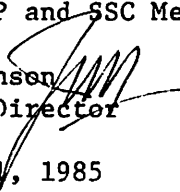


M E M O R A N D U M

TO: Council, AP and SSC Members

FROM: Jim H. Branson 
Executive Director

DATE: December 31, 1985

SUBJECT: Policy on Confidentiality of Statistics

ACTION REQUIRED

Final approval of Council policy.

BACKGROUND

Item C-5(a) is a draft policy on the confidentiality of statistics. It has been reviewed by NOAA General Counsel Pat Travers and was included as Attachment 2 in the December 5 Council mailing distributed during the last Council meeting.

With this policy in place, we can establish the necessary procedures to enable our staff to access confidential state and federal data. The policy also covers data submitted voluntarily to the Council by individuals or companies. The Council Executive Director or designated staff members may request state or federal confidential data. Authorized users must sign a statement of non-disclosure and cannot use the data for personal gain, reward or competitive advantage. No confidential data from the state or federal governments can be disclosed without authorization from the collecting agency. Though the staff may be allowed routine access to confidential data via microcomputer, procedures must be established to ensure the security of the data. A complete inventory of all confidential data must be maintained.

Council approval of this policy will enable the staff to arrange access to confidential data collected by the NMFS Regional Office and the Northwest and Alaska Fisheries Center. These data are often needed for proper analysis of the social and economic impacts of proposed management measures. The staff will also be able to review industry responses to the DAP and JVP surveys and fishing performance by individual companies or vessels. This access will be especially important as we work out the bycatch issues relating to the Gulf of Alaska and Bering Sea/Aleutians groundfish fisheries.

North Pacific Fishery Management Council
Draft Policy on the
Confidentiality of Statistics

PURPOSE

In accordance with Section 302(i)(4) of the Magnuson Act, this policy establishes procedures to ensure that statistics submitted to the Council by federal or state authorities or voluntarily by private persons remain confidential. It also includes measures to restrict Council employee access and prevent conflicts of interest. For state or federal statistics policies and procedures must be consistent with relevant federal or state law.

DEFINITIONS (For purposes of these procedures.)

Aggregate or Summary Form: Restructuring confidential data or information in such a way that the submitter cannot be identified, either from the present release of the restructured data or in combination with preceding or other releases.

Authorized Use: That specific use which is allowable within the constraints imposed on a Council by federal or state statutes, regulations, and directives; or by Council policies and procedures, or commitments made by the Council or Council staff to submitters under data collections sponsored by the Council.

Authorized User: A Council staff member or contractor specified by the Council executive director as having a need to use confidential data, who has met other requirements specified in these procedures, is cognizant of these procedures, has agreed to comply with the requirements herein, and has signed a "statement of nondisclosure" affirming the user's understanding of Council policies and procedures with respect to confidentiality of statistics, including obligations to comply with federal and state confidentiality laws, regulations, and procedures. Contractors specified to have need to access state or federal confidential data must obtain those data directly from the

federal or state entity and comply with the applicable federal, state, and Council laws, regulations, and procedures.

Confidential: Information, the disclosure of which may be prejudicial or harmful, including data received from state or federal agencies labeled confidential and Council-sponsored data collections where confidentiality was pledged to the submitter.

Conflict of Interest: Access to confidential data that may provide personal gain, reward, or competitive advantage.

Contract/Agreement: All binding forms of mutual commitment under a stated set of conditions to achieve a specific objective.

Data, Information, and Statistics: Used interchangeably; all three may be confidential.

Data Base Administrator: For federally-sponsored data gathering, an employee in each NMFS data management center responsible for the direction and development of data management systems. The North Pacific Council's Data Base Administrators for federal data are the NMFS NWAFC and Alaska Region Data Base Administrators. For Council-sponsored data gathering, the executive director will serve as data base administrator. For state-sponsored data gathering, the designated state official will be the data base administrator.

Need-to-Know: The request for access is consistent with the use for which the data are obtained.

(Refer to NOAA Directives on Confidential Fisheries Statistics for additional definitions.)

POLICY

Disclosure: Confidential data (received from a federal or state agency) will not be disclosed (without authorization from that agency.) Disclosure of
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of record

confidential data collected under Council sponsorship shall be in accordance with guidelines established by NOAA Directives governing confidential fishery statistics.

Access: All users having access to confidential data shall be informed that the data are confidential and be required to sign a statement of nondisclosure. When there is a potential for, or possible appearance of, conflict of interest, access will not be permitted. Council staff specified by the executive director as authorized users shall sign a statement to ensure no conflict of interest.

Operational Responsibilities: The Council executive director will serve as the Council's "Data Base Administrator" for purposes of Council-sponsored data collections. The executive director will coordinate with NMFS Data Base Administrators for federal confidential data and with designated state officials for state confidential data.

PROCEDURES

Obtaining Confidential Data

1. From State or Federal Agencies: The Council executive director, or Council staff member designated as authorized user, may request confidential data from state or federal agencies to carry out Council responsibilities where direct access to confidential data has not been granted.
2. Council-Sponsored Data Collection: Data submitted are voluntary. If a pledge of confidentiality is made to the submitter, these data are to be treated as confidential. The executive director is responsible for making the determination as to when a pledge of confidentiality may be made. Submitters will be advised, in all cases, orally or in writing, of the purpose for collecting data and uses that may be made of the data, and that submission of the data is voluntary. If a pledge of confidentiality is made, the submitter shall be advised in writing.

If the Council contracts to have data gathered on its behalf, contractors and their employees are subject to the same civil and criminal penalties as any authorized user. Contractor personnel will be required to sign a statement of nondisclosure. Confidential data collected under contract are to be transferred on a timely basis to authorized Council staff. No copies of these data can be retained by the contractor. Aggregated data may be retained. A data return clause shall be included in the contract.

Conflict of Interest

Authorized users are prohibited from using confidential data for personal gain, reward, or competitive advantage. If a potential conflict of interest or the appearance of a conflict of interest exists, the executive director will refer the matter to the NOAA Office of General Counsel, Alaska Region, for determination.

Security

An inventory will be maintained by the Council executive director of all confidential data received from state or federal agencies or collected by the Council. The inventory will include a record of distribution and final disposition of each data set. Data will be maintained in a secure fashion, whether in hard copy or electronic form.

Access

1. Access Control: Access to confidential data received from state or federal agencies shall be approved by a designated agency official. Access to confidential data collected under Council sponsorship shall be approved by the Council executive director in accordance with Council policies and procedures.
2. Users: Access will be limited to authorized users. Council authorized users are the Council staff members specified by the executive director:

(a) Identified NPFMC technical staff will have routine access (through office micro computers or other means) to confidential data.

(b) All confidential data will be adequately protected in any electronic files (on line or off line storage) or in standard files.

(c) NPFMC staff with access to confidential data will not release confidential data, data derived from confidential data (e.g., aggregated data), or the results of any analysis of confidential data to anyone until: (i) Confidential data, data derived from confidential data or results of any analysis of confidential data, have been classified as being not confidential by the NMFS NWAFC and Alaska Region data base administrators or designated State official. The timely review and classification of material can be done by long distance computer hookups, or (ii) Confidential data have been approved for release by the data base administrators because of established "need to know" presented by the Council's executive director to the data base administrators.

3. Reproduction: Reproduction of any confidential data must be approved by the executive director and entered into the data inventory.
4. Contractors: Council contractors may be authorized access to confidential data collected under Council sponsorship with the approval of the executive director. Requests for access by a contractor to confidential data that were provided to the Council by a state or federal agency shall be submitted to the designated agency official for approval. Documentation of that approval must be entered into the data inventory.
5. Statement of Nondisclosure: Each user or clerical who handles the data is required to sign a statement (see attachment) which states they understand the confidential nature of the data and the penalties for unauthorized use and disclosure. The statements shall be kept on file by the executive director.

Release of Confidential Data

1. Requests for Confidential Data: All requests must be in writing and reviewed by NOAA Office of General Counsel, Alaska Region. Public requests will be treated as Freedom of Information Act requests. Release of data will be in accordance with procedures set out in "Access" above.
2. Subpoenas for Data: Subpoenas should be submitted immediately to NOAA Office of General Counsel, Alaska Region.
3. Requests for Release of Aggregate Data: Requests for aggregate data compiled from confidential data shall be approved by the Data Base Administrators for the submitting agency or the executive director for Council-sponsored data collections.

STATEMENT OF NONDISCLOSURE, CONFLICT OF INTEREST AND
CONFIDENTIALITY PROCEDURES

I will not disclose any statistics identified as confidential by a state, the National Marine Fisheries Service, or a fishery management council to any person or persons except authorized users in accordance with NMFS, Council and/or state applicable procedures and policies.

I will use any NMFS, Council or state confidential data for authorized purposes only and not for personal gain or competitive advantage. I understand that any potential conflict of interest or the appearance of a conflict of interest will be referred to the NOAA Office of General Counsel for determination.

I will follow the North Pacific Fishery Management Council's Policy on the Confidentiality of Statistics, a copy of which has been given to me.

I am fully aware of the civil and criminal penalties for unauthorized disclosure, misuse, or other violation of the confidentiality of such statistics as provided for in the Magnuson Fishery Conservation and Management Act and other applicable law.

Date

Signature

Affiliation

Approved: _____
Executive Director