

National Oceanic and Atmospheric Administration	NOAA Administrative Order 216-100	
NOAA ADMINISTRATIVE ORDER SERIES	Date of Issuance July 26, 1994	Effective Date July 18, 1994
SUBJECT PROTECTION OF CONFIDENTIAL FISHERIES STATISTICS		

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.

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]. 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.

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.

Director, Office of Administration

Office of Primary Interest:
National Marine Fisheries Service
Office of Research and Environmental Information
Fisheries Statistics Division (F/RE1)

STATUTES

NMFS is authorized to collect biological, economic, social, and other data under the following statutes, among others:

- a. Agricultural Marketing Act of 1946, 7 U.S.C. 1621-1627;
- b. Agricultural Trade Development and Assistance Act of 1954, 7 U.S.C. 1704;
- c. Anadromous Fish Conservation Act, 16 U.S.C. 757-757f;
- d. Atlantic Coast Fish Study for Development and Protection of Fish Resources, 1950, 16 U.S.C. 760a;
- e. Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971-971i;
- f. Eastern Pacific Tuna Licensing Act of 1984, 16 U.S.C. 972-972h;
- g. Endangered Species Act, 16 U.S.C. 1531-1543;
- h. Farrington Act of 1947, 16 U.S.C. 758-758d;
- i. Fish and Wildlife Act of 1956, 16 U.S.C. 742(a) *et seq*;
- j. Fish and Wildlife Coordination Act of 1934, 16 U.S.C. 661-666c;
- k. Fishery Market News Service Act of 1937; 50 Stat. 296;
- l. Fur Seal Act, 16 U.S.C. 1151-1175;
- m. Interjurisdictional Fisheries Act of 1986, 16 U.S.C. 4101 *et seq*;
- n. Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq*;
- o. Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq*;
- p. Marine Migratory Gamefish Act of 1959, 16 U.S.C. 760e;
- q. South Pacific Tuna Act of 1988, 16 U.S.C. 973-973n; and
- r. Tuna Conventions Act of 1950, 16 U.S.C. 951-961.

PRIMARY PROTECTIVE AUTHORITIES

a. Magnuson Fishery Conservation and Management Act,
16 U.S.C. 1853d, (Magnuson Act).

Data required as part of a reporting requirement under the Magnuson Act are protected from disclosure to the public by section 303(d) which provides: "Any statistic submitted to the Secretary by any person in compliance with any requirement under subsections 303(a) and (b) shall be confidential and shall not be disclosed except:

(1) to Federal employees and Council employees who are responsible for management plan development and monitoring;

(2) to State employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person; or

(3) when required by court order.

The Secretary shall, by regulation [See 50 CFR part 603], prescribe such procedures as may be necessary to preserve such confidentiality, except that the Secretary may release or make public any such statistics in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such statistics. Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary, or with the approval of the Secretary, the Council, of any statistic submitted in compliance with a requirement under subsection (a) or (b)."

b. Marine Mammal Protection Act, 16 U.S.C. 1383a(j), (MMPA)

Certain MMPA data are protected from disclosure by section 114(j) which provides: "Any information collected under subsection (c),(d),(e),(f), or (h) of this section shall be confidential and shall not be disclosed except:

(A) to Federal employees whose duties require access to such information;

(B) to State employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person;

(C) when required by court order; or

(D) in the case of scientific information involving fisheries, to employees of Regional Fishery Management Councils who are responsible for fishery management plan development and monitoring....

The Secretary shall prescribe such procedures [See 50 CFR 229.10] as may be necessary to preserve such confidentiality, except that the Secretary shall release or make public any such information in aggregate, summary, or other form which does not directly or indirectly disclose the identity or business of any person."

c. South Pacific Tuna Act 16 U.S.C. 973j(b).

Certain data are protected from disclosure by section 973j(b) which provides: "Information provided by license holders in Schedules 5 and 6 of Annex 1 of the Treaty shall be provided to the Secretary for transmittal to the Administrator and to an entity designated by the license holder. Such information thereafter shall not be released and shall be maintained as confidential by the Secretary, including information requested under Section 552 of Title 5, unless disclosure is required under court order or unless the information is essential for an enforcement action under section 973c, 973h(c), or 973i of this title, or any other proper law enforcement action."

d. Freedom of Information Act, 5 U.S.C. 552 (FOIA)

Although FOIA generally requires agencies to make records available to any person requester, it does provide specific exemptions for which an agency may deny disclosure as follows:

"...(b) This section does not apply to matters that are... (3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) records or information compiled for law enforcement purposes,..."

e. Trade Secrets Act 18 U.S.C. 1905

The Trade Secrets Act forbids disclosure only to the extent that other laws do not require the information be released. The courts have interpreted its protection to be virtually coextensive with exception of FOIA exemption 4.

The Trade Secrets Act states: "Whoever, being an officer or employee of the United States or of any department or agency thereof, or agent of the Department of Justice as defined in the Antitrust Civil Process Act (15 U.S.C. 1311-1314), publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except

as provided by law; shall be fined not more than \$1,000, or imprisoned not more than one year, or both; and shall be removed from office or employment."

f. Privacy Act, 5 U.S.C. 552a(b)

Privacy Act records are to be handled according to NAO 205-15.

The Privacy Act prohibits disclosure stating:

"...(b) Conditions of Disclosure. No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be:

- (1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;
- (2) required under section 552 of this title;
- (3) for a routine use as defined in subsection (a) (7) of this section and described under subsection (e) (4) (D) of this section;
- (4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;
- (5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;
- (6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;
- (7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;
- (8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;
- (9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;
- (10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;
- (11) pursuant to the order of a court of competent jurisdiction; or

(12) to a consumer reporting agency in accordance with section 3711(f) of title 31.

g. Government in the Sunshine Act 5 U.S.C. 552b(c)

The Sunshine Act provides for open access to meetings held by the government. The Act provides for certain cases when, with prior notice to the public, a meeting may be closed.

Authorized users of NMFS confidential data should be aware of these exceptions when holding an open meeting. The Act states:

"Except in a case where the agency finds that the public interest requires otherwise, the second sentence of subsection (b) shall not apply to any portion of an agency meeting, and the requirements of subsections (d) and (e) shall not apply to any information pertaining to such meeting otherwise required by this section to be disclosed to the public, where the agency properly determines that such portion or portions of its meeting or the disclosure of such information is likely to ... (3) disclose matters specifically exempted from disclosure by statute (other than section 552 of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) involve accusing any person of a crime, or formally censuring any person;

(6) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;..."

MODEL
AGREEMENT OF ACCESS

I. Purpose

The purpose of this agreement is to outline the understanding between the National Marine Fisheries Service (NMFS) and the _____ regarding access to, subsequent storage, and usage of confidential data provided to the Secretary of Commerce.

II. References and Authorities

[Cite specific Authorities]

III. Definitions

The terms in this agreement except where specifically defined below have the meanings that are prescribed in 50 CFR 601.2.

- A. The term "detailed statistics" refers solely to the use of raw unaggregated data submitted in confidence in response to Federal requirements and/or requests.
- B. The term "landings data" refers to those data related to the catch, landings, and value of commercial fishery products collected through the use of "weigh-out" slips by agents of the NMFS or the term "port sampling data" refers to those data related to the catch, fishing effort, etc., of commercial fishermen collected by means of personal interviews by agents of the NMFS.

IV. Responsibilities of the Parties

A. Contractor

1. Disclosure of the data made available under this agreement to anyone other than a duly authorized NMFS or _____ employee is forbidden unless specifically provided for herein. A list of _____ employees and agents authorized to receive the data is included in this agreement. Any additions or deletions must be approved by the NMFS _____ Regional Office.

For the purposes of access to, storage, and disclosure of the subject data, agents and employees of the contractor shall be considered as agents of the Federal Government and shall be subject to the provisions of sections 1905 and 201-209 of Title 18 of the United States Code (commonly referred to as the Trade Secrets Laws and Conflict of Interests Laws respectively).

2. Contractor safeguards of data include:
- a. Signed, witnessed, and approved certificates from each employee and prospective agent of the contractor as to their awareness of the provisions of 18 U.S.C. 1905 and of sections 201-209 for misuse of raw data of a confidential nature. Each approved certificate will be appended to, and made a part of the agreement.
 - b. Each certificate shall continue in force for the duration of the employee or agent's relationship with the contractor; and for one year thereafter; upon termination of the relationship of any contractor access control codes will be changed immediately through an amendment to this agreement.
 - c. All print-outs of raw, unaggregated data will be kept under lock and key by the contractor and by the principal agent(s) (Principal Investigators) of the contractors.
 - d. Contractor employees and agents will be required to sign out for required print-outs and, upon return of the print-outs, to sign again. Logbooks will be maintained under lock and key by
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(i.e., the senior contract employees or by the principal agents (Principal Investigators)).

- e. Remote, direct access to raw data of confidential nature by contractor employees and/or agents will be by dual coding, i.e., two persons will be required to achieve access, each possessing a code number known and maintained only by himself or herself. The computer addressed should log both numbers prior to allowing access. A monthly tabulation, by day, of access/code numbers logged will be forwarded to the NMFS Regional Office.
 - f. All print-outs and other documents containing confidential data, when surplus to the needs of the contractor employees or agents, will be returned to NMFS.
3. Identification of persons or organizations who will have access to data under this agreement:
 4. The contractor hereby holds NMFS, NOAA, DOC, and the United States harmless for any civil suit that may arise from the misuse by the contractor of the subject data.
 5. The contractor agrees to notify NMFS of the filing of or notice of the probability of a civil suit being filed against the contractor involving the subject data.
 6. The contractor agrees to notify the appropriate NMFS Regional office on termination of access need on the part of any contractor employee and agent.

B. Federal

The NMFS, _____ Region, shall provide to the contractor on request:

1. A current identification of Federally collected fishery-related data as specified in the agreement.
2. A means of access to the data as currently available in computerized format.

V. General Understanding

It is understood between the parties to this agreement that the contractor may let subcontracts to private and public organizations for the access, collation, analysis, and/or storage of the subject data; and that such contracts shall include a provision incorporating all of the safeguards, certificates, prohibitions, and limitations of this agreement. The contracts will include at a minimum:

- A. an identification of those people who would have access to the data;
- B. incorporation of the access safeguards found in section IV(A)(2); and
- C. provision for the execution of employee certificate(s) as required by this agreement.

VI. Safeguards

The _____ on behalf of itself, its employees, contractors, and agents specifically agrees:

- A. To establish and maintain procedures for preserving the confidentiality of the data made accessible to it under this agreement.
- B. To provide the _____ appropriate NMFS Regional Office with a description of the procedures specified in paragraph VI(A) of this section so that their effectiveness may be determined and evaluated, and to make any changes in such procedures as may be requested.
- C. Not to disclose any data in a manner that is inconsistent with this agreement.

VII. Review and Amendments

- A. This agreement will be reviewed periodically, but not less than annually. It may be subject to reconsideration at such other times as may be required or requested and as agreed to by the parties entering into the agreement.
- B. This agreement may be amended at any time by the mutual consent of the parties entering into the agreement.

VIII. Other Provisions

Nothing herein is intended to conflict with current NOAA or NMFS orders. If the terms of this agreement are inconsistent with controlling NMFS orders, then those portions of this agreement which are determined to be inconsistent shall be invalid; but the remaining terms and conditions of this agreement not affected by any inconsistency shall remain in full force and effect. At the first opportunity for review of the agreement, such changes as are deemed necessary will be accomplished by either an amendment to this agreement or by entering into a new agreement, which ever is deemed expedient to the interest of both parties.

Should disagreement arise as to the interpretation of the provisions of this agreement, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be reduced to writing by each party and presented to the other party for consideration at least 14 days prior to forwarding to the Assistant Administrator for Fisheries for appropriate resolution.

XI. Terms of Agreement

The terms of this agreement will become effective upon the signature of both the approving officials of NMFS and the contractor entering into this agreement.

The terms of this agreement will remain in effect for the period of the contract unless terminated by (1) mutual agreement, (2) (specific date) with advanced (60-day) written notice by either party for cause or (3) the operation/terms of this agreement, whichever shall first occur.

Signature for Contractor	Printed Name & Title	Date
Signature for NMFS	Printed Name & Title	Date

CERTIFICATE

Date: _____

This is to certify that:

1. As a (temporary) (full-time) (contractual) employee of the _____, I have need for access to and for usage of certain written records, data files, and data banks pertaining to fisheries matters; and that:
2. I am fully aware of the civil and criminal penalties prescribed by law for Federal employees who would misuse or otherwise violate the confidentiality of such data; and that
3. To gain the necessary access and usage, I request that I be considered as a Federal employee, for the sole purpose of the laws regarding confidentiality of data, but that no remuneration or other benefit shall accrue as a result.

Signature of Employee

Signature of Witness

Approved until otherwise notified; as per conditions of the Agreement of Access dated _____, of which this certificate is made a part.

Signature of Contractor's Representative

Printed Name and Title of
Contractor's Representative

**SOUTHEAST FISHERIES SCIENCE CENTER
STATEMENT OF NON-DISCLOSURE**

This is to certify that:

1. It has been determined by **Name:** _____;

Title: _____; **Organization:** _____; that in order for me to carry out my fisheries-related work assignments I require access to NMFS Government computer systems and/or NMFS data files which may contain information declared to be held confidential by NMFS. My affiliation with the NMFS Southeast Regional Office or the Southeast Fisheries Science Center is:

Affiliation (Check one)	(Complete All)
<input type="checkbox"/> NMFS	Agency: _____
<input type="checkbox"/> Other Federal	
<input type="checkbox"/> State Employee: (State) _____	Division: _____
<input type="checkbox"/> Fisheries Council	
<input type="checkbox"/> Fisheries Commission	Location: _____
<input type="checkbox"/> Contractor	
<input type="checkbox"/> Other (Specify) _____	_____

2. In using NMFS computers and data, I agree to uphold the government's security provisions for preserving the safety and integrity of the systems accessed and protecting against misuse or destruction of the computer systems and data being accessed.
3. I have read NOAA Administrative Order 216-100 (PROTECTION OF CONFIDENTIAL FISHERIES STATISTICS) and/or NOAA Computer Users' Guide to Protecting Information Resources and understand the contents of these documents.
4. I am fully aware of the civil and criminal penalties for unauthorized disclosure, misuse, or other violation of the confidentiality of such data.
5. I will not knowingly disclose any data identified as confidential under this agreement to any person or persons, except as authorized by the NMFS Assistant Administrator for Fisheries, or the Administrator's designee, in accordance with the law, as authorized by the NOAA office of General Counsel.

Notification: This notification is to inform you that NOAA/NMFS monitors all usage of Electronic mail, Internet activities, and Data retrieval under the jurisdiction of the Federal Government. There are severe penalties for the misuse of these resources. Your Signature on this form acknowledges you have been notified and are aware of this monitoring.

Name of User (type or print)	Signature	Date
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Name (NMFS Supervisor/Program Mgr.)	Signature	Date
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Name of the SEC-ITSSO	Signature	Date
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Access Certification: _____