

To Whom It May Concern,

This letter was prepared to explain National Marine Fisheries Service (NMFS) and National Oceanic and Atmospheric Administration (NOAA) policies regarding the protection of confidential data. This includes data submitted in response to the voluntary Cost, Earnings and Employment Survey being undertaken by the Alaska Fisheries Science Center in cooperation with the Pacific States Marine Fisheries Commission and the North Pacific Fishery Management Council.

Protecting the confidentiality of proprietary data provided to NMFS is not only required by Federal statute and regulation, it is critical to NMFS efforts to obtain the data required to meet its fishery conservation and management responsibilities. NMFS collects and maintains a wide variety of confidential data and has been successful both in preventing unauthorized access to data and in protecting confidential data from release under Freedom of Information Act (FOIA) requests.

It is NOAA's position that the information submitted in the Cost, Earnings and Employment Survey will be treated as confidential and will be protected from FOIA requests by Exemption 4 of FOIA. Under NOAA policy on confidential data, only the results of the survey, aggregated at a level that will not compromise individual confidentiality, will be reported to the public. The basis for this position is presented below.

Exemption 4 states that information which is: 1) commercial or financial; and 2) privileged or confidential is generally exempt from disclosure. Commercial or financial information specifically includes business sales statistics, profit and loss data, overhead and operating costs, and information on financial conditions. Commercial or financial information is considered confidential for purposes of Exemption 4 if the disclosure of the information is likely to: 1) impair the government's ability to obtain necessary information in the future; or 2) cause substantial harm to the competitive position of the person submitting the information. It is NOAA's position that both of these conditions are met by the Cost, Earnings and Employment Survey data.

Additional protection may be provided to the Cost, Earnings and Employment Survey data because it will be submitted voluntarily. In Critical Mass Energy Project v. Nuclear Regulatory Comm'n, 975 F.2d 871 (D.C. Cir 1992) (en banc), the court ruled that Exemption 4 protects any commercial or financial information voluntarily supplied to the government if the information is of a kind that the provider would not customarily release to the public. It is NOAA's position that this condition is met for the Cost, Earnings and Employment Survey data.

NMFS has implemented a series of controls to protect the identity of submitters of confidential data. The control system for a particular region is described in a Regional Data Security Handbook maintained by each region's Data Base Administrator (RDBA). Specifically it:

- (1) Identifies those persons who have access to statistics/data files on a named basis and under what conditions;
- (2) Contains procedures to limit access to confidential data to authorized users on a "need to know basis;" and
- (3) Provides for safeguarding the data through user and password restrictions that govern access to databases. Source data (e.g., paper records) are maintained under lock and key until no longer needed; then they are burned or shredded.

This system requires that all persons who have authorized access to the data be informed of the confidentiality of the data. These persons are required to sign and file with the regional RDBA a statement of non-disclosure that includes statements that they:

- (1) Have been informed that the data are confidential; and
- (2) Have reviewed and are familiar with the procedures to protect confidential statistics.
- (3) Are aware of the penalties for violation of the non-disclosure statement.

Persons having access to these data are prohibited from unauthorized use or disclosure, and are subject to the civil and criminal penalty provisions of 18 U.S.C. 1905, 16 U.S.C. 1857, and NOAA/NMFS internal procedures, including NOAA Administrative Order 216-100.

NMFS realizes that the data collected through the Cost, Earnings and Employment Survey is particularly sensitive. Authorized access to this data will be strictly limited and all necessary precautions will be taken to assure that the data is secure from unauthorized access.

With your cooperation, we believe that the Cost, Earnings and Employment Survey will provide information that is critical for improving our ability both to measure the economic importance of the Alaskan groundfish fisheries and to determine the economic effects of fishery management decisions. Therefore, we encourage you to participate in the survey.

Sincerely,

Steven Pennoyer
Administrator, Alaska Region

James W. Balsiger
Science and Research Director, Alaska Region