

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 12/20/2011

Department of Commerce  
National Oceanic and Atmospheric Administration  
FOR CERTIFYING OFFICIAL: Simon Szykman  
FOR CLEARANCE OFFICER: Diana Hynek

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 12/20/2011

ACTION REQUESTED: Revision of a currently approved collection  
TYPE OF REVIEW REQUESTED: Regular  
ICR REFERENCE NUMBER: 201112-0648-016  
AGENCY ICR TRACKING NUMBER:  
TITLE: Alaska License Limitation Program for Groundfish, Crab, and Scallops  
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change  
OMB CONTROL NUMBER: 0648-0334  
The agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

EXPIRATION DATE: 12/31/2014 DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	171	355	2,110
New	204	1,418	2,012
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	7	143	4
Change due to Agency Adjustment	26	920	-102
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE:

OMB Authorizing Official: Kevin F. Neyland  
Deputy Administrator,  
Office Of Information And Regulatory Affairs

List of ICs

IC Title	Form No.	Form Name	CFR Citation
Groundfish, Crab, and Scallop Transfers	NA, NA	Application for transfer LLP scallop license, LLP transfer application for groundfish and crab	50 CFR 679
Transfer Appeals			50 CFR 679
Application for a CQE to Receive a Non-trawl Groundfish LLP License	NA	Application for Community Quota Entity to Receive a Non-Trawl Groundfish LLP License	
CQE Letter of authorization			50 CFR 679.4
CQE Annual Report			50 CFR 679.4
Survey to Verify the Length Overall (LOA) of the Vessel			50 CFR 679.4

# PAPERWORK REDUCTION ACT SUBMISSION

**Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.**

1. Agency/Subagency originating request	2. OMB control number <span style="float: right;">b. <input type="checkbox"/> None</span> a. _____ - _____
3. Type of information collection ( <i>check one</i> ) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested ( <i>check one</i> ) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated
7. Title	5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No
8. Agency form number(s) ( <i>if applicable</i> )	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
9. Keywords	
10. Abstract	
11. Affected public ( <i>Mark primary with "P" and all others that apply with "x"</i> ) a. ___ Individuals or households d. ___ Farms b. ___ Business or other for-profit e. ___ Federal Government c. ___ Not-for-profit institutions f. ___ State, Local or Tribal Government	12. Obligation to respond ( <i>check one</i> ) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden ( <i>in thousands of dollars</i> ) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection ( <i>Mark primary with "P" and all others that apply with "X"</i> ) a. ___ Application for benefits e. ___ Program planning or management b. ___ Program evaluation f. ___ Research c. ___ General purpose statistics g. ___ Regulatory or compliance d. ___ Audit	16. Frequency of recordkeeping or reporting ( <i>check all that apply</i> ) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission)  Name: _____ Phone: _____

## 19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

**NOTE:** The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
  - (i) Why the information is being collected;
  - (ii) Use of information;
  - (iii) Burden estimate;
  - (iv) Nature of response (voluntary, required for a benefit, mandatory);
  - (v) Nature and extent of confidentiality; and
  - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

## SUPPORTING STATEMENT

### ALASKA REGION PERMIT FAMILY OF FORMS OMB CONTROL NO. 0648-0206

#### INTRODUCTION

*This is a resubmission of a request is for the revision of an existing collection of information in conjunction with the Final Rule RIN 0648- AY53. There were no changes to this request due to comments on the proposed rule.*

National Marine Fisheries Service, Alaska Region (NMFS) manages the groundfish fisheries in the Exclusive Economic Zone (EEZ) off the coast of Alaska under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The North Pacific Fishery Management Council (Council) prepared the FMP under the [Magnuson-Stevens Fishery Conservation and Management Act](#) as amended in 2006. Regulations implementing these procedures are located at [50 CFR part 679](#).

NMFS created the Federal Fisheries Permit (FFP), Federal Processor Permit (FPP), and Exempted Fishery Permit for use in the EEZ groundfish fisheries. These permits allow NMFS to monitor participation in groundfish fisheries. All vessel operators must hold onboard a vessel a valid FFP to fish for or to retain groundfish in the Gulf of Alaska (GOA). All managers of a shoreside processor or a stationary floating processor must hold at the plant or onboard a valid FPP to receive, purchase, or arrange to purchase unprocessed groundfish.

The State of Alaska parallel waters are concurrent physically and temporally with Federal waters in the GOA for specific fish species. Federal groundfish fisheries in the EEZ may be opened by NMFS to directed fishing for selected groundfish species. Parallel fisheries for groundfish species may be opened by the Commissioner for the Alaska Department of Fish and Game (ADF&G) through emergency order. The directed fisheries for Pacific cod in State waters (0 to 3 nm) are open concurrently with the directed fisheries in Federal waters (3 nm to 200 nm). The fisheries in State waters (referred to as the ‘parallel fisheries’) are conducted under virtually the same rules as the Federal fisheries, and catch is counted against the Federal total allowable catch (TAC). NMFS requires all vessel operators who hold an active FFP to comply with NMFS recordkeeping and reporting requirements as well as observer coverage and vessel monitoring system (VMS) requirements (see OMB Control No. 0648-0445).

One of the objectives of the proposed action is to establish sector allocations for each gear and operation type in the GOA Pacific cod fishery. The sector allocations would be based primarily on historical catches, as well as conservation, catch monitoring, bycatch, prohibited species catch (PSC) avoidance, and social objectives, including considerations for small boat sectors and coastal communities. Dividing the TAC among sectors may also facilitate the future development of management measures to address Steller Sea lion mitigation issues, bycatch reduction, and PSC mortality issues.

Currently, vessel operators who hold an FFP and fish for Pacific cod in Federal waters may

surrender their FFP for the purpose of fishing in the parallel waters Pacific cod fishery; this surrender allows them to avoid Federal monitoring (recordkeeping and reporting, observer, and VMS requirements. Without an active FFP, the vessel is immune from requirements. Without the Federal monitoring these requirements provide, NMFS believes that the quality of catch accounting is degraded.

In addition, certain catcher/processors using pot and hook-and-line gear continue to fish for Pacific cod in parallel waters when Pacific cod is closed to the catcher/processor sector but is open to directed fishing to the catcher vessel sector. This additional fishing by unauthorized vessels -- increased fishing pressure -- has resulted in shortened seasons, has exacerbated the race for fish, and has increased the concentration of Pacific cod harvest inside State waters. If not corrected, this pressure will erode the harvests by vessels that have historically participated in the GOA Pacific cod fishery. The increased fishing pressure and catch in the parallel waters fishery have also increased the complexity and difficulty in managing sector allocations, seasonal apportionments, area apportionments, and maintaining catch below acceptable biological catch and TAC. With this action, NMFS expects to reduce the frequency with which some catcher/processors circumvent the intent of Pacific cod sector allocations. Reduction of unauthorized fishing pressure is intended to enhance stability in the Western and Central GOA Pacific cod fisheries, reduce competition among the sectors, and preserve the historical division of catch among sectors.

#### Federal Fisheries Permit (FFP)

The owner of a vessel of the United States must hold an FFP for the vessel to fish for groundfish in the GOA or Bering Sea and Aleutian Islands (BSAI). The owner of a vessel of the United States must hold an FFP to fish in the GOA or BSAI for any non-groundfish species, including but not limited to halibut, crab, salmon, scallops, and herring, and that is required to retain any bycatch of groundfish. See 50 CFR 679.4(b).

Currently, an FFP may be voluntarily surrendered; if surrendered, NMFS will reissue an FFP in the same fishing year in which it was surrendered. With this action, NMFS would change procedures for surrender of an FFP:

- ◆ In the BSAI, NMFS will not reissue an FFP to the owner of a vessel named on an FFP that has been issued with endorsements for catcher/processor vessel operation type, pot or hook-and-line gear type, and the BSAI area, until after the expiration date of the surrendered FFP.
- ◆ In the GOA, NMFS will not reissue an FFP to the owner of a vessel named on an FFP that has been issued with endorsements for catcher/processor or catcher vessel operation type; trawl, hook-and-line, pot, or jig gear type; and the GOA area endorsement, until after the expiration date of the surrendered FFP.

Currently, an FFP may be amended; if amended, NMFS will reissue an amended FFP in the same fishing year in which it was amended. With this action, NMFS would change procedures for amendment of an FFP:

- ◆ In the BSAI, NMFS will not approve an application to amend an FFP to remove a catcher/processor vessel operation endorsement, pot gear type endorsement, hook-and-line gear type endorsement, or BSAI area endorsement from an FFP that was issued with endorsements

for catcher/processor operation type, pot or hook-and-line gear type, and the BSAI area.

◆ In the GOA, NMFS will not approve an application to amend an FFP to remove a catcher/processor or catcher vessel operation endorsement, pot gear type endorsement, trawl gear type endorsement, hook-and-line gear type endorsement, or GOA area endorsement from an FFP that was issued with these endorsements.

#### Federal Processor Permit (FPP)

A shoreside processor or stationary floating processor must hold an active FPP to receive, purchase, arrange to purchase, unprocessed groundfish harvested in the GOA or BSAI (see 50 CFR 679.4(f)).

With this action, NMFS adds a new category of participants required to hold an FPP: a Community Quota Entity (CQE) floating processor. Vessel owners and operators can apply for a CQE floating processor endorsement on the FPP. A mothership FFP holder that chooses to operate as a CQE floating processor would need to surrender his or her FFP and apply for an FPP with the CQE floating processor endorsement. Regulations restrict the owner or operator of a vessel from possessing both an FFP and an FFP simultaneously.

Currently, a limited number of shoreside processors operate in GOA communities. The majority of Western GOA groundfish deliveries are made to Sand Point and King Cove, which each have one shoreside plant, and Dutch Harbor. Most (>95%) of Central GOA groundfish deliveries are made to Kodiak. The rationale for allowing motherships to process within specific GOA communities is that it may provide an incentive for additional processors to operate in the GOA, which would give CV operators more options for making deliveries, and possibly higher prices.

### **A. JUSTIFICATION**

Amendment 83 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA) would allocate the Western and Central GOA Pacific cod total allowable catch (TAC) limits among various gear and operational sectors. Sector allocations would limit the amount of Western and Central GOA Pacific cod that each sector is authorized to harvest. This action would reduce competition among sectors and would support stability in the Pacific cod fishery. This action would also limit access to the Federal Pacific cod TAC fisheries prosecuted in State waters, commonly known as the parallel fishery, adjacent to the Western and Central GOA. This action is intended to promote community participation and would provide incentives for new entrants in the jig sector.

#### **1. Explain the circumstances that make the collection of information necessary.**

Competition among participants in the Western and Central GOA Pacific cod fisheries has intensified in recent years. Because the TACs are not divided among gear or operation types, there is a derby-style race for fish and competition among the various gear types for shares of the TACs. The proposed action would divide the Western and Central GOA Pacific cod TACs among the various gear and operation types, based primarily on historical dependency and use by each sector, while also considering the needs of fishing communities. This amendment is intended to enhance stability in the fishery by enabling operators within each sector to plan harvesting or processing activity during a fishing year, reduce competition among sectors, and



preserve the historical division of catch among sectors, while providing opportunities for new entrants in these fisheries.

**2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.**

The information requested on the FFP and FPP applications is used for fisheries management and regulatory compliance by the U.S. Coast Guard (USCG), NMFS Sustainable Fisheries Division, NMFS Restricted Access Management Program, NMFS Observer Program, NOAA Fisheries Office for Enforcement, and the Council.

The applications may be submitted

by mail to: NMFS, Alaska Region  
Restricted Access Management (RAM) Program  
P.O. Box 21668  
Juneau, AK 99802

or delivered to:  
Federal Building  
709 W. 9th Street, Suite 713  
Juneau, AK 99801

or faxed to: 907-586-7354

**a. Federal Fisheries Permit (FFP).**

An FFP authorizes a vessel owner to deploy a vessel to conduct groundfish operations in the GOA or BSAI as a catcher vessel, catcher/processor, mothership, tender vessel, or support vessel. A vessel may not be operated in a category other than as specified on the FFP, except that a catcher vessel, catcher/processor, mothership, or tender vessel may be operated as a support vessel. FFPs are non-transferable, three-year permits, issued on request and without charge to vessel owners. These permits are authorized 50 CFR 679(4)b.

The FFP is also required for vessels used to fish for any non-groundfish species and that are required to retain any bycatch of groundfish under 50 CFR Part 679. Non-groundfish species include but are not limited to halibut, crab, salmon, scallops, and herring.

If the owner of a catcher vessel or catcher/processor plans to participate in the directed fishery for Pacific cod, pollock, or Atka mackerel in the GOA or BSAI with any gear other than jig gear, the FFP must be endorsed for these species by gear type. For new requests for an FFP or if ownership of the vessel issued an FFP has changed, documentation of vessel ownership must be provided with the application.

**Federal fisheries permit (FFP) application**

Indicate the type of request: New FFP, FFP Renewal, Amended FFP, or Surrendered FFP  
 If requesting to renew, amend, or surrender an existing FFP, provide current FPP number

Block A – Owner information

- Owner name and NMFS Person ID
- Business mailing address, including street or P.O. box, city, state, and zip code;  
 indicate whether permanent or temporary
- Managing company name (if any)
- Business telephone number, business fax number, and e-mail address

Block B. Vessel information

- Vessel name
- Home port (city and state)
- ADF&G processor code (if applicable)
- Indicate whether this is a vessel of the United States
- USCG documentation number
- ADF&G vessel registration number
- Length overall (ft) and registered length (ft)
- Gross tonnage and net tonnage
- Shaft horsepower

Block C. Permit information

- Area of operation.
- Type of vessel operation.
- Gear type (catcher vessel or catcher/processor only)
- GOA Inshore Processing Endorsement (vessels under 125 ft length overall)

Block D. Species Endorsements and Amendments

- Indicate requested species endorsements with gear other than jig gear; or
- Remove species endorsement

Block E. Signature

- Printed name and signature of applicant and date signed

**Attachments:**

- For USCG documented vessels, a copy of the USCG Abstract of Title or Certificate of Documentation
- For undocumented vessels, a copy of the ADF&G vessel license or registration

<b>Federal Fisheries Permit, respondents</b>	
<b>Total number of respondents</b>	<b>1,789</b>
1,460 catcher vessels	
170 catcher/processors	
34 motherships	
100 tender vessels	
25 support vessels	
<b>Total number of annualized respondents and responses</b> (1789 /3 = 586.33)	<b>596</b>
Response per participant = 1 every 3 yrs	
<b>Total Time burden</b> (208.60)	<b>209 hr</b>
Time per response (21 min)	
<b>Total personnel costs</b> (\$25 x 209)	<b>\$5,225</b>
Cost per hour =\$25	
<b>Total miscellaneous costs</b> (877.84)	<b>\$878</b>
Submit by fax (\$6 x 100 = 600)	
Submit by mail (.44 x 496 = 218.24)	
Photocopy (0.05 x 2pp x 596 = 59.60)	

<b>Federal Fisheries Permit, Federal Government</b>	
<b>Total number of responses</b>	<b>596</b>
<b>Total time burden</b>	<b>447 hr</b>
Time requirement per response (45 min)	
<b>Total personnel cost (\$25 x 447)</b>	<b>\$11,175</b>
Cost per hour =\$25	
<b>Total miscellaneous costs</b>	<b>\$0</b>

## **b. Federal processor permit (FPP) application**

The FPP is a groundfish permit required for stationary floating processors (processing vessels that operate solely within Alaska State waters) and for shoreside processors that receive, purchase, arrange to purchase, and/or process groundfish harvested in the GOA and BSAI. FPPs are non-transferable, three year permits, issued to owners on request and without charge. Only persons who are U.S. citizens are authorized to receive or hold an FPP.

A new endorsement, a CQE Floating Processor, is required on a Federal Processor Permit (FPP) if the vessel will process Pacific cod within the marine municipal boundaries of CQE communities in the Western or Central GOA. A CQE floating processor is able to move to any number of CQE communities in a given fishing year. A vessel cannot function as both a mothership and as a CQE floating processor at the same time; a vessel cannot have an FPP and an FPP at the same time.

This action would permit eligible vessels to operate in the Western and Central GOA within the boundaries of municipalities eligible to participate in the CQE program. The owners or operators of vessels that are not stationary floating processors, defined at 50 CFR part 679.2, could apply for an FPP with a CQE floating processor endorsement. Under this action, Federally permitted vessels that receive and process groundfish from other vessels, and have not been used to harvest groundfish off Alaska during the same calendar year could temporarily process groundfish within the municipal boundaries of a Western or Central GOA CQE community.

### **Federal processor permit (FPP) application**

Indicate category of processor: Shoreside processor, SFP, or CQE floating processor

Indicate type of permit requested

If requesting to renew or amend an existing FPP, enter FPP number

#### **Block A. Owner information**

Owner name

NMFS Person ID

Permanent business mailing address, including street or box, city, state, and zip code

A temporary business mailing address may also be included

Business telephone number, business fax number, and business e-mail address

Managing company name (if any)

#### **Block B. SFP information.**

Name of SFP

Indicate whether this is a vessel of the United States

USCG documentation number

ADF&G vessel registration number

ADF&G processor code

Length overall (ft) and registered length (ft)

Gross tonnage and net tonnage

Shaft horsepower

Home port (city and state)

Indicate if requesting GOA Inshore Processing Endorsement

**Block C. Shoreside processor information**

Name of shoreside processor

ADF&G processor code

Permanent business mailing address, including P.O. box or street, city, state, and zip code

A temporary business mailing address may also be included

Physical location of plant at which this shoreside processor is operating (no post office boxes)

Indicate whether this shoreside processor is replacing a previous processor at this facility;

if YES, name of previous processor

Indicate whether there are multiple processors using this facility

Indicate whether the owner named in Block A owns the plant named in Block C

Business telephone number, business fax number, and business e-mail address

**Block D. CQE Floating processor information**

Name of vessel

Indicate whether a vessel of the United States

USCG documentation number

ADF&G vessel registration number

ADF&G processor code

Length overall (ft) and registered length (ft)

Gross tonnage and net tonnage

Shaft horsepower

Home port of vessel (city and state)

Indicate if requesting GOA CQE Floating Processor Endorsement

**Block E. Applicant signature**

Printed name and signature of applicant and date signed

**Attachment:** If an SFP or CQE floating processor, attach a copy of the USCG Abstract of Title or Certificate of Documentation if requesting a new FPP or if ownership of the SFP or CQE floating processor has changed

<b>Federal Processor Permit, respondents</b>	
<b>Total number of respondents</b>	<b>157</b>
119 shoreside processors	
14 SFPs	
24 CQE floating processors	
<b>Total number of annualized respondents and responses (52.33)</b>	<b>52</b>
Number responses per participant=1 every 3 years	<b>18 hr</b>
<b>Total time burden</b> for all responses (18.2)	
Time requirement per response (21 min)	<b>\$450</b>
<b>Total personnel cost</b>	
Cost per hour =\$25	<b>\$56</b>
<b>Total miscellaneous cost (55.88)</b>	
Submit by fax (\$6 x 5 = 30)	
Submit by mail (.44 x 47 = 20.68)	
Photocopy (0.05 x 2pp x 52 = 5.20)	

<b>Federal Processor Permit, Federal Government</b>	
<b>Total number responses</b>	<b>52</b>
<b>Total time burden</b> for all responses	<b>39 hr</b>
Time requirement per permit = 45 min	
<b>Total personnel cost</b> (\$25 x 39 hr)	<b>\$975</b>
<b>Total miscellaneous cost</b>	<b>\$0</b>

The other information collection, annual exempted fishery permit, remains the same:

<b>Exempted Fishing Permit, Respondent</b>	
<b>Estimated number of respondents</b>	<b>4</b>
<b>Total estimated responses</b>	<b>4</b>
Number of responses per participant=1	
<b>Total time burden (4 x 20 hr)</b>	<b>80 hr</b>
Application for each permit=20 hr	
<b>Total personnel cost (\$25 x 80 hr)</b>	<b>\$2,000</b>
Personnel cost per hour=\$25	
<b>Total miscellaneous cost</b>	<b>\$18</b>
Priority Mail Postage (4.50 x 4)	
<b>Exempted Fishing Permit, Federal Government</b>	
<b>Estimated total responses</b>	<b>4</b>
Number responses per respondent=1	
<b>Total time burden</b>	<b>45 hr</b>
Review application & resolve questions (10)	
4 hr at GS-12/13	
5 hr at GS-14/15	
1 hr at \$100/hr	
Process application, create EA, issue EFP (33 hr)	
24 hr at GS-12/13	
9 hr at GS-14/15	
Complete report of EFP activity (2 hr)	
1 hr at GS-12/13	
1 hr at GS-14/15	
<b>Total personnel cost</b>	<b>\$2,247</b>
(4 + 24 + 1 GS-12/13) x \$43 = 1247	
(5 + 9 + 1 GS-14/15) x \$60 = 900	
1 hr at \$100 = 100	
<b>Total miscellaneous costs</b>	<b>\$300</b>

It is anticipated that the information collected will be disseminated to the public or used to support publicly disseminated information. As explained in the following paragraphs, the information gathered has utility. NOAA Fisheries will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. See response to Question 10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Prior to dissemination, the information will be subjected to quality control measures and a pre-dissemination review pursuant to Section 515 of Public Law 106-554.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.**

The FFP and FPP applications may be completed onscreen using fillable forms, downloaded, and printed from the NMFS Alaska Region website <http://www.alaskafisheries.noaa.gov>.

**4. Describe efforts to identify duplication.**

No duplication exists with other information collections.

**5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.**

The proposed action directly regulates catcher vessels and catcher/processors that participate in the Pacific cod fisheries in the Western and Central GOA. Data from 2008 show that five processing entities and 401 catcher vessels are considered small entities. Seven catcher/processors are estimated to be small entities. NMFS estimates that one mothership and a stationary floating processor owned by two different processing entities, are small entities. As of April 29, 2011, 24 CQE non-profit corporations represent 24 unique Alaskan communities. The collection-of-information does not impose a significant impact on small entities.

**6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.**

In 1992, the inshore/offshore processing allocations were established under Amendment 23 to the FMP (57 FR 23321; June 3, 1992) and were intended to prevent one processing sector, such as catcher/processors, from preempting another, such as shoreside processors. The inshore/offshore processing allocations enabled vessels and facilities operators to better plan their annual harvest and processing activity. These provisions protected the inshore processing component from competition by the offshore fleet.

The proposed action, Amendment 83, would supersede the inshore/offshore allocations with sector allocations. This amendment is intended to enhance stability in the fishery by enabling operators within each sector to plan harvesting or processing activity during a fishing year, reduce competition among sectors, and preserve the historical division of catch among sectors, while providing opportunities for new entrants in these fisheries.

This action would retain restrictions established under the inshore/offshore system to prohibit stationary floating processors from engaging in mothership activity in more than one geographic location in the GOA, or operating as a catcher/processor in the GOA during the same calendar year. In addition, this proposed rule would establish various processing caps as part of the new sector allocations in the Western and Central GOA.

Without these restrictions, sector allocations, and processing caps, owners and operators of vessels receiving deliveries of Pacific cod could shift historic processing delivery patterns away from communities historically dependent on processing activity and future harvests by some sectors would increase and impinge on the historical levels of catch by other sectors.

**7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.**

No special circumstances exist.

**8. Provide a copy of the PRA Federal Register Notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

NMFS Alaska Region published a proposed rule (RIN 0648-AY53) coincident with the initial submission of this request, soliciting comments from the public. No comments related to the information collection requirements were received.

**9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.**

No payment or gift is provided.

**10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.**

As stated on the forms, the information collected is confidential under section 402(b) of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*); and also under [NOAA Administrative Order \(AO\) 216-100](#), which sets forth procedures to protect confidentiality of fishery statistics.

All information collected is part of a system of records: NOAA #19, Permits and Registrations for United States Federally Regulated Fisheries.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.**

This information collection does not involve information of a sensitive nature.

**12. Provide an estimate in hours of the burden of the collection of information.**

Estimated total respondents and responses: 652, up from 644. Hours: 307, up from 304. Personnel costs: \$ 7,675, up from \$ 7,600.

**13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in Question 12 above).**

Estimated total miscellaneous cost: \$ 952, down from \$2,200.

**14. Provide estimates of annualized cost to the Federal government.**

Estimated total burden: 531 up from 525 hr. Estimated total personnel cost: \$14,397, up from \$14,247. Total miscellaneous costs: no change from previous cost of \$300.

**15. Explain the reasons for any program changes or adjustments.**

Adjustments are made in this collection, due in part to differences in numbers of participants, based on current permit counts, and due to revisions to postage rates and fax costs and the more current proportions of those choosing to mail vs. faxing.

Federal fisheries permit application

A decrease of \$1,038 miscellaneous costs, \$878 instead of \$1,916.

Federal processor permit application

A decrease of \$210 miscellaneous costs, \$56 instead of \$266.

Program change: A total of 24 CQE floating processors will be completing the FPP application (annualized to 8).

Federal processor permit application

An increase of 8 respondents and responses, 52 instead of 44

An increase of 3 hrs, 18 instead of 15

An increase of \$75 personnel costs, \$450 instead of \$375.

**16. For collections whose results will be published, outline the plans for tabulation and publication.**

The information obtained from the applications for FFPs and FPPs is not expected to be published for statistical use. Information resulting from issuance of EFPs will be made available to the public. NMFS anticipates that some of this information will be in the form of statistical data.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.**

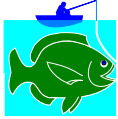
In accordance with OMB requirements, the control number and expiration date of OMB approval will be shown on the FFP and FPP applications. The EFP application does not have a form; required information may be submitted in any format.

**18. Explain each exception to the certification statement.**

In accordance with OMB requirements, the certification statement will be shown on the FFP and FPP applications. The EFP application does not have a form; required information may be submitted in any format.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

This collection does not employ statistical methods.



**Application  
for a Community Quota Entity  
(CQE) to Receive a Non-trawl  
Groundfish LLP License**

U.S. Dept. of Commerce/NOAA  
National Marine Fisheries Service (NMFS)  
Restricted Access Management Program (RAM)  
P.O. Box 21668  
Juneau, AK 99802-1668  
(800) 304-4846 toll free / 586-7202 in Juneau  
(907) 586-7354 fax



**BLOCK A - IDENTIFICATION OF APPLICANT**

1. Name of Non-Profit (CQE) Organization:	2. Name of CQE Contact Person:	3. CQE NMFS Person ID:
4. Name of Community on whose behalf the CQE is applying for an LLP(s):		
5. Permanent Business Mailing Address:		
6. Business Telephone Number:	7. Business Fax Number:	8. Business E-mail Address:

**BLOCK B - NUMBER OF GULF OF ALASKA NON-TRAWL LLP LICENSES & NON-TRAWL GEAR DESIGNATIONS REQUESTED**

1. Enter the number of LLP groundfish licenses being requested (*see instructions for the maximum number of licenses that can be issued per eligible community, for a management area*)
2. In the space below enter the non-trawl gear type to be designated on each groundfish license requested. By regulation NMFS may issue only pot gear Pacific cod endorsements for licenses that are endorsed for the Western Gulf of Alaska (WG). (*see instructions*)

License	Gear Type	License	Gear Type
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

***BLOCK C – ATTACHMENTS WITH ADDITIONAL INFORMATION***

The following information must be included as attachments to this application. The application will not be processed unless appropriate information and documentation are provided.

- ◆ Describe the procedures the CQE will use to determine the distribution of LLP licenses to residents of the community represented by that CQE.
- ◆ Describe the procedures the CQE will use to solicit requests from residents to be assigned an LLP license.
- ◆ Describe the criteria the CQE will use to determine the distribution of LLP licenses among qualified community residents and the relative weighting of those criteria.
- ◆ The CQE must provide an annual CQE authorization letter to NMFS that lists for each LLP license held by the CQE:
  - o The vessel to be assigned to the license for the calendar year
  - o The individual authorized to use the LLP license
  - o Certifies that the individual authorized to use the LLP license is
    - A citizen of the United States
    - Has maintained a domicile, for the 12 consecutive months preceding the authorization in the CQE Community that is eligible to receive an LLP license endorsed for Pacific cod in the CG or WG and on whose behalf this LLP license is to be held.

***BLOCK D - CQE CERTIFICATION***

I am a duly authorized representative of the applicant; by my signature below, I declare that I have examined this application in its entirety, and to the best of my knowledge and belief, the information presented here is true, correct, and complete.

1. Signature of Applicant (or Authorized Agent):

2. Date:

3. Printed Name of Applicant (or Authorized Agent): If agent, attach authorization.

**Instructions**  
**Application for a Community Quota Entity (CQE) to**  
**Receive a Non-trawl Groundfish LLP License**

Each non-profit must be approved by NMFS as a CQE by submitting an Application for a Non-profit Corporation to be Designated as a Community Quota Entity (CQE) which is at: <http://alaskafisheries.noaa.gov/ram/cqp/CQEStatus.pdf>

Each CQE that is approved by the Regional Administrator under the requirements of 50 CFR 679.41(1)(3) to represent a community may apply to receive a groundfish license on behalf of any of the communities listed in Table 50 to part 679 (see below). A CQE may not apply for, and may not receive, more than the maximum amount of groundfish licenses designated in the regulatory area specified for a community listed.

**Table 50 To Part 679 — Maximum Number of Groundfish Licenses  
and the Regulatory Area Specification of Groundfish Licenses  
that May Be Granted to CQEs Representing Specific GOA Communities**

Central GOA Pacific cod endorsed non-trawl groundfish license		Western GOA Pacific cod endorsed non-trawl groundfish license	
Community	Max. number of groundfish licenses that may be granted	Community	Max. number of groundfish licenses that may be granted
Akhiok	2	Ivanof Bay	2
Chenega Bay	2	King Cove	9
Chignik	3	Perryville	2
Chignik Lagoon	4	Sand Point	14
Chignik Lake	2		
Halibut Cove	2		
Karluk	2		
Larsen Bay	2		
Nanwalek	2		
Old Harbor	5		
Ouzinkie	9		
Port Graham	2		
Port Lions	6		
Seldovia	8		
Tyonek	2		
Tatitlek	2		
Yakutat	3		

A groundfish license approved for issuance to a CQE by the Regional Administrator for a community:

- ◆ May not be transferred to any person from the CQE;
- ◆ Will have only the regional designation specified for that community as listed in Table 50 to part 679;
- ◆ Will have an Maximum Length Overall (MLOA) of 60 feet specified on the license;
- ◆ Will have only a catcher vessel designation;
- ◆ Will receive only a non-trawl gear endorsement;

- ◆ Will be assigned a Pacific cod endorsement with a non-trawl gear designation as specified in regulation at 50 CFR 679.4(k)(10)(vi);
- ◆ May not be assigned to any vessel other than the vessel specified for that groundfish license in the annual CQE authorization letter; and
- ◆ May not be assigned for use by any person other than the individual specified for that groundfish license in the annual CQE authorization letter, or any subsequent amendment to that authorization letter that is made by the CQE provided that NMFS receives that amendment prior to that person using that groundfish license aboard a vessel.

## GENERAL INFORMATION

Type or print legibly in ink and retain a copy of completed application for your records.

Please allow at least 10 working days for your application to be processed. Items will be sent by first class mail, unless you provide alternate instructions and include a prepaid mailer with appropriate postage or corporate account number for express delivery.

Mail the original completed application form to: **NMFS Alaska Region  
Restricted Access Management (RAM)  
P.O. Box 21668  
Juneau, AK 99802-1668**

Hand Deliver to: Room 713, Federal Building  
709 West 9th Street

Or Fax to: (907) 586-7354

If you need additional information, call RAM at: (800) 304-4846 (Option 2) or (907) 586-7202 (Option 2)

## COMPLETING THE APPLICATION

### BLOCK A – IDENTIFICATION OF APPLICANT

1. Name of Non-Profit Organization: Please provide the name of the non-profit entity seeking to receive a Non-trawl Groundfish LLP License.
2. Name of Contact Person: Name of the contact person for the non-profit organization.
3. NMFS person ID of the non-profit organization.
4. Enter the name of the community on whose behalf the CQE is applying.
5. Permanent Business Mailing Address: Enter permanent mailing address, including street or P.O. Box, city, state, and zip code.
- 6 -7. Business Telephone Number and Fax Number, including the area codes.
8. Business E-mail address.

## **BLOCK B – NUMBER of CENTRAL GOA NON-TRAWL LLP LICENSES REQUESTED & NON-TRAWL GEAR DESIGNATION**

1. Enter the number of Gulf of Alaska LLP Groundfish License that the CQE is requesting on behalf of the eligible community in Block A.4.

*Note: A community will not be issued more than the number and type of licenses authorized in Table 50 to Part 679 (see below).*

2. Indicate for each license requested, the gear non-trawl type to be designated on each license.

For example, if requesting two Central GOA LLP Non-Trawl Licenses indicate gear on each as follows:

License #1 – Longline Gear

License #2 – Pot Gear

### **NOTE(s):**

- NMFS will issue only pot gear Pacific cod endorsements on groundfish licenses endorsed for the Western Gulf of Alaska (WG) issued to a CQE.
- NMFS will issue either a pot gear or a hook-and-line gear Pacific cod endorsement for a groundfish license with a Central Gulf of Alaska (CG) designation issued to a CQE provided that this application is received by NMFS not later than six (6) months after April 21, 2011. If an application is received more than six months after April 21, 2011, NMFS will issue an equal number of licenses with pot gear and hook-and-line gear Pacific cod endorsements. In cases where the CQE is eligible to receive an odd number of groundfish licenses, NMFS will issue one more groundfish license with pot gear than with hook-and-line gear. For example, if a CQE community may receive five (5) CG groundfish licenses and an application is received more than six months after April 21, 2011, NMFS will issue three (3) licenses with pot gear and two (2) licenses with hook-and-line gear.

## **BLOCK C - REQUIRED INFORMATION**

The non-profit organization applying to receive a non-trawl groundfish LLP license must provide all of the documentation listed in this section. Failure to provide any of the required documentation will result in a denial of this application.

## **BLOCK D – CQE CERTIFICATION**

- 1-3. Enter signature, printed name, and date of application. Representatives acting on behalf of an applicant must supply proof of agent authorization to submit this application on the applicant's behalf.

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### **PUBLIC REPORTING BURDEN STATEMENT**

Public reporting burden for this collection of information is estimated to average 20 hours per response, including time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden to Assistant Regional Administrator, Sustainable Fisheries Division, NOAA National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802-1668.

### **ADDITIONAL INFORMATION**

Before completing this form, please note the following: 1) Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number; 2) This information is mandatory and is required to manage commercial fishing efforts under 50 CFR part 679 and under section 402(a) of the Magnuson-Stevens Act (16 U.S.C. 1801, *et seq.*); 3) Responses to this information request are confidential under section 402(b) of the Magnuson-Stevens Act as amended in 2006. They are also confidential under NOAA Administrative Order 216-100, which sets forth procedures to protect confidentiality of fishery statistics.

**SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS 16 U.S.C. 1853**

**95-354, 99-659, 101-627, 104-297**

(a) **REQUIRED PROVISIONS.**—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall—

(1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are—

(A) necessary and appropriate for the conservation and management of the fishery to prevent overfishing and rebuild overfished stocks, and to protect, restore, and promote the long-term health and stability of the fishery;

(B) described in this subsection or subsection (b), or both; and

(C) consistent with the national standards, the other provisions of this Act, regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits), and any other applicable law;

(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interest in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;

(3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;

(4) assess and specify—

(A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3),

(B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing, and

(C) the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States;

**109-479**

(5) specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, charter fishing, and fish processing in the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, economic information necessary to meet the requirements of this Act, and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors;

(6) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery; except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery;

(7) describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat;

(8) in the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 304(a) (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan;

**109-479**

(9) include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and analyze the likely effects, if any, including the cumulative conservation, economic, and social impacts, of the conservation and management measures on, and possible mitigation measures for—

(A) participants in the fisheries and fishing communities affected by the plan or amendment;

(B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants; and

(C) the safety of human life at sea, including whether and to what extent such measures may affect the safety of participants in the fishery;

(10) specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or the Secretary has determined is approaching an overfished condition or is overfished, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery;

(11) establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority—

(A) minimize bycatch; and

(B) minimize the mortality of bycatch which cannot be avoided;

**16 U.S.C. 1853**  
**MSA § 303**

(12) assess the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish, and include conservation and management measures that, to the extent practicable, minimize mortality and ensure the extended survival of such fish;

**109-479**

(13) include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery, including its economic impact, and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors;

**109-479**

(14) to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate, taking into consideration the economic impact of the harvest restrictions or recovery benefits on the fishery participants in each sector, any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery and;

**109-479**

(15) establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.

**97-453, 99-659, 101-627, 102-251, 104-297**

(b) DISCRETIONARY PROVISIONS.—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may—

(1) require a permit to be obtained from, and fees to be paid to, the Secretary, with respect to—

(A) any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone [or special areas,]\* or for anadromous species or Continental Shelf fishery resources beyond such zone [or areas]\*;

(B) the operator of any such vessel; or

(C) any United States fish processor who first receives fish that are subject to the plan;

**109-479**

(2)(A) designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

(B) designate such zones in areas where deep sea corals are identified under section 408, to protect deep sea corals from physical damage from fishing gear or to prevent loss or damage to such fishing gear from interactions with deep sea corals, after considering long-term sustainable uses of fishery resources in such areas; and

(C) with respect to any closure of an area under this Act that prohibits all fishing, ensure that such closure—

- (i) is based on the best scientific information available;
- (ii) includes criteria to assess the conservation benefit of the closed area;
- (iii) establishes a timetable for review of the closed area's performance that is consistent with the purposes of the closed area; and
- (iv) is based on an assessment of the benefits and impacts of the closure, including its size, in relation to other management measures (either alone or in combination with such measures), including the benefits and impacts of limiting access to: users of the area, overall fishing activity, fishery science, and fishery and marine conservation;

(3) establish specified limitations which are necessary and appropriate for the conservation and management of the fishery on the—

- (A) catch of fish (based on area, species, size, number, weight, sex, bycatch, total biomass, or other factors);
- (B) sale of fish caught during commercial, recreational, or charter fishing, consistent with any applicable Federal and State safety and quality requirements; and
- (C) transshipment or transportation of fish or fish products under permits issued pursuant to section 204;

(4) prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of the provisions of this Act;

**109-479**

(5) incorporate (consistent with the national standards, the other provisions of this Act, and any other applicable law) the relevant fishery conservation and management measures of the coastal States nearest to the fishery and take into account the different circumstances affecting fisheries from different States and ports, including distances to fishing grounds and proximity to time and area closures;

**109-479**

(6) establish a limited access system for the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account—

- (A) present participation in the fishery;
- (B) historical fishing practices in, and dependence on, the fishery;
- (C) the economics of the fishery;
- (D) the capability of fishing vessels used in the fishery to engage in other fisheries;
- (E) the cultural and social framework relevant to the fishery and any affected fishing communities;
- (F) the fair and equitable distribution of access privileges in the fishery; and
- (G) any other relevant considerations;

**16 U.S.C. 1853**  
**MSA § 303**

(7) require fish processors who first receive fish that are subject to the plan to submit data which are necessary for the conservation and management of the fishery;

(8) require that one or more observers be carried on board a vessel of the United States engaged in fishing for species that are subject to the plan, for the purpose of collecting data necessary for the conservation and management of the fishery; except that such a vessel shall not be required to carry an observer on board if the facilities of the vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized;

(9) assess and specify the effect which the conservation and management measures of the plan will have on the stocks of naturally spawning anadromous fish in the region;

(10) include, consistent with the other provisions of this Act, conservation and management measures that provide harvest incentives for participants within each gear group to employ fishing practices that result in lower levels of bycatch or in lower levels of the mortality of bycatch;

(11) reserve a portion of the allowable biological catch of the fishery for use in scientific research;

**109-479**

(12) include management measures in the plan to conserve target and non-target species and habitats, considering the variety of ecological factors affecting fishery populations; and

(14)[sic]<sup>15</sup> prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

**97-453, 104-297**

(c) PROPOSED REGULATIONS.—Proposed regulations which the Council deems necessary or appropriate for the purposes of—

(1) implementing a fishery management plan or plan amendment shall be submitted to the Secretary simultaneously with the plan or amendment under section 304; and

(2) making modifications to regulations implementing a fishery management plan or plan amendment may be submitted to the Secretary at any time after the plan or amendment is approved under section 304.

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<sup>15</sup> So in original.

**P.L. 109-479, sec. 104(b), MSA § 303 note**

**16 U.S.C. 1853 note**

**EFFECTIVE DATES; APPLICATION TO CERTAIN SPECIES.**—The amendment made by subsection (a)(10)<sup>16</sup>—

(1) shall, unless otherwise provided for under an international agreement in which the United States participates, take effect—

(A) in fishing year 2010 for fisheries determined by the Secretary to be subject to overfishing; and

(B) in fishing year 2011 for all other fisheries; and

(2) shall not apply to a fishery for species that have a life cycle of approximately 1 year unless the Secretary has determined the fishery is subject to overfishing of that species; and

(3) shall not limit or otherwise affect the requirements of section 301(a)(1) or 304(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851(a)(1) or 1854(e), respectively).

**109-479**

**SEC. 303A. LIMITED ACCESS PRIVILEGE PROGRAMS.**

**16 U.S.C. 1853a**

(a) **IN GENERAL.**—After the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, a Council may submit, and the Secretary may approve, for a fishery that is managed under a limited access system, a limited access privilege program to harvest fish if the program meets the requirements of this section.

(b) **NO CREATION OF RIGHT, TITLE, OR INTEREST.**—Limited access privilege, quota share, or other limited access system authorization established, implemented, or managed under this Act—

(1) shall be considered a permit for the purposes of sections 307, 308, and 309;

(2) may be revoked, limited, or modified at any time in accordance with this Act, including revocation if the system is found to have jeopardized the sustainability of the stock or the safety of fishermen;

(3) shall not confer any right of compensation to the holder of such limited access privilege, quota share, or other such limited access system authorization if it is revoked, limited, or modified;

(4) shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is harvested by the holder; and

(5) shall be considered a grant of permission to the holder of the limited access privilege or quota share to engage in activities permitted by such limited access privilege or quota share.

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<sup>16</sup> Section 104(a)(10) of P.L. 109-479 added section 303(a)(15).

(c) REQUIREMENTS FOR LIMITED ACCESS PRIVILEGES.—

(1) IN GENERAL.—Any limited access privilege program to harvest fish submitted by a Council or approved by the Secretary under this section shall—

(A) if established in a fishery that is overfished or subject to a rebuilding plan, assist in its rebuilding;

(B) if established in a fishery that is determined by the Secretary or the Council to have over-capacity, contribute to reducing capacity;

(C) promote—

(i) fishing safety;

(ii) fishery conservation and management; and

(iii) social and economic benefits;

(D) prohibit any person other than a United States citizen, a corporation, partnership, or other entity established under the laws of the United States or any State, or a permanent resident alien, that meets the eligibility and participation requirements established in the program from acquiring a privilege to harvest fish, including any person that acquires a limited access privilege solely for the purpose of perfecting or realizing on a security interest in such privilege;

(E) require that all fish harvested under a limited access privilege program be processed on vessels of the United States or on United States soil (including any territory of the United States);

(F) specify the goals of the program;

(G) include provisions for the regular monitoring and review by the Council and the Secretary of the operations of the program, including determining progress in meeting the goals of the program and this Act, and any necessary modification of the program to meet those goals, with a formal and detailed review 5 years after the implementation of the program and thereafter to coincide with scheduled Council review of the relevant fishery management plan (but no less frequently than once every 7 years);

(H) include an effective system for enforcement, monitoring, and management of the program, including the use of observers or electronic monitoring systems;

(I) include an appeals process for administrative review of the Secretary's decisions regarding initial allocation of limited access privileges;

(J) provide for the establishment by the Secretary, in consultation with appropriate Federal agencies, for an information collection and review process to provide any additional information needed to determine whether any illegal acts of anti-competition, anti-trust, price collusion, or price fixing have occurred among regional fishery associations or persons receiving limited access privileges under the program; and

(K) provide for the revocation by the Secretary of limited access privileges held by any person found to have violated the antitrust laws of the United States.

(2) WAIVER.—The Secretary may waive the requirement of paragraph (1)(E) if the Secretary determines that—

- (A) the fishery has historically processed the fish outside of the United States; and
- (B) the United States has a seafood safety equivalency agreement with the country where processing will occur.

(3) FISHING COMMUNITIES.—

(A) IN GENERAL.—

(i) ELIGIBILITY.—To be eligible to participate in a limited access privilege program to harvest fish, a fishing community shall—

- (I) be located within the management area of the relevant Council;
- (II) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;
- (III) consist of residents who conduct commercial or recreational fishing, processing, or fishery-dependent support businesses within the Council's management area; and
- (IV) develop and submit a community sustainability plan to the Council and the Secretary that demonstrates how the plan will address the social and economic development needs of coastal communities, including those that have not historically had the resources to participate in the fishery, for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

(ii) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges granted under this section for any person who fails to comply with the requirements of the community sustainability plan. Any limited access privileges denied or revoked under this section may be reallocated to other eligible members of the fishing community.

- (B) PARTICIPATION CRITERIA.—In developing participation criteria for eligible communities under this paragraph, a Council shall consider—
- (i) traditional fishing or processing practices in, and dependence on, the fishery;
  - (ii) the cultural and social framework relevant to the fishery;
  - (iii) economic barriers to access to fishery;
  - (iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;
  - (v) the expected effectiveness, operational transparency, and equitability of the community sustainability plan; and
  - (vi) the potential for improving economic conditions in remote coastal communities lacking resources to participate in harvesting or processing activities in the fishery.

(4) REGIONAL FISHERY ASSOCIATIONS.—

(A) IN GENERAL.—To be eligible to participate in a limited access privilege program to harvest fish, a regional fishery association shall—

- (i) be located within the management area of the relevant Council;
- (ii) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;
- (iii) be a voluntary association with established by-laws and operating procedures;
- (iv) consist of participants in the fishery who hold quota share that are designated for use in the specific region or subregion covered by the regional fishery association, including commercial or recreational fishing, processing, fishery-dependent support businesses, or fishing communities;
- (v) not be eligible to receive an initial allocation of a limited access privilege but may acquire such privileges after the initial allocation, and may hold the annual fishing privileges of any limited access privileges it holds or the annual fishing privileges that is [sic]<sup>17</sup> members contribute; and
- (vi) develop and submit a regional fishery association plan to the Council and the Secretary for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

(B) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges granted under this section to any person participating in a regional fishery association who fails to comply with the requirements of the regional fishery association plan.

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<sup>17</sup> So in original.

(C) PARTICIPATION CRITERIA.—In developing participation criteria for eligible regional fishery associations under this paragraph, a Council shall consider—

- (i) traditional fishing or processing practices in, and dependence on, the fishery;
- (ii) the cultural and social framework relevant to the fishery;
- (iii) economic barriers to access to fishery;
- (iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;
- (v) the administrative and fiduciary soundness of the association; and
- (vi) the expected effectiveness, operational transparency, and equitability of the fishery association plan.

(5) ALLOCATION.—In developing a limited access privilege program to harvest fish a Council or the Secretary shall—

(A) establish procedures to ensure fair and equitable initial allocations, including consideration of—

- (i) current and historical harvests;
- (ii) employment in the harvesting and processing sectors;
- (iii) investments in, and dependence upon, the fishery; and
- (iv) the current and historical participation of fishing communities;

(B) consider the basic cultural and social framework of the fishery, especially through—

- (i) the development of policies to promote the sustained participation of small owner-operated fishing vessels and fishing communities that depend on the fisheries, including regional or port-specific landing or delivery requirements; and
- (ii) procedures to address concerns over excessive geographic or other consolidation in the harvesting or processing sectors of the fishery;

(C) include measures to assist, when necessary and appropriate, entry-level and small vessel owner-operators, captains, crew, and fishing communities through set-asides of harvesting allocations, including providing privileges, which may include set-asides or allocations of harvesting privileges, or economic assistance in the purchase of limited access privileges;

(D) ensure that limited access privilege holders do not acquire an excessive share of the total limited access privileges in the program by—

- (i) establishing a maximum share, expressed as a percentage of the total limited access privileges, that a limited access privilege holder is permitted to hold, acquire, or use; and
- (ii) establishing any other limitations or measures necessary to prevent an inequitable concentration of limited access privileges; and

(E) authorize limited access privileges to harvest fish to be held, acquired, used by, or issued under the system to persons who substantially participate in the fishery, including in a specific sector of such fishery, as specified by the Council.

(6) PROGRAM INITIATION.—

(A) LIMITATION.—Except as provided in subparagraph (D), a Council may initiate a fishery management plan or amendment to establish a limited access privilege program to harvest fish on its own initiative or if the Secretary has certified an appropriate petition.

(B) PETITION.—A group of fishermen constituting more than 50 percent of the permit holders, or holding more than 50 percent of the allocation, in the fishery for which a limited access privilege program to harvest fish is sought, may submit a petition to the Secretary requesting that the relevant Council or Councils with authority over the fishery be authorized to initiate the development of the program. Any such petition shall clearly state the fishery to which the limited access privilege program would apply. For multispecies permits in the Gulf of Mexico, only those participants who have substantially fished the species proposed to be included in the limited access program shall be eligible to sign a petition for such a program and shall serve as the basis for determining the percentage described in the first sentence of this subparagraph.

(C) CERTIFICATION BY SECRETARY.—Upon the receipt of any such petition, the Secretary shall review all of the signatures on the petition and, if the Secretary determines that the signatures on the petition represent more than 50 percent of the permit holders, or holders of more than 50 percent of the allocation in the fishery, as described by subparagraph (B), the Secretary shall certify the petition to the appropriate Council or Councils.

(D) NEW ENGLAND AND GULF REFERENDUM.—

(i) Except as provided in clause (iii) for the Gulf of Mexico commercial red snapper fishery, the New England and Gulf Councils may not submit, and the Secretary may not approve or implement, a fishery management plan or amendment that creates an individual fishing quota program, including a Secretarial plan, unless such a system, as ultimately developed, has been approved by more than 2/3 of those voting in a referendum among eligible permit holders, or other persons described in clause (v), with respect to the New England Council, and by a majority of those voting in the referendum among eligible permit holders with respect to the Gulf Council. For multispecies permits in the Gulf of Mexico, only those participants who have substantially fished the species proposed to be included in the individual fishing quota program shall be eligible to vote in such a referendum. If an individual fishing quota program fails to be approved by the requisite number of those voting, it may be revised and submitted for approval in a subsequent referendum.

(ii) The Secretary shall conduct a referendum under this subparagraph, including notifying all persons eligible to participate in the referendum and making available to them information concerning the schedule, procedures, and eligibility requirements for the referendum process and the proposed individual fishing quota program. Within 1 year after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, the Secretary shall publish guidelines and procedures to determine procedures and voting eligibility requirements for referenda and to conduct such referenda in a fair and equitable manner.

(iii) The provisions of section 407(c) of this Act shall apply in lieu of this subparagraph for an individual fishing quota program for the Gulf of Mexico commercial red snapper fishery.

(iv) Chapter 35 of title 44, United States Code, (commonly known as the Paperwork Reduction Act) does not apply to the referenda conducted under this subparagraph.

(v) The Secretary shall promulgate criteria for determining whether additional fishery participants are eligible to vote in the New England referendum described in clause (i) in order to ensure that crew members who derive a significant percentage of their total income from the fishery under the proposed program are eligible to vote in the referendum.

(vi) In this subparagraph, the term ‘individual fishing quota’ does not include a sector allocation.

(7) TRANSFERABILITY.—In establishing a limited access privilege program, a Council shall—

(A) establish a policy and criteria for the transferability of limited access privileges (through sale or lease), that is consistent with the policies adopted by the Council for the fishery under paragraph (5); and

(B) establish, in coordination with the Secretary, a process for monitoring of transfers (including sales and leases) of limited access privileges.

(8) PREPARATION AND IMPLEMENTATION OF SECRETARIAL PLANS.—This subsection also applies to a plan prepared and implemented by the Secretary under section 304(c) or 304(g).

(9) ANTITRUST SAVINGS CLAUSE.—Nothing in this Act shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For purposes of the preceding sentence, the term ‘antitrust laws’ has the meaning given such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

**16 U.S.C. 1853a**  
**MSA § 303A**

(d) AUCTION AND OTHER PROGRAMS.—In establishing a limited access privilege program, a Council shall consider, and may provide, if appropriate, an auction system or other program to collect royalties for the initial, or any subsequent, distribution of allocations in a limited access privilege program if—

(1) the system or program is administered in such a way that the resulting distribution of limited access privilege shares meets the program requirements of this section; and

(2) revenues generated through such a royalty program are deposited in the Limited Access System Administration Fund established by section 305(h)(5)(B) and available subject to annual appropriations.

(e) COST RECOVERY.—In establishing a limited access privilege program, a Council shall—

(1) develop a methodology and the means to identify and assess the management, data collection and analysis, and enforcement programs that are directly related to and in support of the program; and

(2) provide, under section 304(d)(2), for a program of fees paid by limited access privilege holders that will cover the costs of management, data collection and analysis, and enforcement activities.

(f) CHARACTERISTICS.—A limited access privilege established after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 is a permit issued for a period of not more than 10 years that—

(1) will be renewed before the end of that period, unless it has been revoked, limited, or modified as provided in this subsection;

(2) will be revoked, limited, or modified if the holder is found by the Secretary, after notice and an opportunity for a hearing under section 554 of title 5, United States Code, to have failed to comply with any term of the plan identified in the plan as cause for revocation, limitation, or modification of a permit, which may include conservation requirements established under the plan;

(3) may be revoked, limited, or modified if the holder is found by the Secretary, after notice and an opportunity for a hearing under section 554 of title 5, United States Code, to have committed an act prohibited by section 307 of this Act; and

(4) may be acquired, or reacquired, by participants in the program under a mechanism established by the Council if it has been revoked, limited, or modified under paragraph (2) or (3).

(g) LIMITED ACCESS PRIVILEGE ASSISTED PURCHASE PROGRAM.—

(1) IN GENERAL.—A Council may submit, and the Secretary may approve and implement, a program which reserves up to 25 percent of any fees collected from a fishery under section 304(d)(2) to be used, pursuant to section 53706(a)(7) of title 46, United States Code, to issue obligations that aid in financing—

(A) the purchase of limited access privileges in that fishery by fishermen who fish from small vessels; and

(B) the first-time purchase of limited access privileges in that fishery by entry level fishermen.

(2) ELIGIBILITY CRITERIA.—A Council making a submission under paragraph (1) shall recommend criteria, consistent with the provisions of this Act, that a fisherman must meet to qualify for guarantees under subparagraphs (A) and (B) of paragraph (1) and the portion of funds to be allocated for guarantees under each subparagraph.

(h) EFFECT ON CERTAIN EXISTING SHARES AND PROGRAMS.—Nothing in this Act, or the amendments made by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, shall be construed to require a reallocation or a reevaluation of individual quota shares, processor quota shares, cooperative programs, or other quota programs, including sector allocation in effect before the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006.

(i) TRANSITION RULES.—

(1) IN GENERAL.—The requirements of this section shall not apply to any quota program, including any individual quota program, cooperative program, or sector allocation for which a Council has taken final action or which has been submitted by a Council to the Secretary, or approved by the Secretary, within 6 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, except that—

(A) the requirements of section 303(d) of this Act in effect on the day before the date of enactment of that Act shall apply to any such program;

(B) the program shall be subject to review under subsection (c)(1)(G) of this section not later than 5 years after the program implementation; and

(C) nothing in this subsection precludes a Council from incorporating criteria contained in this section into any such plans.

(2) PACIFIC GROUND FISH PROPOSALS.—The requirements of this section, other than subparagraphs (A) and (B) of subsection (c)(1) and subparagraphs (A), (B), and (C) of paragraph (1) of this subsection, shall not apply to any proposal authorized under section 302(f) of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 that is submitted within the timeframe prescribed by that section.

**16 U.S.C. 1853a note, 1854**  
**MSA §§ 303A note, 304**

**P.L. 109-479, sec. 106(e), MSA § 303A note**

**16 U.S.C. 1853a note**

**APPLICATION WITH AMERICAN FISHERIES ACT.**—Nothing in section 303A of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), as added by subsection (a) [P.L. 109-479], shall be construed to modify or supersede any provision of the American Fisheries Act (46 U.S.C. 12102 note; 16 U.S.C. 1851 note; et alia).

**P.L. 104-297, sec. 108(i), MSA § 303 note**

**EXISTING QUOTA PLANS.**—Nothing in this Act [P.L.104-297] or the amendments made by this Act shall be construed to require a reallocation of individual fishing quotas under any individual fishing quota program approved by the Secretary before January 4, 1995.

## **SEC. 304. ACTION BY THE SECRETARY**

**16 U.S.C. 1854**

### **104-297**

(a) REVIEW OF PLANS.—

(1) Upon transmittal by the Council to the Secretary of a fishery management plan or plan amendment, the Secretary shall—

(A) immediately commence a review of the plan or amendment to determine whether it is consistent with the national standards, the other provisions of this Act, and any other applicable law; and

(B) immediately publish in the Federal Register a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.

(2) In undertaking the review required under paragraph (1), the Secretary shall—

(A) take into account the information, views, and comments received from interested persons;

(B) consult with the Secretary of State with respect to foreign fishing; and

(C) consult with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea and to fishery access adjustments referred to in section 303(a)(6).

(3) The Secretary shall approve, disapprove, or partially approve a plan or amendment within 30 days of the end of the comment period under paragraph (1) by written notice to the Council. A notice of disapproval or partial approval shall specify—

(A) the applicable law with which the plan or amendment is inconsistent;

(B) the nature of such inconsistencies; and

(C) recommendations concerning the actions that could be taken by the Council to conform such plan or amendment to the requirements of applicable law.

If the Secretary does not notify a Council within 30 days of the end of the comment period of the approval, disapproval, or partial approval of a plan or amendment, then such plan or amendment shall take effect as if approved.

104-297

**SEC. 402. INFORMATION COLLECTION**

16 U.S.C. 1881a

109-479

(a) COLLECTION PROGRAMS.—

(1) COUNCIL REQUESTS.—If a Council determines that additional information would be beneficial for developing, implementing, or revising a fishery management plan or for determining whether a fishery is in need of management, the Council may request that the Secretary implement an information collection program for the fishery which would provide the types of information specified by the Council. The Secretary shall undertake such an information collection program if he determines that the need is justified, and shall promulgate regulations to implement the program within 60 days after such determination is made. If the Secretary determines that the need for an information collection program is not justified, the Secretary shall inform the Council of the reasons for such determination in writing. The determinations of the Secretary under this paragraph regarding a Council request shall be made within a reasonable period of time after receipt of that request.

(2) SECRETARIAL INITIATION.—If the Secretary determines that additional information is necessary for developing, implementing, revising, or monitoring a fishery management plan, or for determining whether a fishery is in need of management, the Secretary may, by regulation, implement an information collection or observer program requiring submission of such additional information for the fishery.

109-479

(b) CONFIDENTIALITY OF INFORMATION.—

(1) Any information submitted to the Secretary, a State fishery management agency, or a marine fisheries commission by any person in compliance with the requirements of this Act shall be confidential and shall not be disclosed except—

(A) to Federal employees and Council employees who are responsible for fishery management plan development, monitoring, or enforcement;

(B) to State or Marine Fisheries Commission employees as necessary to further the Department's mission, subject to a confidentiality agreement that prohibits public disclosure of the identity of business of any person;

(C) to State employees who are responsible for fishery management plan enforcement, if the States employing those employees have entered into a fishery enforcement agreement with the Secretary and the agreement is in effect;

(D) when required by court order;

(E) when such information is used by State, Council, or Marine Fisheries Commission employees to verify catch under a limited access program, but only to the extent that such use is consistent with subparagraph (B);

(F) when the Secretary has obtained written authorization from the person submitting such information to release such information to persons for reasons not otherwise provided for in this subsection, and such release does not violate other requirements of this Act;

(G) when such information is required to be submitted to the Secretary for any determination under a limited access program; or

(H) in support of homeland and national security activities, including the Coast Guard's homeland security missions as defined in section 888(a)(2) of the Homeland Security Act of 2002 (6 U.S.C. 468(a)(2)).

(2) Any observer information shall be confidential and shall not be disclosed, except in accordance with the requirements of subparagraphs (A) through (H) of paragraph (1), or—

(A) as authorized by a fishery management plan or regulations under the authority of the North Pacific Council to allow disclosure to the public of weekly summary bycatch information identified by vessel or for haul-specific bycatch information without vessel identification;

(B) when such information is necessary in proceedings to adjudicate observer certifications; or

(C) as authorized by any regulations issued under paragraph (3) allowing the collection of observer information, pursuant to a confidentiality agreement between the observers, observer employers, and the Secretary prohibiting disclosure of the information by the observers or observer employers, in order—

(i) to allow the sharing of observer information among observers and between observers and observer employers as necessary to train and prepare observers for deployments on specific vessels; or

(ii) to validate the accuracy of the observer information collected.

(3) The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of information submitted in compliance with any requirement or regulation under this Act, except that the Secretary may release or make public any such information in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such information. Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary, or with the approval of the Secretary, the Council, of any information submitted in compliance with any requirement or regulation under this Act or the use, release, or publication of bycatch information pursuant to paragraph (2)(A).

**(c) RESTRICTION ON USE OF CERTAIN INFORMATION.—**

(1) The Secretary shall promulgate regulations to restrict the use, in civil enforcement or criminal proceedings under this Act, the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.), and the Endangered Species Act (16 U.S.C. 1531 et seq.), of information collected by voluntary fishery data collectors, including sea samplers, while aboard any vessel for conservation and management purposes if the presence of such a fishery data collector aboard is not required by any of such Acts or regulations thereunder.

(2) The Secretary may not require the submission of a Federal or State income tax return or statement as a prerequisite for issuance of a permit until such time as the Secretary has promulgated regulations to ensure the confidentiality of information contained in such return or statement, to limit the information submitted to that necessary to achieve a demonstrated conservation and management purpose, and to provide appropriate penalties for violation of such regulations.

**16 U.S.C. 1881a-1881b**  
**MSA §§ 402-403**

(d) **CONTRACTING AUTHORITY.**—Notwithstanding any other provision of law, the Secretary may provide a grant, contract, or other financial assistance on a sole-source basis to a State, Council, or Marine Fisheries Commission for the purpose of carrying out information collection or other programs if—

(1) the recipient of such a grant, contract, or other financial assistance is specified by statute to be, or has customarily been, such State, Council, or Marine Fisheries Commission; or

(2) the Secretary has entered into a cooperative agreement with such State, Council, or Marine Fisheries Commission.

(e) **RESOURCE ASSESSMENTS.**—

(1) The Secretary may use the private sector to provide vessels, equipment, and services necessary to survey the fishery resources of the United States when the arrangement will yield statistically reliable results.

(2) The Secretary, in consultation with the appropriate Council and the fishing industry--

(A) may structure competitive solicitations under paragraph (1) so as to compensate a contractor for a fishery resources survey by allowing the contractor to retain for sale fish harvested during the survey voyage;

(B) in the case of a survey during which the quantity or quality of fish harvested is not expected to be adequately compensatory, may structure those solicitations so as to provide that compensation by permitting the contractor to harvest on a subsequent voyage and retain for sale a portion of the allowable catch of the surveyed fishery; and

(C) may permit fish harvested during such survey to count toward a vessel's catch history under a fishery management plan if such survey was conducted in a manner that precluded a vessel's participation in a fishery that counted under the plan for purposes of determining catch history.

(3) The Secretary shall undertake efforts to expand annual fishery resource assessments in all regions of the Nation.

**104-297**

**SEC. 403. OBSERVERS**

**16 U.S.C. 1881b**

(a) **GUIDELINES FOR CARRYING OBSERVERS.**—Within one year after the date of enactment of the Sustainable Fisheries Act, the Secretary shall promulgate regulations, after notice and opportunity for public comment, for fishing vessels that carry observers. The regulations shall include guidelines for determining—

(1) when a vessel is not required to carry an observer on board because the facilities of such vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized; and

(2) actions which vessel owners or operators may reasonably be required to take to render such facilities adequate and safe.