


<p align="center"><b><i>NATIONAL MARINE FISHERIES SERVICE PROCEDURE 04-115-04</i></b> Effective on: May 10, 2022</p>	
<p align="right">To be reviewed on: May 10, 2027</p>	
<p align="right">Science and Technology 04-115</p> <p align="center"><i>Policy on Electronic Technologies and Fishery-Dependent Data Collection</i></p>	
<p align="center">INFORMATION LAW APPLICATION FOR DATA AND SUPPORTING GUIDANCE IN ELECTRONIC MONITORING PROGRAMS FOR FEDERALLY MANAGED U.S. FISHERIES</p>	
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## I. Introduction

### 1. Background on Policy Development for Electronic Monitoring Programs

NOAA Fisheries<sup>1</sup>, in conjunction with Regional Fishery Management Councils (councils) and Interstate Marine Fisheries Commissions (commissions), continues to explore electronic technologies (ET) to develop new, and improve existing, fishery-dependent data collection. These efforts have been guided by and align with the NOAA Fisheries Policy on Electronic Technologies and Fishery-Dependent Data Collection<sup>2</sup> to improve the timeliness, quality, integration, cost effectiveness, and accessibility of fishery-dependent data. One type of ET for collecting critical fishery-dependent data is electronic monitoring (EM), which uses cameras and other hardware systems for monitoring vessel operations and fishery catch. Unlike traditional means of data collection in fisheries (e.g., via at-sea and shoreside observer programs, or vessel logbooks), EM systems collect video and/or still-images, in addition to other sensor data (e.g., haul location) and metadata about the fishing trip (e.g., trip sail date, vessel information). For the purposes of this procedural

<sup>1</sup> Known informally as NOAA Fisheries, the official name of the agency in legislation and regulations is the National Marine Fisheries Service (NMFS).

<sup>2</sup> NOAA Fisheries Policy 04-115 - "Policy on Electronic Technologies and Fishery-Dependent Data Collection":  
<https://media.fisheries.noaa.gov/dam-migration/04-115.pdf>.

directive, “EM data” refers to the raw data that are collected by an EM system and transmitted from the participating vessel to an EM service provider, including the video, images, or other sensor data collected during fishing operations, as well as associated metadata (see Attachment 1 – Glossary). Collection, transmission, analysis, and storage of EM data often make up a large portion of an EM program’s costs and there has been lack of clarity on how to apply existing federal laws to some of the data collected from EM systems. Moreover, councils, fishing industry groups, and other partners have expressed interest in NOAA Fisheries’ policy on access to, and disclosure of EM data that it manages, including whether and how that information can be used for purposes that are beyond the stated goals and objectives of an EM program.

In May 2019, NOAA Fisheries published an EM procedural directive<sup>3</sup> for allocating costs of EM programs between NOAA Fisheries and the fishing industry in federally managed U.S. fisheries. This procedural directive provides a transparent and consistent framework for NOAA Fisheries and industry to identify and discuss the respective cost responsibilities in any EM program. During the development of this cost allocation guidance, the fishing industry raised concerns over how long EM data must be retained, either by the fishing industry or the federal government. In response, NOAA Fisheries published guidance in a second EM procedural directive<sup>4</sup> on how long an EM service provider (see Attachment 1, Glossary) should retain EM data when the fishing industry is responsible for maintaining non-federal records. In addition, and in conjunction with the National Archives and Records Administration (NARA), NOAA Fisheries established a 5-year retention schedule for EM data that are federal records (NARA Records Disposition Schedule DAA-0370-2020-0001, May 2021:

[https://www.archives.gov/files/records-mgmt/rcs/schedules/departments/departments-of-commerce/rg-0370/daa-0370-2020-0001\\_sf115.pdf](https://www.archives.gov/files/records-mgmt/rcs/schedules/departments/departments-of-commerce/rg-0370/daa-0370-2020-0001_sf115.pdf)).

## 2. Application of Information Law to Electronic Monitoring Data

Through implementation of EM programs, and based on comments from councils and other partners when the draft directives noted above were released, NOAA Fisheries recognized a need for clarity on how the Federal Records Act (FRA), the confidentiality provisions of section 402(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), and the Freedom of Information Act (FOIA) (collectively referred to as “Information Law”) apply to EM data. Information Law provides a framework for how EM data are managed, protected, and shared, but the different EM program configurations and resulting management of those data by different entities and under various storage and handling practices, including third parties, complicate application of this Information Law. For the purposes of this procedural directive, “third party(ies)” refer to entities distinct from NOAA Fisheries, which include agency contractors and recipients of federal financial assistance (e.g., grant or cooperative agreement), commissions, and EM service providers, that report a vessel’s catch and discards and other information based on analysis of the EM data. Application of Information Law to EM data managed by third parties may impact access to and use of those data by interested parties for business, conservation, or other purposes.

Section III.1 provides information on how NOAA Fisheries applies Information Law to EM data.

## 3. Third Party Reporting Requirements and Management of EM Data

NOAA Fisheries has a direct role in administering EM programs, through implementing and funding monitoring programs or by establishing program performance standards and guidance for industry-funded programs. To address concerns expressed by stakeholders on the potential expansion of an EM program’s primary objectives, this directive also provides clarity on third party reporting requirements and how an EM

<sup>3</sup> NOAA Fisheries Procedure 04-115-02 - Cost Allocation in Electronic Monitoring Programs for Federally Managed U.S. Fisheries”: <https://media.fisheries.noaa.gov/dam-migration/04-115-02.pdf>.

<sup>4</sup> NOAA Fisheries Procedure 04-114-03 - “Third-Party Minimum Data Retention Period in Electronic Monitoring Programs for Federally Managed Fisheries”: <https://media.fisheries.noaa.gov/dam-migration/04-115-03.pdf>.

program could strategically evolve over time beyond the initial scope. In any EM program, NOAA Fisheries creates or receives EM data, and this procedural directive provides guidance and notice to interested parties on how any EM data are collected and managed by the agency, as well as how it may be accessed and used inside and outside of the agency.

Section III.2 provides information on third party reporting and how NOAA Fisheries manages access and use of EM data.

## II. Objectives

The information in this procedural directive should be used in the development of new, and in adjustments to existing, EM program requirements through fishery management plans (FMPs) and FMP amendments, framework amendments, and other related fishery management actions (e.g., actions addressing fisheries bycatch) to facilitate compliance with the MSA and other applicable law.

1. This procedural directive provides guidance to NOAA Fisheries, councils, and third parties, such as commissions and EM service providers, on the application of Information Law to EM data that are made and retained by NOAA Fisheries or a third party.
2. This procedural directive provides clarity on how NOAA Fisheries, councils, and other partners could develop and/or expand requirements for third party reporting in industry-funded EM programs. The directive also provides guidance on how any EM information may be accessed and used internally by the agency, or potentially, how the EM information could be shared externally by NOAA Fisheries.

## III. Guidance

1. Information Law Application to Raw EM Data

Table 1. Summary of Information Law Application to Raw EM Data in Federal EM Programs

Party Maintaining Raw EM Data	FRA	MSA 402(b)	FOIA
NOAA Fisheries	Applies	Applies	Applies
NOAA Fisheries Contractor	Does Not Apply <sup>4,5</sup>	Applies <sup>1</sup>	Does Not Apply <sup>4</sup>
NOAA Fisheries Federal Financial Assistance Recipient <sup>2</sup>	Does Not Apply <sup>4,5</sup>	Applies <sup>1</sup>	Does Not Apply <sup>4</sup>
Fishing Industry Contractor/Service Agreements	Does Not Apply	Applies <sup>3</sup>	Does Not Apply

<sup>1</sup> NOAA Fisheries would include a requirement in any contract or financial assistance award to maintain the confidentiality of EM data.

<sup>2</sup> Entity is a recipient of a grant or is a party to a cooperative agreement.

<sup>3</sup> Given applicability of MSA section 402(b), NOAA Fisheries expects that third parties have a means to protect EM data in an industry-funded EM program.

<sup>4</sup> Does not apply if the EM data are stored on a non-NOAA system. Any EM data stored on a NOAA system would be subject to the FRA and FOIA.

<sup>5</sup> By default, NOAA Fisheries would not include a provision in a contract or federal financial assistance award to require that the EM data be stored on a NOAA system. However, Section III.1.A provides clarity on when NOAA Fisheries would consider requiring that the EM data be maintained on a NOAA system.

### A. Federal Records Act

The Federal Records Act, 44 U.S.C. § 3101, requires agencies to preserve records that contain adequate and proper documentation of its organization, functions, policies, decisions, procedures, and that are essential to

its transactions. Therefore, EM data that meet this standard and that are made or received by NOAA Fisheries in the conduct of its official business would be retained as a “federal record” for FRA purposes, according to the retention and disposition cycle that was approved and executed by the NARA.

The information in this section describes which EM data are federal records subject to this disposition schedule and which are not federal records.

#### *EM Data that are Federal Records*

Records made or received by NOAA Fisheries in the conduct of its official business are federal records and will be stored for five years under the EM data disposition schedule published by NARA. The five-year clock begins at the end of the fishing year in which the data were collected. For example, in a fishery that operates from January 1, 2021, to December 31, 2021, the retention schedule would apply to all data collected during that year, and expire on December 31, 2026. Each EM program is developing a process to identify and dispose of EM data based on this new retention schedule.

As explained below in Section III.2.A. (*Managing EM Data Accessed Remotely*), any portion of EM data that are maintained by a third party, accessed remotely, and used by NOAA Fisheries for official business, would require that the agency obtains a copy of the applicable EM data. Should NOAA Fisheries receive EM data through this process, the EM data must be retained as a federal record for five years. EM programs also collect and submit other types of data to NOAA Fisheries, such as summary information and compliance reports, after the EM data has been processed and analyzed. These types of EM data are stored as federal records and managed under a separate retention schedule<sup>5</sup> administered with traditional human observer data, which are held indefinitely.

#### *EM Data that are not Federal Records*

EM data that are made and retained by a third party are not federal records and would not be subject to the federal record retention schedule. The list below provides examples of third parties under EM programs:

- 1) NOAA Fisheries contractor,
- 2) NOAA Fisheries federal financial assistance recipient (e.g., grant award to a commission),
- 3) Fishing industry contracting directly with an EM service provider, or
- 4) Fishing industry acting as its own EM service provider.<sup>6</sup>

EM data that are retained by a third party would be subject to the specific third party data retention requirements for the applicable EM programs using the guidance provided in the Procedural Directive for Third-Party Minimum Data Retention Period. However, if data made and retained by a third party (i.e., not a federal record) are submitted to and received by NOAA Fisheries for the conduct of its official business, that copy held by NOAA Fisheries becomes a federal record. When the agency receives a copy of any EM data for their records, this does not negate any existing requirements for the third party to retain the original record(s).

In existing EM programs, EM data maintained by the third party are not regularly submitted to or accessed by NOAA Fisheries, and there are no requirements that the EM data be managed on a NOAA system, and as such are not federal records. Consequently, as a default practice, NOAA Fisheries will not include language

<sup>5</sup> Please refer to schedule 1513 - “Fishery Law Enforcement and Surveillance Files”:

<https://www.noaa.gov/sites/default/files/legacy/document/2020/Mar/chapter-1500-marine-fisheries.pdf>

<sup>6</sup> A video monitoring system maintained by a vessel owner under 50 CFR 679.28(e) provides an example of where the fishing industry acts as its own EM service provider. Under that regulation, which applies to vessels operating in certain Alaska fisheries, video data collected through a vessel’s video monitoring system is not transferred to a third party contractor for processing. Instead, the regulation provides that it must be maintained by the vessel operator and made available on request by NOAA Fisheries, or any individual authorized by NOAA Fisheries, and retained on board the vessel for no less than 120 days after the date the video is recorded, unless otherwise notified by NOAA Fisheries.

in contracts or federal financial assistance awards, between the agency and third parties that requires EM data to be maintained on a NOAA system. In the future, there may be an exception to this default practice, whereby NOAA Fisheries identifies a particular need for regular submission of, or access to, EM data on an ongoing basis to conduct official agency business. In those cases, similar to other types of contracts and federal financial assistance awards, NOAA Fisheries would need to include a provision to ensure that all EM data collected by the third party are maintained on a NOAA system and managed as federal records.

***B. Confidential Information under the Magnuson-Stevens Fishery Conservation and Management Act***

Section 402(b) of the MSA requires the confidentiality of any observer information, defined under MSA section 3(32), 16 U.S.C § 1802(32), to include any information collected by an EM system. As a form of observer information, all EM data are considered confidential information from the point of collection for MSA purposes, whether in the possession of NOAA Fisheries or retained by a third party. However, there may be differences in how NOAA Fisheries and third parties handle EM data for purposes of the MSA confidentiality requirements. Additionally, as this procedural directive describes, the application of MSA confidentiality to data held by a third party does not mean that the data are also subject to the FRA and FOIA.

This procedural directive reflects current practices regarding the handling of observer information. For example, NOAA Fisheries will continue to make certain details of fishery interactions with marine mammals available to Marine Mammal Protection Act (MMPA) Take Reduction Teams (TRTs), which hold public meetings to develop recommended measures for the reduction of incidental take of marine mammals occurring in a fishery. In the context of EM data, NOAA Fisheries may release imagery of interactions with marine mammals to a TRT, provided that the imagery does not include any information that would disclose the identity or business of any person. If the imagery includes the identity or business of any person, NOAA Fisheries would evaluate whether it is feasible and practical to redact the confidential information to be able to release the imagery publicly. If NOAA Fisheries determines that it is not feasible or practical, that imagery would be kept confidential.

*Third Party Funded by NOAA Fisheries*

NOAA Fisheries will require that any agency contract or federal financial assistance award include a means to preserve the confidentiality of EM data that are made and retained by the third party. This would include contracts or federal financial assistance awards for any MSA-authorized program, project, or activity, such as the development of an EM program for a federally managed fishery. Many third parties offer other data management services beyond EM, such as supporting the administration of a vessel logbook program, but the guidance in this procedural directive is specific to managing EM data.

*Third Party (including Commissions) Funded by the Fishing Industry*

EM data maintained by third parties are confidential information for purposes of MSA section 402(b), but are not subject to disclosure under the same exceptions listed below that apply to information held by NOAA Fisheries. A third party that provides EM services should have a means to protect a vessel owner's EM data in order to satisfy the MSA confidentiality mandate that applies to that information. NOAA Fisheries therefore expects that EM programs should require that third parties have a means to protect EM data, in the form of FMP regulations, as a condition in a contract or a federal assistance award, or as part of a service provider approval process. As an example, in some EM programs, NOAA Fisheries would review service provider applications from third parties, and a component of that approval process would include the applicants self-certifying that they have a means to protect a vessel owner's EM data. However, NOAA Fisheries would not review or enforce third party contracts or other agreements. Any violations of those contracts, including unauthorized release of data, would need to be addressed by the parties in the contract.

NOAA Fisheries considers EM data and related records that a vessel owner stores with an EM service

provider as owned by the vessel owner. As a general matter, a third party and its employees may release a vessel's EM data if authorized by the vessel owner or their authorized representative. NOAA Fisheries will require that any EM program authorize access to EM data by NOAA Fisheries for monitoring performance of EM program standards and other official business, and may provide access to an authorized state agency to facilitate enforcement of a program.

### *C. Freedom of Information Act*

The FOIA provides a public right of access to executive branch information in the federal government. Under FOIA, a person may request "agency records" that are created or obtained by an agency and subject to the agency's control at the time of the request. This standard generally limits the applicability of FOIA to EM data that are in NOAA Fisheries possession and control. NOAA Fisheries must conduct a search for "agency records" that are within the scope of a FOIA request and treat any such records that are located as responsive. However, even if responsive, a record may be withheld from public disclosure under one of the FOIA's nine exemptions.

#### *EM Data that are Subject to FOIA*

In the context of EM programs, EM data and other records that NOAA Fisheries creates, or obtains from a third party, and has within its possession at the time a request is made, are "agency records" for FOIA purposes. This would include records submitted to NOAA Fisheries by a third party or by the fishing industry. If FOIA applies to a record, it is subject to disclosure unless the record or a portion of the record may be withheld under a FOIA exemption.

EM data in NOAA Fisheries possession, along with other forms of MSA confidential information, may be released under the specific exceptions of MSA subsections 402(b)(1) and (b)(2). MSA subsection 402(b)(1) authorizes release of information, for example, to state employees responsible for FMP enforcement or when required by a court order; either situation may result in public disclosure of that information.

Under the MSA, NOAA Fisheries may also release or make public information that is aggregated or summarized into a form that does not directly or indirectly disclose the identity or business of any person that submitted the information. NOAA Fisheries will continue to aggregate or summarize numeric fishery-dependent data, including data extracted from analysis of EM data, and make such information available for public release, including in responses to FOIA requests, if the data can be aggregated into a non-confidential form. As with still imagery, NOAA Fisheries may release marine mammal injury or mortality events captured by cameras if the image(s) does not disclose the identity or business of any person. In responding to requests for that information under FOIA, NOAA Fisheries would evaluate the image(s) that captures the marine mammal interaction and, if feasible and practical, would obscure the identifying information prior to releasing it publicly.

Video collected from EM systems, however, is not a medium that can be aggregated or summarized, and more importantly, FOIA does not require that an agency create new records to be responsive to a request, such as extracting still-images from EM video. Accordingly, NOAA Fisheries does not expect to release video, unless it is within the scope of an exception under subsections 402(b)(1) or (b)(2) of the MSA.

#### *EM Data that are Not Subject to FOIA*

FOIA does not apply to EM data and/or any other records retained by a third party and not under NOAA Fisheries' possession and control at the time of the request. While the copy of a record that NOAA Fisheries obtains may be subject to FOIA, the original record retained by the third party is not.

## 2. Third Party Reporting Requirements and Guidance on the Management of EM Data

### ***A. Monitoring the Performance of Third Party Reporting in an Industry-Funded EM Program***

#### ***Establishing Third Party Reporting Requirements***

An industry-funded EM program, like any at-sea monitoring program, has objectives and associated reporting requirements reflected in the FMP and implementing regulations. The EM-specific reporting requirements may be narrow in scope, such as monitoring a vessel's catch and discards, or broader, to include collection of information on bycatch occurring in the fishery. Whether narrow or broad in scope, the reporting requirements in an industry-funded EM program apply to each vessel owner who participates in the program and are carried out by the vessel owner or a third party on their behalf. Thus, as part of developing an industry-funded EM program, a council and NOAA Fisheries should identify and develop reporting requirement alternatives to ensure that the associated costs are evaluated for purposes of the regulatory impact analysis as required under Executive Order 12866, the MSA, the Regulatory Flexibility Act, and other applicable law. Ultimately, the final approved reporting requirements for an industry-funded EM program will be set forth in the program's implementing regulations to ensure that each vessel owner has notice of their reporting obligations.

The MSA requires that FMPs specify data to be reported on the respective fishery, such as catch, temporal and spatial information, and fishing gear, and establish standardized bycatch reporting methodologies. Additionally, fishing vessels must self-report marine mammal injuries and mortalities, 16 U.S.C. § 1387(e), and many fisheries are subject to reporting requirements for Endangered Species Act (ESA)-listed species. These reporting requirements are satisfied through various means, including vessel logbooks and other standardized forms, such as the MMPA injury/mortality self-reporting form and, in many fisheries, human observer coverage. In cases where an industry-funded monitoring program supplements data collected from other reporting mechanisms, the requirements for those other reporting mechanisms continue to apply.

NOAA Fisheries will continue to evaluate the ability of EM systems to collect a wide-range of fisheries information, including protected species bycatch data, with the goal of trying to integrate data collection tools and reduce costs across all monitoring programs over time, including industry-funded monitoring programs. NOAA Fisheries would work with the appropriate council(s) and industry partners to evaluate how to replace and improve data collection through EM or an appropriate alternative, to include how to appropriately allocate the costs of any modified program(s) and reporting requirements. For example, the implementation of EM in a fishery could impact data collection priorities and deployments of observers and at-sea monitors long-term based on how the parallel programs evolve, and data collection priorities shift, and whether we identify more ways to utilize EM systems. As with any other fishery management action, replacement of an existing reporting requirement with a new requirement in an industry-funded EM program would need to be considered through the appropriate regulatory and rulemaking process and satisfy applicable statutory mandates.

#### ***Monitoring Third Party Performance***

NOAA Fisheries must ensure that third parties (e.g., EM service providers or commissions) collecting and submitting information to the agency are doing so according to the specific performance and data standards established by each EM program. In programs where the fishing industry is contracted directly with a third party, one means of ensuring these standards are being met may be for NOAA Fisheries to analyze a portion of the EM data and associated summary data, independently from the third party reporting on behalf of the fishing vessel. At present, there are no national standards for this process; these would need to be developed, established, and published by each EM program. The onboarding of a new EM service provider to a program, the performance of individual video reviewers employed by the EM service provider, or new vessels enrolling in an EM program, all can impact the quality of data collected and reported to NOAA

Fisheries. Additionally, the status of the stocks in a fishery (e.g., overfished status), may impact the desired quality of information in the monitoring program. That said, the need and/or rate of secondary analysis to monitor a third parties' performance of meeting standards as the program matures could be reduced over time. As these processes are developed and implemented, NOAA Fisheries would potentially receive EM data through an EM program that captures other fisheries catch and events, outside the scope of the program. Should that occur, and even if the data meets EM program standards, NOAA Fisheries would manage the information like it does for any other form of information deemed to be a federal record under the FRA.

#### *Managing EM Data Accessed Remotely*

Remote access is a means of providing NOAA Fisheries with direct, electronic access to EM data, which aids in providing timely performance feedback to the third party service provider and the vessel upon review of the information. However, this creates a situation in which the EM data are managed on a non-NOAA system, but analyzed and potentially used by NOAA Fisheries staff. In these cases, an EM program would need to develop guidance and a process for NOAA Fisheries to acquire EM data records, after remotely reviewing and using them. Even if NOAA Fisheries remotely accesses and uses certain EM data from a fishing trip (e.g., a single fishing haul), this does not mean that the agency must acquire data for the entire trip (e.g., all hauls for a trip, or the transiting time between hauls or back to port). NOAA Fisheries would need to obtain a copy of the discrete portion of EM data used for agency business and manage it as a federal record, but would not need a copy of the remaining portions of the EM data. EM programs may develop different processes and procedures for acquiring a copy of a record. The third party service provider would need to retain the original record of anything submitted to NOAA Fisheries, as provided under the relevant EM program requirements.

Section III.1.A above describes how the FRA applies to information made or received by NOAA Fisheries.

#### ***B. NOAA Fisheries' Access to and Use of EM Information***

Any agency record may be used for agency business. NOAA Fisheries employees, contractors, and federal financial recipients thus may access EM data, as well as compliance reports, summary data, and other outputs created from analyzing EM data, that are agency records if necessary to carry out functions under the MSA or other authorities including the MMPA and ESA. However, NOAA Fisheries would apply the same policies regarding access to the EM data and summary data similar to other types of data collection programs, such as observer data, ownership interest data, and economic data. For example, when a program receives internal agency requests for access to EM data, the program first would try to determine if summary and/or aggregated EM data would suffice. If not, the program would identify the potential users and how they would use the EM data. Because EM data are confidential under the MSA, with some exceptions described in this directive, staff given access to EM data may be required to sign a statement of nondisclosure in which they acknowledge that EM data are considered confidential information and the penalties for unauthorized disclosure of that information. NOAA Fisheries may also provide employees of other federal agencies with such access for work related to fisheries conservation and management, and other purposes specified in the exceptions to the MSA confidentiality requirements. This type of access may also include a requirement to sign a statement of non-disclosure.

EM analysts are typically focused on extracting information from the EM data based on guidance and requirements associated with the FMP and the objectives of the monitoring program. Additionally, analysts may observe events, such as harassment of a marine mammal or an observer deployed on the vessel, which would be forwarded onto the Office of Law Enforcement for further investigation. However, potential violations of regulations that occur during commercial fishing and that are recorded on EM data may be outside the scope of NOAA Fisheries enforcement authority. Therefore, NOAA Fisheries may, in some cases, refer information to the U.S. Coast Guard or other appropriate agencies for further investigation, but



only if an exception to MSA section 402(b) authorizes disclosure.

#### **IV. Implementation Guidelines**

NOAA Fisheries and councils should use the guidance in this procedural directive to guide the management, transmission, and use of EM data when developing new, or adjusting existing, EM programs through FMPs or FMP amendments and implementing regulations. Those processes include an opportunity for public notice and comment. Although the issues addressed in this procedural directive are most relevant to EM programs where a third party(ies) have a role in managing EM data, this procedural directive has broad applicability to any type of MSA-authorized fishing trip in an EM program including: (1) EM programs managed and implemented through regulations; (2) EM programs implemented and managed under an exempted fishing permit (EFP); and (3) pilot projects that are testing a new application of EM in a fishery. Conversely, this procedural directive does not apply to any data collection initiative conducted independent of NOAA Fisheries (e.g., EM pilot project) or data collected from an EM system that is acknowledged by NOAA Fisheries as deployed on a scientific research vessel(s) for scientific research purposes.

##### **1. Implementation Timelines**

NOAA Fisheries expects adherence to this guidance on how to apply information law to EM data, on managing remotely accessed information, and for third party reporting requirements in industry-funded EM programs as soon as practicable from the publication date of this directive. EM programs that are being developed should implement these requirements for all newly collected EM data in the programs. With respect to data collected in EM programs pursuant to regulations issued before publication of this directive or an EM program under development at the time of publication, processes for applying the FRA, FOIA, and MSA confidentiality provisions to existing records and data should be identified, examined, and implemented accordingly.

##### **2. Measuring Effectiveness**

EM programs are an evolving means of collecting fishery-dependent data. NOAA Fisheries will revisit this guidance as it continues to implement new programs and new and/or increasing data related handling, processing, access, and use issues arise.

## **Attachment 1 – Glossary**

**Electronic Monitoring (EM)** – The use of technologies—such as video cameras, gear sensors, and reporting systems—to monitor fishing operations, effort, and/or catch.

**Electronic Monitoring (EM) Data** – The data that are created in the collection of fishery-dependent data by EM systems including the video, images, or other sensor data during fishing operations as well as the metadata that provides information about the raw data (e.g., trip sail date, vessel information).

**Electronic Monitoring (EM) Service Provider** – For the purpose of this procedural directive, an EM service provider refers to any organization certified and/or permitted by NOAA Fisheries and arranged for by the fishing industry, a Regional Fishery Management Council, or other entity that is engaged in the collection, handling, and dissemination of fisheries-dependent EM data. EM providers may include private businesses, Interstate Marine Fisheries Commissions, non-governmental organizations, or fishing and natural resource advocacy groups.

**Electronic Technology(ies) (ET)** – Any electronic tool used to support fisheries monitoring both onshore and at sea, including electronic reporting (e.g., e-logbooks, tablets, and other input devices), electronic monitoring (e.g., electronic cameras and gear sensors on-board fishing vessels), and vessel monitoring systems.

**Fishery-dependent Data Collection Program** – Data collected in association with commercial, recreational or subsistence/customary fish harvesting or subsequent processing activities or operations, as opposed to data collected via means independent of fishing operations, such as from research vessel survey cruises or remote sensing devices.

**Third Party** - For the purposes of this procedural directive, “third party(ies)” refer to entities distinct from NOAA Fisheries, which include agency contractors and recipients of federal financial assistance (e.g., grant or cooperative agreement), interstate marine fisheries commissions, and EM service providers.