

Species ¹		Description of listed entity	Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name				
*	*	*	*	*	*
Corals					
*	*	*	*	*	*
Coral, pillar	<i>Dendrogyra cylindrus</i>	Entire species	[INSERT FEDERAL REGISTER CITATION], December 17, 2024.	226.230	NA

¹ Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

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 [FR Doc. 2024-29082 Filed 12-16-24; 8:45 am]
 BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 241209-0318]

RIN 0648-BM26

Confidentiality of Information

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is issuing this final rule to revise existing regulations pertaining to confidentiality of information requirements under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act or MSA). This rule updates the regulations consistent with the 2006 Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) and 1996 Sustainable Fisheries Act (SFA) and amendments to the High Seas Driftnet Fishing Moratorium Protection Act (FMPA) under the 2015 Illegal, Unreported and Unregulated Fishing Enforcement Act (IUU Fishing Act). The final rule provides other revisions to address issues that concern NMFS' internal control procedures (ICPs) for management of MSA confidentiality of information.

DATES: Effective January 16, 2025.

ADDRESSES: A plain language summary of this rule is available at: <https://www.regulations.gov/docket/NOAA-HQ-2023-0146>.

Electronic Access: Information relevant to this proposed rule, which includes a final regulatory impact review and a Regulatory Flexibility Act

certification, is accessible via the internet at: <https://www.regulations.gov/docket/NOAA-HQ-2023-0146/>.

FOR FURTHER INFORMATION CONTACT: Karl Moline, 301-427-8225, or at NMFS, Operations, Management, & Information Division F/ST3, Ste. 12300, 1315 East West Highway, Silver Spring, MD 20910.

SUPPLEMENTARY INFORMATION: Section 402(b) of the MSA provides that “any information submitted to the Secretary, a State fishery management agency, or a marine fisheries commission by any person in compliance with the requirements of this Act,” 16 U.S.C. 1881a(b)(1), and “[a]ny observer information,” *id.* 1881a(b)(2), “shall be confidential and shall not be disclosed” except pursuant to certain exceptions. Section 402(b)(3) requires that the Secretary “shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of information submitted in compliance with any requirement or regulation under [the MSA],” but the Secretary may release confidential information “in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such information.” *Id.* 1881a(b)(3). NMFS regulations implementing MSA section 402(b) are at 50 CFR part 600, subpart E, and there are confidentiality related definitions and references at 50 CFR 600.10 and 600.130. NMFS published a proposed rule in the **Federal Register** on March 11, 2024 (89 FR 17358). Comments were invited and accepted through April 25, 2024. NMFS received 36 individual comments, including 1 letter that contained 5,040 signatures. NMFS responses are addressed in the Response to Comments section below. After considering public comments submitted for the proposed rule, NMFS is implementing the final rule with some changes.

Background

The agency last revised the confidentiality regulations in February 1998 (63 FR 7075, February 12, 1998). A number of statutory changes have been enacted since 1998, and this rule provides important updates and clarifications to the confidentiality regulations to reflect those statutory changes. The 2006 MSRA (Pub. L. 109-479) made three major changes to the confidentiality provisions at MSA section 402(b). First, the MSRA added a provision specifying that observer information (defined at 16 U.S.C. 1802(32)) shall be confidential and shall not be disclosed except pursuant to specified exceptions. 16 U.S.C. 1881a(b)(2). One such exception at MSA section 402(b)(1)(F) authorizes release of confidential information based on written authorization from the person submitting such information. *Id.* 1881a(b)(1)(F). The proposed rule distinguished between observer information that is collected onboard a vessel for scientific and management purposes and information collected for administration of the observer program and allowed a vessel permit holder to execute a written authorization only for the first category of information. See 89 FR 17358, 17364 (March 11, 2024) (explaining basis for proposed rule approach, which retains current agency practice).

Second, the MSRA added a new exception that authorizes the Secretary to disclose confidential information when such information is required to be submitted to the Secretary for any determination under a limited access program (LAP). 16 U.S.C. 1881a(b)(1)(G). The proposed rule included a definition of “determination” and defines “limited access program” consistent with how “catch share” is defined under NOAA’s Catch Share Policy (available at http://www.nmfs.noaa.gov/sfa/management/catch_shares/about/documents/noaa_cs_policy.pdf). The proposed rule explained that the exception could

apply, regardless of whether NMFS has made a LAP determination as long as there are sufficient facts showing that the information was submitted to NMFS for it to make a determination under a LAP. For example, prior landings information would be releasable if a fishery management council (Council) has submitted a fishery management plan (FMP) or amendment for a LAP for secretarial approval and NMFS issues a **Federal Register** notice stating that it will use prior landings data for initial allocation determinations under the proposed LAP. The proposed rule also notes that information submitted under a non-LAP fishery may later be relevant for determinations regarding privileges, if the fishery transitions to a LAP. NMFS proposed that information previously submitted under a non-LAP that the agency uses or intends to use for determinations under a newly established LAP may fall within the scope of the LAP exception. See 89 FR 17363–17364 (March 11, 2024, explaining proposed rule approach to LAP exception).

Third, the MSRA expanded the confidentiality provision to include information submitted to a State fishery management agency or a marine fisheries commission in compliance with a requirement or regulation under the Act. Prior to the MSRA, the 1996 SFA (Pub. L. 104–297) had expanded the confidentiality provision to apply to information submitted in compliance with “any requirement or regulation” under the Act and also revised MSA section 402(b) to refer to “information” instead of “statistics.”

In addition, as discussed in the preamble to the proposed rule, the Illegal, Unreported and Unregulated Fishing Enforcement Act of 2015 (IUU Fishing Act), Public Law 114–81 101(b) (Nov. 5, 2015), amended the FMPA to include provisions at 16 U.S.C. 1826i and 1826g related to MSA confidential information. 89 FR at 17359. NMFS implements and administers the FMPA through authority delegated from the Secretary. Under section 1826i(b)(1), the Secretary is authorized to disclose information, as necessary and appropriate, including information collected under joint authority of the MSA and another statute that implements an international fishery agreement, such as the Atlantic Tunas Convention Act (ATCA) of 1975, *Id.* 971 *et seq.*, to a Federal or State government agency, the Food and Agriculture Organization of the United Nations, or the secretariat or equivalent of an international fishery management organization or arrangement made pursuant to an international fishery

agreement, if certain conditions are satisfied. Such information may be vessel-specific. One condition for release of the otherwise confidential information is “such government, organization, or arrangement . . . has policies and procedures to protect such information from unintended or unauthorized disclosure.” *Id.* 1826i(b)(1). Section 1826g(d)(2) authorizes disclosure to the same entities and foreign governments, subject to the same condition regarding policies and procedure to protect against unauthorized disclosure. In addition, section 1826g(d)(2) also requires that disclosures be necessary for one of the compliance or enforcement purposes enumerated under subparagraph (A)(ii). *Id.* 1826g(d)(2)(A)(i)–(ii). For purposes of the FMPA disclosure provisions, the term “international fishery agreement” has the same meaning as “international fishery management agreement” as set forth in 50 CFR 300.201.

Both 1826i(b)(2) and 1826g(d)(2)(B) provide that, with respect to the FMPA, the confidentiality requirements of the MSA are not applicable for obligations of the United States to share information under a Regional Fishery Management Organization (RFMO) to which the United States is a member, or to information collected by NMFS regarding foreign fishing vessels.

In response to comments on the proposed rule, NMFS has revised the final rule to more simply and closely track the FMPA provisions. See response to Comment 20 below. In addition, some RFMO implementing statutes have confidentiality provisions, *e.g.*, Western and Central Pacific Fisheries Convention (WCPFC) Implementation Act, 16 U.S.C. 6905(d). NMFS initiated this rulemaking based on the statutory changes described in the Background section of the proposed rule and this final rule and a general need to reorganize and clarify the scope of applicability of the confidentiality regulations.

NMFS proposed to revise § 600.405 to clarify that regulations under subpart E apply to confidential information that is under NMFS’ custody and control. NMFS further explained that it treats information as subject to its custody and control when it physically obtains the information (*see* 16 U.S.C. 1881a(b) (providing for confidentiality of information “submitted” to the Secretary in compliance with MSA requirements)). In the case of electronically submitted information, NMFS has custody and control when the information enters a NMFS Federal Information Security Modernization Act

(FISMA) domain (which is a collection of devices, applications, software and information technology assets that serve a coordinated purpose or mission, and have a common enforced boundary with enforced or inherited security and privacy controls). Thus, while the MSA confidentiality requirements apply to information submitted to a State fishery management agency or a marine fisheries commission, these regulations would not apply to such information as it is outside of NMFS’ physical possession. Protection of that information would be addressed through an agreement with a State or a marine fisheries commission as provided for under § 600.410(c).

The 1998 regulations discuss the generic application of “safeguards as specified by NOAA Directives, or other NOAA or NMFS internal procedures” to confidential data. 50 CFR 600.410(a)(3). Currently those procedures are set forth in a NOAA Administrative Order (NAO 216–100). As discussed in the preamble of the proposed rule, NOAA intends to replace NAO 216–100 with updated internal control procedures. Accordingly, NMFS revised existing § 600.410 to clarify the need to establish these internal control procedures and to outline certain topics that should be included in the updated procedures (*See* § 600.410(b)).

This final rule includes the following elements:

(1) A clarification that the regulations under 50 CFR part 600, subpart E, apply to information under NMFS’ custody and control (§ 600.405).

(2) Deletion of references to “statistics” in 50 CFR part 600, subpart E, and the definitions and Council sections (§§ 600.10 and 600.130), and other technical, non-substantive changes for the sake of clarity.

(3) Revised definition of “Aggregate or summary form” based on MSA section 402(b)(3), including adding a reference to “business of any person” (§ 600.10).

(4) New definitions of “Business of any person”, “Confidential information”, “Electronic Monitoring Service Provider”, “Information sharing obligation of a Regional Fishery Management Organization (RFMO)”, “Observer provider”, and “Regional Fishery Management Organization” (§ 600.10).

(5) Deletion of existing text at § 600.410(a)(2) regarding NMFS removing, after receipt, “identifying particulars” from statistics.

(6) Procedures regarding State or marine fisheries commission information collection agreements (§ 600.410(c)) and observer providers

and electronic monitoring service providers (§ 600.410(d)).

(7) Addition of text from 16 U.S.C. 1881a(b)(1)(I) on disclosure of information to “Federal agencies, to the extent necessary and appropriate, to administer Federal programs established to combat illegal, unreported, or unregulated fishing or forced labor (as such terms are defined in section 11329 of the Don Young Coast Guard Authorization Act of 2022 [16 U.S.C. 1885a note]), which shall not include an authorization for such agencies to release data to the public unless such release is related to enforcement.” (§ 600.415(a)(3)).

(8) New procedures regarding access to confidential information by Federal employees when in support of homeland and national security activities (§ 600.415(a)(2)), State and marine fisheries commission employees (§ 600.415(b)), and State enforcement employees responsible for FMP enforcement (§ 600.415(c)).

(9) Revised procedures regarding access to confidential information by Council members (§ 600.415(d)(2)).

(10) New procedures regarding access to confidential information by a Council’s scientific and statistical committee, advisory panels and contractors (§ 600.415(d)(3)–(5)).

(11) A provision on making vessel monitoring system information directly available to State enforcement employees and state management agencies, as provided under section 311(i) of the Magnuson-Stevens Act (§ 600.415(e)).

(12) A provision on disclosure of information to specified governmental and intergovernmental entities pursuant to the FMPA, 16 U.S.C. 1826i and 1826g (§ 600.415(f)).

(13) Provisions on disclosure of observer information for proceedings to adjudicate observer certifications and as authorized by regulations implementing recommendations in an FMP prepared by the North Pacific Fishery Management Council (§ 600.420(a)–(b)).

(14) LAP exception to confidentiality requirements and related new definitions for LAP and “determination” (§ 600.420(c)).

(15) Clarification of the court order exception (§ 600.420(d)).

(16) Provision regarding disclosure of information for enforcement of the MSA or when necessary for enforcement of any state living marine resource law, if that state has a Joint Enforcement Agreement that is in effect (§ 600.420(e)).

(17) Procedures for written authorization for release of confidential

information, including observer information (§ 600.420(f));

(18) Provision that NMFS may disclose in any aggregate or summary form information that is required to be maintained as confidential under the regulation (§ 600.425)

(19) Prohibition on disclosing confidential information without authorization (§ 600.725(y)).

Response to Comments

NMFS published its proposed rule on March 11, 2024, (89 FR 17358) and accepted public comments for 45 days, closing on April 25, 2024. NMFS received a total of 36 comments. Below, NMFS summarizes and responds to all comments received. Comments are grouped by subject matter (e.g., ‘45-day Comment Period’) with similar comments summarized under a comment number (e.g., ‘Comment 1’ summarizes all comments received regarding the 45-day comment period).

45-Day Comment Period

Comment 1: Many commenters said that the 45-day comment period was too short and that NMFS should reissue the proposed rule with additional time for comment. Some commenters stated that, concurrent with additional time for comment, NMFS should engage the public on the rulemaking and specific issues such as electronic monitoring policies, data ownership and management, and public access. One commenter said that NMFS should at minimum conduct another rulemaking for the data aggregation and summarization procedures referenced under § 600.410(b). Two commenters recommended reinitiating this rulemaking and that NMFS should engage the public through an Advanced Notice of Proposed Rulemaking (ANPR).

Response: The 45-day comment period provided sufficient time for submission of a wide range of material issues and concerns. During that period no new information was presented that would warrant additional time for review and comment or for reissuance of the rule for another notice and comment period. After finalization of this rulemaking, NMFS will develop an approach to engage with the public on improvements to the procedures for aggregation and summarization of confidential information referenced under § 600.410(b) for the maintenance of and access to confidential information. NMFS typically engages the public through ANPRs in order to scope issues, identify possible alternatives, and generally gather information that it may need to develop a proposed rule. An ANPR was not

necessary here given NMFS’ experience in administering confidentiality requirements since enactment of the 1976 Fishery Conservation and Management Act (precursor to the MSA) and the 2012 MSA confidentiality proposed rule and public comments received during an almost 5-month comment period. See 82 FR 4278 (January 13, 2017) (describing and withdrawing 2012 proposed rule). If experience implementing these regulations identifies the need for additional procedures to preserve the confidentiality of information, the agency will consider an ANPR along with other options to engage the public in development of those procedures.

Open Government and Transparency

Comment 2: Some commenters opposed the proposed rule stating that it limited public access to information without a statutory mandate and is inconsistent with the Administration’s Open Government Policy.

Response: NMFS disagrees. First, the MSA mandates the confidentiality of any information that is submitted to the Secretary, a State fishery management agency, or a marine fisheries commission and any observer information in compliance with a requirement or regulation under the MSA. 16 U.S.C. 1881a(b)(1) and (b)(2). The limitations on public access to information under this rule are consistent with that mandate and MSA section 402(b)(3) which directs the Secretary to promulgate, by regulation, such procedures as may be necessary to preserve the confidentiality of information. Second, this rule advances open government and transparency by providing a framework that allows for access to, or public disclosure of, confidential information when authorized by law.

Unauthorized Use/Disclosure Prohibition

Comment 3: Some commenters opposed the prohibition on unauthorized use or disclosure of confidential information in § 600.725 stating that it would discourage legitimate disclosures of confidential information. These commenters recommended that NMFS instead emphasize training on the handling of confidential information. A commenter asked that NMFS clarify whether NMFS would be responsible for enforcing the proposed prohibition.

Response: This prohibition reflects the confidentiality requirements of MSA 402(b) and section 307(1)(A) which provides that it is unlawful for any person to violate any provision of the

Act. Since 1996, NMFS' regulations for preservation of MSA confidential information under subpart E have included this prohibition and during that time NMFS employees and other individuals authorized to access confidential information have been required to sign a statement that they acknowledge the prohibition on unauthorized disclosure of confidential information and the potential for civil or criminal prosecution for any violation of that prohibition. The proposed prohibition, therefore, represents applicable law and existing policy. Based on its long history of successfully operating under this prohibition, NMFS has no basis to believe that the prohibition would discourage or create concerns within NMFS on legitimate access to and disclosure of confidential information. Enforcement will be the responsibility of NMFS' Office of Law Enforcement with support from other governmental entities.

Development of Internal Control Procedures

Comment 4: Many commenters requested that NMFS clarify how it will develop ICPs referenced under § 600.410(b) and how the ICPs would apply to the collection and maintenance of, access to, and release of any confidential information. Some commenters stated that they could not assess the rule without further information on the ICPs and how they would be developed. One commenter asserted that the rule's approach to development of the ICPs is not consistent with principles of transparency and inclusion provided in NMFS' Equity and Environmental Justice Strategy and NOAA's Data Strategic Action Plan. Commenters generally requested that NMFS provide a transparent and inclusive process with meaningful opportunities for public engagement in the development of ICPs.

Response: The ICPs are internal agency procedures intended to guide the handling of confidential information under the MSA. Because the current ICPs inform NMFS' internal administrative processes, they are included in a 1994 NOAA Administrative Order (NAO 216–100) and are not set forth in the Code of Federal Regulations. However, as noted in the preamble to the proposed rule, NOAA intends to replace NAO 216–100 with updated ICPs. NMFS is committed to an open, equitable, and transparent public engagement process in the development of the ICPs through appropriate means and methods and consistent with legal requirements. The extent and manner of public

engagement will vary depending on the subject matter.

Recognizing that ICPs have been a part of the confidentiality regulations since 1998 in some fashion, this rule reiterates the need to establish ICPs. While the requirement to establish and maintain ICPs is part of this rulemaking, the rulemaking does not dictate the specific substance of those ICPs. As guidance rather than regulatory mandate, ICPs will be developed subsequent to the issuance of the final rule and reflect its requirements related to the preservation of confidential information. Developing internal administrative procedures that could change as a result of this rulemaking would not be efficient. When NMFS develops substantive ICPs, it plans to engage the public through webinars, workshops, and/or other forms and methods for obtaining public comment.

Comment 5: Some commenters stated that the ICPs are substantive rules of general applicability that must be promulgated through rulemaking in order to comply with the Administrative Procedure Act (APA). Other commenters also said that NMFS must promulgate ICPs by regulation in order to comply with MSA 402(b)(3), 16 U.S.C. 1881a(b)(3). One commenter viewed notice-and-comment rulemaking as appropriate for development of procedures for release of confidential information in aggregate or summary form while other procedures that only apply to NMFS' internal handling of confidential information could be developed through a non-rulemaking process.

Response: ICPs have been part of the confidentiality regulations since 1998. As stated above, they currently exist in NAO 216–100, have not been codified in the Code of Federal Regulations, and were not promulgated through notice and comment rulemaking in the **Federal Register**. These ICPs constitute a practice or procedure relating to agency management and are therefore not subject to notice and comment procedures under the APA, 5 U.S.C. 553(a)(2). Nevertheless, NMFS intends to evaluate each ICP individually and determine the appropriate process for public engagement and development. NMFS anticipates that most, if not all, will constitute a practice or procedure relating to agency management and as such not subject to APA notice and comment procedures. However, NMFS will conduct further rulemaking, if necessary, and/or may choose to make draft ICPs available for public comment.

Under MSA 402(b)(3), the Secretary, through NMFS, is directed to “prescribe such procedures [by regulation] as may

be necessary to preserve the confidentiality of information . . .” NMFS therefore has discretion to determine which procedures are necessary for the protection of confidential information and which, therefore, must be done through rulemaking. This final rule prescribes all such procedures.

In contrast, the ICPs contained in NAO 216–100 consist of procedures for agency management that can be addressed through non-regulatory methods. ICPs provide additional guidance on the application of the regulatory requirements in specific cases, but they are not themselves regulatory. As such, the subject matter to be addressed through ICPs, such as standardized agreements for sharing information, do not constitute procedures that are necessary for preserving confidentiality. However, if NMFS determines that a specific ICP should have regulatory effect, NMFS will promulgate that ICP through appropriate rulemaking. Until ICPs are developed and finalized, it will continue to apply the provisions of NAO 216–100 except those that are in conflict with applicable law. For example, NMFS will not apply Section 6.04.a.1(d) of NAO 216–100, which provides that observer data collected under the MSA are not confidential. This provision is in direct conflict with MSA 402(b)(2), 16 U.S.C. 1881a(b)(2).

Comment 6: A commenter expressed concern that NMFS would release confidential information under the Freedom of Information Act (FOIA) even if prohibited under ICPs because procedures not completed through regulations lack the force of law.

Response: NMFS agrees that non-regulatory ICPs lack the force of law. Any such ICPs will not address or apply to whether confidential information may be released under FOIA. Rather, as stated in the preamble of the proposed rule, NMFS applies MSA section 402(b)(3) as the basis for FOIA Exemption Three, mandatory withholding authority.

Comment 7: A commenter stated that it is unclear how national policies developed through the ICPs will interact with regional practices and implementation plans.

Response: As required under § 600.410(b), NMFS intends to update the current ICPs set forth in NAO 216–100. As with the current ICPs, these updated ICPs will be intended to provide national-level guidance on the application of these regulations for the maintenance of and access to any confidential information. Regions may develop additional ICPs that address

specific issues with their region's data collection programs and/or fisheries for management of confidential information. Any such regional ICPs must be consistent with statutory and regulatory requirements and should also be consistent with the national ICPs.

Protection of Confidential Information Collected and/or Processed by Observer Information Services

Observer Providers

Comment 8: One commenter requested that NMFS revise the definition of "observer provider" because observer providers do not collect observer data. The commenter further requested that NMFS explain the use of the term "observer information" rather than "observer data" and whether using the term "observer information" will affect public access to information that is collected by observers.

Response: The definition of observer provider is clear that an observer provider does not itself collect observer information but rather collects that information through the placement of observers on certain platforms or in certain facilities. This rule defines "observer provider" as "any person that collects observer information by placement of observers on or in fishing vessels, shoreside processors, or stationary floating processors under the MSA or as part of a cooperative research initiative." The MSA defines "person" to include "any corporation, partnership, association, or other entity." 16 U.S.C. 1802(36). The MSA defines "observer information," *id.* 1802(32), and specifically references that term in the MSA's confidentiality requirements at section 402(b), *id.* 1881a(b)(2). Accordingly, it is appropriate to use the term "observer information" for this rule rather than "observer data," which is neither defined in the MSA nor referenced in the MSA's confidentiality requirements.

Electronic Monitoring (EM) Service Providers

Comment 9: One commenter recommended that NMFS expand the definition of "EM Service Provider" to include EM providers that contract directly with fishery participants or their representatives. Otherwise, portions of EM data that are collected and maintained by EM service providers may not be protected by NMFS even though that information is subject to the MSA confidentiality requirements. The commenter requested that NMFS maintain the confidentiality of EM information in the same way that it protects information collected by

human observers. The commenter stated that protection of information will incentivize further participation in and development of EM. An additional commenter stated that NMFS should describe how the revised MSA confidentiality regulations will affect its policy directives on EM. The commenter stated that NMFS should initiate a distinct rulemaking for maintaining the confidentiality of EM information and engage the public on access to that information.

Response: Under this final rule, an EM service provider is defined to include such providers that contract directly with a vessel to manage information that is collected by an EM system required under MSA regulations or a permit. However, agency access, maintenance, and release responsibilities under this final rule apply only to information that is under NMFS' custody and control. As explained in the Background section of this final rule and the proposed rule (89 FR at 17361–62), NMFS treats information as subject to its custody and control when it physically obtains the information (*see* 16 U.S.C. 1881a(b) (providing for confidentiality of information "submitted" to the Secretary in compliance with MSA requirements)). Information that is maintained by an EM service provider under contract with a fishing vessel is not under NMFS' custody and control. Therefore, the access, maintenance, and release responsibilities of this final rule do not apply to that information.

As explained in the preamble to the proposed rule, because EM information is a form of observer information under the MSA, it is considered confidential under the MSA. NMFS expects an EM service provider to have a means to protect a vessel owner's EM information that is subject to the MSA's broader statutory prohibition on the release of observer information. See Information Law Application for Data and Supporting Guidance in Electronic Monitoring Programs For Federally Managed U.S. Fisheries 04–115–04, available at <https://media.fisheries.noaa.gov/dam-migration/04-115.pdf>. Regulatory programs that establish EM programs should require that third parties have a means to protect EM data, whether through FMP implementing regulations, a service provider approval process, or other applicable procedure. *Id.*

NMFS has a different approach for information collected by human observers because MSA 402(b)(2)(C) provides for limited dissemination of confidential information between observers, observer providers, and

NMFS pursuant to a confidentiality agreement that prohibits other types of dissemination. See 89 FR at 17361 (proposed rule discussion). To comply with MSA section 402(b)(2)(C), NMFS must effectuate the MSA confidentiality requirements for human observer information including information collected by observers employed by an observer provider that is under contract with a fishing vessel, but a similar provision does not exist for electronic monitoring information not under NMFS' control. Thus, the final rule takes a different approach for observer providers than for EM service providers that are under contract with a fishing vessel.

For these reasons, NMFS is finalizing its proposed definition of an Electronic Monitoring Service Provider with no changes. NMFS' existing policy directives on EM information and these regulations are sufficient to guide the management of confidential information collected through EM systems, and a specific rulemaking on such issues is unwarranted.

NMFS has made one edit to the definition of "observer information" to insert statutory text that was inadvertently left out. The MSA defines "observer information" to include EM information collected pursuant to an authorization by the Secretary or "as part of a cooperative research initiative." 16 U.S.C. 1802(36). The final rule adds the cooperative research text. Lastly, because this final rule does not apply to confidential information maintained by EM service providers, it does not affect NMFS' policy directive 04–115–03 which provides guidance on how long privately contracted EM service providers should retain EM information.

Comment 10: A commenter expressed concern that the proposed definition of "confidential information" did not cover certain categories of EM data or portions of the "chain of custody," *i.e.*, the handling of EM data before review and data extraction.

Response: This final rule defines "confidential information" consistent with the MSA, which requires the confidentiality of any observer information with some exceptions. 16 U.S.C. 1881a(b)(2). Under the MSA, observer information is defined to include any information collected by an EM system. Accordingly, under this final rule, all categories of EM data that are collected by an EM system constitute confidential information. Information regarding "chain of custody," or the handling of EM data before review and data extraction, does not fall under the MSA definition of

observer information. Therefore, such information would not be considered confidential information for MSA purposes unless it is required to be submitted to NMFS in compliance with a regulation under the Act.

Comment 11: One commenter requested an assessment of the impacts of the proposed rule on the implementation of a new reporting requirement for electronic logbooks (ELBs) for commercial fisheries in the Gulf of Mexico. The commenter stated that this assessment is important to ensure that implementation of the ELBs for commercial fisheries is not delayed.

Response 11: Confidentiality of information requirements under the MSA and this final rule may apply to information that a person submits through ELBs or other electronic devices but not the devices themselves. Agency access, maintenance, and release responsibilities under this rule apply only to information that is under NMFS' custody and control, *i.e.*, when it enters a NMFS FISMA domain. *See* Background section above for FISMA explanation. As such, this final rule does not have an impact on the implementation of new reporting requirements for ELBs in the Gulf of Mexico, and therefore, no assessment of the impacts of this rule on reporting requirements for ELBs was conducted.

Comment 12: A commenter stated that NMFS should improve the efficacy of its confidentiality agreement protocols by requiring EM providers to disclose their artificial intelligence and machine learning technologies.

Response: The commenter did not indicate why or how disclosure of an EM provider's artificial intelligence and machine learning technologies to NMFS would improve the efficacy of the confidentiality agreement protocols. These final regulations require that a confidentiality agreement between NMFS and EM service providers that are providing services to NMFS under a contract, or performing functions that require the handling of confidential information under a NMFS financial assistance award, specify the procedures that the provider will apply to protect confidential information from public disclosure; and also require that the EM service provider, and each of its employees who will handle confidential information, acknowledge the requirement to maintain the confidentiality of observer information and the civil penalties for unauthorized use or disclosure of this information under 16 U.S.C. 1858. NMFS believes that these procedures are sufficient to address any potential information security issues that may arise with

respect to any technologies employed by an EM service provider for the processing of EM data.

Comment 13: A commenter requested that NMFS revise the proposed rule to clarify if all information collected by the EM systems that are required under the MSA or other authorities will be treated as confidential information.

Response: As stated above, any information collected by an EM system that is required under the MSA is subject to the Act's confidentiality requirements. Agency access, maintenance, and release responsibilities under this rule apply only to information that is under NMFS' custody and control, which occurs when NMFS physically obtains the information, or it enters an NMFS FISMA domain. *See* Background section above for FISMA explanation. The response to Comment 9 explains NMFS' approach to EM information maintained by an EM service provider under contract with a fishing vessel. Responses to Comments 14 and 24 describe agreements with states or Marine Fisheries Commissions for the collection of confidential information. Neither MSA confidentiality requirements nor this rule apply to information that is collected by an EM system that may be required under other authorities. Whether NMFS must protect from disclosure information collected by an EM system required under an authority other than the MSA depends on the authority at issue.

Comment 14: Commenters requested that NMFS clarify what constitutes "authority comparable to the MSA" for purposes of an agreement with a state that allows for collection of confidential information. Commenters also asked how NMFS will determine that a State will "exercise such authority" and what happens if it does not.

Response: Pursuant to § 600.410(c)(1), NMFS will assess whether a State has legal authority to protect confidential information from disclosure in the same manner that NMFS can protect such information from public disclosure under the MSA. NMFS will rely on the respective State's assurances to determine whether a State will exercise such authority. Should a State not exercise its authority to protect confidential information, NMFS may rescind the collection agreement. NMFS intends to develop ICPs to guide the development of confidentiality agreements with States and commissions that are authorized to collect confidential information.

Scope of Subpart E Regulations

Comment 15: A commenter said that proposed § 600.405 would narrow the scope of information that would be subject to the regulations compared to current regulations. Some commenters requested that NMFS clarify whether confidentiality protections would apply to information collected by NMFS under a fishery management plan (FMP) that was not implemented under the MSA.

Response: Proposed § 600.405 was not intended to narrow the scope of information subject to MSA confidentiality requirements (16 U.S.C. 1881a(b)); the section refers to a definition of confidential information (§ 600.10) that is consistent with 16 U.S.C. 1881a(b). After reviewing public comment, NMFS is clarifying § 600.405. Final § 600.405 continues to state that the regulations apply to confidential information as defined in § 600.10 with an additional explanation that agency access, maintenance, and release responsibilities apply only to confidential information under NMFS' custody and control. As explained in the Background section of this final rule and the proposed rule (89 FR at 17361–62), NMFS treats information as subject to its custody and control when it physically obtains the information (*see* 16 U.S.C. 1881a(b) (providing for confidentiality of information "submitted" to the Secretary in compliance with MSA requirements)).

With regard to the relevant FMP, the proposed rule stated that the MSA confidentiality requirements apply to information that a person submits in compliance with an FMP that is implemented under the MSA and any observer information collected under the Act. In some cases, FMP information collection and/or monitoring requirements are implemented under joint authority of the MSA and another authority. In those cases, the MSA confidentiality requirements apply just as they would to information that is submitted by a person or collected by an observer under an FMP implemented solely under the MSA. For information collection requirements implemented under FMPs under authorities other than the MSA, the Act's confidentiality requirements do not apply.

Voluntarily Submitted Data

Comment 16: A commenter asked NMFS for examples of information collected under an MSA program that isn't submitted to the Secretary, State agency, or marine fisheries commission and thus would not be subject to this rule. Additionally, a commenter sought clarification on the application of this

rule to data from cooperative research programs that is provided voluntarily. The commenters also requested clarification on privacy protections for data from recreational and voluntary collection programs not covered by MSA confidentiality and asserted that these voluntary data collection programs may suffer if data is considered non-confidential or not protected. They requested that the agency identify any data and privacy protections for information collected through State and NOAA surveys. They emphasized the need to differentiate between high-resolution data for research and data for management decisions and recommended that voluntary data streams, such as those from participants in an opt-in on-demand gear program, receive confidential protection.

Response: Where there is no MSA requirement for the information collected and a person voluntarily submits it, the MSA confidentiality prohibition against release does not apply. In addition, neither these regulations, nor any current or future ICPs developed pursuant to these regulations, would apply to information that is voluntarily provided to NMFS. For example, confidentiality restrictions would not apply to recreational fishing information collected through a state survey program and provided to NMFS. Any information voluntarily provided directly to NMFS through a NMFS-conducted survey, including voluntary surveys to collect cost and earnings data, would also not be MSA confidential information. While voluntarily submitted information is not confidential under the MSA, it may be exempt from public disclosure under FOIA as confidential business information or information that would result in an unwarranted invasion of personal privacy if made publicly available. As such, NMFS does not anticipate a reduction in participation of voluntary collections.

The MSA confidentiality requirements and procedures under this rule apply to observer information that was collected as part of a cooperative research initiative and that is under NMFS' custody and control. See 16 U.S.C. 1881a(b)(2) and 1802(32) (providing that "observer information" is confidential and referring to a cooperative research initiative in the definition of that term). In addition, if cooperative research is conducted under an exempted fishing permit and information collected through that research is required to be submitted under the terms of the permit, NMFS

will treat it as confidential information for MSA purposes.

Lastly, NMFS intends to develop guidance on data aggregation standards as part of an ICP to address the level of data resolution needed to preserve confidentiality, if it is to be released for management purposes. See 50 CFR 600.410(b)(9).

Disclosure Under the Limited Access Program Exception

Comment 17: Commenters expressed a range of views on the LAP exception. A commenter stated that the proposed rule approach for the LAP exception seemed to be broader than what was intended and requested that NMFS narrow the LAP exception by revising the definition of LAP such that it only covers limited access privilege programs (LAPPs) and interpreting it to authorize release of confidential information only to a person who has applied for privileges under a LAPP. One commenter stated that "determination" for purposes of the LAP exception should apply only to the initial phase of a LAP program and not to monitoring under LAP-managed fisheries. Another commenter supported the proposed rule approach stating that treatment of some LAP participant information as non-confidential would enhance transparency and accountability. The commenter supported application of FOIA exemptions to information that is non-confidential under the LAP exception if necessary to protect personal privacy. Other commenters expressed qualified support for NMFS' proposed approach to the LAP exception but requested that NMFS consider a broader approach that would allow for more information to be treated as not confidential under that exception.

Response: The MSA LAP exception allows for the disclosure of information that a person is required to submit for a determination under a LAP. This final rule provides that the exception applies to LAPPs, 16 U.S.C. 1853a and 1802(26), and other fisheries that are managed through allocation of privileges to a person. The LAP exception uses the undefined term "limited access programs;" thus, in developing the proposed rule, NMFS considered what limited access management approaches may necessitate a specific confidentiality exception for disclosure of information. 89 FR 17358, 17362–17363 (March 11, 2024). After considering public comment, NMFS continues to believe the need is most evident for fisheries in which exclusive fishing privileges, such as a portion of a fishery's total allowable catch, are allocated to persons based on their

historical catch, or other applicable historical fishery participation. See *Id.* at 17363 (noting the same need in the proposed rule). As discussed in the proposed rule, in these fisheries—often referred to as catch share programs—the availability of information is necessary for administration of appeals of allocations and related determinations and generally promotes transparency in the basis for such determinations. See NOAA's Catch Share Policy (available at http://www.nmfs.noaa.gov/sfa/management/catch_shares/about/documents/noaa_cs_policy.pdf) for information on catch shares.

Accordingly, in this final rule, the LAP exception applies to information that underlies allocations of those privileges and subsequent NMFS determinations that apply to those allocated privileges. Having considered public comment, NMFS still sees no basis for interpreting "determination" to apply only to determinations that are made in the initial phase of a LAP and not to any subsequent allocation determinations. In this final rule, the exception applies to any determination under a LAP involving allocation decisions at any time. § 600.420(c)(2) defines "Determination" to include allocations generally and therefore covers both the initial and any subsequent annual allocation of privileges. Additionally, the final rule defines determination to include approval or denial of a lease or sale of either allocated privileges or annual allocations and end-of-season adjustments.

The LAP exception is just that—an exception to the MSA confidentiality requirements. NMFS declines to adopt a broader interpretation of the LAP exception that would result in it operating as a rule, rather than exception, where confidentiality does not apply to most if not all information that a person is required to submit in LAP managed fisheries. This exception allows, but does not require, release of excepted information pursuant to the MSA. Other statutes, such as FOIA, may apply and protect certain agency records from public disclosure (See *e.g.*, FOIA protections below).

Comment 18: Some commenters expressed concern that NMFS would treat information that it accesses through an agreement with a State as non-confidential, notwithstanding a State law that protects and restricts access to that information.

Response: NMFS has sufficient authority to protect vessel-specific information to avoid any conflict with State law requirements. While the LAP exception allows for release of information that is submitted for a

determination under a LAP, it does not require that NMFS proactively do so. Should NMFS receive a FOIA request for information that is not confidential under the LAP exception, NMFS could, as appropriate, protect that information from public disclosure under FOIA Exemption Four, which applies to confidential business information, or Exemption Six, which applies to information the release of which would constitute an unwarranted invasion of personal privacy. In determining the appropriateness of application of FOIA Exemption Four, NMFS will consider whether the requested information is protected under state law because that is relevant to whether a person submitted it with the expectation that it would be treated as confidential.

Comment 19: Some commenters asked NMFS how this rule's approach to the LAP exception compares to NMFS' current practice. A commenter also asked how the approach would affect confidentiality of information in LAPPs. A commenter expressed concern that the LAP exception would apply to information that NMFS uses to consider whether to establish a LAP. They requested NMFS clarify when the exception would apply to such considerations and what information NMFS uses to determine whether to approve a lease or sale of allocated privileges, and when that information would be made public.

Response: The LAP exception applies to LAPPs and other fisheries that are often referred to as catch share programs. See response to Comment 17. Since the LAP exception was enacted in 2007, NMFS has applied the exception in the same manner codified in this final rule. In other words, NMFS, including its regional offices, has not applied the exception beyond information submitted or used for any initial or annual allocations, approval or denial of a lease or sale of allocated privileges, or end-of-season adjustments. Some regions have applied the LAP exception only in the context of allocation determinations. The final rule will establish a uniform approach and clarifies that information a person submits for a determination, as defined at § 600.420(c)(2), would be subject to the LAP exception.

With regard to establishing a LAP, a Council could transmit an FMP amendment to NMFS recommending a new LAP. Even if NMFS has not yet determined whether to implement the FMP amendment through a final rule, NMFS may decide, as an example, that releasing historical landings or catch information to a potential LAP participant would be helpful in order to

provide sufficient time for vessel owners to verify or correct information that will be used for initial allocations, 89 FR at 17363, and this final rule clarifies that such information could be released. The LAP exception would not, however, be applicable for a Council's consideration of whether to establish a LAP. In other words, NMFS would not release MSA confidential information pursuant to the LAP exception when a Council was considering whether to establish a LAP. *Id.*

What information is used to determine whether to approve a lease or sale of allocated privileges, and thus whether and when such information would be made public, depends on the requirements established and implemented for a particular fishery.

Disclosure Related to International Fisheries Agreements and the High Seas Driftnet Fishing Moratorium Protection Act

Comment 20: Some commenters objected to the rule's approach to what is not confidential for MSA purposes under section 608(b)(2) of the FMPA, as amended. 16 U.S.C. 1826i(b)(2). Specifically, these commenters said that the approach was too broad and should be removed or revised so that information collected from U.S. vessels is treated as confidential even if shared with an RFMO to satisfy a United States obligation. Another commenter asked that NMFS clarify whether the FMPA authorizes NMFS to rely on each RFMO's confidentiality procedures to protect information or whether NMFS will engage each RFMO to ensure protection of business and personal information.

Response: NMFS agrees that the proposed approach is too broad and has made changes to the rule language to reflect this concern. FMPA sections 608(b)(2) and 606(d)(2)(B) do not define information provided to satisfy an RFMO obligation or foreign vessel information as "not confidential" for MSA purposes. Rather, these sections specify that "with respect to the [FMPA]" the MSA confidentiality requirements shall not apply for, or with respect to, obligations of the United States to share information under an RFMO of which the United States is a member or foreign vessel information. 16 U.S.C. 1826i(b)(2) and 1826g(d)(2)(B). To clarify this point, this final rule deletes references to RFMO and foreign vessel information in the definition of confidential information (proposed § 600.10) and consolidates and simplifies relevant FMPA text in § 600.415(f).

The FMPA permits disclosure of information, including information that is collected jointly under the MSA and a statute that implements an international fishery agreement, to "any other Federal or State government agency, the Food and Agriculture Organization of the United Nations, the secretariat or equivalent of an international fishery management organization or arrangement made pursuant to an international fishery agreement" if they have policies and procedures in place to protect the information. *Id.* 1826i(b)(1). Such information may be vessel-specific. The FMPA allows for release of confidential information to the same list of entities as well as foreign governments if, in addition to having policies and procedures in place, the information is released for purposes specified at section 1826g(d)(2)(A)(ii). The FMPA authority described above is reflected in revised § 600.415(f), which states that NMFS may disclose such information, as authorized under, and subject to the requirements and conditions of, section 608(b) or 606(d)(2) of the High Seas Driftnet FMPA (16 U.S.C. 1826i(b) and 1826g(d)(2)), to entities specified in those sections. For such disclosures, specified entities must have in place policies and procedures to protect confidential information from unintended or unauthorized disclosure. The United States engages within the RFMOs it is a member of to support the development and adoption of policies and procedures, including confidentiality procedures to protect information from unintended or unauthorized disclosure. Where the United States is not a member of an RFMO, NMFS would consider the RFMO's policies and procedures on a case-by-case basis.

FMPA sections 608(b)(2) and 606(d)(2)(B), 16 U.S.C. 1826i(b)(2) and 1826g(d)(2)(B), provide for two exceptions where MSA confidentiality requirements do not apply; in other words, the policies and procedures described above are not required for disclosures of: (i) information disclosed with respect to obligations of the United States to share information under a RFMO of which the United States is a Member or (ii) information collected by NMFS regarding foreign fishing vessels. NMFS may determine what, if any, conditions may be appropriate for these two categories of information and will consider whether any additional, related guidance on agency management of information is needed in updated ICPs.

Comment 21: Commenters recommend that NMFS apply section 608 of the FMPA only to RFMOs

identified in 16 U.S.C. 1826g (section 606(d)(2)) rather than any RFMO.

Response: NMFS does not agree with limiting the FMPA disclosure of information provisions to U.S. obligations related to specifically listed RFMOs because the statute clearly applies to other RFMOs which implement fishery agreements, even if not specifically enumerated. Section 606 states that it applies to information collected under the joint authority of the MSA and the ATCA, WCPFC Implementation Act, “or other statutes implementing international fishery agreements.” The section authorizes disclosure of such information, subject to specific requirements and exceptions, to various entities, including the secretariat or equivalent of an international fishery management organization or arrangement made pursuant to an international fishery agreement. *Id.* § 1826g(d)(2)(A). Section 608 uses similar language with regard to information and entities. Thus, NMFS has made no changes to this aspect of the final rule.

Comment 22: A commenter expressed support for the proposed rule allowing state and federal agencies and certain international organizations to access confidential information if necessary and appropriate under the FMPA. Another commenter asked that NMFS clarify how access by RFMOs would be different under the proposed rule compared to current practices. The commenter stated that NMFS should treat information as non-confidential for purposes of sharing it with an RFMO only if that RFMO’s definition of what is confidential is the same as NMFS’.

Response: NMFS acknowledges the support for disclosure of confidential information pursuant to the FMPA and that information sharing furthers efforts to develop science-based measures for conservation and management of domestic and international fisheries and to strengthen enforcement of those measures. The FMPA disclosure of information provisions were enacted under the 2015 Illegal, Unreported, and Unregulated Fishing Enforcement Act, and NMFS does not expect that the final rule will substantively change how NMFS applies them in practice. Under the MSA, information is confidential if required to be submitted in compliance with requirements of the Act. While an RFMO may have a policy that defines confidential information, it would not control what is confidential for MSA purposes. As stated in response to *Comment 20*, under the FMPA, NMFS may disclose information that is subject to the MSA confidentiality requirements to RFMOs if they have policies and

procedures in place to protect the information. NMFS’ practice has been to make disclosures under this authority only to RFMOs that have policies and procedures to protect confidential information that are equivalent to NMFS’. NMFS will consider whether any additional, related guidance on agency management of this information is needed in updated ICPs.

Comment 23: A commenter urged NMFS to provide transparency on global fisheries management through release of information that is collected under the Seafood Import Monitoring Program (SIMP). The commenter referenced the proposed rule’s implementation of the FMPA, which provides that information collected from foreign fishing vessels is not confidential. The commenter believes that there should be greater public access to information collected under the Marine Mammal Protection Act Import Provisions and other authorities administered by NMFS.

Response: As explained in response to *Comment 20*, the final rule revises the definition of confidential information (§ 600.10) to delete reference to foreign fishing vessels and addresses the FMPA in § 600.415(f). The MSA does not have an exception for public disclosure of confidential information collected under SIMP. Further, the Trade Secrets Act (18 U.S.C. 1905) prohibits the disclosure of information collected and maintained in Customs and Border Protection (CBP) systems, which may limit the ability for SIMP data to be shared publicly (data collected for SIMP is submitted electronically through the Automated Commercial Environment maintained by CBP). However, per the FMPA, NMFS could disclose information collected under the program regarding foreign vessels, as provided under § 600.415(f) and if consistent with other applicable law.

Enforcement of Data Agreements and Prohibitions To Release Data

Comment 24: Several commenters asked for clarity regarding the responsible party for enforcing the prohibition under MSA 308(a), 16 U.S.C. 1858(a), non-disclosure agreements, or any mutual agreements to ensure confidentiality procedures are maintained by those entities.

Response: Section 308(a) of the MSA concerns the assessment of a civil penalty if the Secretary determines that a person has committed an act prohibited by section 307 of the MSA. NMFS is generally responsible for enforcing the various prohibitions in the MSA and in regulations promulgated under the MSA including the prohibitions set forth in this rule. NMFS

works closely and collaboratively with States, marine fishery management commissions, and other entities to ensure appropriate handling of MSA confidential information. Under § 600.410(c)(1), NMFS may enter into an agreement with a state for the collection of confidential information by the state on behalf of the Secretary if NMFS determines that the state has authority comparable to the MSA for the protection of information and that the state will exercise such authority to protect confidential information. See response to *Comment 3* for further explanation. In addition, NMFS may enter into an agreement with a marine fisheries commission per § 600.410(c)(2). In such circumstances, NMFS may look to the states or commissions to carry out agreed upon duties to protect information using the comparable State or Commission authorities rather than MSA authorities.

Data Collected Under Other Programs for Management Purposes and Applicability of MSA Confidentiality Measures

Comment 25: One commenter asked for clarity regarding how data collected and transmitted to the NOAA Office Of Law Enforcement (OLE) would be treated, especially vessel position information (*i.e.*, Vessel Monitoring Systems (VMS) data) or data collected for scientific monitoring purposes in the Gulf of Mexico commercial shrimp fishery. In addition, the commenter would like clarity that OLE data would enter the Federal Information Security System and thereby be under NMFS custody and control for protection as confidential information.

Response: The NOAA OLE is an office under the NMFS. Every NMFS office, including OLE, maintains VMS and other forms of MSA confidential information in accordance with the NMFS’s Federal Information Security Management Act requirements. The NMFS office responsible for initially collecting MSA confidential information has no bearing on OLE’s authority to access and use any MSA confidential information collected by NMFS. VMS data, like other forms of confidential information, can be accessed by NMFS and others for fishery conservation and management purposes. In the case of the proposed data collected in the Gulf of Mexico shrimp fishery, the data has traditionally been submitted to NMFS, resides in NMFS’ custody and control, and is managed within a NMFS FISMA domain. In cases where MSA confidential information must be used to enforce the provisions of the MSA,

that MSA confidential information may become part of the public record.

Access to and Disclosure of Confidential Information to a Council's Management Entities

Comment 26: Comments were mixed on the proposed procedure that allows Council executive directors to request access to confidential information for scientific and statistical committee (SSC) and/or advisory committee or panel (AP) members. Those opposed said that the MSA does not authorize SSC/AP members to have access to confidential information. Other commenters asserted that State law may not permit such access to information that a State provides to NMFS in accordance with an agreement with the State. Some commenters expressed concern that SSC/AP members may gain a competitive advantage if given such access. Other commenters were in support of this procedure and requested broadening this approach to allow access to any individuals or groups who provide support to NMFS with respect to fishery conservation and management under the MSA such as technical management teams, cooperative researchers and contract employees.

Response: The MSA authorizes disclosure of confidential information to the Councils: "Nothing in this subsection [402(b)] shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary, or with the approval of the Secretary, the Council, of any information submitted in compliance with any requirement or regulation under this chapter . . ." 16 U.S.C. 1881a(b)(3). The MSA requires establishment of SSCs, 16 U.S.C. 1852(g)(1), and APs that are necessary or appropriate to assist a Council in carrying out its functions, notably, the preparation of fishery management plans and amendments, 16 U.S.C. 1852(g)(2)–(h)(1). Given these mandates, the MSA authorizes disclosure of information to SSCs and APs if needed for conservation and management purposes and subject to the below-described procedures. § 600.415(d)(5) also acknowledges the potential need for Council contractors to access confidential information. However, NMFS does not believe it is necessary to expand § 600.415(d) to include any individuals or entities who might provide some support to NMFS related to MSA conservation and management.

As explained in the preamble to the proposed rule, a Council may request, through its executive director, that members of its SSCs and APs be given access to confidential information.

Proposed § 600.415(d), however, provided that the executive director could make this request on their own initiative. This final rule revises that procedure to reflect the procedure stated in the preamble; *i.e.*, that a Council may, through its executive director, request that members of its SSCs and APs be provided access to confidential information. This procedure can be applied consistent with a more restrictive State law. For example, a Council could include in its standard operating procedures a requirement to consider whether access by Council SSC or AP members may be in potential conflict with a State law. A Council member for a State with such a concern could raise it for consideration by the Council.

Before approving any such request, NMFS must determine that access will not result in any Council member having a personal or competitive advantage (§ 600.415(d)(3)–(4)). Further, NMFS will consider whether providing confidential information is inconsistent with State law. NMFS recognizes that State law applicable to information that NMFS accesses under an information sharing agreement with a State may not always align with what is authorized under the MSA and other applicable Federal law. NMFS coordinates with its State partners to address such issues as they arise but has not experienced an unresolvable conflict between State and Federal mandates to date.

Definition of Business of Any Person

Comment 27: Comments were mixed on the proposed definition of "business of any person." Some commenters supported the proposed definition because business information and identifying information need protection. These commenters stated that the definition would apply to information that reasonably constitutes proprietary information and would cause competitive harm if disclosed. Other commenters opposed this definition, stating that it is contrary to the MSA and the agency's long-standing interpretation of "identity or business of any person" as referring to the identity of a person or a business. These commenters further stated that the definition is too broad and overly protective and would violate MSA National Standard 2 (NS 2) and the Open Government Policy by limiting public access to information for use in cooperative research and other activities related to fisheries management.

Response: MSA section 402(b)(3) expressly states that aggregated or summarized information may be released only if it does not directly or

indirectly disclose the "identity or business of any person" (emphasis added). This rule amends existing regulations to better align with the statutory text. Since the statute distinguishes between the identity or business of any person, the regulations must go beyond a reference to identity. In practice, NMFS aggregates information to protect a person's identity as well as the person's business information. In other words, NMFS does not simply strip identifiers off information that it releases. Many fishermen have business interests in protecting information related to their fishing practices, including the time, location and gear used. Disclosure of this information at a vessel-specific level, even if stripped of identifiers, could raise concerns about competitive disadvantages. In NMFS's experience, the types of operational and financial information listed in the "business of any person" definition are precisely the types of information that, if disclosed at the vessel-specific level, could result in competitive harm. The definition is clear and relatively easy to apply, reflects a common understanding of what constitutes the "business" of a person in the MSA regulatory context, and is consistent with the agency's long-standing practice.

NMFS supports transparency, public participation, and collaboration through the MSA's regional, process-intensive approach to fishery management. For information on the U.S. Open Government initiative, go to <https://www.gsa.gov/governmentwide-initiatives/us-open-government>. NMFS agrees that access to fisheries information facilitates transparency, public participation, and collaboration and that these goals should be taken into account in its handling of confidential information. To that end, NMFS intends to develop ICPs to provide guidance on the minimum level of aggregation disclosure advisable to protect the identity and the business of any person, consistent with MSA confidentiality requirements. NMFS also intends that the ICPs will provide guidance on when information should be considered to indirectly disclose a person's identity or business. NMFS disagrees that the definition of "business of any person" is inconsistent with National Standard 2, which requires the use of best scientific information available but does not address confidentiality of information.

Comment 28: Some commenters said that NMFS should revise the proposed definition of "business of any person" to further detail what constitutes financial and operational information,

and one commenter recommended revising the definition to include information reported by processors such as amount processed or processing capacity.

Response: NMFS disagrees that revisions are necessary to detail or further clarify what constitutes the business of any person. MSA 402(b) broadly requires the confidentiality of any information that a person is required to submit in compliance with the Act and any observer information. The definition covers common types of financial or operational information such as ownership information or fishing locations and is not intended to be exhaustive. The definition, which is finalized as proposed, includes estimated and actual processing capacity of U.S. fish processors, so it is not necessary to add “amount processed.”

Comment 29: A commenter stated that NMFS should exclude landings, revenue, and effort on annual or fishing year basis from the proposed rule definition for confidential information in cases where data is available from fewer than three vessels or entities. In the commenter’s view, public interest in this information outweighs the interest of the participants in the fishery who are benefiting from a public resource.

Response: Under MSA section 402(b)(3), NMFS may publicly release confidential information only in an aggregate or summary form that does not directly or indirectly disclose the identity or business of any person. Aggregated information from at least three submissions or entities is often necessary to achieve that standard. If data from only two entities is aggregated, one entity could identify itself and/or its own data, thus disclosing the other entity’s business and/or identity. For that reason, NMFS is not revising the definition of “confidential information” to refer to fewer than three vessels or entities. NMFS will explore the potential for disclosing information in a summary form on an ad hoc basis.

Comment 30: Many commenters requested that NMFS clarify through ICPs how confidential information can be aggregated or summarized into a form that would not directly or indirectly disclose the identity or business of any person. A commenter felt that the proposed rule missed an opportunity to address the level at which confidential information must be aggregated for it to be releasable to the public.

Response: NMFS determined that it was necessary to revise the definition of “aggregate or summary form” and to define “business of any person” before

it developed an ICP that provides guidelines for aggregation and summarization of confidential information. As stated above, development of ICPs based on definitions that could change would not be efficient. With the revised definitions finalized through this rule, NMFS can proceed to develop guidance on the minimum level of aggregation or summarization advisable to protect the identity and the business of any person. In doing so, NMFS intends to advance and balance three objectives: transparency through release of the broadest amount of information at the finest level detail; protection of the identity and the business of any person; and responsiveness to individual information requests.

Comment 31: A commenter requested that NMFS clarify whether the proposed rule would change existing practices on the requests for confidential information that is held by different entities (e.g., a State fishery management commission, a State fishery management agency, and NMFS).

Response: The final rule clarifies NMFS’ practices but does not change them or the practices that a state fishery management commission or a state may have for responding to requests for confidential information. Access, maintenance, and release requirements under the rule apply only to information that is under NMFS’ custody and control (§ 600.405). NMFS treats information as subject to its custody and control when it physically obtains the information, which, for electronically submitted information, is when the information enters a NMFS FISMA domain (See Background section for FISMA explanation).

In addition to subpart E regulations, requests for confidential information subject to NMFS’ custody and control would be addressed by FOIA request procedures under NOAA Administrative Order 205–14 and any applicable ICPs. Requests for information under the custody and control of a State fishery management commission or a state would be subject to their requirements and procedures. NMFS will continue to work with these entities in a non-regulatory fashion to reach mutual agreement on how to maintain the confidentiality of information submitted to them pursuant to an MSA requirement.

Applicability and Authority of MSA and Marine Mammal Protection Act (MMPA)

Comment 32: Several commenters supported the approach in the proposed rule with respect to marine mammals while others expressed concern. In

particular, some commenters supported the proposed rule’s treatment of details that concern interactions with marine mammals as non-confidential for MSA purposes. Other commenters stated that the proposed rule is inconsistent with the protection of identity and business of any person under the MSA and the MMPA and other regulations protecting confidential information. Many commenters expressed concern that disclosure of details of interactions with marine mammals would indirectly disclose the identity of the vessel involved in the interaction and urged NMFS to take steps to prevent such disclosures. Some commenters recommended that NMFS release general area descriptions or latitude/longitude block areas instead of specific interaction locations.

Response: For the reasons stated in the proposed rule, this final rule continues to exclude observer information on interactions with marine mammals from the definition of confidential information (§ 600.10). This information can be publicly disclosed provided that information regarding fishing practices and gear would not constitute a trade secret under the FOIA, 5 U.S.C. 552(b)(4). NMFS included the trade secret text in proposed and final § 600.10, recognizing concerns that disclosing details of marine mammal interactions (take) may indirectly disclose the identity of vessels involved in interactions.

Fishery management plans and regulations under the MSA must be consistent with applicable law, which includes the MMPA. See 16 U.S.C. 1853(a)(1)(C) and 1854(a)(1), (3), (b)(1), and (c)(7). Release of observer information that concerns interactions with marine mammals advances implementation of MMPA mandates, and, in particular, such information is critical for deliberations of MMPA Take Reduction Teams (TRTs). See 89 FR at 17367–17368 (providing further explanation of MMPA mandates in proposed rule preamble).

This final rule reflects NMFS’ long-standing approach as the agency has been presenting detailed information on commercial fisheries’ interactions with marine mammals to TRTs since the program was mandated in 1994 by the MMPA. To prevent disclosures of the identity of a vessel involved in interactions, NMFS evaluates whether a release of detailed interaction information would, if combined with past disclosures, identify the vessel involved in the interaction. Additionally, if appropriate for purposes of the TRTs’ goals and objectives, we routinely strive to present

data in aggregated form, particularly when illustrating latitude/longitude positions of individual takes. For example, TRTs, which include fishing industry representatives, may be particularly interested in viewing take locations by season to discern whether patterns in bycatch exist. In that case, NMFS would aggregate all available years of data to evaluate seasonal patterns. Further, the specific location of an interaction may in some cases be essential to develop meaningful mitigation measures and comply with the MMPA goals of reducing mortality and serious injury incidental to commercial fishing. For example, a particular marine mammal interaction may have occurred in association with a specific oceanographic feature (e.g., a seamount, the continental shelf break) that would only be recognizable when evaluating individual latitude/longitude positions and not as a block area. In these circumstances, the TRTs cannot work effectively without disclosing the detailed, vessel-specific information upon which their analysis and determinations rely. In recent years, NMFS has disclosed this information through TRTs without receiving concerns that such disclosure harms MSA confidentiality interests. By knowing this information, TRTs can design more precise, targeted recommendations for mitigation measures, instead of broad, overly restrictive recommendations, which can lead to and has led to reduced regulatory burden on a fishery.

Comment 33: Several commenters recommended that photos and videos of marine mammals should be excluded from the definition of confidential information given they cannot readily be aggregated. The commenters also asserted that other information such as the nature and severity of interactions, samples collected, handling and release details, etc. should be excluded from the definition.

Response: While photos and videos may be useful, they are not among the specific information that TRTs need to develop measures to reduce take occurring in a fishery. However, NMFS has and will continue to release marine mammal injury or mortality events captured by cameras if the image does not disclose the identity or any unique gear configurations that may constitute a trade secret as defined for purposes of FOIA Exemption Four. See NMFS' Policy on Electronic Technologies and Fishery-Dependent Data Collection available at https://media.fisheries.noaa.gov/2022-05/04-115-04_0.pdf. In making such public disclosures, NMFS will evaluate the

image that captures the marine mammal interaction and if feasible and practicable take steps to obscure identifying information prior to releasing it publicly. In contrast to photos, video collected through EM systems cannot be aggregated or summarized. NMFS will provide access to that information, and release it publicly, only as authorized under §§ 600.415 and 600.420.

Details of interactions (e.g., nature and severity of interactions, samples collected, handling and release details, etc.) may also be useful, but they are not among the specific information that TRTs need to develop measures to reduce take occurring in a fishery. Thus, NMFS is not excluding this information as well as photos and videos from the definition of confidential information.

Comment 34: Some commenters stated that NMFS could allow TRTs to receive information without releasing it publicly by restricting release of detailed information on interactions with marine mammals to members of TRTs through confidentiality agreements.

Response: NMFS considered requiring members of TRTs to sign non-disclosure agreements but determined this approach is not appropriate because observer information on marine mammal interactions described in § 600.10 is not confidential information and may be disclosed. Additionally, as noted in the proposed rule, TRTs established under the MMPA must meet in public and develop plans to reduce incidental mortality and serious injury; specific details of interactions with marine mammals are critical to developing such plans. See 16 U.S.C. 1387(f)(6) (establishing and setting forth requirements for TRTs).

Comment 35: One commenter recommended that NMFS clarify the relationship between the MSA and MMPA, the authorities governing deployment of observers and the collection of information under each statute, and whether the confidentiality rules differ depending on the type of information and purpose for which they will be used.

Response: Section 600.10 of the proposed rule and final rules exclude details of observer information on interactions with marine mammals from the definition of "confidential information" for the purposes of the MSA. NMFS may require observers and observer coverage and other data reporting and collection under multiple statutory authorities depending on the conservation and management needs of and objectives of the program and the nature of, gear used, area fished during,

or other circumstances for a particular trip. Regardless of whether an observer is deployed in a fishery under both MMPA and MSA authorities or solely MSA authority, observer information related to interactions with marine mammals will not be considered confidential information for MSA purposes.

Comment 36: Some commenters viewed NMFS' approach to excluding marine mammal interactions as too narrow and requested broadening it to include all protected species and bycatch data under the MMPA, Endangered Species Act (ESA), and Migratory Bird Treaty Act (MBTA), including non-protected species bycatch. One commenter asserted that the approach should be broadened to include vessel interactions with ESA-listed species, noting that specific conditions imposed on a fishery by ESA section 7 biological opinions and incidental take statements require detailed reporting and analyses of takes to assess impacts of proposed actions on ESA-listed species. The commenter asserted that this information should be reported publicly so that it can be used by stakeholders to review and examine, and sometimes challenge, agency decisions under the ESA, given the ESA explicitly provides for citizen suits in this regard.

Response: The MSA does not allow, nor do other Federal statutes require, disclosure of details on interactions with ESA-listed species, seabirds, bycatch of nonprotected species, or species protected under state statutes. See 89 FR at 17367–17368 (providing further explanation of ESA in proposed rule preamble). Observer information regarding interactions with ESA-listed species or other protected species would continue to be releasable in aggregate or summary form consistent with MSA section 402(b)(3) and these regulations.

Proposed Changes Clarifying NMFS' Confidentiality Regulations

Comment 37: Some commenters said NMFS should clarify whether regulations are necessary to implement MSA 402(b)(1)(I), 16 U.S.C. 1881a(b)(1)(I), which allows other federal agencies to access information for enforcement of forced labor prohibitions.

Response: For ease of reference, § 600.415 of the final rule includes the statutory text of MSA 402(b)(1)(I). NMFS does not believe regulations are needed to interpret that text. NMFS will prescribe additional procedures to implement this exception by regulation as may be necessary to preserve the confidentiality of information.

Entities Potentially Affected by the Rule

Comment 38: A commenter stated that any vessel with a Federal fishing permit should be included in a description of potential entities affected by the rule because any of those vessels might be subject to observer coverage and thus potentially affected if there are changes to how observer data are treated (confidential or not).

Response: This rule applies to information that is maintained by NMFS and subject to its custody and control and does not impose regulatory burdens on vessels. The rule does not change the extent of required observer coverage, and therefore there is no need to analyze impacts on vessels that might be potentially be subject to observer coverage. The rule broadly addresses NMFS' responsibility under MSA section 402(b) to maintain as confidential any information that a person is required to submit in compliance with any regulation or requirement under the MSA and any observer information. 89 FR at 17359. If a vessel were to be subject to MSA observer coverage requirements, the observer information would be handled as confidential consistent with the Act and this rule.

Changes From the Proposed Rule

In response to public comment, and after further agency consideration, NMFS has made minor edits for clarity and several substantive changes between the proposed and final rules. These changes are summarized and explained here.

The proposed rule (§ 600.10) defined confidential information to not include (1) vessel-specific information provided in satisfaction of obligations of the United States to share information under a RFMO of which the United States is a member and (2) any information collected by NMFS under the MSA regarding foreign vessels. This final rule deletes references to these two categories from § 600.10 and addresses the FMPA in § 600.415(f).

Final § 600.405 continues to state that the regulations apply to confidential information as defined in § 600.10. To clarify this section, NMFS revised it to provide that “[a]gency access, maintenance, and release responsibilities [under this subpart] apply only to confidential information under NMFS' custody and control.”

In the proposed rule, NMFS also defined “electronic monitoring service provider” as any person who manages observer information collected by an electronic monitoring system required under an MSA regulation. The proposed

rule left out “or as part of a cooperative research initiative,” a phrase that is in the MSA definition of observer information, 16 U.S.C. 1802(32). This final rule adds that statutory text to the regulatory definition.

NMFS proposed a procedure under which a Council may, through its executive director, request that members of its SSC and AP that are not Federal or State employees be granted access to confidential information. Although accurately described in the preamble, the proposed regulation incorrectly provided that the Council executive director, rather than the Council itself, may initiate it. This final rule corrects this error. Additionally, NMFS makes a technical revision to this procedure so that it applies to Members of the Council's advisory panels (plural), rather than a panel.

To implement the FMPA, the proposed rule excluded two categories of information from the definition of confidential information (see § 600.10 explanation above) and addressed access to information in proposed §§ 600.415(f)–(g). The final rule deletes FMPA-related references in § 600.10, deletes § 600.415(g), and addresses the FMPA in revised § 600.415(f). The revised text states, for the purposes of sections 608(b) and 606(d)(2) of the FMPA (16 U.S.C. 1826i(b) and 1826g(d)(2)), international fishery agreement has the same meaning as international fishery management agreement at 50 CFR 300.201. In addition, NMFS may disclose information, as authorized under, and subject to the requirements and conditions of, section 608(b) or 606(d)(2) of the FMPA to entities specified in those sections. For purposes of applying section 608(b) and 606(d)(2), the confidentiality requirements of section 402(b) of the Magnuson-Stevens Act, 16 U.S.C. 1881a(b), shall not apply with respect to (1) obligations of the United States to share information under a Regional Fishery Management Organization (RFMO) of which the United States is a Member; or (2) information collected by NMFS regarding foreign fishing vessels. The same cross-reference to 50 CFR 300.201 (international fishery management agreement), noted above, was in the proposed rule.

The final rule includes a confidentiality of information exception from MSA 402(b)(1)(I), 16 U.S.C. 1881a(b)(1)(I), related to illegal unreported, or unregulated fishing and forced labor. See final rule element # 7 in the Background section, above. NMFS did not include the statutory text in the proposed rule, but for ease of

reference added it to the final rule regulatory text.

Classification

NMFS is issuing this final rule pursuant to section 305(d) of the MSA. The NMFS Assistant Administrator has determined that this final rule is consistent with the MSA and other applicable laws, including the FMPA. This final rule has been determined to be not significant for purposes of Executive Order 12866. There are no relevant Federal rules that may duplicate, overlap, or conflict with this action. This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

Certification Under the Regulatory Flexibility Act Analysis

The Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published in the proposed rule and is not repeated here. NMFS received one comment regarding this certification. The commenter stated that any vessel with a Federal fishing permit should be included in a description of potential entities affected by the rule because any of those vessels might be subject to observer coverage and thus potentially affected if there are changes to how observer data are treated (confidential or not). This rule applies to information that is maintained by NMFS and subject to its custody and control and does not impose regulatory burdens on vessels. The rule does not change the extent of required observer coverage, and therefore there is no need to analyze impacts on vessels that might potentially be subject to observer coverage. The rule broadly addresses NMFS' responsibility under MSA section 402(b) to maintain as confidential any information that a person is required to submit in compliance with any regulation or requirement under the MSA and any observer information. If a vessel were to be subject to MSA observer coverage requirements, the observer information would be handled as confidential consistent with the Act and this rule.

This final rule is not expected to have a significant economic impact on a substantial number of small entities. As a result, a final regulatory flexibility analysis was not required, and none was prepared.

Lists of Subjects in 50 CFR Part 600

Confidential business information, Fisheries.

Dated: December 9, 2024.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 600 as follows:

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

■ 2. Amend § 600.10 by:

■ a. Revising the definition of “Aggregate or summary form”;

■ b. Adding, in alphabetical order, definitions for “Business of any person”, “Confidential information”,

■ c. Removing the definitions of “Confidential statistics” and “Data, statistics, and information”;

■ d. Adding, in alphabetical order, definitions for “Electronic monitoring service provider”, “Information sharing obligation of a Regional Fishery Management Organization (RFMO)”, “Observer provider”, and “Regional Fishery Management Organization”.

The revisions and additions read as follows:

§ 600.10 Definitions.

* * * * *

Aggregate or summary form means information structured in such a way that the identity or business of any person (defined at 16 U.S.C. 1802(36)) who submitted the information cannot be directly or indirectly determined either from the present release of the information or in combination with other releases.

* * * * *

Business of any person means:

(1) Financial information such as ownership information, cash flow documents, income statements, or information that contributes to the preparation of balance sheets; or

(2) Operational information such as fishing locations, time of fishing, specific gear configuration, catch by species in numbers or weight thereof, number of hauls, number of employees and estimated processing capacity of and the actual processing capacity utilized by U.S. fish processors.

* * * * *

Confidential information includes any observer information as defined under 16 U.S.C. 1802(32) or any information submitted to the Secretary, a State fishery management agency, or a marine fisheries commission by any person in

compliance with any requirement or regulation under the Magnuson-Stevens Act. Confidential information does not include observer information related to interactions with species protected under the Marine Mammal Protection Act: the date, time, and location of interactions, the type of species, and the fishing practices and gear involved provided that information regarding fishing practices and gear would not constitute a trade secret under the Freedom of Information Act, 5 U.S.C. 552(b)(4).

* * * * *

Electronic monitoring service provider means any person who manages observer information collected by an electronic monitoring system required under an MSA regulation or as part of a cooperative research initiative.

* * * * *

Information sharing obligation of a Regional Fishery Management Organization (RFMO) means a measure or part thereof that creates a binding requirement on the United States to report certain information by virtue of its membership in the respective RFMO.

* * * * *

Observer provider means any person that collects observer information by placement of observers on or in fishing vessels, shoreside processors, or stationary floating processors under a requirement of the MSA or as part of a cooperative research initiative.

* * * * *

Regional Fishery Management Organization (RFMO) means an intergovernmental fisheries organization or arrangement, as appropriate, that has the competence to establish conservation and management measures.

* * * * *

§ 600.130 [Amended]

■ 3. In § 600.130, remove the word “statistics”, wherever it appears, and add in its place the word “information”.

■ 4. Subpart E to part 600 is revised to read as follows:

Subpart E—Confidentiality of Information

Sec.

600.405 Applicability.

600.410 Protection of confidential Information.

600.415 Access to confidential information

600.420 Release of confidential information.

600.425 Release of information in aggregate or summary form.

Subpart E Confidentiality of Information

§ 600.405 Applicability.

This subpart applies to confidential information as defined at § 600.10. Agency access, maintenance, and release responsibilities apply only to confidential information that is under NMFS’ custody and control.

§ 600.410 Protection of confidential information.

(a) *General.* This section requires control procedures related to confidential information and provides procedures for the protection of certain confidential information submitted to NMFS and State fishery management agencies or marine fisheries commissions pursuant to a statutory or regulatory requirement imposed pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

(b) *Confidential information collected by NMFS.* NMFS must establish internal control procedures for the maintenance of and access to any confidential information. The control procedures should include, but are not limited to, the following:

(1) Requirements for information system management and data storage to prevent unauthorized access to or disclosure of confidential information;

(2) Procedures for NMFS employees to access confidential information;

(3) Procedures for providing access to confidential information by states, Councils, and Marine Fisheries Commissions;

(4) Procedures for evaluating whether members of a Council, or a Council Scientific and Statistical Committee (SSC), plan team, or Advisory Panel (AP) could gain personal or competitive advantage from access to confidential information under § 600.415(d);

(5) Procedures for evaluating requests by contractors, grantees, cooperative agreement recipients and other external individuals and organizations to access confidential information;

(6) Procedures for vessel owners to access and request confidential information, including historic information associated with a fishing permit;

(7) Standardized sharing agreements that acknowledge the confidentiality and protection of information from public disclosure;

(8) Template for written authorization for release of confidential information for purposes of § 600.420(f);

(9) Procedures for aggregating and summarizing confidential data and responding to requests for non-confidential information;

(10) Any other procedures as necessary to maintain the confidentiality of information.

(c) *Confidential information collected by State Fishery Management Agencies or Marine Fisheries Commissions.*

NMFS may enter into an agreement with a state or a Marine Fisheries Commission for the collection of confidential information on behalf of the Secretary provided that NMFS, as part of the agreement, determines that:

(1) The state has confidentiality of information authority comparable to the Magnuson-Stevens Act and that the state will exercise this authority to prohibit public disclosure of confidential information;

(2) The marine fisheries commission has established policies and procedures comparable to the Magnuson-Stevens Act and that the Commission will exercise such policies and procedures to prohibit public disclosure of confidential information.

(d) *Observer and Electronic Monitoring Services.* (1) Observer providers. NMFS may allow the collection of observer information by an observer pursuant to a confidentiality agreement that:

(i) Specifies procedures that the observer provider will apply to protect confidential information from public disclosure; and

(ii) Requires that the observer provider, each observer, and each of its other employees that will handle confidential information acknowledge the requirement to maintain the confidentiality of observer information and the civil penalties for unauthorized use or disclosure of such information provided under 16 U.S.C. 1858.

(2) Electronic monitoring service providers. NMFS may allow the handling of observer information by an electronic service provider pursuant to a confidentiality agreement that:

(i) Specifies procedures that the electronic monitoring service provider will apply to protect confidential information from public disclosure; and

(ii) Requires that the electronic monitoring service provider, and each of its employees who will handle confidential information, acknowledge the requirement to maintain the confidentiality of observer information and the civil penalties for unauthorized use or disclosure of such information provided under 16 U.S.C. 1858.

(3) As part of any agreement with an observer provider under paragraph (d)(1) of this section, NMFS may allow the sharing of observer information among and between observers and observer providers for:

(i) Training or preparation of observers for deployments on specific vessels; or

(ii) Validating the accuracy of the observer information collected.

§ 600.415 Access to confidential information.

Confidential information may be accessed by the following persons subject to any specified conditions and procedures:

(a) *Federal employees.* (1) Responsible for fishery management plan (FMP) development, monitoring, or enforcement, including persons that need access to confidential information to perform functions authorized under a Federal contract, cooperative agreement, or grant awarded by NOAA/NMFS;

(2) At the request of another Federal agency, if providing the information supports homeland security and national security activities, including the Coast Guard's homeland security missions as defined in section 888(a)(2) of the Homeland Security Act of 2002 (6 U.S.C. 468(a)(2)); or,

(3) To the extent necessary and appropriate to administer Federal programs established to combat illegal, unreported, or unregulated fishing or forced labor (as such terms are defined in section 11329 of the Don Young Coast Guard Authorization Act of 2022 [16 U.S.C. 1885a note]), which shall not include an authorization for such agencies to release data to the public unless such release is related to enforcement.

(b) *State or marine fisheries commission employees.* As necessary to further the mission of the Department of Commerce, subject to an agreement with NMFS that prohibits public disclosure of confidential information;

(c) *State enforcement personnel.* State employees who are responsible for enforcing FMPs, provided that the state for which the employee works has entered into a Joint Enforcement Agreement with NOAA and the agreement is in effect;

(d) *Councils.* A Council may, through its Executive Director, request access for the following:

(1) The Council's employees who are responsible for FMP development and monitoring;

(2) Members of the Council for use by the Council for conservation and management, but only if NMFS determines that access will not result in any Member having a personal or competitive advantage;

(3) Members of any Council scientific and statistical committee (SSC) established under section 302(g) of the Magnuson-Stevens Act who are not

Federal or State employees, if necessary for the SSC to assist and advise the Council as provided under the Magnuson-Stevens Act, but only if NMFS determines that access will not result in any Member having a personal or competitive advantage;

(4) Members of any Council advisory panel (AP) established under section 302(g) of the Magnuson-Stevens Act, if necessary for the AP to provide information and recommendations on, and assist in the development of FMPs and amendments thereto, but only if NMFS determines that access will not result in any Member having a personal or competitive advantage;

(5) A contractor of the Council for use in such analysis or studies necessary for conservation and management purposes but only if approved by NMFS and subject to a confidentiality agreement; and

(e) *Vessel Monitoring System Information.* Nothing in these regulations contravenes section 311(i) of the Magnuson-Stevens Act which requires the Secretary to make vessel monitoring system information directly available to the following:

(1) Enforcement employees of a State with which NMFS has entered into a Joint Enforcement Agreement and the agreement is in effect;

(2) State management agencies involved in, or affected by, management of a fishery if the State has entered into an agreement with NMFS that prohibits public disclosure of the information.

(f) *High Seas Driftnet Fishing Moratorium Protection Act (FMPA).* (1) For purposes of sections 608(b) and 606(d)(2) of the FMPA (16 U.S.C. 1826i(b) and 1826g(d)(2)), international fishery agreement has the same meaning as international fishery management agreement at 50 CFR 300.201.

(2) NMFS may disclose information, as authorized under, and subject to the requirements and conditions of, section 608(b) or 606(d)(2) of the FMPA to entities specified in those sections.

(3) For purposes of applying section 608(b) and 606(d)(2), the confidentiality requirements of section 402(b) of the Magnuson-Stevens Act, 16 U.S.C. 1881a(b), shall not apply with respect to:

(i) Obligations of the United States to share information under a Regional Fishery Management Organization (RFMO) of which the United States is a Member; or

(ii) Information collected by NMFS regarding foreign fishing vessels.

§ 600.420 Release of confidential information.

NMFS will not disclose to the public any information made confidential pursuant to the Magnuson-Stevens Act, except the agency may disclose information when:

(a) Authorized by regulations issued by the Secretary to implement recommendations contained in an FMP prepared by the North Pacific Council and approved by NMFS to allow disclosure of observer information to the public of weekly summary bycatch information identified by vessel or for haul-specific bycatch information without vessel identification;

(b) Observer information is necessary in proceedings to adjudicate observer certifications;

(c) Information is required to be submitted to the Secretary for any determination under a limited access program (LAP). This exception applies at the level of confidential information that NMFS has used, or intends to use, for a regulatory determination under a LAP. This includes information that was submitted before the fishery was a LAP and that NMFS subsequently uses or intends to use for a LAP determination. For the purposes of this exception:

(1) *Limited Access Program* means a program that allocates exclusive fishing privileges, such as a portion of the total allowable catch, an amount of fishing effort, or a specific fishing area, to a person.

(2) *Determination* means a decision that is specific to a person and exclusive

fishing privileges held or sought under a limited access program. These decisions are allocations, approval or denial of a lease or sale of allocated privileges or annual allocation, and end of season adjustments.

(d) Required to comply with a Federal court order. For purposes of this exception:

(1) *Court* means an institution of the judicial branch of the U.S. Federal Government. Entities not in the judicial branch of the Federal Government are not courts for purposes of this section;

(2) *Court order* means any legal process which satisfies all of the following conditions:

(i) It is issued under the authority of a Federal court;

(ii) A judge or magistrate judge of that court signs it; and

(iii) It commands NMFS to disclose confidential information as defined under § 600.10.

(e) Necessary for enforcement of the Magnuson-Stevens Act or any other statute administered by NOAA or when necessary for enforcement of any State living marine resource laws, if that State has a joint enforcement agreement that is in effect.

(f) A person that is subject to a Magnuson-Stevens Act submission of information requirement or their designee provides written authorization to the Secretary authorizing release of such information to other persons for reasons not otherwise provided for in section 402(b) of the Magnuson-Stevens Act and such release does not violate

other requirements of the Magnuson-Stevens Act. That person or their designee must prove identity, and authorization to act if serving as a designee, by a statement consistent with 28 U.S.C. 1746, which permits statements to be made under penalty of perjury as a substitute for notarization. The statement of identity, and authority to serve as a designee, must be in the following form:

(1) If executed outside the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)".

§ 600.425 Release of information in aggregate or summary form.

NMFS may disclose in any aggregate or summary form information that is required to be maintained as confidential under these regulations.

■ 5. In § 600.725, add paragraph (y) to read as follows:

§ 600.725 General prohibitions.

* * * * *

(y) Disclose confidential information without authorization.

[FR Doc. 2024-29366 Filed 12-16-24; 8:45 am]

BILLING CODE 3510-22-P