or becomes a matter of public knowledge;
 - (iii) is received by RECEIVER from a third party without a duty of confidentiality;
 - (iv) is disclosed by the DEPARTMENT to a third party without a duty of confidentiality on the third party;
 - (v) is disclosed by RECEIVER with the DEPARTMENT's prior written approval; or
 - (vi) is required by law to be disclosed.

(b) As required by 5 U.S.C. § 2302(b)(13) and the annual Appropriations Act, these provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General or the Office of Special Counsel of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.

(c) This agreement shall not be construed to prohibit or restrict an employee or applicant for employment from disclosing to Congress, the Special Counsel, the Inspector General of an agency, or any other agency component responsible for internal investigation or review any information that relates to any violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or any other whistleblower protection.

(5) RECEIVER agrees to coordinate with the DEPARTMENT on reviewing all products (publications, reports, presentations, maps, etc.), or any representation of the confidential data, including products in which the data are summarized or aggregated to a non-confidential level, **and allow two weeks for DEPARTMENT to complete such review**, prior to public display, release, or distribution, to the extent permitted by law. The purpose of the DEPARTMENT's review is solely to ensure that the confidentiality of the source data is preserved.

(6) RECEIVER agrees not to present specific location or identity data (e.g., vessel or processor), either in graphical or tabular format, where any vessel fished without aggregating by a minimum of three (3) (e.g., vessels) and additional approval by the DEPARTMENT, to the extent permitted by law.

(7) RECEIVER agrees that all reports, manuscripts, or other print or video material shall contain an acknowledgement of the DEPARTMENT for providing the requested information, to the extent permitted by law.

(8) RECEIVER agrees that a copy of this agreement shall remain with the requested data, whether it resides in an electronic or printed format.

(9) RECEIVER agrees to promptly remove all active copies of the original raw data provided from its computer systems upon completion of work or should funding for the project not be secured for the purpose described above. For data contained in computer system backups, RECEIVER will remove general user access to such data. RECEIVER's disposition of the data or records containing the data shall be in accordance with applicable NOAA Records Schedules.

(10) RECEIVER agrees to notify the DEPARTMENT if the general timeframe for the project, as described in box (2) above, is significantly altered.

(11) This agreement may be terminated immediately by either RECEIVER or DEPARTMENT upon written notification to the other party. Such termination shall not affect RECEIVER's duties with respect to confidential data provided by DEPARTMENT prior to termination.

(12) This agreement is made under and shall be governed by the laws of the United States. This agreement may be amended by written agreement signed by both RECEIVER and DEPARTMENT.

(13) This agreement constitutes the entire agreement of the Parties regarding the confidentiality of these data, and this agreement supersedes all prior communications, representations, or agreements, verbal or

written, among the Parties relating to the agreement's subject matter. No provision in this agreement may be waived or amended except by written consent of both parties. It is further understood and agreed that no failure or delay by either Party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise or waiver of a right, power or privilege preclude any other or further exercise thereof.

(14) This agreement may be executed in two or more identical counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute the same instrument notwithstanding that all parties are not signatories to the same counterpart.

OREGON DEPARTMENT OF FISH AND WILDLIFE, MARINE RESOURCES PROGRAM



Justin Ainsworth
Technical & Data Services Section Leader

Date: 1/4/2023

RECEIVER(S)

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Date: 2022.12.29 08:09:22 -08'00'

Dr. Kevin V. Werner
Science Director
Northwest Fisheries Science Center

Date: _____

ACKNOWLEDGEMENT THAT INDIVIDUALS WHO MAY ACCESS THE DATA HAVE READ AND UNDERSTANDS THE REQUIREMENTS OF THIS AGREEMENT, BY RECEIVER(S)

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Jason Cope, Ph.D.
Research Fishery Biologist
Fishery Resource Analysis and Monitoring Division
Northwest Fisheries Science Center

Date: _____

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Aaron Berger, Ph.D.
Fishery Resource Analysis and Monitoring Division
Northwest Fisheries Science Center

Date: _____

