



NORTHWEST FISHERIES SCIENCE CENTER

AGREEMENT OF ACCESS TO CONFIDENTIAL FISHERIES DATA

I. Purpose and Scope

A. The purpose of this agreement is to establish terms between the Northwest Fisheries Science Center (NWFSC) of the National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA); and the International Pacific Halibut Commission (IPHC or RECIPIENT) regarding access, possession, and subsequent storage and usage of confidential data (Confidential Data) that includes fishery information submitted to the U.S. Secretary of Commerce under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §§ 1801 *et. seq.* (Magnuson-Stevens Act).

B. For this agreement, Confidential Data is defined as:

All non-aggregated observer data obtained by the Fishery Resource Analysis and Monitoring Division (FRAM) or NWFSC from commercial fishing vessels observed by the West Coast Groundfish Observer Program (WCGOP) or the At-sea Hake Observer Program (A-SHOP) provided to Recipient. This includes but is not limited to: Haul-level observer data: fishing vessel information, gear used, Pacific halibut catch, catch of other species, species biological data (e.g. length, weight, sex), mortality assessments, haul locations, tow or soak time duration, depth, date, and time.

The Confidential Data will be labeled or marked in a manner consistent with Section IV.B.2. of this Agreement.

C. The Confidential Data is being provided for the following purpose:

Annual reporting of catch and bycatch for Pacific halibut, which occurs across many west coast fisheries is necessary to set quotas and catch limits for this commercially important species. Observer information is central to the estimation of total mortality across fisheries and in expanding estimates to the fleet level. Pacific halibut in the north Pacific is jointly managed both under an international agreement between the United States and Canada and in the US between the IPHC and NMFS. While the NMFS directed observer programs are responsible for collecting data to inform stock assessments, management, and other research for a variety of west coast species, the IPHC is specifically responsible for generating the Pacific halibut stock assessment, and other scientific research and surveys regarding Pacific halibut. Under this agreement sharing of Observer information will allow the IPHC to collaborate with NMFS on the creation of fleet-level mortality estimates and to incorporate this non-aggregated data into the Pacific halibut stock assessment. This agreement will also allow this information to inform Pacific halibut research, management, and reporting by the IPHC.

D. The NWFSC is sharing the Confidential Data with RECIPIENT under 16 U.S.C. §



1826g(d)(2).

II. References and Authorities

This document incorporates, and RECIPIENT must comply with, all applicable laws and NMFS guidance concerning the use, handling, and disclosure of the Confidential Data, including but not limited to Section 402 of the Magnuson-Stevens Act (16 U.S.C. §1881a), the Trade Secrets Act (18 U.S.C. § 1905), NOAA Administrative Order 216-100 (NAO 216-100), and 50 CFR Parts 600 and 660. To the extent NAO 216-100 is inconsistent with the statute or regulations, it does not apply.

III. Definitions

The terms in this agreement have the meanings that are prescribed in the Magnuson-Stevens Act, NAO 216.100 and 50 C.F.R. Parts 600 and 660.

IV. Responsibilities of the Parties

A. RECIPIENT

1. RECIPIENT shall not disclose the Confidential Data under this agreement to anyone other than a duly authorized NWFSC or RECIPIENT employee unless such disclosure has been approved by the NWFSC or is specifically provided for herein.
2. A list of RECIPIENT employees and agents initially authorized to receive the Confidential Data shall be attached as an appendix to this agreement and those individuals must sign the acknowledgment in that appendix. RECIPIENT shall provide the NWFSC with written notification of any additions or deletions to the list. The updated list and acknowledgements shall be appended to this agreement.
3. Consistent with 50 CFR 600.41, for the purposes of access to, storage, and disclosure of the Confidential Data, agents and employees of the RECIPIENT having access to this data are prohibited from unauthorized use or disclosure and are subject to the provisions of 18 U.S.C. § 1905, 16 U.S.C. § 1857, and NOAA/NMFS internal procedures, including NAO 216-100.

B. NWFSC

1. The NWFSC agrees to provide the Confidential Data to the RECIPIENT under the provisions of the Magnuson-Stevens Act.
2. The NWFSC will label or mark the Confidential Data in a manner that identifies it as confidential.
3. The NWFSC will provide the Confidential Data to RECIPIENT through a means NMFS determines as secure.

V. Safeguards

RECIPIENT agrees to the following safeguards for the Confidential Data:

- A. RECIPIENT will ensure that any employee, grantee, agent or contractor of



RECIPIENT who may be given access to the Confidential Data under this agreement will sign a non-disclosure certificate provided by the NWFSC prior to accessing any Confidential Data.

1. Each signed certificate must be approved by the NWFSC and the approved certificate will be appended to, and made a part of this agreement. RECIPIENT will maintain the certificates and provide them to the NWFSC upon request.
 2. If an employee, grantee, agent, or contractor of RECIPIENT is no longer in a position requiring access to the Confidential Data RECIPIENT will ensure that the individual no longer has access to the Confidential Data.
 3. A current or former employee, grantee, agent or contractor of RECIPIENT who has signed a certificate has a continuing obligation to maintain the confidentiality of the Confidential Data even upon termination of their access to that data.
- B. RECIPIENT will maintain the confidentiality of the data consistent with this agreement, including the references and authorities described in Section II of this agreement.
- C. RECIPIENT will establish and maintain procedures and use receptacles to ensure that all physical and electronic copies of the Confidential Data or any data systems containing Confidential Data are secure, private, and publicly inaccessible.
1. Upon request, RECIPIENT will provide the NWFSC with a description of these procedures and receptacles so that the NWSFC can determine and evaluate their effectiveness, and modify procedures if necessary. RECIPIENT shall implement these modifications when requested by the NWFSC.
 2. RECIPIENT will not store the Confidential Data on mobile storage devices including, but not limited to, USB drives, memory sticks, PDA's or cell phones.
- D. RECIPIENT will use encryption with Federal Information Processing Standard (FIPS) 140-2 validated cryptographic modules on computers which contain the Confidential Data. Further information on FIPS can be found at: <https://csrc.nist.gov/projects/cryptographic-module-validation-program>. RECIPIENT will provide the NWFSC with an artifact as evidence of this encryption on any computer containing the Confidential Data.
- E. RECIPIENT shall only use the Confidential Data for the purposes specified in Section I.C. of this agreement.
- F. Prior to any disclosure of the Confidential Data in a publication or presentation, RECIPIENT will submit a draft of such publication or presentation using the Confidential Data to the NWFSC for review and approval to ensure confidentiality requirements are met.



- G. If RECIPIENT determines that a disclosure must occur to any third party, including an entity with whom RECIPIENT has subcontracted, RECIPIENT must consult with and receive approval from the NWFSC prior to release of any Confidential Data. RECIPIENT must demonstrate to the NWFSC that the disclosure of the Confidential Data does not conflict with the references and authorities described in Section II of this agreement.
1. Any subcontract shall include a provision incorporating all of the safeguards, certificates, prohibitions, and limitations of this agreement. The contract shall include at a minimum (a) identification of those people who would have access to the Confidential Data; (b) incorporation of the access safeguards found in this agreement; and (c) provision for the execution of non-disclosure certificate(s) as required by this agreement.
- H. All RECIPIENT contractors and grantees who are allowed access to the Confidential Data, upon completion or termination of the contract or grant, shall be required to provide the RECIPIENT with a signed statement confirming that all Confidential Data obtained by the contractor or grantee has been destroyed or returned to the RECIPIENT.
- I. All physical and electronic copies of the Confidential Data, when no longer needed by the RECIPIENT or at the termination of this agreement, will be destroyed or returned to the NWFSC.
- J. RECIPIENT will notify the NWFSC immediately of any changes or incidents relating to or affecting confidentiality of the Confidential Data provided to RECIPIENT, including any instances where the Confidential Data may have been lost or stolen. RECIPIENT will abide by the DOC Privacy Act (PA), Personally Identifiable Information (PII), and Business Identifiable Information (BII) Breach Notification Plan in terms of reporting unauthorized disclosure, misuse, or other violation of the confidentiality of such data and will follow any NOAA/NMFS/NFWSC required reporting needed to document the circumstances of the loss.
- K. RECIPIENT shall, to the extent practicable, seek appropriate disciplinary or legal action against any employee, grantee, agent, or contractor, who misuses the Confidential Data that is subject to this agreement.
- L. RECIPIENT agrees to notify the NWFSC of the filing of or notice of the probability of a civil suit, or administrative action being filed against RECIPIENT involving the Confidential Data.

VI. Review and Amendments

This agreement may be amended or modified at any time by the written mutual consent of the authorized representatives of both parties entering into the agreement.

VII. Other Provisions

- A. Nothing herein is intended to conflict with current NOAA or NMFS guidance or with any federal statute or regulation. If the terms of this agreement are inconsistent with



controlling NOAA or NMFS guidance, 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.

- B. Should disagreement arise as to the interpretation of the provisions of this agreement, or amendments and/or revisions thereto that cannot be resolved, it is the expectation of both parties that they will meet and resolve the issue through discussion and negotiation. If the parties are unable to resolve the disagreement, the area(s) of disagreement shall be documented in writing by each party and presented to the other party for consideration at least 14 days prior to forwarding to the Assistant Administrator for Fisheries for appropriate resolution.
- C. This Agreement can be executed via facsimile or .pdf file copies and in counterparts, each of which will be deemed an original instrument, but all of which together will constitute one single agreement.
- D. This agreement does not bar disclosures to Congress or to an authorized official of an executive agency or the U.S. Department of Justice that are essential to reporting a substantial violation of law.
- E. As required by 5 U.S.C. § 2302(b)(13) and the annual Appropriations Act, these provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General or the Office of Special Counsel of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling. This agreement shall not be construed to prohibit or restrict an employee or applicant for employment from disclosing to Congress, the Special Counsel, the Inspector General of an agency, or any other agency component responsible for internal investigation or review any information that relates to any violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or any other whistleblower protection..

VIII. Term of Agreement

- A. The term of this agreement will become effective upon the last signature of the approving official(s) of each party. The term of this agreement will be for a period of five years starting on the effective date of this agreement, unless extended by written agreement of the parties.
- B. Either party may terminate this agreement for any reason with a thirty (30) day written notice to the other party, including terminating it because the Confidential Data is no longer needed for the purposes described in Section I.C. or those purposes have already been met.



- C. Upon termination of the agreement, if a new agreement is not in effect, RECIPIENT shall, within sixty (60) days, return or destroy any Confidential Data disclosed pursuant to this agreement.
- D. All obligations regarding the use, confidentiality and nondisclosure of the Confidential Data shall remain in effect after the expiration or termination of the agreement.

International Pacific Halibut Commission

David T. Wilson

David Wilson, Executive Director, International Pacific Halibut Commission

Date: 20/07/2022

Northwest Fishery Science Center

Nicolle Hill, Deputy Science and Research Director, Northwest Fisheries Science Center

6/23/2022

Date: _____

APPENDIX A

LIST OF INDIVIDUALS AUTHORIZED TO ACCESS THE CONFIDENTIAL DATA

Jason Jannot, Branch Manager: Fisheries Data Services

Ian Stewart, Quantitative Scientist: Stock Assessment

Ray Webster, Quantitative Scientist: Biometrician



Allan Hicks, Quantitative Scientist: Management Strategy Evaluation

ACKNOWLEDGEMENT THAT INDIVIDUALS WHO MAY ACCESS THE DATA HAVE READ AND UNDERSTAND THE REQUIREMENTS OF THIS AGREEMENT

Jason E. Jannot

Jason Jannot, Branch Manager: Fisheries Data Services

Date: 16/07/2022

Ian J Stewart

Ian Stewart, Quantitative Scientist: Stock Assessment

Date: 20/07/2022

RA Webster

Ray Webster, Quantitative Scientist: Biometrician

Date: 20/07/2022



Allan Hicks, Quantitative Scientist: Management Strategy Evaluation *Allan Hicks*

Date: 20/07/2022

APPENDIX B

**UPDATED LIST OF INDIVIDUALS AUTHORIZED TO ACCESS THE CONFIDENTIAL DATA
REPLACING APPENDIX A OF THIS AGREEMENT**

DATED JANUARY 10, 2024

Barbara Hutniczak, Fisheries Regulations and Data Services Branch Manager

Huyen Tran, Fisheries Data Coordinator

Ian Stewart, Stock Assessment Quantitative Scientist

Ray Webster, Stock Assessment Biometrician

Allan Hicks, Management Strategy Evaluation Quantitative Scientist

**ACKNOWLEDGEMENT THAT INDIVIDUALS WHO MAY ACCESS THE DATA HAVE
READ AND UNDERSTAND THE REQUIREMENTS OF THIS AGREEMENT**

Barbara Hutniczak

Barbara Hutniczak, Fisheries Regulations and Data Services Branch Manager

Date: 12-01-2024

Huyen Tran

Huyen Tran, Fisheries Data Coordinator

Date: 16-01-2024

Ian Stewart

Ian Stewart, Stock Assessment Quantitative Scientist

Date: 17-01-2024

Ray Webster

Ray Webster, Stock Assessment Biometrician

Date: 12-01-2024

Allan Hicks

Allan Hicks, Management Strategy Evaluation Quantitative Scientist

Date: 12-01-2024