

Version signed

## RECIPROCAL DATA ACCESS AGREEMENT

MEMORANDUM OF AGREEMENT  
BETWEEN THE  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA)  
AND THE  
ALASKA DEPARTMENT OF FISH AND GAME  
AND THE  
COMMERCIAL FISHERIES ENTRY COMMISSION

### I. Purpose and Scope

A. The purpose of this agreement is to outline the understanding between the National Marine Fisheries Service (NMFS) of the National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce (DOC); the Alaska Department of Fish & Game (ADF&G); and the Alaska Commercial Fisheries Entry Commission (CFEC); regarding reciprocal provision of direct access to, and subsequent storage and usage of, confidential data regarding marine fisheries in and off Alaska, such as fishery landings data and port sampling data. This agreement pertains to fishery information provided to the Secretary of Commerce under the authority of the Federal Reports Act of 1943, the Northern Pacific Halibut Act, and the Magnuson-Stevens Fishery Conservation and Management Act of 1976 (Magnuson-Stevens Act) and to information provided to ADF&G and the CFEC under 5 AAC 39.130 or other statutes and regulations subject to AS 16.05.815.

B. In order for ADF&G and CFEC personnel to gain access to and use of confidential data collected by NMFS, federal regulations require that the Assistant Administrator of Fisheries for NOAA first determine that ADF&G and the CFEC have authority that is at least as strict as the Magnuson-Stevens Act to protect data confidentiality, and will exercise such authority to limit subsequent access to and use of these confidential data to fishery management and monitoring purposes. 50 C.F.R. § 600.415(c)(2)(1997). In satisfaction of this requirement, the Assistant Administrator for Fisheries for NOAA determines that ADF&G and the CFEC (1) have sufficient authority pursuant to AS 09.25.120(4) to protect the confidentiality of data provided by NMFS pursuant to this agreement, and (2) will exercise such authority pursuant to this agreement to limit subsequent access and use of these confidential data to fishery management and monitoring purposes. Similarly, the Alaska Department of Law (ADOL) has determined that NMFS has adequate authority under 5 U.S.C. § 552(b), 18 U.S.C. § 1905, and 50 C.F.R. part 600, to protect the confidentiality of ADF&G and CFEC data and maintain their confidentiality.

C. Databases of special importance to ADF&G and the CFEC are those for the NMFS groundfish observer program, processor reporting, and those related to the Community Development Quota (CDQ) Program. Confidential data for which ADF&G and the CFEC have a continuing need to access include the following:

1. Groundfish processing data including catch and product amounts retained by processor, vessel, week, area, species, target fishery, and product type.

2. Observer data by vessel haul/set, date, area, gear, target fishery, species, sampling method, and other records and reports submitted to NMFS by NMFS-certified groundfish fishery observers and by observer contractors.
3. Estimates of prohibited species bycatch amounts and mortality by size and sex by vessel, processor, date, area, gear, target fishery, and other similar records and reports.
4. Information on CDQ fisheries including catch (retained and discarded) of pollock, halibut, other groundfish and prohibited species by vessel, haul/set, processor, date, area, CDQ group, and other similar records and reports.
5. Resource assessment survey data.
6. Economic data including cost and price data.
7. Restricted Access Management (RAM) database information.
8. Other data types such as vessel characteristics, numbers of observed, one-third observed, and unobserved vessels by fishery, product recovery rates.

D. ADF&G and CFEC confidential data bases are of importance to the NMFS for the preparation and implementation of fishery management plans of the North Pacific Fishery Management Council, and for which NMFS has a continuing need for access, include the following:

1. ADF&G's fish tickets and fish ticket reports prepared by ADF&G or CFEC.
2. Processor summaries of activity, including specifically ADF&G "Intent to Operate" and "Commercial Operators Annual Report" files.
3. Groundfish and shellfish observer data.
4. Crab stock abundance survey information.
5. CFEC Gross Earnings, Permit, and Vessel License data.

## II. References and Authorities

Magnuson-Stevens Fishery Conservation and Management Act of 1976, 16 U.S.C. §§ 1801-1883; Northern Pacific Halibut Act of 1982, 16 U.S.C. §§ 773-773k; Federal Reports Act of 1943, 44 U.S.C. §§ 3501-3520; Freedom of Information Act, 5 U.S.C. § 552; 18 U.S.C. §§ 201-209, 1905; 50 C.F.R. part 600, subpart E (1997); NOAA Administrative Order 216.100; AS 09.25.120; AS 16.05.815; AS 16.43.975; 5 AAC 39.130; 20 AAC 05.1930.

### III. Definitions

The terms in this agreement except where specifically defined below have the meanings that are prescribed in 50 C.F.R. part 600 and in NOAA Administrative Order 216.100.

- A. The terms "data," "statistics" and "information" are used interchangeably.
- B. The term "landings data" refers to those confidential statistics related to the catch, landings, and value of commercial fishery products collected by agents of the NMFS, "fish ticket" or "processor summary" information collected by ADF&G, or observations of ADF&G or NMFS onboard observers.
- C. The term "port sampling data" refers to information concerning the catch, fishing effort, etc., of commercial fishermen collected by means of personal interviews by agents of the NMFS or ADF&G.
- D. The term "confidential data" refers to all unaggregated data, such as landings data and port sampling data, made available under this agreement and that are protected from public disclosure by State or federal law.
- E. The term "unaggregated data" means data groups based on an aggregation of similar data from less than four separate entities, and also includes data structured in such a way that it is apparent that the identity of the submitter can be determined either from release of the subject data or in combination with other releases that have occurred or that are anticipated.

F. The term "electronic copies" means all data recorded or stored in computerized form.

### IV. Responsibilities of the Parties

#### A. State of Alaska, ADF&G & CFEC

- 1. On request, to the extent practicable within time and budget constraints, ADF&G and the CFEC shall provide to the NMFS:
  - a. a current identification of ADF&G and CFEC fishery-related data as specified in the agreement; and
  - b. a means of access to the data as currently available in computerized format.
- 2. Unless disclosure is otherwise required by law, disclosure of confidential data made available to ADF&G or the CFEC under this agreement to anyone other than a duly-authorized NOAA/NMFS, ADF&G, or CFEC employee is forbidden unless specifically provided for herein. A list of ADF&G and CFEC employees, contractors, grantees, and agents initially authorized to receive NMFS data shall

be attached as an appendix to this agreement. Written notification of additions or deletions must be provided to the Alaska Regional Data Base Administrator's Office, and updated lists shall be appended to this agreement.

For the purpose of access to, storage, and disclosure of the subject confidential data, agents, contractors, grantees, and employees of ADF&G and the CFEC shall be considered as agents of the Federal Government and shall be subject to the provisions of 18 U.S.C. 1905, and 18 U.S.C. 201-209.

Use of the subject confidential data shall be limited to purposes related to conservation and management (including research and enforcement) of living marine resources.

3. ADF&G and CFEC safeguards of data include:
  - a. Signed, witnessed, and approved certificates from each employee, grantee, and prospective agent or contractor of ADF&G or the CFEC who may be given access to the subject confidential data, as to their awareness of the provisions of 18 U.S.C. 201-209 and 18 U.S.C. 1905 and of NOAA Administrative Order 216.100 for misuse of confidential data will be maintained. Each approved certificate will be maintained by the ADF&G and the CFEC, and a copy of each approved certificate will be delivered to each party to be appended to this agreement.
  - b. Each certificate shall continue in force for the duration of the individual employee, contractor, grantee, or agent's relationship with ADF&G or the CFEC, so long as the individual remains in a position requiring access to confidential data; upon termination of the relationship, action shall be taken to ensure that the former employee, contractor, grantee, or agent no longer has access to confidential data.
  - c. All print-outs and electronic copies of confidential data will, in the normal course of business, be kept at ADF&G or CFEC facilities under the supervision of the principal agent(s) of ADF&G or CFEC.
  - d. Any ADF&G or CFEC employee, contractor, grantee, or agent who removes confidential data from ADF&G or CFEC facilities will be required to first sign out for required data, and upon return, will be required to sign in the returned data.
  - e. All print-outs and electronic copies of documents containing confidential data, when surplus to the needs of ADF&G or CFEC employees, contractors, grantees, or agents, will be destroyed or returned to NMFS.

- f. All ADF&G and CFEC contractors and grantees who are allowed access to confidential data, upon completion or termination of the contract or grant, shall be required to provide the contracting or granting agency with a notarized statement, made under oath and subject to penalty for perjury, that all confidential data obtained by the contractor or grantee has been destroyed or returned to the agency.
    - g. ADF&G and the CFEC shall, to the extent practicable, seek appropriate disciplinary or legal action against any employee, grantee, agent or contractor, who misuses confidential data that is subject to this agreement.
  4. ADF&G and the CFEC agree to notify NMFS of the filing of or notice of the probability of a civil suit being filed against ADF&G, CFEC or the State of Alaska involving the subject confidential data.
  5. ADF&G and the CFEC agree to notify the NMFS Alaska Regional Data Base Administrator on termination of access need or authorization on the part of any ADF&G or CFEC employee, contractor, grantee or agent.

**B. NMFS**

1. The Office of the Regional Data Base Administrator of the NMFS, Alaska Region, shall, to the extent practicable under time and budget constraints, provide to ADF&G or the CFEC on request:
  - a. a current identification of Federally collected fishery-related data as specified in the agreement.
  - b. a means of access to the data as currently available in computerized format.
2. Unless disclosure is otherwise required by law, disclosure of the confidential data made available to NMFS under this agreement to anyone other than a duly authorized NOAA/NMFS or ADF&G or CFEC employee is forbidden unless specifically provided for herein. Confidential data made available under this agreement is intended for use in connection with the preparation or implementation (including related research activities and enforcement) of fishery management plans of the North Pacific Fishery Management Council in the exclusive economic zone and other users are forbidden. A list of initial NMFS employees, contractors, grantees, and agents authorized to receive confidential data from ADF&G and CFEC shall be attached as an appendix to this agreement. Written notification of additions or deletions must be provided to the ADF&G and CFEC commissioner's offices, and updated lists shall be appended to this agreement.

Access to, storage, and disclosure of the subject ADF&G and CFEC confidential data shall be subject to all the safeguards provided for confidential data of NMFS, and shall be subject to the provisions of 18 U.S.C. 1905, and 18 U.S.C. 201-209.

3. NMFS safeguards of confidential data include:

- a. Signed, witnessed, and approved certificates from each employee, grantee, and prospective agent or contractor of the NMFS, who may be given access to confidential data under this agreement, as to their awareness of the provisions of 18 U.S.C. 1905, 18 U.S.C. 201-209, and AS 16.05.815 governing the legal use of confidential data. Each approved certificate will be maintained by the NMFS Alaska Regional Data Base Administrator, and a copy of each approved certificate will be delivered to each party to be appended to this agreement.
- b. NMFS shall enter into a confidentiality agreement with each agent, contractor, or grantee who obtains data provided by ADF&G or by CFEC under this agreement. The agreement shall obligate the agent, contractor, or grantee to protect the confidentiality of that data by prohibiting its release without the express consent of ADF&G, CFEC, or NMFS. The agreement shall provide that the State of Alaska may enforce the terms of the agreement against an agent, contractor, or grantee. The agreement shall provide that the State of Alaska may recover from an agent, contractor, or grantee any damages that the State suffers due to a breach of the agreement by the agent, contractor, or grantee.
- c. Each certificate shall continue in force for the duration of the individual employee, grantee, contractor, or agent's relationship with NMFS, so long as the individual remains in a position requiring access to confidential data. Upon termination of the relationship, NMFS shall take action to ensure that the former employee, contractor, grantee, or agent no longer has access to confidential data.
- d. All confidential data will, in the normal course of business, be kept at NOAA or NMFS facilities under the supervision of NMFS.
- e. Any NMFS employee, contractor, grantee, or agent who removes confidential data from NOAA or NMFS facilities will be required to first sign out for required data, upon return, to sign in the returned data.
- f. All print-outs and electronic copies of documents containing confidential data, when surplus to the needs of the NMFS employees, contractors,

grantees, or agents, will be destroyed or returned to ADF&G or the CFEC.

- g. All NMFS contractors and grantees who are allowed access to confidential data, upon completion or termination of the contract or grant, shall be required to provide NMFS with a notarized statement, made under oath and subject to penalty for perjury, that all confidential data obtained by the contractor or grantee has been destroyed or returned to NMFS.
  - h. The NMFS shall, to the extent practicable, seek appropriate disciplinary or legal action against any employee, grantee, agent or contractor, who misuses confidential data that is subject to this agreement.
- 4. NMFS agrees to notify ADF&G and the CFEC of the filing of, or notice of the probability of a civil suit being filed against NMFS, NOAA or the United States involving the subject confidential data.
  - 5. NMFS agrees to notify ADF&G and the CFEC on termination of access need or authorization on the part of any NMFS employee, contractor, grantee or agent.

#### V. General Understanding

It is understood between the parties to this agreement that the parties may let subcontracts to private and public organizations for the access, collation, analysis, and/or storage of the subject confidential data; and that such contracts shall include a provision incorporating all of the safeguards, certificates, prohibitions, and limitations of this agreement. The contracts will include at a minimum:

- A. an identification of those people who would have access to the confidential data;
- B. incorporation of the access safeguards found in section IV.A.3 or IV.B.3 including provision for the execution of employee certificate(s) as required by this agreement.

#### VI. Safeguards

- A. The ADF&G and CFEC, on behalf of themselves, their employees, contractors, and agents, specifically agree:
  - 1. To establish and maintain procedures for preserving the confidentiality of the data made accessible to it under this agreement and to use aggregated data rather than confidential data whenever practical.
  - 2. To provide the Alaska Regional Data Base Office of the National Marine Fisheries Service with a description of the procedures specified in paragraph 1 of this section so that their effectiveness may be determined and evaluated, and to make

any reasonable and practicable changes in such procedures that may be requested by the Office of the Regional Data Base Administrator.

3. To the extent authorized by law, not to disclose any data in a manner that is inconsistent with this agreement.
4. To notify the Regional Data Base Administrator of the NMFS of any changes in Alaska law relating to or affecting confidentiality of any data exchanged under this agreement.

B. The NMFS on behalf of itself, its employees, contractors, and agents specifically agrees:

1. To establish and maintain procedures for preserving the confidentiality of the data made accessible to it under this agreement and to use aggregated data rather than confidential data whenever practical.
2. To provide the ADF&G and CFEC commissioners' offices with a description of the procedures specified in paragraph 1 of this section so that their effectiveness may be determined and evaluated.
3. To the extent authorized by law, not to disclose any confidential data in a manner that is inconsistent with this agreement.
4. To notify the ADF&G and CFEC commissioners' offices of any changes in Federal law relating to or affecting confidentiality of any data exchanged under this agreement.

#### VII. Review and Amendment

A. This agreement will be reviewed periodically. It may be subject to reconsideration at any time upon request by any of the parties entering into the agreement.

B. This agreement may be amended at any time by the mutual consent of the parties entering into the agreement.

#### VIII. Other Provisions

Nothing herein is intended to conflict with current NOAA or NMFS directives with any federal or state statute or regulation. If the terms of this agreement are inconsistent with controlling NOAA/NMFS directives, or with state or federal statutes and regulations, then those portions of this agreement which are determined to be inconsistent shall be invalid but the remaining terms and conditions of this agreement not affected by any inconsistency shall remain in full force and effect. At the first opportunity for review of the agreement, such changes as are deemed necessary will be accomplished by either an amendment to this agreement or by entering into a new agreement, whichever is deemed expedient to the interests of the parties.

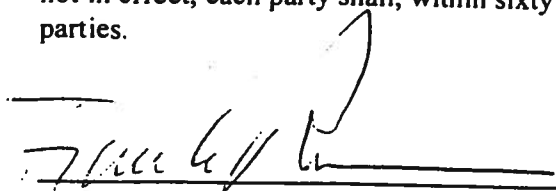


Should disagreement arise as to the interpretation of the provisions of this agreement, or amendments and/or revisions thereto that cannot be resolved at the operating level, the area(s) of disagreement shall be reduced to writing by each party and presented to the other party for consideration.

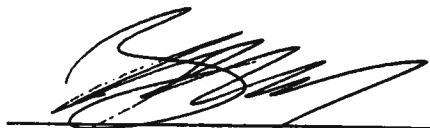
IX Term of Agreement

The terms of this agreement will become effective upon the signature of the approving officials of NMFS, ADF&G and the CFEC.


The terms of this agreement will remain in effect indefinitely and may be terminated by any party upon written notice to the other parties. Upon termination of the agreement, if a new agreement is not in effect, each party shall, within sixty days, return or destroy any confidential data of the other parties.

  
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Frank Rue, Commissioner, ADF&G

9.23.99  
Date

  
\_\_\_\_\_  
Bruce Twomley, Chair, CFEC

9/23/99  
Date

  
\_\_\_\_\_  
Penny D. Dalton, Assistant Administrator Fisheries, NOAA

SEP 9 1999  
Date