

- 1) Memo on Observer Information pursuant to FOIA
- 2) Memo on Data Aggregation and Summarization Guidelines

1)

Original Message

Subject: Release of Observer Information pursuant to FOIA

Date: Fri, 14 Mar 2008 13:45:58 -0400

From: Samuel Rauch <Samuel.Rauch@noaa.gov>

To: NMFS All-RDs SDs ODs Deputies Secretaries

<NMFS.All.DirectorsDeputiesSec@noaa.gov>, Carrie Selberg
<carrie.selberg@noaa.gov>, Lisa Desfosse <Lisa.Desfosse@noaa.gov>, Tonya
Woods <Tonya.Woods@noaa.gov>, Brian Brown *FIMB*
<Brian.Brown@noaa.gov>, Becky Rootes <Becky.Rootes@noaa.gov>, Diana
Avery <Diana.Avery@noaa.gov>

To: All FOIA Coordinators and Observer Program Managers:

NMFS has received several FOIA requests for observer information since passage of the Magnuson Stevens Reauthorization Act (MSRA). MSRA section 402(b) (2) states that any observer information shall be confidential and shall not be disclosed, except in accordance with the requirements of subparagraphs (A) through (H) of paragraph (1), or subparagraphs (A) through (C) of section 402(b) (2).

NMFS is currently developing national standards for aggregation of confidential information that will assist in responding to these FOIA requests. Until these national standards are approved, if you identify a need to release observer information for any reason, even in aggregate form, please contact Dr. Lisa Desfosse, Acting Deputy Director, Office of Science and Technology, at (301) 713-2367.

2)

Subject:

Data Aggregation and Summarization Guidelines

From:

Ned Cyr <Ned.Cyr@noaa.gov>

Date:

Thu, 02 Jul 2009 17:15:56 -0400

To:

NMFS Science Directors <NMFS.Science.Directors@noaa.gov>, NMFS Regional
Admins <NMFS.Regional.Admins@noaa.gov>, NMFS HQ Office Directors
<NMFS.HQ.Office.Directors@noaa.gov>, NMFS Deputy Directors
<NMFS.Deputy.Directors@noaa.gov>, Samuel Rauch <Samuel.Rauch@noaa.gov>,
Steve Murawski <Steve.Murawski@noaa.gov>

CC:

Steve Koplin <Steve.Koplin@noaa.gov>, Samantha Brooke
<Samantha.Brooke@noaa.gov>, David Detlor <David.Detlor@noaa.gov>

NMFS Science Directors, Regional Administrators and Office Directors,

Further to my message of June 24, 2009 on this subject which was subsequently retracted. Please use the guidelines below.

The Magnuson-Stevens Fishery Conservation and Management Act requires NMFS to maintain the confidentiality of any information submitted in compliance with the Act and any observer information. The Act does, however, authorize the release of confidential information in aggregate or summary form that does not directly or indirectly disclose the identity or business of any person.

NOAA General Counsel, Fisheries (GCF) presented three legally defensible options for the release of confidential information in aggregate or summary form to the Leadership Council at its May 2009 meeting in Silver Spring. The Leadership Council recommended moving forward with completing the rulemaking and revisions to NAO 216-100 using the option consistent with the methodology developed by the Fishery Dependant Data Collection Working Group's Data Aggregation Standards. This email outlines data aggregation and summarization techniques consistent with the recommended option that may be used by NMFS staff as guidelines until revisions and review of the NAO are complete ..

1. Information from at least three participants in the fishery must be aggregated/summarized at a temporal and spatial level to protect not only the identity of a person or a business, but also any business information.

* Specific business information is not releasable. Business information must be aggregated even if it would not directly or indirectly reveal the identity of a business or person.

* Business information is defined as "any operational or financial, or economic information about any corporation, partnership, association or other entity."

* Operational information includes fishing locations, landings, gear, time of fishing, or similar information relevant to commercial fishing.

2. Information on takes of protected species:

* NMFS will presume that the release of the following information associated with incidental takes of marine mammals or ESA-listed species will not disclose the identity or business of any person:

- o the name and description of the fishery;
- o the species of each marine mammal or ESA-listed species incidentally killed or injured;
- o the date, time, and geographic location of the take; and
- o non-proprietary information regarding gear used in the take.

* This presumption applies only if the following information thresholds are satisfied.

- o For information associated with the take of an ESA-listed species, there must be at least three participants in the relevant fishery.
- o For information associated with the take of a marine mammal, there must be at least three participants in the fishery under the most recent MMPA List of Fisheries.

NOTE: For ESA biological opinions, information that does not qualify for release under the above process must be placed in the privileged section of the administrative record for the biological opinion.

3. Any office within NMFS may use confidential information for fisheries conservation and management, but may not release this information to the public without aggregating or summarizing as described in (1&2).

Questions on data aggregation and summarization may be directed to Keith Hagg (GCF), Jason Forman (GCF), Steven Koplin (ST), and Samantha Brooke (ST/National Observer Program).

Ned Cyr
Director, Office of Science and Technology