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New England Fishery Management Council

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E.F. "Terry" Stockwell III, *Chairman* | Thomas A. Nies, *Executive Director*

February 11, 2014

Mr. John Bullard  
Regional Administrator, GARFO  
NMFS/NOAA Fisheries  
55 Great Republic Drive  
Gloucester, MA 01930

**RE: Data Confidentiality**

Dear John:

As we continue to develop the catch share programs in New England, a number of questions have arisen within the Council staff regarding data confidentiality. Your clarification on these issues would help ensure that the Council staff meets its responsibilities under the Magnuson-Stevens Act (MSA).

**Catch history.** Council staff understood that all catch history information is considered confidential, because it falls within the data confidentiality provisions of MSA, Section 402(b). This understanding was reinforced by your letter dated March 21, 2013 regarding monkfish landings history, indicating that landings data for specific permits may only be made public with the written permission of all current and former entities with landings history associated with a given permit. However, NMFS indicated at the January 2014 Groundfish Oversight Committee meeting, and through subsequent emails with Council staff, that the Potential Sector Contribution (PSC) data of Northeast multispecies permits is considered public due to an exception to the data confidentiality provisions made when PSCs were first generated. PSC can be easily manipulated to determine a permit's landing history during the qualification period. Your letter regarding monkfish did not indicate that exceptions to the MSA data confidentiality provisions were possible in that case.

*Why was a data confidentiality exception made in the case of groundfish catch history?  
Why is this not possible in the case of monkfish? Please articulate why the stock-specific  
PSC held by specific multispecies permit holders may be released to the public.*

**Value of ACE/quota trading.** NMFS has indicated that data within the annual reports submitted by groundfish sectors is confidential, except data which is used for the determination of limited access allocation, such as sector-level Annual Catch Entitlement (ACE) allocation, catch, the weight of ACE transfers between sectors and any sector overage or carryover. In the past, Council staff has been told that information that shows specific ACE trades between sectors is confidential. However, the FY2012 Final Report on the Performance of the Northeast Multispecies Fishery includes data on the value of ACE trading by specific sectors. This data is not necessary for a limited access determination.

*Can information be released on the extent of ACE or quota trading between individual sectors or vessels? Is the value of ACE trading by specific sectors public? If so, please explain why an exception to the MSA data confidentiality provisions applies.*

**Annual reports.** Through the development of Amendment 18 to the Northeast Multispecies Fishery Management Plan, the Groundfish Oversight Committee is currently considering whether to recommend a regulatory definition of a non-profit permit bank. The alternative, as currently drafted, would require a non-profit permit bank to enroll in a sector, as they currently do, but submit to NMFS an annual report that would be considered public, separate from the confidential sector annual reports. Staff-level discussions with NMFS have indicated that the non-profit permit bank reports would be subject to the same data confidentiality requirements as the sector annual reports. However, MSA Section 402(b) indicates that an exception to the provisions could be made when “the Secretary has obtained written authorization from the person ... and such release does not violate other requirements of this Act.” In addition, Section 402(b)(1)(G) of the MSA allows for the release of information submitted to the Secretary if such information is required to be submitted “for any determination under a limited access program”; does this language authorize release of information that is collected to ensure that an entity is meeting the management goals and objectives?

*Could formal recognition as a non-profit permit bank be conditioned on an agreement that the permit bank's annual report would be made public and contain data that would otherwise be confidential? What data could be released under such an exception, consistent with the exceptions provided in the MSA? What are the limits to the types of determination that would authorize a release of data under section 402(b)(1)(G) of the MSA? Does this apply to data collected to verify management measures are meeting the objectives of the management plan? Please explain the rationale.*

**Monitoring costs.** In 2011, NMFS indicated through staff-level communications, that sector-specific monitoring costs can be released publicly, so long as information is not released that would create a competitive disadvantage for monitoring provider companies, such as their specific billing rates. However, it is unclear whether the number of trips or days monitored by a specific vessel or sector is confidential.

*Can sector-specific monitoring costs be released to the public? Is the number of trips or days monitored by a specific vessel or sector confidential? Please articulate the rationale why or why not.*

Thank you for considering this request for clarification. As several of these questions impact what information can be provided to the Council to inform their discussions expected to occur in April, a timely reply would be appreciated. Please contact me if you have questions.

Sincerely,



Thomas A. Nies  
Executive Director