



## NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

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Ms. Janet Coit  
Assistant Administrator, NOAA Fisheries  
1315 East-West Highway  
Silver Spring, MD 20910  
Via email: [janet.coit@noaa.gov](mailto:janet.coit@noaa.gov)

Dear Ms. Coit:

On behalf of the North Pacific Fishery Management Council, I offer the following comments on the proposed rule to revise the regulations governing confidentiality of information. We are disappointed that our request for an extended comment period was not granted, noting that there are significant complexities in the proposed rule that make it difficult to understand the full impacts on our region. Nevertheless, we are providing these comments based on our current understanding of the draft rule.

Overall, the Council is very concerned that the proposed rule establishes a requirement for NOAA Fisheries to develop procedures to preserve the confidentiality of information via internal control procedures, rather than regulations, as required by section 402(b)(3) of the Magnuson-Stevens Act. We appreciate the recognition of regional differences and the potential ability of a region to opt out of the allowance to release confidential information via regional internal control procedures. Nevertheless, we are concerned that if regulations allow release of confidential information, there will be a push to release confidential data through the Freedom of Information Act even if prohibited by the internal control procedures, given that the procedures do not have the force of law.

The Council is also concerned with the development of internal control procedures by NOAA Fisheries, given the critical importance of these procedures. Although the proposed rule describes that NOAA Fisheries intends establish control procedures and make them available to the public and distribute them to the regional Councils and other agencies, this approach provides no opportunity for the public, state fishery management agencies, marine fisheries commissions, or regional fishery management councils to take part in developing and reviewing the internal control procedures. Given that the details of agency determinations on what information remains confidential and the protocols around releases of confidential data are shifted to the pending internal control procedures, this makes it very difficult to understand the regional implications of the proposed rule at this time. Any internal control procedures must be developed in close cooperation with respective councils, states, commissions, and RFMOs as appropriate, and a full consultative process should be described in the final rule.

Our primary concern with the substantive changes in the proposed rule is the risk it poses to the data sharing agreement with the State of Alaska, NOAA Fisheries, and the International Pacific Halibut Commission (IPHC), which has developed around long-standing State of Alaska confidentiality requirements. The Council relies on the interagency data sharing agreement, and our existing confidentiality rules, to allow State and Federal agency staff, IPHC staff, and Council staff to share landings, production, and other information critical to fisheries management and work closely together on environmental and economic impact analyses. All Council employees and contractors are required to sign a confidentiality agreement prior to having access to confidential information. This system is the basis of our management in the North Pacific. Several provisions in the proposed rule would allow release of data

that are currently deemed confidential by both NOAA Fisheries and the State of Alaska. The Council cannot support any change that would alter the data sharing agreement or support any part of the rule that violates State of Alaska statutes and/or regulations on confidentiality of information. The rule must recognize councils such as the North Pacific that operate under state confidentiality constraints and not allow information release that would violate state statutes or regulations or regional data sharing agreements with regards to confidentiality.

The Council is strongly opposed to release of confidential information to non-agency members of the Council or its advisory bodies, including the Advisory Panel (AP) and Scientific and Statistical Committee (SSC). This would be in clear violation of State of Alaska statute, regulation, and policy and there is no authority under the Magnuson Stevens Act to do so. Further, there is no way to guarantee that the confidential information would not be further distributed or released to the public, and NMFS should acknowledge that this will inevitably occur at some point. There is no way to prevent non-agency members of these bodies from gaining a competitive advantage by having access to such information at the time of release or in the future, and the rule does not provide any details on the protocols around such releases. The North Pacific Council has successfully managed fisheries for the past 45 years using existing confidentiality rules that require data aggregation and have been developed through collaboration between NOAA Fisheries, the State of Alaska, and the IPHC. This collaboration is built on a mutual respect and adherence to each agency's confidentiality requirements. Creating a situation where members of the Council and its advisory bodies have access to confidential information, while the public does not have access to these data, creates a challenging dynamic for open and transparent discussion of the impacts of policy and management decisions.

The Council understands that the agency would like to release more data relative to interactions with species protected under the Marine Mammal Protection Act (MMPA) including the date, time, location, type of species, fishing practices and gear involved. However, given the extensive vessel monitoring systems in the North Pacific, any release of specific location data (latitude/longitude) would allow identification of the individual vessel involved in an interaction with an MMPA species. We suggest that rather than a specific detailed location identifier such as latitude/longitude or GPS coordinates, a general description of the fishing area (e.g., "south of Cape Barnabas") would be sufficient to meet the objectives, without allowing identification of individual vessels. The agency should be clear that any information that could identify an individual vessel would not be released.

We remain uncertain about how the confidentiality rules apply to Limited Access Privilege (LAP) programs. As previously mentioned, we are concerned with releasing confidential information in violation of state statutes or regulations. We suggest that NOAA Fisheries ensure that the rule only applies to the 'determination' phase of a LAP program, and that release of confidential information is not required for the continued monitoring or review of LAPP fisheries. Additionally, the rule needs to allow flexibility to decide if disclosure of confidential information is even necessary (e.g., include the phrase "...the agency may disclose...").

We are also uncertain about NOAA Fisheries proposing to exempt from confidentiality protections "fishing effort, catch information, and other forms of vessel-specific information that the United States must provide to a Regional Fishery Management Organization (RFMO) to which the United States is a member in order to satisfy any information sharing obligations of the respective RFMO." This appears extremely broad and warrants revision. One example for the North Pacific is the U.S. Pacific halibut fishery (commercial, recreational, subsistence) that operates in the EEZ. Because halibut is jointly managed under an international treaty with Canada through the IPHC, the IPHC appears to meet the proposed rule's definition of an RFMO. An outgrowth of the rule may be that the thousands of vessels participating in the halibut fishery would not have their data defined as confidential information, as is

currently the case under NOAA's data sharing agreement with the IPHC. Please remove this provision from the rule or modify to clarify that all data collected from U.S. vessels operating within the U.S. EEZ under a bilateral agreement shall continue to be defined as confidential information.

Lastly, the Council is concerned with the procedures through which a regional council can request that employees who are not federal or state employees, be granted access to confidential information. For example, under the proposed rule, it appears a Council Executive Director must submit a request to NOAA Fisheries for Council employees to receive access to confidential information. It is unclear whether this request is a one-time access request for all current and future Council staff, or whether such requests would be employee- or even project-specific. If the former, then a simple revision to the Regional Operating Agreement would suffice. It should be noted that Council staff already sign an employee-specific confidentiality agreement for access to State of Alaska data when they are hired. If the new Federal requirement is intended to be project-specific, there will be dozens of requests to process each year, which may cause unnecessary delay with preparing Council analyses. Similarly, the request for a contractor to have access to confidential data would require specific approval from NOAA Fisheries as well as a confidentiality agreement. The Council requests clarity regarding how onerous the procedures would be, and what factors would be taken into account by NOAA Fisheries for approval of a contractor to have access to confidential information.

Thank you for the opportunity to provide comments.



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Chair, NPFMC