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POLICY BRIEF

FISHERIES AND OCEANS CANADA'S "RULE OF FIVE"

Toward transparent science for Canadians

Fisheries data informs marine science and evidence-based decisions affecting fish stocks and aquatic ecosystems. Under the rule of five, DFO only releases data that can be aggregated, and protects information of relevance to individual or commercial licence holders at the expense of scientific research and public transparency.

What is the "Rule of Five"?

The "rule of five" is a discretionary DFO policy developed in reference to the Treasury Board Directive on Privacy Practices to address privacy and confidentiality requirements under the Privacy Act and the Access to Information Act. The rule prohibits the use and disclosure of fisheries data where there are fewer than five units of personally identifying variables (e.g., fishers, vendors, buyers, licences, vessels).

ISSUES WITH THE “RULE OF FIVE”

Lack of clarity

According to DFO, “[p]rivacy is subject to individual interpretation and there is no scientific way to determine an undue invasion of privacy.”¹ In fact, exemptions under the Privacy Act and Access to Information Act do allow the release of data for the public interest or for research purposes, but this is not clearly stated in the DFO Guidelines for the Informal Release of Information and, as such, the rule is often narrowly applied, exceeding the scope of what can validly be authorized under both laws.

Inconsistent application

DFO application of the rule varies from region to region. For example, a “rule of three” or a “rule of four” is employed in the Pacific Region, whereas the “rule of five” applies in Atlantic Canada. DFO’s discretion in applying various iterations of the rule creates imbalance and unfairness and illustrates that a level of “five” is excessive.

Competing interests

DFO has a responsibility to safeguard private information and ensure a high bar of openness and transparency in order to promote an independent evaluation of fisheries science and management decisions. Currently, the “rule of five” protects commercial interests over public good.

Detrimental impacts on fisheries and marine science

Fisheries data is vital to inform marine science and evidence-based decisions affecting fish stocks and aquatic ecosystems. In many circumstances (e.g., sparsely populated areas, such as the Arctic or areas where fishing licences are monopolized by a few), the threshold of five cannot be met and the data becomes unusable for advice and effective decision-making² or unusable to those requesting it.³

WWF-CANADA’S RECOMMENDATIONS

For DFO to meet its privacy obligations in a manner that does not hinder research, transparency and evidence-based decision-making, WWF-Canada recommends the following steps for improvement:

1. Undertake a comprehensive review and assessment to evaluate the “rule of five” and its variations within DFO.
2. Standardize, formalize and publish the policy and clearly articulate the exemptions. For example, the rule should not apply when data is requested for the public interest or for research purposes.
3. Modernize the DFO data request process by moving toward an online platform with publicly available data.

WWF-CANADA CALLS FOR THE DEPARTMENT OF FISHERIES AND OCEANS TO IMPROVE TRANSPARENCY IN CANADIAN WATERS BY STANDARDIZING THE APPLICATION OF ITS “RULE OF FIVE” POLICY TO ALLOW FOR A WIDER RELEASE OF FISHERIES DATA THAT SUPPORTS RESEARCH AND THE PUBLIC GOOD.

¹ DFO’s internal “Directive on Privacy Practices”

² Evaluation of Economic Analysis and Statistics, Fisheries and Oceans Canada (2020) Accessed June 2021 <https://www.dfo-mpo.gc.ca/ae-ve/evaluations/19-20/eas-aes/eas-aes-19-20-eng.html>

³ DFO’s internal “Guidelines for the Informal Release of Information”



A Canada with abundant
wildlife, where nature and
people thrive.

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