




UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Alaska Fisheries Science Center
Fisheries Monitoring and Analysis Division
7600 Sand Point Way Northeast
Seattle, Washington 98115-0070

April 16, 2007

MEMORANDUM FOR: AFSC Division Directors

FROM: William A. Karp, Ph.D. 
Director, Fisheries Monitoring and Analysis Division

SUBJECT: Confidentiality and Appropriate Use of Observer Data

When the Magnuson Stevens Act (MSA) was reauthorized earlier this year, changes were made in requirements related to the confidentiality of observer data. NMFS has a responsibility to ensure its employees and contractors are informed and complying with these requirements. Please consider that there are direct consequences should anyone fail to protect the confidentiality of confidential data. Individuals could be personally liable for Magnuson Act violations with potential legal and financial consequences; the credibility of the agency and AFSC are also vulnerable.

To ensure that all users of the data understand the confidentiality provisions and their responsibilities relative to the use of this data we will be requiring all users to sign a statement of non-disclosure. This also gives us an opportunity to advise individuals who work with observer data that they should fully understand the circumstances under which this data is collected and that they should consult with FMA managers regarding appropriate use of this data. This will allow us to put them in touch with someone who can help them address their specific needs.

Confidentiality of Observer Information

Revisions to section 402 can be found in the reauthorized MSA. The new language clarifies the point that all observer information is confidential, and observer information is broadly defined. NOAA administrative Order 216-100 provides policy guidance on processes for handling confidential information. To comply with NAO 216-100, each data user with access to observer information must sign the attached statement of non-disclosure. Please sign and return the attached access agreement to Martin Loefflad by May 18th, 2007.

You must be an authorized user, as defined in the MSA, to access observer information. Please do not assume that anyone else is an authorized user unless you have consulted with one of the FMA management team. Note that we are able to share observer information with contractors and grant recipients if they meet the criteria for authorized users but they may be required to sign a more extensive data sharing agreement.

The Regional office has a long standing process whereby users of confidential data sign the statement of non-disclosure and/or data sharing agreements. Individuals who are on



their list of authorized users of confidential data will not need to sign the attached form but should email Martin with this information.

Use of Observer Data

The observer information system is complex and has evolved over time. Many users are unaware of the circumstances under which the data were collected and the extent to which these circumstances should be taken into account when analyzing or interpreting the data. In several instances inappropriate inference has resulted when data have been used without proper consultation.

To avoid this type of misunderstanding, we ask that you consult with FMA management staff regarding your proposed use of observer data. We are working to develop documentation to assist users. In 2008, observer database users will have access to a data dictionary and full meta-data documentation will be included in the NMFS national meta-data repository.

As a reminder, Martin or myself should be included in the process for reviewing manuscripts and analytical products that involve interpretations and/or presentation of observer data so we can ensure that it is used appropriately and presented in a manner which protects confidentiality.

Attachment: Statement of non-disclosure.

CC: Doug DeMaster, AFSC
Jim Coe, AFSC
Doug Mecum, AKR

STATEMENT OF NONDISCLOSURE FOR USING CONFIDENTIAL FISHERIES DATA

FEDERAL CONFIDENTIAL DATA

I have read the NOAA Administrative order 216-100 (NAO 216-100) on Protection of Confidential Fisheries Statistics and I understand its contents. I understand that the Magnuson Stevens Act Reauthorization of 2006 provides that observer information is confidential and to the extent the NAO 216-100 is inconsistent with it, NAO 216-100 is inapplicable.

I will not disclose any data identified as confidential to any unauthorized person(s), except as directed by the Assistant Administrator for Fisheries. I am fully aware of the civil and criminal penalties for unauthorized disclosure, misuse, or other violation of the confidentiality of such data.

I understand that I may be subject to criminal and civil penalties under provisions of Titles 5 U.S.C. 552 and 18 U.S.C. 1905, which are the primary Federal statutes prohibiting unauthorized disclosure of confidential data. I may also be subject to civil penalties for improper disclosure of data collected under the Magnuson-Stephens Act or the Marine Mammal Protection Act.

Typed Name

Name of Witness

Signature

Signature of Witness

Date

Date

Affiliation:

NMFS Employee _____

Other Federal Employee _____

Council Member or Staff _____

Contractor _____

Grantee _____

Designated NMFS Official

William A. Karp

Signature

Date