

NMFS Report: Progress report on project to clarify confidentiality of certain state and PacFIN data.

**Prepared by NMFS West Coast Regional Office
PFMC Meeting, November 14-20, 2017**

Introduction

NMFS and NOAA General Counsel (GC) have received several requests to clarify the confidentiality of certain data that are submitted to the states or the Pacific States Marine Fisheries Commission (PSMFC) and, specifically, whether the confidentiality provisions under section 402(b)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) apply to this data. The answer to this question would govern the procedures that NMFS, PacFIN, and the states, would use for the protection or release of that data in responding to data requests. NMFS and NOAA GC have been developing an analysis to answer this question and provide guidance to NMFS, PSMFC, and the states, on the handling of this data. This analysis will also outline considerations for NMFS, PSMFC, and the states, for deciding whether modifications or clarifications to existing Federal regulations are needed. This NMFS Report is intended to give a report of progress and expected next steps for conclusion of this project.

Progress Report

NMFS and NOAA GC expect to conclude our analysis in late November 2017. NMFS and NOAA GC staff had a conference call with state fish and wildlife staff and attorneys from the states of Washington, Oregon, and California, in September 2017 to discuss the status of this project and our expected next steps. Following completion of the analysis, NMFS intends to set up individual or collective meetings with the states of Washington, Oregon, California, and Idaho, as well as the PSMFC, to discuss our findings and next steps. Depending on our findings, NMFS, the states, and PSMFC, may wish to discuss modifications that NMFS may make to west coast Federal regulations to modify or clarify the confidentiality of state and PacFIN data. Additionally, development of joint uniform procedures for the protection and release of this data would need to be developed whether regulatory changes are needed or not. It may also be necessary to compile an inventory of what state and PacFIN data is affected to inform these discussions. NMFS would expect to hold these meetings in the December 2017-January 2018 timeframe. The timeline for steps to follow would depend on what is decided in the initial meetings. However, NMFS envisions the general steps to be:

1. Completion of NMFS and NOAA GC analysis (November 30, 2017)
2. Discuss findings with PSMFC and the states (December 2017-January 2018)
3. Update the Council on findings (March or April 2018 Council meeting)
4. Compile inventory of affected data (Spring 2018)
5. Determine whether changes to Federal regulations are needed based on the data affected (Spring 2018)
6. Complete Council action and rulemaking to make changes to Federal regulations, if needed
7. Develop joint, uniform procedures for protection and release of this data