



P.O. Box 30167
Seattle, Washington 98103

February 17, 2009

Ms. Mary M. Glackin
Deputy Under Secretary
National Oceanic and Atmospheric Administration
1315 East West Highway
Silver Springs, Maryland 20910

Re: NMFS Regulatory Guidelines on Confidentiality of Fisheries Statistics and Public
Access to Fisheries Observer Data

Dear Ms. Glackin,

We, the undersigned organizations and individuals, are writing to express our concern about pending revisions to the National Marine Fisheries Service's (NMFS) regulatory guidelines on Confidentiality of Fisheries Statistics. The recent Obama Administration memorandum halting work on federal regulations left unfinished at the end of the Bush Administration includes the proposed rule on confidentiality of statistics, which has languished at the Fisheries Service for nearly two years. We urge NOAA to take this opportunity to thoughtfully review and revise as necessary the draft regulations to ensure that all proposed revisions support public access to fisheries observer data and other fisheries information to the maximum extent allowed by the Magnuson Stevens Fishery Conservation and Management Act (MSA). 16 U.S.C. 1801 *et seq.* Public access to such information is vital to ensure that fisheries management decisions are made in a manner consistent with public trust management of the nation's marine resources.

Section 402(b) of the MSA addresses confidentiality of fisheries information. The provision describes the conditions under which information shall be disclosed. Due to ambiguities in interpretation, in 2007 the Magnuson-Stevens Reauthorization Act (MSRA) modified section 402(b), expressly stating that fishery observer information shall generally be considered confidential, subject to several clear exceptions, some existing and some new. *See* 16 U.S.C. §1881a(b)(2). The MSRA did not change the provision providing the Secretary with clear authority to release or make public confidential information, so long as the release maintains the identity or business of any person who submits such information. *See* 16 U.S.C. §1881a(b)(3).

Thus, any regulatory interpretation should focus on this broad latitude, recognizing the importance of accurate and timely information to the public's ability to participate effectively in the management of its resources. However, the existing regulatory guidelines governing

public access of fisheries information do not reflect that latitude. Instead, they are ambiguous and have been used to deny public requests for data. Further, the new regulations should not be misconstrued to restrict public access to many types of fishery data central to the public's ability to understand the management and performance of fisheries. The implications of this rulemaking are significant for maintaining transparency in management and providing a level playing field between stakeholders, including managers, non-governmental scientists and the general public. Thus, we urge you to review the proposed regulations to ensure new guidelines are clear and will protect public access to fishery information vital to effective management.

The existing rules at 50 C.F.R. §§ 600.405-425 permit public access to observer data and other fisheries statistics where the identity of individual vessels or other information is not disclosed. In some cases, however, the rules can be used to hinder independent analysis of fishing impacts on marine ecosystems. Likewise, bycatch mitigation research, for example, involving the use of observer data might be withheld from the public under overly-restrictive new confidentiality rules. This would be unacceptable because such research is specifically developed for management purposes to address bycatch concerns. Without the ability to access this data, the public is shut out of the process of evaluating the efficacy of management regulations. An assessment of observer program coverage levels is important to assess the efficacy of a service delivery model in achieving adequate coverage levels. Stakeholders need to be able to independently evaluate observer program policies, protocols and data. We urge you to ensure that new confidentiality guidelines and revised NMFS observer program policies do not inhibit legitimate assessment and evaluation of progress on these issues, and that all stakeholders, including fisheries managers, non-governmental scientists as well as the general public, have equal and timely access to the data.

We very much appreciate President Obama's directive for transparency in government as the basis for public trust. The nation's fisheries are held in public trust, and therefore public access to such information is central to upholding principles of public trust management. New regulatory guidelines addressing the MSA's confidentiality provisions must ensure public access to fishery information within this framework of rules.

As NMFS develops new regulatory guidance on this matter, the undersigned individuals and organizations ask for your help in safeguarding public access to fisheries data.

Thank you very much for your consideration.

Sincerely,

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