

Title 50 - Wildlife and Fisheries
Chapter VI - Fishery Conservation and Management,
National Oceanic and Atmospheric Administration
Department of Commerce

PART 603 - CONFIDENTIALITY OF STATISTICS

Interim Final Regulations

AGENCY: National Oceanic and Atmospheric Administration (NOAA),
Department of Commerce.

ACTION: Interim final regulations.

SUMMARY: These regulations prescribe procedures authorized by section 303(d) of the Fishery Conservation and Management Act of 1976 (the Act) to protect the confidentiality of any statistics submitted to the Secretary of Commerce by any person in compliance with requirements of a preliminary fishery management plan or a fishery management plan. The regulations specify persons having access to confidential statistics, systems required to protect the confidential data, and circumstances under which the data may or may not be released.

EFFECTIVE DATE: Regulations are effective on December 7, 1979.

Comment is invited on these regulations until January 23, 1980.

ADDRESS: Comments should be submitted in writing to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: B.G. Thompson, Assistant Chief, Resource Statistics Division, National Marine Fisheries Service, Washington, D.C. 20235. Telephone: (202)634-7366.

SUPPLEMENTARY INFORMATION

On January 9, 1978, the National Marine Fisheries Service (NMFS) published proposed regulations on Confidentiality of Statistics submitted pursuant to the Act, and requested public comment (43 FR 1460). Since publication of the proposed regulations, the Act has been amended to require the collection of data concerning the capacity of United States fish processors to process domestic catch. These regulations have been revised to acknowledge this new statutory reporting requirement. The regulations also have been revised in response to comments received on the proposed regulations. Comments which responded to the substance of the proposed regulations are addressed below. Those sections which are not addressed in the preamble received no comment.

General Comments

Five commenters recommended substituting "individual" or "firm" for "person." The definition of "person" in the Act includes associations, Federal, State, local, or foreign governments, and section 303(d) of the Act protects against disclosure of the "identity or business of any person who submits such statistics." Since the word "person" has the same definition in these regulations as in the Act, the concern was that this would prevent the publication of statistics submitted by foreign governments.

While statistics may be received from a foreign government, they are not the original submitters of the statistics. For example, the identity and catch of a foreign fishing vessel is a confidential statistic, but the aggregated catch of all fishing vessels of a foreign nation is not. Therefore, such aggregated data can be disclosed.

Concern was raised about access by State personnel to data that the States collect under their own authority but which is stored in Federal facilities. These regulations do not increase or diminish the authority of any State to collect fishery statistics from persons subject to their jurisdiction, nor limit the use of any statistics collected under such authority. However, States which by contractual agreement are collecting

confidential statistics for the Secretary under the Secretary's authority, but which do not have State authority to collect such statistics, will not have access to, nor be permitted to retain, these statistics. Several changes have been made to these regulations to clarify the authority of the Secretary to execute agreements with the States to collect required statistics, and the authority of States to have access to data they have collected under their own authority.

Several commenters have questioned the propriety of disclosing confidential statistics to members and staffs of Regional Fishery Management Councils (Councils). In order to ensure accurate data submission and to avoid placing Councils and their staffs in an awkward position due to the potential for the appearance of a conflict of interest, these regulations operate to prohibit the disclosure of confidential statistics to Councils' members and staffs.

Concern was raised that section 603.5, Procedures for Disclosure, provided discretionary authority for the disclosure of statistics, contrary to the intent of the regulations. Commenters also felt that section 603.5 failed to provide for access by the States to data which they collected. NMFS agrees with these comments, and has determined that section 603.5 did not adequately address all the issues involved. To correct the problem, the previously proposed section 603.5, Procedures for Disclosure, has been replaced with three new sections:

603.5 Access to statistics.

603.6 Controls system.

603.7 Release of statistics.

Other Changes

603.2 Definitions.

A definition of "aggregate or summary form" has been added. Since it is possible to aggregate data and still reveal the identity and business of a person, it was felt necessary to establish the meaning of the term as used in these regulations. The definition is intended to provide a common understanding of the term and establish a standard to avoid disclosure of the identity or business of the person submitting required statistics.

603.3 Types of statistics covered.

This section has been revised to include additional types of data in response to amendment of section 303(a) of the Act by the so-called "joint venture amendment" (Public Law 95-354).

603.4 Collection and maintenance of statistics.

Language has been added to note that State agents can be

authorized to collect statistics required by a fishery management plan implemented under the Act.

Request for Public Comment

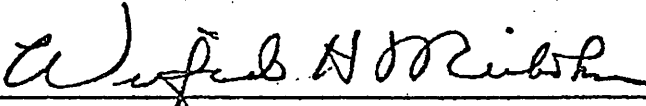
Interested persons, Regional Fishery Management Councils, and government agencies are encouraged to submit written comments, views, or data concerning these regulations to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, D.C. 20235. All such submissions received on or before January 23, 1980, will be considered.

In order to contribute to a sound statistical basis for fishery conservation and management through the application of a secure system of confidentiality protection, and in view of the immediate need presented by passage of P.L. 95-354, and because these regulations impose no burden on the general public, the 30-day "cooling off" period required by the Administrative Procedure Act is waived.

Since the purpose of the regulations is to prescribe internal procedures within the National Oceanic and Atmospheric Administration, they constitute no burden on the public, nor do they significantly affect the environment or the economy. For these reasons, the Assistant Administrator has determined that these regulations do not require preparation of an environmental

impact statement under the National Environmental Policy Act; he also finds that these regulations are not significant under Executive Order 12044.

Signed in Washington, D.C., this 4th day of December, 1979.



Winfred H. Meibohm

Executive Director

National Marine Fisheries Service

603.1 Purpose.

603.2 Definitions.

603.3 Types of statistics covered.

603.4 Collection and maintenance of statistics.

603.5 Access to statistics.

603.6 Control system.

603.7 Release of statistics.

Authority: 5 U.S.C. Sec. 301, 16 U.S.C. Sec. 1853 (d)

603.1 Purpose.

The purpose of this Part 603 is to prescribe procedures to preserve the confidentiality of any statistics submitted to the Secretary by any person in compliance with a requirement under a

preliminary fishery management plan (PMP) or a fishery management plan (FMP).

603.2 Definitions.

The terms used in this Part shall have the same meaning as ascribed to them in section 3 of the Fishery Conservation and Management Act of 1976, as amended (16 U.S.C. 1801 et seq.) and Part 601 of this chapter.

Aggregate or summary form, with respect to data, means data or information submitted by three or more persons that have been summed or assembled in such a manner so as not to reveal, directly or indirectly, the identity or business of any such person.

Assistant Administrator means the Assistant Administrator for Fisheries or his designee.

"Data", "statistics", and "information" are used interchangeably.

603.3 Types of statistics covered.

This Part applies to all information required to be submitted by any PMP or FMP or any regulation promulgated to implement a PMP or FMP, including, but not limited to: information regarding the type and quantity of fishing gear used; catch by species in numbers of fish or weight thereof; areas in which fishing was engaged; time of fishing; number of hauls; and the estimated processing capacity of, and the actual processing capacity

utilized by, United States fish processors.

603.4 Collection and maintenance of statistics.

(a) General. (1) All statistics required to be submitted to the Secretary under a PMP or FMP shall be provided to the Assistant Administrator.

(2) After receipt of the statistics submitted to the Assistant Administrator, the appropriate NMFS official shall delete all identifying particulars from the statistics at the first practicable opportunity consistent with the needs of the NMFS and good scientific practice.

(3) Appropriate safeguards as specified by NOAA Directives, or other NOAA or NMFS internal procedures, shall apply to the collection and maintenance of all statistics, whether separated from identifying particulars or not, so as to ensure their confidentiality.

(b) Collection Agreements with States. (1) The Assistant Administrator may enter into an agreement with a State authorizing the State to collect statistics on behalf of the Secretary.

(2) It is the policy of NMFS that NMFS will not enter into a cooperative collection agreement with a State unless the State has authority to protect the statistics from disclosure to the public in a manner similar to that of the Federal government, and in a manner consistent with these regulations.

603.5 Access to statistics.

(a) NOAA and NMFS personnel. Statistics submitted as a requirement of a PMP or FMP and which will reveal the business or identity of the submitter shall only be accessible to:

(1) Personnel within NMFS responsible for the collection, processing, and storage of the statistics;

(2) Personnel within NMFS performing research that requires routine access;

(3) Other NOAA and NMFS personnel on a demonstrable need-to-know basis; and

(4) NMFS contractors that require access in order to perform functions authorized by the Federal contract.

(b) State personnel. (1) State access to, and use of, those statistics collected will depend upon the State's authority to require collection of the statistics on its own behalf.

(2) If the State has authority to collect the statistics in question but has no agreement with the Assistant Administrator, the State shall not have access to statistics covered by this Part which are submitted to the Assistant Administrator.

(c) Prohibitions. Persons having access to these data are prohibited from unauthorized use or disclosure, and are subject to the provisions of 18 U.S.C. 1905 and NOAA/NMFS internal procedures.

603.6 Controls system.

(a) The Assistant Administrator shall institute a control system to protect the confidentiality of statistics submitted in compliance with a PMP or FMP. The control system will:

- (1) identify those persons who have routine access to the statistics;
- (2) contain procedures to identify non-routine users and their use of the data; and
- (3) provide for safeguarding the data.

(b) This system will require that all persons who have access to the data be informed of the confidentiality of the data. These persons shall be required to sign a statement that they:

- (1) have been informed that the data are confidential, and
- (2) have reviewed and are familiar with the procedures to protect data confidentiality.

603.7 Release of statistics.

(a) The Assistant Administrator shall not disclose to the public any statistics required to be submitted under a PMP or FMP in other than aggregate or summary form except as required by court order. Disclosure as required by court order shall be made only after approval of the NOAA Office of General Counsel.

(b) All requests for statistics submitted in response to a requirement of a PMP or FMP shall be processed consistent with NOAA Freedom of Information Act (FOIA) regulations (15 CFR Part

903), NOAA Directives Manual 21-25, Department of Commerce Administrative Orders 205-12 and 205-14, and 15 CFR Part 4.

(1) The Assistant Administrator shall have the authority to issue initial denials of requests subject to the FOIA for statistics submitted in response to a PMP or FMP. Initial denials shall indicate that exemption 3 of FOIA (5 U.S.C. 552(b)(3)) is the basis for denial, making specific reference to section 303(d) of the Act and reciting in its entirety the first sentence of that section. Furthermore, citing this regulation, the denial shall indicate that the application of section 303(d) is non-discretionary and shall refer specifically to the appropriate portion of the applicable PMP, FMP, or implementing regulation that required the submission of the requested statistics. Exemption (b)(4) (5 U.S.C. 552(b)(4)), as well as other applicable FOIA exemptions, may be cited in addition, where appropriate.

(2) Appeals from initial denials should be addressed to the Administrator of NOAA, Department of Commerce, Washington, D.C. 20230. The Administrator shall not make a discretionary release of statistics unless, upon review, it is determined that the Assistant Administrator improperly applied exemption (b)(3) to the requested statistics. In such cases the Administrator will instruct the Assistant Administrator to release the statistics to the requestor.