

# Data Sharing & Electronic Monitoring

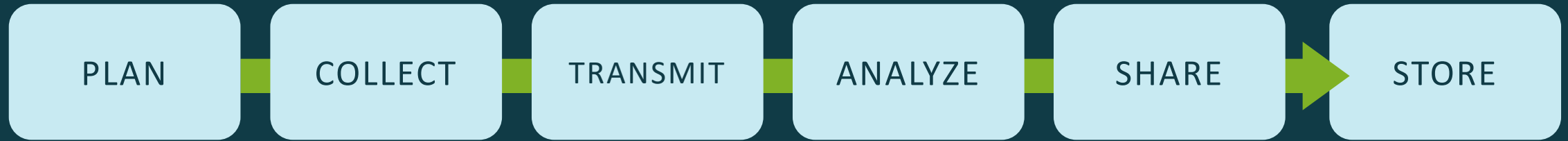
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Kate Wing  
Net Gains Alliance

worksheets here

<https://tinyurl.com/EMDataFlow>

# A Data Lifecycle



PLAN

Atlantic HMS: verify self-reported bycatch in logbooks

COLLECT

TRANSMIT

ANALYZE

SHARE

STORE

What data are we  
talking about?

Who pays?

Who can access?

Who's responsible?

PLAN

Atlantic HMS: verify self-reported bycatch in logbooks

COLLECT

**What:** VIDEO +

**Payer:** NOAA Fisheries

**Access:** Vendor

**Owner:** Various



PLAN

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PLAN

Atlantic HMS: verify self-reported bycatch in logbooks



VIDEO +

Payer:



Access:



Owner:



VIDEO +

Payer:



Access:



Owner:



PLAN

Atlantic HMS: verify self-reported bycatch in logbooks



VIDEO +

Payer:



VIDEO +

Payer:



VIDEO +

Payer:



Access:



Access:



Access:



Owner:

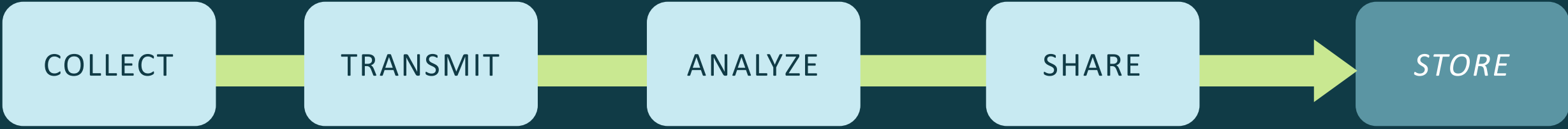


Owner:



Owner:





**VIDEO +**

Payer: **N**

Access: **V**

Owner: **?**

**VIDEO +**

Payer: **N**

Access: **V**

Owner: **?**

**VIDEO +**

Payer: **N**

Access: **V**<sup>2</sup>

Owner: **V**<sup>2</sup>

**VIDEO +**

Payer:

Access:

Owner:

**Still images**

Payer:

Access:

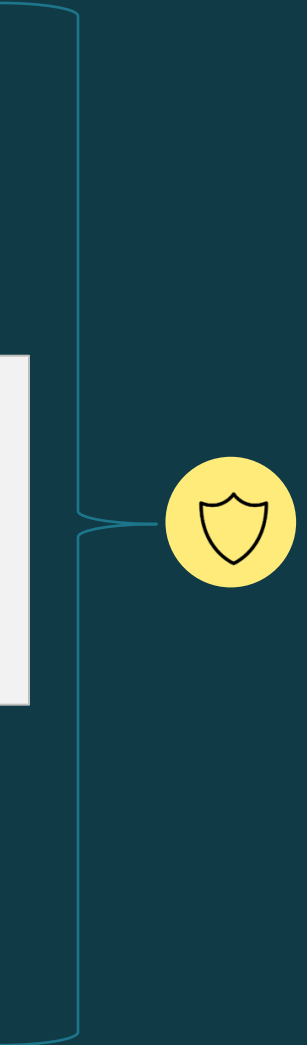
Owner:

**Summary**

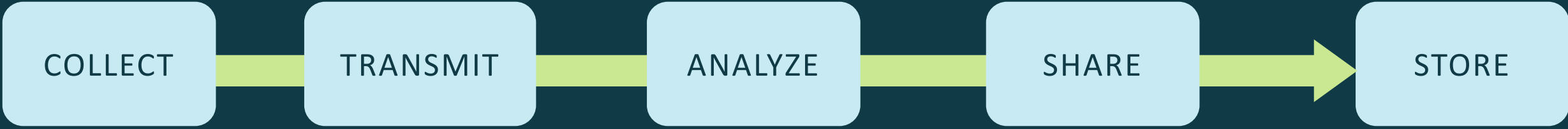
Payer:

Access:

Owner:







**VIDEO +**

Payer: **N**

Access: **V**

Owner: **?**

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Owner: **V**<sup>2</sup>

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**Still images**

Payer:

Access:

Owner:

**Summary**

Payer:

Access:

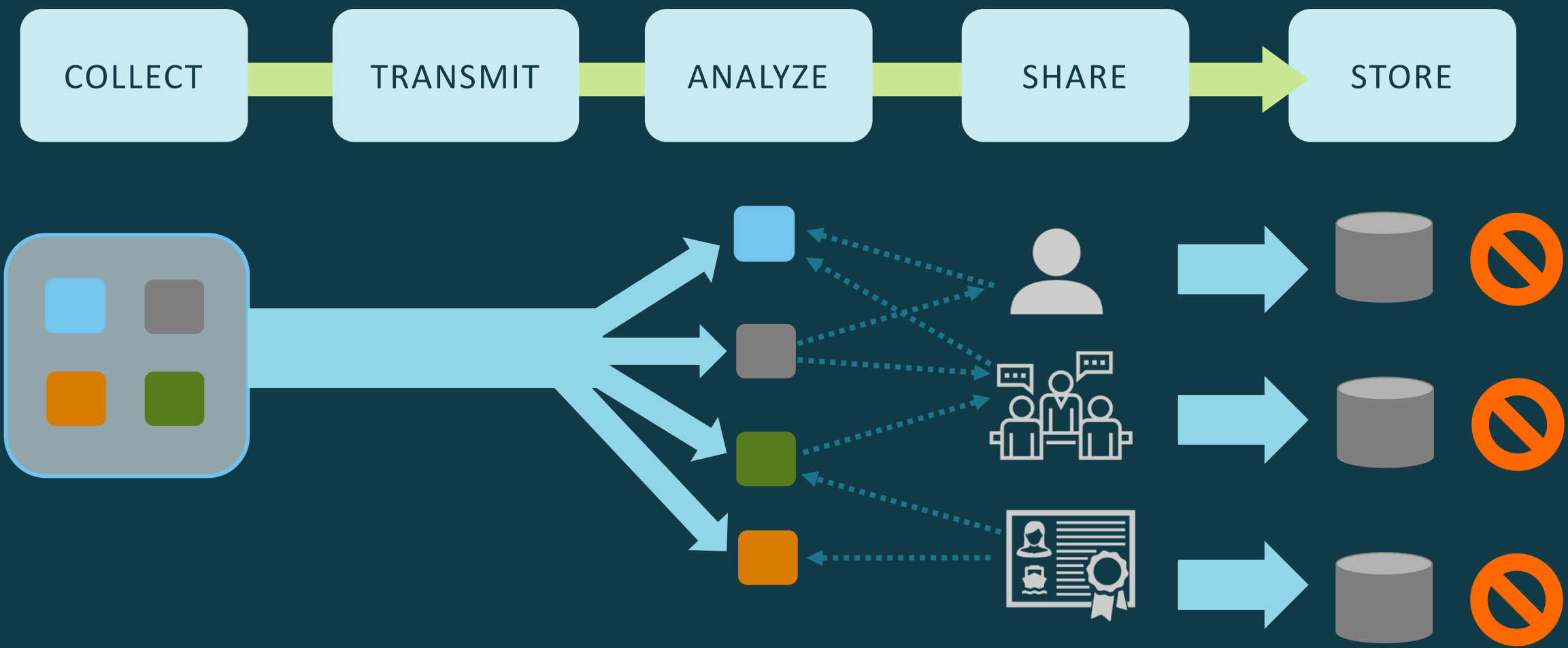
Owner:

**V**<sup>2</sup>

Stores everything forever

**N**

Follows federal retention rules



# Legal Considerations for EM Data

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Joe Sullivan

From the background report prepared for the June 2019 EM Data Sharing Meeting  
Available at <https://em4.fish/our-library/em-video-data-management-workshop-background-document-meeting-summary/>

*these slides do not constitute legal advice and may be different from  
current agency practices and interpretations*

## Three key laws that may affect EM Data

	Federal Records Act (FRA)	Freedom of Information Act (FOIA)	Magnuson-Stevens Act (MSA)
Information designation	“Agency Record”	“Agency Record”	“Observer Information”
Definition	Record made or received by an agency of the U.S. government (per statute)	Record created or obtained by the agency and under agency’s control at the time of the request (per case law)	MSA definition includes information created by an EM system pursuant to authorization by the Secretary of Commerce and includes “video, audio, photographic or written documents”
Status of information held by third parties	Information maintained for an agency under a records management contract remains an agency record	Information received by a contractor that is “constructively obtained and controlled” by an agency is an agency record; see the “Tax Analysis” case four part test	Applies to information when generated; status is not conditioned on submission

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## Questions about how those laws could be applied to EM Data

	Federal Records Act (FRA)	Freedom of Information Act (FOIA)	Magnuson-Stevens Act (MSA)
Retention requirement	Per FRA?	Per FRA? Does this change if record is requested?	If submitted, per FRA?
Confidentiality	Per FOIA?	Per FOIA production exceptions	Per MSA
Disclosure permitted or required	Per FOIA?	All information outside of exceptions	Court order, aggregate or summary form that does not disclose identity or business of submitter

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## An example of applying those laws to two hypothetical modes for EM

What applies	Agency Direct (NOAA receives data directly from boat or a contracted service provider)	Third Party Provider
Federal Records Act	Yes, once data become a federal record (submitted to or received by NMFS)	No
Freedom of Information Act	Yes, once data become a federal record (submitted to or received by NMFS)	Depends on “constructive obtainment and control” test
Confidential MSA Observer Information	Yes	Yes
Subject to MSA Confidentiality Exemptions	Yes	Depends on when data is considered “submitted to or received by” NMFS.

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