

**NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
NATIONAL MARINE FISHERIES SERVICE - WEST COAST REGION  
AGREEMENT OF ACCESS TO CONFIDENTIAL FISHERIES DATA**

**I. Purpose and Scope**

A. The purpose of this agreement is to establish terms between the West Coast Region (WCR) 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 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), and the Northern Pacific Halibut Act of 1982, 16 U.S.C. 773-773k. Certain legal authorities require NMFS to maintain the confidentiality of the fishery information (Confidential Data), including but not limited to the Magnuson-Stevens Act, the Privacy Act (5 U.S.C. § 552a), the Trade Secrets Act (18 U.S.C. § 1905) and the Freedom of Information Act (FOIA) (5 U.S.C. §552). The WCR is sharing the Confidential Data with RECIPIENT consistent with the Privacy Act and section 101 of the Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015, 16 U.S.C. § 1826g(d)(2).

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

- All non-trawl logbook data submissions that include landings or discards of Pacific halibut, either sourced from the electronic application (FishVue Float) or paper logbooks, which is currently located in a data system maintained by the Pacific States Marine Fisheries Commission (PacStates); and
- All permit data for directed commercial fishery, recreational charter fishery, incidental salmon troll, and incidental longline sablefish fishery permits for Pacific halibut, which are currently located in a data system maintained by NMFS.

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. Logbook information is important for the estimation of effort and total mortality across fisheries and in expanding estimates to the fleet level. Pacific halibut is jointly managed both under an international agreement between the United States and Canada and within the United States between the IPHC and NMFS. While NMFS is 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 collecting such data to

generate Pacific halibut stock assessments through commercial logbook data, recreational catch estimates, and other scientific research and surveys of Pacific halibut. Under this agreement, sharing of permitting and logbook information collected by NMFS will allow the IPHC to collect and incorporate, respectively, non-aggregated logbook data into mortality estimates for IPHC regulatory Area 2A into Pacific halibut stock assessments. This agreement will also allow this information to inform Pacific halibut research, management, and reporting by the IPHC.

## **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), the Privacy Act (5 U.S.C. § 552a), the FOIA (5 U.S.C. §552), 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, Privacy Act, FOIA, NAO 216.100 and 50 C.F.R. Parts 600 and 660. To the extent that any definitions in NAO 216-100 are inconsistent with the statute or regulations, those definitions would not apply.

## **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 WCR or RECIPIENT employee unless such disclosure has been approved by the WCR or is specifically provided for herein. RECIPIENT may not disclose the Confidential Data under this agreement to any agent, grantee, or contractor of RECIPIENT unless such disclosure has been approved by the WCR or is specifically provided for herein.
2. A list of RECIPIENT employees, agents, grantees, or contractors initially authorized to access or receive the Confidential Data shall be attached as an appendix to this agreement. RECIPIENT shall provide the WCR 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 600.415 for the purposes of access to, storage, and disclosure of the Confidential Data, agents, grantees, contractors, 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. WCR**

1. With respect to the Confidential Data located in a data system maintained by PacStates:
  - a. The WCR agrees to work with PacStates to provide RECIPIENT and its authorized employees, agents, grantees, or contractors with access to the Confidential Data consistent with applicable legal authorities.
  - b. The WCR will notify RECIPIENT when it has authorized PacStates to provide RECIPIENT and its authorized employees, agents, grantees, or contractors access to the Confidential Data.
  - c. The WCR will work with PacStates to identify, label, or mark the Confidential Data in a manner that identifies it as confidential.
  - d. The WCR will work with PacStates to provide RECIPIENT and its authorized employees, agents, grantees, or contractors with access to the Confidential Data through a means NMFS determines as secure.
2. With respect to the Confidential Data located in a data system maintained by NMFS:
  - a. The WCR agrees to provide the Confidential Data to the RECIPIENT consistent with its applicable legal authorities..
  - b. The WCR will label or mark the Confidential Data in a manner that identifies it is as confidential.
  - c. The WCR 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, agent, grantee, 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 WCR prior to accessing any Confidential Data.
  1. Each signed certificate must be approved by the WCR 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 WCR upon request.
  2. If an employee, agent, grantee, 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, agent, grantee, 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 WCR 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 WCR.
  - 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 WCR 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 WCR for review and approval to ensure confidentiality requirements are met.
- G. If RECIPIENT determines that a disclosure must occur to any third party, including but not limited to an entity with whom RECIPIENT has subcontracted, RECIPIENT must consult with and receive approval from the WCR prior to release of any Confidential Data. RECIPIENT must demonstrate to the WCR 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 in the possession of or under the control of the RECIPIENT, when no longer needed by the RECIPIENT or at the termination of this agreement, will be destroyed or returned to the WCR.
- J. RECIPIENT will notify the WCR immediately of any changes or incidents relating to or affecting confidentiality of the Confidential Data provided to or obtained by the 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/NFWS 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, agent, grantee, or contractor who misuses the Confidential Data that is subject to this agreement.
- L. RECIPIENT agrees to notify the WCR 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 NOAA 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.
- F. Nothing in this Agreement, or the act of issuing it, is to be construed as a waiver of any rights or immunities granted the IPHC pursuant to the International Organizations Immunities Act, 22 U.S.C. Sec. 288 et seq.
- G. Each Party agrees that it will be responsible for its own acts and the results thereof and shall not be responsible for the acts of the other party thereof.
- H. This agreement is a no-cost Memorandum of Understanding. This MOU does not authorize funding or services nor is it a legally binding contract. Any funding commitments or services will be handled in accordance with applicable laws, regulations, and procedures. Such endeavors, if any, will be covered by separate agreement(s) that shall be made in writing by representatives of the Participating Agencies and shall be independently authorized by appropriate statutory authority. This MOU does not provide such authority.

### **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 (5) 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 promptly stop accessing any Confidential Data maintained by PacStates and, within sixty (60) days, return or destroy any Confidential Data disclosed pursuant to this agreement that is under its possession or control. Also, the WCR will work with

PacStates to remove RECIPIENT's access to the Confidential Data maintained by PacStates in a timely manner.

- 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*

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David Wilson

Executive Director, International Pacific Halibut Commission

Date: 18-10-2023

**National Marine Fisheries Service – West Coast Region**

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Jennifer Quan

Regional Administrator, NOAA Fisheries, West Coast Region

Date: \_\_\_\_\_

**APPENDIX A**

**LIST OF INDIVIDUALS AUTHORIZED TO ACCESS THE CONFIDENTIAL DATA AND HAVE READ AND UNDERSTAND THE REQUIREMENTS OF THIS AGREEMENT**

- 1. Barbara Hutniczak, Fisheries Regulations & Data Services Branch Manager**
- 2. Huyen Tran, Fisheries Data Coordinator**
- 3. Tom Kong, Fisheries Data Specialist**
- 4. Kimberly Sawyer Van Vleck, Fisheries Data Specialist**
- 5. Kelsey Magrane, Fisheries Data Specialist**
- 6. Ian Stewart, Quantitative Scientist**
- 7. Ray Webster, Quantitative Scientist**
- 8. Allan Hicks, Quantitative Scientist**
- 9. Robert Tynes, Lead Information Technology Specialist**
- 10. Afshin Taheri, Information Technology Specialist**