



# MARINE MAMMAL COMMISSION

25 April 2024

Karl Moline, Chief  
Operation Management and Technology Division  
Office of Science and Technology  
National Marine Fisheries Service  
Silver Spring, Maryland

Dear Mr. Moline:

On 11 March 2024, NMFS published a proposed rule that would revise regulations governing the confidentiality of information submitted in compliance with Magnuson-Stevens Conservation and Management Act (MSA) regulations. The Marine Mammal Commission (the Commission), in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the proposed rule and offers comments and recommendations herein.

The MSA specifies requirements for the confidentiality of fisheries information, including that collected by fisheries observers.<sup>1</sup> NMFS may disclose confidential fisheries information if it is aggregated or summarized in a form that does not disclose the identity or business of the submitter. NMFS is proposing to implement new control procedures that would apply to the collection, maintenance, accessibility and release of confidential fisheries information. Among other changes, 'confidential information', as defined in the proposed rule, would exclude information collected by fisheries observers that is related to interactions with species protected under the Marine Mammal Protection Act (MMPA).

The Commission notes that an observer may collect information under the authority of both the MMPA and the MSA. Therefore, the Commission recommends that NMFS clarify in the final rule (1) the relationships between the two Acts, (2) the authorities governing deployment of observers and the collection of information under each statute, and (3) whether the confidentiality rules differ depending on the type of information and purpose for which they will be used.

The information provided by observers regarding marine mammal interactions with fisheries is essential to understanding the factors contributing to those interactions and to mitigating marine mammal bycatch. Further, access to such information by Take Reduction Teams (TRTs) is essential if they are to fulfill their mandate under the MMPA to develop Take Reduction Plans that will reduce bycatch of marine mammals to acceptable levels. Because of these imperatives, and because the aggregation or summarization of marine mammal bycatch information can compromise its

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<sup>1</sup> 16 U.S.C. 1881a(b)

'Observer information' is defined as any information collected, observed, retrieved, or created by an observer or electronic monitoring system as required by NMFS under the MSA, or collected as part of a cooperative research initiative, including fish harvest or processing observations, fish sampling or weighing data, vessel logbook data, vessel or processor-specific information, and video, audio, photographic, or written documents (16 U.S.C. 1802(3)(32)).

Mr. Karl Moline

25 April 2024

Page 2

effectiveness and value, the Commission strongly recommends that the rule exclude the specified marine mammal interaction information collected by fisheries observers from the definition of what constitutes confidential information.

The Commission understands that rules for the aggregation of observer data to be released to the public will be revised subsequent to the promulgation of this proposed confidentiality rule. Photos and videos of marine mammal interactions are necessary to TRT's understanding interaction dynamics and developing effective mitigations measures. Because photos and videos cannot be aggregated, the Commission recommends that marine mammal interaction photos and videos also be excluded from the definition of confidential information.

Please contact me if you would like to discuss the Commission's comments or recommendations.

Sincerely,

A handwritten signature in blue ink that reads "Peter O. Thomas". The signature is written in a cursive, flowing style.

Peter O. Thomas, Ph.D.  
Executive Director