

COUNCIL OPERATING PROCEDURE

Confidentiality of Statistics

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Approved by Council: 01/11/84

Revised: 07/11/84, 04/06/95, 03/11/05

PURPOSE

In accordance with Section 302 (i) (4) of the Magnuson-Stevens Fishery Conservation and Management Act, establish policies and procedures to ensure confidentiality of statistics submitted to the Council by federal or state authorities, and voluntarily submitted to the Council by private persons, including restriction of Council employee access and prevention of conflicts of interest. In the case of statistics submitted by a state or federal entity, policies and procedures must be consistent with the laws and regulations of the federal or state entity submitting the statistics.

DEFINITIONS

(For purposes of these procedures.)

Aggregate of Summary Form - Restructuring confidential data or information in such a way that the person submitting the data cannot be identified, either from the present release of the restructured data being processed 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; by Council policies and procedures; or by commitments made by the Council or Council staff to persons submitting data 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 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 person submitting the data.

Conflict of Interest - Access to confidential data that will 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 National Marine Fisheries Service (NMFS) or state-sponsored data gathering, an employee in each NMFS data management center responsible for the direction and development of data management systems. The Council's data base administrators are the Northwest Fisheries Science Center (NWFSC) and Southwest Fisheries Science Center (SWFSC)

data base administrators. For Council-sponsored data gathering, the Executive Director will serve as data base administrator.

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

Refer to National Oceanic and Atmospheric Administration (NOAA) Directives on Confidential Fisheries Statistics for additional definitions.

POLICY

Disclosure

Confidential data received from federal or state agencies will not be disclosed without authorization from that agency. Disclosure of confidential data collected under Council sponsorship shall be in accordance with guidelines established by NOAA directive 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 as it relates to federal confidential data and with designated state officials for state confidential data.

PROCEDURES

Obtaining Confidential Data

From State or Federal Agencies

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.

Council-sponsored Data Collection

Data submitted are voluntary. If a pledge of confidentiality is made to the person submitting data, 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. Persons submitting data will be advised, in all cases, orally or in writing, of the purpose for collecting data, uses that may be made of the data, and that submission of the data is voluntary. If a pledge of confidentiality is made, the person submitting the data 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, Northwest Region, for determination.

Maintenance

Security

An inventory will be maintained by the Council Executive Director of all confidential data received from state or federal agencies or collected by 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 hard copy or electronic.

Access

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.

Users. Access will be limited to authorized users. Council authorized users are the Council staff members specified by the Executive Director.

Identified Council technical staff would have routine access (through the office microcomputer or other means) to confidential data.

1. All confidential data will be adequately protected in any electronic files (on-line or off-line storage) or in standard files.
2. Council 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:
 - A. Confidential data, data derived from confidential data, or results of any analysis of confidential data have been classified as being not confidential by the NWFSC and SWFSC data base administrators. The timely review and classification of material can be done by long-distance computer hookups.
 - B. Confidential data have been approved for release by the data base administrators because of established "need to know" presented by the Council Executive Director to the data base administrators.

Reproduction. Reproduction of any confidential data must be approved by the Executive Director and entered into the data inventory.

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 submitted 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.

Statement of Nondisclosure. Each user or clerical who handles the data is required to sign a statement (see attachment) which states he/she understands 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

Release of Confidential Data (Public Requests)

Verbal requests will be refused. Written requests are to be treated as Freedom of Information Act requests and will be forwarded to NMFS for decision.

Requests from Congress and Federal and State Agencies

Requests shall be submitted to NMFS.

Subpoenas for Data

Subpoenas should be submitted immediately to NOAA Office of General Counsel, Northwest Region.

Requests for Release of Aggregate Data

Requests for aggregate data compiled from confidential data shall be approved by the data base administrators for 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 (NMFS), 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 will follow the "Pacific Fishery Management Council Confidentiality of Statistics Procedures," 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.

Signature

Date

Affiliation

Approved: _____
Executive Director