



# NET GAINS ALLIANCE

April 2024

## Net Gains Alliance Initial Response to the National Marine Fisheries Service Proposed Confidentiality Rule

After reviewing the NMFS' proposed confidentiality rule, Net Gains Alliance is drafting our comment letter now. We'll share this letter on our website when we submit it, but that will likely happen just before the April 25th deadline, too late to contribute to the kind of discussion that we often facilitate. While we're finalizing our letter, here are some of the key issues from our read for your consideration as you develop your own comments:

1. **This is a missed opportunity.** The rule is very similar to what NMFS proposed in 2012. In the last twelve years, technology has advanced rapidly, and competing demands on the ocean have increased. The rule doesn't seem to acknowledge that technology, data science, software, cloud services, and federal information security laws have changed since 2012, and more so since the Magnuson Act language to which this rule is responding was passed in 1976. We recognize that a rulemaking is not the place for NMFS to call for amendments to the current law, but NMFS could have written a rule enabling flexibility within the Magnuson language to use these policy and technology advancements to enable fisheries conservation and management. Instead, this rule describes the future in the rule's preamble and anchors the rule itself squarely in the past.
2. **Making data harder to access hurts fisheries.** Timely, accurate fisheries data is essential to NMFS's mandate to use the best available scientific information available. When catch and location data is highly restricted, fisheries can be overlooked in ocean decisions, such as allocating funding for climate adaptation, siting offshore wind, or setting protected areas under the Biden Administration's 30 x 30 initiative. Without data on industry trends, such as capacity estimates, U.S. fisheries can lose out on investment opportunities. NGA has repeatedly reported on the ways overly restrictive data policies penalize U.S. fishermen and have a chilling effect on agency staff who are threatened with civil and criminal penalties for potentially disclosing catch information that, in fact, is no secret at all within the fisheries community. This rule offers nothing to alleviate that culture of fear nor a pathway to making fisheries information visible, useful, and used.

- 3. NMFS must commit to a timeline for a public, open process for administrative guidance.** The lengthy preamble to the rule describes how many of the key details will be developed through administrative guidance, once the rule is approved. In the past, that type of guidance has been crafted internally and disseminated through emails or staff memos with no input from the fisheries community. While there can be good reasons to use administrative guidance for key details, since it can be updated as technology changes and more carefully tailored to regions, there's no guarantee that NMFS will open up that administrative process this time.

Visit the [Federal Register](#) to submit your comments on NMFS' draft rule on confidential fisheries data and information before April 25, 2024