

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 06/19/2009

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

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 06/19/2009

ACTION REQUESTED: Revision of a currently approved collection  
TYPE OF REVIEW REQUESTED: Regular  
ICR REFERENCE NUMBER: 200906-0648-013  
AGENCY ICR TRACKING NUMBER:  
TITLE: Alaska Cooperatives in the Bering Sea and Aleutian Islands (Formerly: American Fisheries Act: Recordkeeping and Reporting Requirements)  
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change  
OMB CONTROL NUMBER: 0648-0401  
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: 08/31/2010 DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	165	320	0
New	167	470	225
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	2	150	225
Change due to Agency Adjustment	0	0	0
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
Salmon Bycatch Reduction Inter-Cooperative Agreement (ICA) application and renewal letter			50 CFR 679
Annual Cooperative Preliminary Report			50 CFR 679
Annual Cooperative Final Report			50 CFR 679
ICA Appeal			50 CFR 679
Inshore Catcher Vessel Cooperative Pollock Catch report			50 CFR 679
Agent for Service of Process			50 CFR 679

# 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 COOPERATIVES IN THE BERING SEA AND ALEUTIAN ISLANDS**  
**OMB CONTROL NO.: 0648-0401**

**INTRODUCTION**

National Marine Fisheries Service (NMFS) manages the groundfish fisheries in the Exclusive Economic Zone (EEZ) of the Bering Sea and Aleutian Islands Management Area (BSAI). The North Pacific Fishery Management Council (Council) prepared the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* ([Magnuson-Stevens Act](#)) as amended by [Public Law 109-479](#). Regulations implementing the FMP appear at 50 CFR part 679. On October 21, 1998, the President signed into law the American Fisheries Act, 16 U.S.C. 1851 ([AFA](#)) which imposed major structural changes on the BSAI pollock fishery.

Amendment 84 proposes a management program, called the salmon bycatch reduction inter-cooperative agreement (ICA), which would enable the pollock fleet to utilize its internal cooperative structure to reduce salmon bycatch. If Amendment 84 is approved and implemented, salmon savings area closures would not apply to vessels that operate under a salmon bycatch reduction ICA.

**BACKGROUND**

Pacific salmon are caught incidentally in the BSAI trawl fisheries, especially in the pollock fishery. Of the five species of Pacific salmon, Chinook salmon (*Onchorynchus tshawytscha*) and chum salmon (*O. keta*) are most often incidentally caught in the pollock fishery. Pacific salmon are placed into two categories for purposes of salmon bycatch management: Chinook and non-Chinook. The non-Chinook category is comprised of chum, sockeye (*O. nerka*), pink (*O. gorbuscha*), and coho (*O. kisutch*) salmon. However, from 2001 through 2004, chum salmon represented about 98% of non-Chinook salmon harvested incidentally in the pollock trawl fishery. For convenience, all non-Chinook salmon are referred to as chum salmon.

The Chinook and Chum Salmon Savings Areas were adopted by the Council based on historic observed salmon bycatch rates and were designed to avoid high spatial and temporal levels of salmon bycatch in the BSAI trawl fisheries. The Chinook Salmon Savings Area (see Figure 8 to 50 CFR part 679) closes when a total BSAI Chinook salmon trawl bycatch reaches a certain number of fish. The Chinook Salmon Savings Area is divided into two subareas. The Aleutian Islands subarea is designated area 1; the Bering Sea subarea is designated as area 2. The Chum Salmon Savings Area (see Figure 9 to 50 CFR part 679) is closed to all trawling from August 1 through August 31 of each year. Additionally, if a certain number of non-Chinook salmon are caught in the Catcher Vessel Operational Area (CVOA) during the period August 15 through October 14, the area remains closed for the remainder of the calendar year.

## A. JUSTIFICATION

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

The ICA would be defined as a voluntary civil agreement among pollock cooperatives, Western Alaska Community Development Quota (CDQ) groups, and western Alaska subsistence salmon user groups that is intended to coordinate the pollock fishery in a manner that reduces incidental catch rates of salmon. The ICA would be incorporated into existing cooperative agreements among participants in the AFA BSAI pollock fishery.

The purpose of the ICA is to use real-time salmon bycatch information to avoid unacceptably high incidental catch rates of chum and Chinook salmon. All parties to the ICA would agree to comply with ICA provisions, including requirements to retain the services of a private contractor to collect and analyze bycatch data and report salmon bycatch information to the ICA parties.

The ICA would require that the bycatch rate of a participating cooperative be compared to a pre-determined bycatch rate (base rate). All ICA provisions for fleet bycatch avoidance behavior, closures, and enforcement would be based on the ratio of the cooperative's rate to the base rate. An ICA cooperative would be assigned to one of three tiers based on its bycatch rate relative to the base rate. Higher tiers correspond to higher bycatch rates. Tier assignments determine access privileges to specific fishing areas.

### 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 applicable NOAA Information Quality Guidelines.

#### a. Salmon Bycatch Reduction Inter-Cooperative Agreement (ICA)

In order for any ICA participant to be exempt from salmon savings area closures as described at § 679.21(e)(7)(ix)(A), § 679.21(e)(7)(ix)(B) and § 679.22(a)(10), the ICA must be approved by NMFS. The initial ICA must be received by NMFS by December 1, 2007, for the 2008 fishing year and the ICA would remain in effect until it expires or is amended. An amendment of the ICA would require submission of an amended ICA signed by all parties and approval of the amended ICA by NMFS. Exemptions from salmon savings area closures will expire upon termination of the initial ICA, expiration of the initial ICA, or if superseded by an approved amended ICA.

The ICA representative must submit a signed copy of the initial ICA and any amended ICA to the NMFS Alaska Region. The mailing address for the Regional Administrator, NMFS Alaska Region is P.O. Box 21668, Juneau, AK 99802. The street address for courier delivery is 709 West 9th St., Suite 401, Juneau, AK 99801.

NMFS will approve the initial or an amended ICA if it meets all the specified requirements. If NMFS disapproves an ICA, the representative may resubmit a revised ICA or file an administrative appeal.

**Renewal letter**

If an ICA was previously filed with NMFS, then the ICA representative may submit a renewal letter to NMFS by the filing deadline in lieu of an ICA. The renewal letter must provide notice that the previously filed ICA will remain in effect for the subsequent fishing year. The renewal letter also must detail any material modifications to the ICA that have been made since the last filing including, but not limited to, any changes to vessels participating in the ICA.

**Salmon bycatch reduction inter-cooperative agreement (ICA)**

Names of the AFA cooperatives, CDQ groups, and third party groups that are parties to the ICA  
 Name of one entity retained to facilitate vessel bycatch avoidance behavior and information sharing.  
 Name(s), Federal fisheries permit numbers, and USCG documentation number(s) of vessels subject to ICA  
 Provisions that dictate salmon bycatch avoidance behaviors for vessel operators subject to the ICA, including

“A” season salmon bycatch management.

- Initial base rate calculation for Chinook salmon
- Inseason adjustments to the Chinook salmon base rate calculation
- ICA salmon savings area notices
- Fishing restrictions for vessels assigned to Tiers

“B” season salmon bycatch management.

- “B” season Chinook salmon
- Non-Chinook salmon
- Inseason adjustments to the non-Chinook base rate calculation
- ICA salmon savings area notices
- Fishing restrictions for vessels assigned to Tiers

Cooperative tier assignments.

Internal monitoring and enforcement provisions to ensure compliance of fishing activities with the provisions of the ICA, including a penalty schedule for violations to the terms and agreements. The ICA must include provisions allowing any party of the ICA to bring suit or initiate a binding arbitration action against another for breach of the agreement. The ICA must include minimum annual uniform assessments for any violation of savings area closures of \$10,000 for the first offense, \$15,000 for the second offense, and \$20,000 for each offense thereafter;

Name, telephone number, and business address of the ICA representative  
 Provisions requiring the parties to conduct an annual compliance audit, and to cooperate fully in such audit, including providing information required by the auditor.  
 Provisions requiring data dissemination in certain circumstances.

<b>ICA, Respondent</b>	
Number of respondents	1
<b>Total annual responses</b>	<b>1</b>
Responses per year = 1	
<b>Total burden hours</b>	<b>14</b>
Estimated time per response = 40 hr for initial application; 15 minutes for renewal letters, years 2 and 3; annualized = 13.5 hours (14)	
<b>Total personnel cost</b>	<b>\$350</b>
Cost per hour = \$25	
<b>Total miscellaneous cost</b> (\$1.67)	<b>\$2</b>
Photocopy (10 pp x .05 x 1=0.50)	
Postage (1.17 x 1=1.17)	

<b>ICA, Federal Government</b>	
<b>Total annual responses</b>	<b>1</b>
<b>Total burden hours</b>	<b>1</b>
Estimated time per response = 2 hr for initial application; 15 minutes for renewal letters, years 2 and 3; annualized = 0.83 hours (1)	
<b>Total personnel cost</b>	<b>\$25</b>
Cost per hour = \$25	
<b>Total miscellaneous cost</b>	<b>0</b>

### **Annual preliminary and final reports**

The purposes of the preliminary and final reports are to provide the Council information upon which decisions are made on coop allocations and on sideboard protection measures. Each fishery cooperative must submit a preliminary report, covering fishing activities through November 1, by December 1 of each year, and a final report by February 1 of the following year to:

North Pacific Fishery Management Council  
605 West 4th Ave, Suite 306  
Anchorage, AK 99501

Annual reports must be postmarked by the submission deadline or received by a private courier service by the submission deadline. The final report may be the preliminary report with a title change or it may incorporate additional material.

Each cooperative collects and summarizes information on its allocated target species all through the year. A private company performs parallel accounting of “sideboard” species for each cooperative. Sideboard species are non-pollock groundfish species allocated annually as incidental catch to AFA and other fishery cooperatives. A summary of each cooperative’s target species and sideboard information is done by another private company which maintains comparable analyses of cooperatives compared with each other in order to keep any one and all cooperatives from overfishing. All three types of information for each cooperative are included in the preliminary and final reports.

#### **Cooperative Preliminary and final written reports must include:**

- Cooperative's allocation of pollock and sideboard species
- Any sub-allocations of pollock and sideboard species made by the cooperative on a vessel-by-vessel basis
- Cooperative's actual retained catch and discards of pollock, sideboard species, and prohibited species catch (PSC) on an area-by-area and vessel-by-vessel basis
- Description of the cooperative’s method to monitor fisheries in which cooperative vessels participate
- Description of any cooperative’s actions taken in response to vessels that exceed their allowed catch and bycatch in pollock and all sideboard fisheries
- Total weight of pollock landed outside State of Alaska waters on a vessel-by-vessel basis
- Number of violations of the ICA, the nature of those violations, and the penalty imposed, if any, against the violating entity

If the Council determined that the salmon ICA did not effectively reduce salmon bycatch, it could initiate a separate action to accomplish salmon bycatch reduction goals. Additionally, NMFS is concerned about the effective execution of the terms and conditions of the ICA. To

address these concerns, regulations at § 679.61(f)(2)(vi) would require AFA preliminary and annual reports to include additional information:

**ICA additions to Preliminary and Annual reports**

- Number of salmon taken by species and season
- Estimated number of salmon avoided as demonstrated by the movement of fishing effort away from salmon savings areas
- Results of the compliance audit
- List of number of appearances vessels appeared on the weekly dirty 20 lists for both salmon species
- Number of violations of the ICA and the nature of those violations
- Penalty imposed, if any, against the violating party.

**b. Cooperative preliminary report**

Only the increases due to the new salmon ICA information requirement are shown for burden hours, personnel costs, and miscellaneous costs. The number of respondents does not change with this new requirement.

<b>Cooperative preliminary report, Respondent</b>	
Estimated number of respondents	11
<b>Total annual responses</b>	<b>11</b>
Estimated responses per respondent = 1	
<b>Total burden hours</b>	<b>88</b>
Estimated hours per response = 8	
<b>Total personnel cost</b>	<b>\$2,200</b>
Personnel cost per hour = 25	
<b>Total miscellaneous cost (2.20)</b>	<b>\$2</b>
Annual photocopy (2 pg x .10 x 11=2.20)	

<b>Cooperative preliminary report, Federal Government</b>	
<b>Total annual responses</b>	11
<b>Total burden hours</b>	<b>11</b>
Estimated hours per response = 1 hr	
<b>Total personnel cost</b>	<b>\$275</b>
11 x \$25 = \$275	
<b>Total miscellaneous cost</b>	<b>\$1</b>
Photocopy 2 copies for public (2 x 2 x 0.10 = 0.40)	

**c. Cooperative final report**

Only the increases due to the new salmon ICA information requirement are shown for burden hours, personnel costs, and miscellaneous costs. The number of respondents does not change with this new requirement.

<b>Cooperative final report, Respondent</b>	
Estimated number of respondents	11
<b>Total annual responses</b>	<b>11</b>
Estimated responses per respondent = 1	
<b>Total burden hours</b>	<b>44</b>
Estimated hours per response = 4	
<b>Total personnel cost</b>	<b>\$1,100</b>
Personnel cost per hour=25	
<b>Total miscellaneous costs (2.20)</b>	<b>\$2</b>
Annual photocopy (2 pg x .10 x 11=2.20)	

<b>Cooperative final report, Federal Government</b>	
Total annual responses	11
<b>Total burden hours</b>	<b>11</b>
Estimated hours per response = 1 hr	
<b>Total personnel cost</b>	<b>\$275</b>
(11 x \$25 = \$275)	
<b>Total miscellaneous cost</b>	<b>\$2</b>
Photocopy 2 copies for public (2 x .10 x 2 = 2.40)	

#### d. Appeals

NMFS would not enforce provisions of the salmon ICA. However, these proposed regulations would require the ICA to include basic provisions necessary to reduce salmon bycatch in the pollock fisheries. Additionally, NMFS would review the ICA for compliance with regulations.

NMFS will approve the initial or an amended salmon ICA if it meets all the requirements specified in regulations. If NMFS disapproves a salmon ICA, the participants may submit a revised salmon ICA or file an administrative appeal as set forth under the administrative appeals procedures described at § 679.43

<b>ICA appeals, Respondent</b>	
Number of respondents	1
<b>Total annual responses</b>	<b>1</b>
Responses per year = 1	
<b>Total burden hours</b>	<b>4</b>
Estimated time per response = 4 hr	
<b>Total personnel cost</b>	<b>\$100</b>
Cost per hour = \$25	
<b>Total miscellaneous cost (\$1.67)</b>	<b>\$2</b>
Photocopy (10 pp x .05 x 1=0.50)	
Postage (1.17 x 1=1.17)	

<b>ICA appeals, Federal Government</b>	
<b>Total annual responses</b>	<b>1</b>
<b>Total burden hours</b>	<b>2</b>
Estimated time per response = 2 hr	
<b>Total personnel cost</b>	<b>\$50</b>
Cost per hour = \$25	
<b>Total miscellaneous cost</b>	<b>0</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 preceding paragraphs, the information gathered has utility. National Oceanic and Atmospheric Administration (NOAA) NMFS 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 #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.**

ICAs and appeals require a signature, and therefore may not be sent by fax or email. The reports may be sent by email.

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

None of the information collected as part of this information collection duplicates other collections. This information collection is part of a specialized and technical program that is not like any other.

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

This 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.**

If the information were not collected annually, NMFS would be unable to implement and maintain the ICA, and therefore to reduce salmon bycatch in the pollock trawl fishery.

**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.**

The NMFS Alaska Region will submit a proposed rule (RIN 0648-AU03) coincident with this submission, requesting comments from the public

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

No payment or gift is provided under this program.

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

The information collected is confidential under section 402(b) of the Magnuson-Stevens Act. It is also confidential under NOAA Administrative Order 216-100, which sets forth procedures to protect confidentiality of fishery statistics.

**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: 11. Estimated total responses: 167, increased from 165. Estimated total burden: 470 hr, increased from 320 hr. Estimated total personnel costs: \$11,750, increased from \$8,000.

**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 #12 above).**

Estimated total miscellaneous costs: \$225, increased from \$216.

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

Estimated total burden: 48 hr, increased from 23 hr. Estimated total personnel cost: \$1,201 increased from \$576. Estimated total miscellaneous cost: \$47, increased from \$44.

**15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.**

The salmon ICA is a new management approach to the AFA cooperatives. The Interagency Agreement adds one response, 14 hours and \$2 in miscellaneous costs. Additional burden and costs for the cooperative preliminary and final reports are 132 hours and \$4, and the appeal of disapproval of a Salmon ICA adds 4 hours and \$2. Total increases due to this revision are 150 hours and \$8 (rounded up to \$9 in ROCIS).

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

The results of this collection-of-information will not be published.

**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.**

The ICA, preliminary report, final report, and ICA appeals are not forms; therefore, the expiration date is not displayed.

**18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.**

The ICA, preliminary report, final report, and ICA appeals are not forms; therefore, the certification statement is not displayed.

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

This collection does not employ statistical methods.

# **Magnuson-Stevens Fishery Conservation and Management Act**

**Public Law 94-265**

**As amended through October 11, 1996**

**AN ACT**

**To provide for the conservation and management of the fisheries,  
and for other purposes.**

**J.Feder version (12/19/96)**

## **SEC. 2. FINDINGS, PURPOSES, AND POLICY 16 U.S.C. 1801**

**(a) FINDINGS.**--The Congress finds and declares the following:

(1) The fish off the coasts of the United States, the highly migratory species of the high seas, the species, which dwell on or in the Continental Shelf appertaining to the United States, and the anadromous species, which spawn in United States rivers or estuaries, constitute valuable and renewable natural resources. These fishery resources contribute to the food supply, economy, and health of the Nation and provide recreational opportunities.

### **104-297**

(2) Certain stocks of fish have declined to the point where their survival is threatened, and other stocks of fish have been so substantially reduced in number that they could become similarly threatened as a consequence of (A) increased fishing pressure, (B) the inadequacy of fishery resource conservation and management practices and controls, or (C) direct and indirect habitat losses which have resulted in a diminished capacity to support existing fishing levels.

(3) Commercial and recreational fishing constitutes a major source of employment and contributes significantly to the economy of the Nation. Many coastal areas are dependent upon fishing and related activities, and their economies have been badly damaged by the overfishing of fishery resources at an ever-increasing rate over the past decade. The activities of massive foreign fishing fleets in waters adjacent to such coastal areas have contributed to such damage, interfered with domestic fishing efforts, and caused destruction of the fishing gear of United States fishermen.

(4) International fishery agreements have not been effective in preventing or terminating the overfishing of these valuable fishery resources. There is danger that irreversible effects from overfishing will take place before an effective international agreement on fishery management jurisdiction can be negotiated, signed, ratified, and implemented.

(5) Fishery resources are finite but renewable. If placed under sound management before overfishing has caused irreversible effects, the fisheries can be conserved and maintained so as to provide optimum yields on a continuing basis.

### **104-297**

(6) A national program for the conservation and management of the fishery resources of the United States is necessary to prevent overfishing, to rebuild overfished stocks, to insure conservation, to facilitate long-term protection of essential fish habitats, and to realize the full potential of the Nation's fishery resources.

(7) A national program for the development of fisheries, which are underutilized or not utilized by the United States fishing industry, including bottom fish off Alaska, is necessary to assure that our citizens benefit from the employment, food supply, and revenue which could be generated thereby.

### **101-627**

(8) The collection of reliable data is essential to the effective conservation, management, and scientific understanding of the fishery resources of the United States.

**104-297**

(9) One of the greatest long-term threats to the viability of commercial and recreational fisheries is the continuing loss of marine, estuarine, and other aquatic habitats. Habitat considerations should receive increased attention for the conservation and management of fishery resources of the United States.

**104-297**

(10) Pacific Insular Areas contain unique historical, cultural, legal, political, and geographical circumstances which make fisheries resources important in sustaining their economic growth.

**(b) PURPOSES.**--It is therefore declared to be the purposes of the Congress in this Act--**99-659, 101-627, 102-251**

(1) to take immediate action to conserve and manage the fishery resources found off the coasts of the United States, and the anadromous species and Continental Shelf fishery resources of the United States, by exercising (A) sovereign rights for the purposes of exploring, exploiting, conserving, and managing all fish within the exclusive economic zone established by Presidential Proclamation 5030, dated March 10, 1983, and (B) exclusive fishery management authority beyond the exclusive economic zone over such anadromous species and Continental Shelf fishery resources[, and fishery resources in the special areas] \*;

(2) to support and encourage the implementation and enforcement of international fishery agreements for the conservation and management of highly migratory species, and to encourage the negotiation and implementation of additional such agreements as necessary;

**104-297**

(3) to promote domestic commercial and recreational fishing under sound conservation and management principles, including the promotion of catch and release programs in recreational fishing;

(4) to provide for the preparation and implementation, in accordance with national standards, of fishery management plans which will achieve and maintain, on a continuing basis, the optimum yield from each fishery;

**101-627**

(5) to establish Regional Fishery Management Councils to exercise sound judgment in the stewardship of fishery resources through the preparation, monitoring, and revision of such plans under circumstances (A) which will enable the States, the fishing industry, consumer and environmental organizations, and other interested persons to participate in, and advise on, the establishment and administration of such plans, and (B) which take into account the social and economic needs of the States;

**95-354, 96-561, 104-297**

(6) to encourage the development by the United States fishing industry of fisheries which are currently underutilized or not utilized by United States fishermen, including bottom fish off Alaska, and to that end, to ensure that optimum yield determinations promote such development in a non-wasteful manner; and

(7) to promote the protection of essential fish habitat in the review of projects conducted under Federal permits, licenses, or other authorities that affect or have the potential to affect such habitat.

**(c) POLICY.**--It is further declared to be the policy of the Congress in this Act--

(1) to maintain without change the existing territorial or other ocean jurisdiction of the United States for all purposes other than the conservation and management of fishery resources, as provided for in this Act;

(2) to authorize no impediment to, or interference with, recognized legitimate uses of the high seas, except as necessary for the conservation and management of fishery resources, as provided for in this Act;

**101-627, 104-297**

(3) to assure that the national fishery conservation and management program utilizes, and is based upon, the best scientific information available; involves, and is responsive to the needs of, interested and affected States and citizens; considers efficiency; draws upon Federal, State, and academic capabilities in carrying out research, administration, management, and enforcement; considers the effects of fishing on immature fish and encourages development of practical measures that minimize bycatch and avoid unnecessary waste of fish; and is workable and effective;

(4) to permit foreign fishing consistent with the provisions of this Act; **99-659, 101-627**

(5) to support and encourage active United States efforts to obtain internationally acceptable agreements which provide for effective conservation and management of fishery resources, and to secure agreements to regulate fishing by vessels or persons beyond the exclusive economic zones of any nation;

#### **101-627**

(6) to foster and maintain the diversity of fisheries in the United States; and **104-297**

(7) to ensure that the fishery resources adjacent to a Pacific Insular Area, including resident or migratory stocks within the exclusive economic zone adjacent to such areas, be explored, developed, conserved, and managed for the benefit of the people of such area and of the United States.

### **SEC. 3. DEFINITIONS 16 U.S.C. 1802**

As used in this Act, unless the context otherwise requires--

(1) The term "anadromous species" means species of fish, which spawn in fresh, or estuarine waters of the United States and which migrate to ocean waters.

#### **104-297**

(2) The term "bycatch" means fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards. Such term does not include fish released alive under a recreational catch and release fishery management program.

#### **104-297**

(3) The term "charter fishing" means fishing from a vessel carrying a passenger for hire (as defined in section 2101(21a) of title 46, United States Code) who is engaged in recreational fishing.

(4) The term "commercial fishing" means fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter or trade.

(5) The term "conservation and management" refers to all of the rules, regulations, conditions, methods, and other measures (A) which are required to rebuild, restore, or maintain, and which are useful in rebuilding, restoring, or maintaining, any fishery resource and the marine environment; and (B) which are designed to assure that--

(i) a supply of food and other products may be taken, and that recreational benefits may be obtained, on a continuing basis;

(ii) irreversible or long-term adverse effects on fishery resources and the marine environment are avoided; and

(iii) there will be a multiplicity of options available with respect to future uses of these resources.

(6) The term "Continental Shelf" means the seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, of the United States, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of such areas.

#### **99-659, 104-297**

(7) The term "Continental Shelf fishery resources" means the following:

CNIDARIA

**Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006**

**Public Law 109-479**

**109th Congress (2nd Session)**

The following are excerpts, **highlighted in red**, from the final legislation and/or conference report which contain references to and studies for The National Academies. (Pound signs [##] between passages denote the deletion of unrelated text.)

HR5946 Pombo (R.-Calif.) 12/09/06  
Enrolled (finally passed both houses)

To amend the Magnuson-Stevens Fishery Conservation and Management Act to authorize activities to promote improved monitoring and compliance for high seas fisheries, or fisheries governed by international fishery management agreements, and for other purposes.

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**SEC. 113. REGIONAL COASTAL DISASTER ASSISTANCE, TRANSITION, AND RECOVERY PROGRAM.**

(a) IN GENERAL.—Title III (16 U.S.C. 1851 et seq.) is amended by adding at the end the following:

**“SEC. 315. REGIONAL COASTAL DISASTER ASSISTANCE, TRANSITION, AND RECOVERY PROGRAM.**

“(a) IN GENERAL.—When there is a catastrophic regional fishery disaster the Secretary may, upon the request of, and in consultation with, the Governors of affected States, establish a regional economic transition program to provide immediate disaster relief assistance to the fishermen, charter fishing operators, United States fish processors, and owners of related fishery infrastructure affected by the disaster.

“(b) PROGRAM COMPONENTS.—

“(1) IN GENERAL.—Subject to the availability of appropriations, the program shall provide funds or other economic assistance to affected entities, or to governmental entities for disbursement to affected entities, for—

“(A) meeting immediate regional shoreside fishery infrastructure needs, including processing facilities, cold storage facilities, ice houses, docks, including temporary docks and storage facilities, and other related shoreside fishery support facilities and infrastructure while ensuring that those projects will not result in an increase or replacement of fishing capacity;

“(B) financial assistance and job training assistance for fishermen who wish to remain in a fishery in the region that may be temporarily closed as a result of environmental or other effects associated with the disaster;

“(C) funding, pursuant to the requirements of section 312(b), to fishermen who are willing to scrap a fishing vessel and permanently surrender permits for fisheries named on that vessel; and

“(D) any other activities authorized under section 312 of this Act or section 308(d) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(d)).

“(2) JOB TRAINING.—Any fisherman who decides to scrap a fishing vessel under the program shall be eligible for job training assistance.

“(3) STATE PARTICIPATION OBLIGATION.—The participation by a State in the program shall be conditioned upon a commitment by the appropriate State entity to ensure that the relevant State fishery meets the requirements of section 312(b) of this Act to ensure excess capacity does not re-enter the fishery.

“(4) NO MATCHING REQUIRED.—The Secretary may waive the matching requirements of section 312 of this Act, section 308 of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107), and any other provision of law under which the Federal share of the cost of any activity is limited to less than 100 percent if the Secretary determines that—

“(A) no reasonable means are available through which applicants can meet the matching requirement; and

“(B) the probable benefit of 100 percent Federal financing outweighs the public interest in imposition of the matching requirement.

“(5) NET REVENUE LIMIT INAPPLICABLE.—Section 308(d)(3) of the Interjurisdictional Fisheries Act (16 U.S.C. 4107(d)(3)) shall not apply to assistance under this section.

“(c) REGIONAL IMPACT EVALUATION.—Within 2 months after a catastrophic regional fishery disaster the Secretary shall provide the Governor of each State participating in the program a comprehensive economic and socio-economic evaluation of the affected region’s fisheries to assist the Governor in assessing the current and future economic viability of affected fisheries, including the economic impact of foreign fish imports and the direct, indirect, or environmental impact of the disaster on the fishery and coastal communities.

“(d) CATASTROPHIC REGIONAL FISHERY DISASTER DEFINED.—In this section the term ‘catastrophic regional fishery disaster’ means a natural disaster, including a hurricane or tsunami, or a regulatory closure (including regulatory closures resulting from judicial action) to protect human health or the marine environment, that—

“(1) results in economic losses to coastal or fishing communities;

“(2) affects more than 1 State or a major fishery managed by a Council or interstate fishery commission; and

“(3) is determined by the Secretary to be a commercial fishery failure under section 312(a) of this Act or a fishery resource disaster or section 308(d) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(d)).”.

(b) SALMON PLAN AND STUDY.—

(1) RECOVERY PLAN.—Not later than 6 months after the date of enactment of this Act, the Secretary of Commerce shall complete a recovery plan for Klamath River Coho salmon and make it available to the public.

(2) ANNUAL REPORT.—Not later than 2 years after the date of enactment of this Act, and annually thereafter, the Secretary of Commerce shall submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Resources on—

(A) the actions taken under the recovery plan and other law relating to recovery of Klamath River Coho salmon, and how those actions are specifically contributing to its recovery;

(B) the progress made on the restoration of salmon spawning habitat, including water conditions as they relate to salmon health and recovery, with emphasis on the Klamath River and its tributaries below Iron Gate Dam;

(C) the status of other Klamath River anadromous fish populations, particularly Chinook salmon; and

(D) the actions taken by the Secretary to address the calendar year 2003 National Research Council recommendations regarding monitoring and research on Klamath River Basin salmon stocks.

(c) OREGON AND CALIFORNIA SALMON FISHERY.—Federally recognized Indian tribes and small businesses, including fishermen, fish processors, and related businesses serving the fishing industry, adversely affected by Federal closures and fishing restrictions in the Oregon and California 2006 fall Chinook salmon fishery are eligible to receive direct assistance under section 312(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(a)) and section 308(d) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(d)). The Secretary may use no more than 4 percent of any monetary assistance to pay for administrative costs.

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## **SEC. 201. RECREATIONAL FISHERIES INFORMATION.**

Section 401 (16 U.S.C. 1881) is amended by striking subsection (g) and inserting the following:

“(g) RECREATIONAL FISHERIES.—

“(1) FEDERAL PROGRAM.—The Secretary shall establish and implement a regionally based registry program for recreational fishermen in each of the 8 fishery management regions. The program, which shall not require a fee before January 1, 2011, shall provide for—

“(A) the registration (including identification and contact information) of individuals who engage in recreational fishing—

“(i) in the Exclusive Economic Zone;

“(ii) for anadromous species; or

“(iii) for Continental Shelf fishery resources beyond the Exclusive Economic Zone; and

“(B) if appropriate, the registration (including the ownership, operator, and identification of the vessel) of vessels used in such fishing.

“(2) STATE PROGRAMS.—The Secretary shall exempt from registration under the program recreational fishermen and charter fishing vessels licensed, permitted, or registered under the laws of a State if the Secretary determines that information from the State program is suitable for the Secretary’s use or is used to assist in completing marine recreational fisheries statistical surveys, or evaluating the effects of proposed conservation and management measures for marine recreational fisheries.

“(3) DATA COLLECTION.—

“(A) IMPROVEMENT OF THE MARINE RECREATIONAL FISHERY STATISTICS SURVEY.—Within 24 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, the Secretary, in consultation with representatives of the recreational fishing industry and experts in statistics, technology, and other appropriate fields, shall establish a program to improve the quality and accuracy of information generated by the Marine Recreational Fishery Statistics Survey, with a goal of achieving acceptable accuracy and utility for each individual fishery.

“(B) NRC REPORT RECOMMENDATIONS.—The program shall take into consideration and, to the extent feasible, implement the recommendations of the National Research Council in its report *Review of Recreational Fisheries Survey Methods (2006)*, including—

“(i) redesigning the Survey to improve the effectiveness and appropriateness of sampling and estimation procedures, its applicability to various kinds of management decisions, and its usefulness for social and economic analyses; and

“(ii) providing for ongoing technical evaluation and modification as needed to meet emerging management needs.

“(C) METHODOLOGY.—Unless the Secretary determines that alternate methods will achieve this goal efficiently and effectively, the program shall, to the extent possible, include—

“(i) an adequate number of intercepts to accurately estimate recreational catch and effort;

“(ii) use of surveys that target anglers registered or licensed at the State or Federal level to collect participation and effort data;

“(iii) collection and analysis of vessel trip report data from charter fishing vessels;

“(iv) development of a weather corrective factor that can be applied to recreational catch and effort estimates; and

“(v) an independent committee composed of recreational fishermen, fishery academics, persons with expertise in assessment and survey design, appropriate and experienced personnel from the National Marine Fisheries Service, and other individuals to evaluate the collection estimates, geographic, and other variables related to intercepts dockside and to identify deficiencies in recreational data collection, and possible correction measures.

“(D) DEADLINE.—The Secretary shall complete the program under this paragraph and implement the improved

Marine Recreational Fishery Statistics Survey not later than January 1, 2009.

“(4) REPORT.—Within 24 months after establishment of the program, the Secretary shall submit a report to Congress that describes the progress made toward achieving the goals and objectives of the program.”.

#### **SEC. 212. IMPACT OF TURTLE EXCLUDER DEVICES ON SHRIMPING.**

(a) **IN GENERAL.**—The Undersecretary of Commerce for Oceans and Atmosphere shall execute an agreement with the National Academy of Sciences to conduct, jointly, a multi-year, comprehensive in-water study designed—

- (1) to measure accurately the efforts and effects of shrimp fishery efforts to utilize turtle excluder devices;
- (2) to analyze the impact of those efforts on sea turtle mortality, including interaction between turtles and shrimp trawlers in the inshore, nearshore, and offshore waters of the Gulf of Mexico and similar geographical locations in the waters of the Southeastern United States; and
- (3) to evaluate innovative technologies to increase shrimp retention in turtle excluder devices while ensuring the protection of endangered and threatened sea turtles.

(b) **OBSERVERS.**—In conducting the study, the Undersecretary shall ensure that observers are placed onboard commercial shrimp fishing vessels where appropriate or necessary.

(c) **INTERIM REPORTS.**—During the course of the study and until a final report is submitted to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Resources, the National Academy of Sciences shall transmit interim reports to the Committees biannually containing a summary of preliminary findings and conclusions from the study.

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#### **SEC. 701. STUDY OF THE ACIDIFICATION OF THE OCEANS AND EFFECT ON FISHERIES.**

The Secretary of Commerce shall request the National Research Council to conduct a study of the acidification of the oceans and how this process affects the United States.

#### **SEC. 804. TSUNAMI FORECASTING AND WARNING PROGRAM.**

(a) **In General.**—The Administrator, through the National Weather Service and in consultation with other relevant Administration offices, shall operate a program to provide tsunami detection, forecasting, and warnings for the Pacific and Arctic Ocean regions and for the Atlantic Ocean, Caribbean Sea, and Gulf of Mexico region.

(b) **Components.**—The program under this section shall—

- (1) include the tsunami warning centers established under subsection (d);
- (2) utilize and maintain an array of robust tsunami detection technologies;
- (3) maintain detection equipment in operational condition to fulfill the detection, forecasting, and warning requirements of this title;
- (4) provide tsunami forecasting capability based on models and measurements, including tsunami inundation models and maps for use in increasing the preparedness of communities, including through the TsunamiReady program;
- (5) maintain data quality and management systems to support the requirements of the program;

(6) include a cooperative effort among the Administration, the United States Geological Survey, and the National Science Foundation under which the Geological Survey and the National Science Foundation shall provide rapid and reliable seismic information to the Administration from international and domestic seismic networks;

(7) provide a capability for the dissemination of warnings to at-risk States and tsunami communities through rapid and reliable notification to government officials and the public, including utilization of and coordination with existing Federal warning systems, including the National Oceanic and Atmospheric Administration Weather Radio All Hazards Program;

(8) allow, as practicable, for integration of tsunami detection technologies with other environmental observing technologies; and

(9) include any technology the Administrator considers appropriate to fulfill the objectives of the program under this section.

(c) System Areas.—The program under this section shall operate—

(1) a Pacific tsunami warning system capable of forecasting tsunami anywhere in the Pacific and Arctic Ocean regions and providing adequate warnings; and

(2) an Atlantic Ocean, Caribbean Sea, and Gulf of Mexico tsunami warning system capable of forecasting tsunami and providing adequate warnings in areas of the Atlantic Ocean, Caribbean Sea, and Gulf of Mexico that are determined—

(A) to be geologically active, or to have significant potential for geological activity; and

(B) to pose significant risks of tsunami for States along the coastal areas of the Atlantic Ocean, Caribbean Sea, or Gulf of Mexico.

(d) Tsunami Warning Centers.—

(1) IN GENERAL.—The Administrator, through the National Weather Service, shall maintain or establish—

(A) a Pacific Tsunami Warning Center in Hawaii;

(B) a West Coast and Alaska Tsunami Warning Center in Alaska; and

(C) any additional forecast and warning centers determined by the National Weather Service to be necessary.

(2) RESPONSIBILITIES.—The responsibilities of each tsunami warning center shall include—

(A) continuously monitoring data from seismological, deep ocean, and tidal monitoring stations;

(B) evaluating earthquakes that have the potential to generate tsunami;

(C) evaluating deep ocean buoy data and tidal monitoring stations for indications of tsunami resulting from earthquakes and other sources;

(D) disseminating forecasts and tsunami warning bulletins to Federal, State, and local government officials and the public;

(E) coordinating with the tsunami hazard mitigation program described in section 805 to ensure ongoing sharing of information between forecasters and emergency management officials; and

(F) making data gathered under this title and post-warning analyses conducted by the National Weather Service or other relevant Administration offices available to researchers.

(e) Transfer of Technology; Maintenance and Upgrades.—

(1) IN GENERAL.—In carrying out this section, the National Weather Service, in consultation with other relevant Administration offices, shall—

(A) develop requirements for the equipment used to forecast tsunamis, which shall include provisions for multipurpose detection platforms, reliability and performance metrics, and to the maximum extent practicable how the equipment will be integrated with other United States and global ocean and coastal observation systems, the global earth observing system of systems, global seismic networks, and the Advanced National Seismic System;

(B) develop and execute a plan for the transfer of technology from ongoing research described in section 806 into the program under this section; and

(C) ensure that maintaining operational tsunami detection equipment is the highest priority within the program carried out under this title.

(2) REPORT TO CONGRESS.—

(A) Not later than 1 year after the date of enactment of this Act, the National Weather Service, in consultation with other relevant Administration offices, shall transmit to Congress a report on how the tsunami forecast system under this section will be integrated with other United States and global ocean and coastal observation systems, the global earth observing system of systems, global seismic networks, and the Advanced National Seismic System.

(B) Not later than 3 years after the date of enactment of this Act, the National Weather Service, in consultation with other relevant Administration offices, shall transmit a report to Congress on how technology developed under section 806 is being transferred into the program under this section.

(f) Federal Cooperation.—When deploying and maintaining tsunami detection technologies, the Administrator shall seek the assistance and assets of other appropriate Federal agencies.

(g) Annual Equipment Certification.—At the same time Congress receives the budget justification documents in support of the President's annual budget request for each fiscal year, the Administrator shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science of the House of Representatives a certification that—

(1) identifies the tsunami detection equipment deployed pursuant to this title, as of December 31 of the preceding calendar year;

(2) certifies which equipment is operational as of December 31 of the preceding calendar year;

(3) in the case of any piece of such equipment that is not operational as of such date, identifies that equipment and describes the mitigation strategy that is in place—

(A) to repair or replace that piece of equipment within a reasonable period of time; or

(B) to otherwise ensure adequate tsunami detection coverage;

(4) identifies any equipment that is being developed or constructed to carry out this title but which has not yet been deployed, if the Administration has entered into a contract for that equipment prior to December 31 of the preceding calendar year, and provides a schedule for the deployment of that equipment; and

(5) certifies that the Administrator expects the equipment described in paragraph (4) to meet the requirements, cost, and schedule provided in that contract.

(h) Congressional Notifications.—The Administrator shall notify the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science of the House of Representatives within 30 days of—

(1) impaired regional forecasting capabilities due to equipment or system failures; and

(2) significant contractor failures or delays in completing work associated with the tsunami forecasting and warning system.

(i) Report.—Not later than January 31, 2010, the Comptroller General of the United States shall transmit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science of the House of Representatives that—

(1) evaluates the current status of the tsunami detection, forecasting, and warning system and the tsunami hazard mitigation program established under this title, including progress toward tsunami inundation mapping of all coastal areas vulnerable to tsunami and whether there has been any degradation of services as a result of the expansion of the program;

(2) evaluates the National Weather Service's ability to achieve continued improvements in the delivery of tsunami detection, forecasting, and warning services by assessing policies and plans for the evolution of modernization systems, models, and computational abilities (including the adoption of new technologies); and

(3) lists the contributions of funding or other resources to the program by other Federal agencies, particularly agencies participating in the program.

(j) External Review.—The Administrator shall enter into an arrangement with the National Academy of Sciences to review the tsunami detection, forecast, and warning program established under this title to assess further modernization and coverage needs, as well as long-term operational reliability issues, taking into account measures implemented under this title. The review shall also include an assessment of how well the forecast equipment has been integrated into other United States and global ocean and coastal observation systems and the global earth observing system of systems. Not later than 2 years after the date of enactment of this Act, the Administrator shall transmit a report containing the National Academy of Sciences' recommendations, the Administrator's responses to the recommendations, including those where the Administrator disagrees with the Academy, a timetable to implement the accepted recommendations, and the cost of implementing all the Academy's recommendations, to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science of the House of Representatives.

(k) Report.—Not later than 3 months after the date of enactment of this Act, the Administrator shall establish a process for monitoring and certifying contractor performance in carrying out the requirements of any contract to construct or deploy tsunami detection equipment, including procedures and penalties to be imposed in cases of significant contractor failure or negligence.

## § 679.1 Purpose and scope

### ***Subpart A--General***

#### **§ 679.1 Purpose and scope.**

Regulations in this part were developed by the Council under the Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act. Along with part 600 of this chapter, these regulations implement the following:

#### ***(a) Fishery Management Plan for Groundfish of the Gulf of Alaska.***

(1) Regulations in this part govern commercial fishing for groundfish in the GOA by vessels of the United States (see subparts A, B, D, and E of this part).

(2) The following State of Alaska regulations are not preempted by this part for vessels regulated under this part fishing for demersal shelf rockfish in the Southeast Outside District, and which are registered under the laws of the State of Alaska: 5 AAC 28.110, fishing seasons; 5 AAC 28.130, gear; 5 AAC 28.160, harvest guidelines; 5 AAC 28.190, harvest of bait by commercial permit holders.

#### ***(b) Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area.***

Regulations in this part govern commercial fishing for groundfish in the BSAI by vessels of the United States (see subparts A, B, C, D, and E of this part).

#### ***(c) [Reserved]***

#### ***(d) IFQ Program for sablefish and halibut.***

The IFQ management measures for the commercial fisheries that use fixed gear to harvest sablefish and halibut (see subparts A, B, D, and E of this part).

#### ***(1) Sablefish.***

(i) Regulations in this part govern commercial fishing for sablefish by vessels of the United States:

(A) Using fixed gear within that portion of the GOA and the BSAI over which the United States exercises exclusive fishery management authority; and

(B) Using fixed gear in waters of the State of Alaska adjacent to the BSAI and the GOA, provided that aboard such vessels are persons who currently hold quota shares, IFQ permits, or IFQ cards.

(ii) Regulations in this part do not govern commercial fishing for sablefish in Prince William Sound or under a State of Alaska limited entry program.

#### ***(2) Halibut.***

Regulations in this part govern commercial fishing for halibut by vessels of the United States using fixed gear, as that term is defined in 50 CFR 679.2, in and off of Alaska.

#### ***(e) Western Alaska CDQ Program.***

The goals and purpose of the CDQ program are to allocate CDQ to eligible Western Alaska communities to provide the means for starting or supporting commercial fisheries business activities that will result in an ongoing, regionally based, fisheries-related economy.

#### ***(f) Groundfish Observer Program. (applicable through December 31, 2007).***

Regulations in this part govern elements of the Groundfish Observer Program for the BSAI groundfish and GOA groundfish fisheries under the Council's authority (see subpart E of this part).

#### ***(g) Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs.***

Regulations in this part govern commercial fishing for king and Tanner crab in the Bering Sea and Aleutian Islands Area by vessels of the United States, **and supersede** State of Alaska regulations applicable

### § 679.1 Purpose and scope

to the commercial king and Tanner crab fisheries in the Bering Sea and Aleutians Islands Area EEZ that are determined to be inconsistent with the FMP (see **subpart A, B, and E** of this part). **Additional regulations governing commercial fishing for, and processing of, king and Tanner crab managed pursuant to section 313(j) of the Magnuson-Stevens Act and the Crab Rationalization Program are codified at 50 CFR part 680.**

#### *(h) Fishery Management Plan for the Scallop Fishery off Alaska.*

(1) Regulations in this part govern commercial fishing for scallops in the Federal waters off Alaska by vessels of the United States (see subpart A of this part).

(2) State of Alaska laws and regulations that are consistent with the FMP and with the regulations in this part apply to vessels of the United States that are fishing for scallops in the Federal waters off Alaska.

#### *(i) Fishery Management Plan for the Salmon Fisheries in the EEZ off the Coast of Alaska (Salmon FMP).*

(1) Regulations in this part govern fishing for salmon by fishing vessels of the United States in the Salmon Management Area.

(2) State of Alaska laws and regulations that are consistent with the Salmon FMP and with the regulations in this part apply to vessels of the United States that are fishing for salmon in the Salmon Management Area.

#### *(j) License Limitation Program (LLP).*

(1) Regulations in this part implement the **LLP** for the commercial groundfish fisheries in the EEZ off Alaska and **the LLP** for the commercial crab fisheries in the Bering Sea and Aleutians Islands Area.

(2) Regulations in this part govern the commercial fishing for **groundfish under the LLP** by vessels of the United States using authorized gear within the GOA and the **Bering Sea and Aleutians Islands Area** and the commercial fishing for crab species **under the LLP** by vessels of the United States

using authorized gear within the Bering Sea and Aleutians Islands Area.

(3) Regulations in this part implement the license limitation program for the commercial scallop fishery in the EEZ off Alaska.

(4) Regulations in this part govern the commercial fishing for scallops by vessels of the United States using authorized gear within the EEZ off Alaska.

#### *(k) American Fisheries Act and AI directed pollock fishery measures.*

Regulations in this part were developed by NMFS and the Council under the Magnuson-Stevens Act, the American Fisheries Act (AFA), and the Consolidated Appropriations Act of 2004 to govern commercial fishing for BSAI pollock according to the requirements of the AFA and the Consolidated Appropriations Act of 2004. This part also governs payment and collection of the loan, under the AFA, the Magnuson-Stevens Act, and Title XI of the Merchant Marine Act, 1936, made to all those persons who harvest pollock from the directed fishing allowance allocated to the inshore component under section 206(b)(1) of the AFA.

**TITLE III -- NATIONAL FISHERY MANAGEMENT PROGRAM**

**SEC. 301. NATIONAL STANDARDS FOR FISHERY  
CONSERVATION AND MANAGEMENT**

**16 U.S.C. 1851**

**(a) IN GENERAL.**--Any fishery management plan prepared, and any regulation promulgated to implement any such plan, pursuant to this title shall be consistent with the following national standards for fishery conservation and management:

**98-623**

(1) Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.

(2) Conservation and management measures shall be based upon the best scientific information available.

(3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

(4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

**104-297**

(5) Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

(7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

**104-297**

(8) Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

**104-297**

(9) Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

**104-297**

(10) Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

**97-453**

**(b) GUIDELINES.**-- The Secretary shall establish advisory guidelines (which shall not have the force and effect of law), based on the national standards, to assist in the development of fishery management plans.

**§ 679.43 Determinations and appeals.**

**(a) General.**

This section describes the procedure for appealing initial administrative determinations made **in this title** under parts 300, 679, 680, and subpart E of **part 300**. This section does not apply to initial administrative determinations made under § 679.30(d).

**(b) Who may appeal.**

Any person whose interest is directly and adversely affected by an initial administrative determination may file a written appeal. For purposes of this section, such persons will be referred to as "applicant" or "appellant."

**(c) Submission of appeals.**

Appeals must be in writing and must be mailed to the

National Marine Fisheries Service  
Office of Administrative Appeals (OAA)  
P. O. Box 21668,  
Juneau, AK 99802-1668

or delivered to

National Marine Fisheries Service  
Attention: Appeals (OAA)  
709 West 9th St., Room 453  
Juneau, AK 99801

Appeals may be transmitted by facsimile to (907) 586-9361. Additional information about appeals may be obtained by calling (907) 586-7258, and by accessing Office of Administrative Appeals section of the NMFS Alaska Region website <http://www.fakr.noaa.gov>.

**(d) Timing of appeals.**

(1) If an applicant appeals an initial administrative determination, the appeal must be filed not later than 60 days after the date the determination is issued.

(2) The time period within which an appeal may be filed begins to run on the date the initial administrative determination is issued. If the last day of the time period is a Saturday, Sunday, or Federal holiday, the time period will extend to the close of business on the next business day.

**(e) Address of record.**

General. NMFS will establish as the address of record the address used by the applicant in initial correspondence to NMFS concerning the application. Notifications of all actions affecting the applicant after establishing an address of record will be mailed to that address, unless the applicant provides NMFS, in writing, with any changes to that address. NMFS bears no responsibility if a notification is sent to the address of record and is not received because the applicant's actual address has changed without notification to NMFS.

**(f) Statement of reasons for appeals.**

Applicants must timely submit a full written statement in support of the appeal, including a concise statement of the reasons the initial administrative determination has a direct and adverse effect on the applicant and should be reversed or modified. If the applicant requests a hearing on any issue presented in the appeal, such request for hearing must be accompanied by a concise written statement raising genuine and substantial issues of adjudicative fact for resolution and a list of available and specifically identified reliable evidence upon which the factual issues can be resolved. The appellate officer will limit his/her review to the issues stated in the appeal; all issues not set out in the appeal will be waived.

**(g) Hearings.**

The appellate officer will review the applicant's appeal and request for hearing, and has discretion to proceed as follows:

(1) Deny the appeal;

(2) Issue a decision on the merits of the appeal, if the record contains sufficient information on which to reach final judgment; or

§ 679.43 Determinations and appeals

(3) Order that a hearing be conducted. The appellate officer may so order only if the appeal demonstrates the following:

(i) There is a genuine and substantial issue of adjudicative fact for resolution at a hearing. A hearing will not be ordered on issues of policy or law.

(ii) The factual issue can be resolved by available and specifically identified reliable evidence. A hearing will not be ordered on the basis of mere allegations or denials or general descriptions of positions and contentions.

(iii) The evidence described in the request for hearing, if established at hearing, would be adequate to justify resolution of the factual issue in the way sought by the applicant. A hearing will not be ordered if the evidence described is insufficient to justify the factual determination sought, even if accurate.

(iv) Resolution of the factual issue in the way sought by the applicant is adequate to justify the action requested. A hearing will not be ordered on factual issues that are not determinative with respect to the action requested.

***(h) Types of hearings.***

If the appellate officer determines that a hearing should be held to resolve one or more genuine and substantial issues of adjudicative fact, he/she may order:

(1) A written hearing, as provided in paragraph (m) of this section; or

(2) An oral hearing, as provided in paragraph (n) of this section.

***(i) Authority of the appellate officer.***

The appellate officer is vested with general authority to conduct all hearings in an orderly manner, including the authority to:

(1) Administer oaths.

(2) Call and question witnesses.

(3) Issue a written decision based on the record.

***(j) Evidence.***

All evidence that is relevant, material, reliable, and probative may be included in the record. Formal rules of evidence do not apply to hearings conducted under this section.

***(k) Appellate officers' decisions.***

The appellate officer will close the record and issue a decision after determining there is sufficient information to render a decision on the record of the proceedings and that all procedural requirements have been met. The decision must be based solely on the record of the proceedings. Except as provided in paragraph (o) of this section, an appellate officer's decision takes effect 30 days after it is issued and, upon taking effect, is the final agency action for purposes of judicial review.

***(l) Disqualification of an appellate officer.***

(1) The appellate officer will withdraw from an appeal at any time he/she deems himself/herself disqualified.

(2) The appellate officer may withdraw from an appeal on an appellant's motion if:

(i) The motion is entered prior to the appellate officer's issuance of a decision; and

(ii) The appellant demonstrates that the appellate officer has a personal bias or any other basis for disqualification.

(3) If the appellate officer denies a motion to withdraw, he/she will so rule on the record.

***(m) Written hearing.***

(1) An appellate officer may order a written hearing under paragraph (h)(1) of this section if he/she:

(i) Orders a hearing as provided in paragraph (g)(3) of this section; and

§ 679.43 Determinations and appeals

(ii) Determines that the issues to be resolved at hearing can be resolved by allowing the appellant to present written materials to support his/her position.

(2) After ordering a written hearing, the appellate officer will:

(i) Provide the appellant with notification that a written hearing has been ordered.

(ii) Provide the appellant with a statement of issues to be determined at hearing.

(iii) Provide the appellant with 30 days to file a written response. The appellant may also provide documentary evidence to support his/her position. The period to file a written response may be extended at the sole discretion of the appellate officer, if the appellant shows good cause for the extension.

(3) The appellate officer may, after reviewing the appellant's written response and documentary evidence:

(i) Order that an oral hearing be held, as provided in paragraph (h)(2) of this section, to resolve issues that cannot be resolved through the written hearing process;

(ii) Request supplementary evidence from the appellant before closing the record; or

(iii) Close the record.

(4) The appellate officer will close the record and issue a decision after determining that the information on the record is sufficient to render a decision.

**(n) Oral hearing.**

(1) The appellate officer may order an oral hearing under paragraphs (h)(2) and (m)(3)(i) of this section if he/she:

(i) Orders a hearing as provided in paragraph (g)(3) of this section; and

(ii) Determines that the issues to be resolved at hearing can best be resolved through the oral hearing process.

(2) After ordering an oral hearing, the appellate officer will:

(i) Provide the appellant with notification that an oral hearing has been ordered.

(ii) Provide the appellant with a statement of issues to be determined at hearing.

(iii) Provide the appellant with notification, at least 30 days in advance, of the place, date, and time of the oral hearing. Oral hearings will be held in Juneau, AK, at the prescribed date and time, unless the appellate officer determines, based upon good cause shown, that a different place, date, or time will better serve the interests of justice. A continuance of the oral hearing may be ordered at the sole discretion of the appellate officer if the appellant shows good cause for the continuance.

(3) The appellate officer may, either at his/her own discretion or on the motion of the appellant, order a pre-hearing conference, either in person or telephonically, to consider:

(i) The simplification of issues.

(ii) The possibility of obtaining stipulations, admissions of facts, and agreements to the introduction of documents.

(iii) The possibility of settlement or other means to facilitate resolution of the case.

(iv) Such other matters as may aid in the disposition of the proceedings.

(4) The appellate officer must provide the appellant with notification of a pre-hearing conference, if one is ordered, at least 30 days in advance of the conference. All action taken at the pre-hearing conference will be made part of the record.

(5) At the beginning of the oral hearing, the appellate officer may first seek to obtain stipulations as to material facts and the issues involved and may state any other issues on which he/she may wish to have evidence presented. Issues to be resolved at the hearing will be limited to those identified by the appellate officer as provided in paragraph (g)(3) of this section. The appellant will then be given an opportunity to present his/her case.

§ 679.43 Determinations and appeals

(6) During the oral hearing, the appellant has the right to present reliable and material oral or documentary evidence and to conduct such cross-examination as may be required in the interests of justice.

(7) After the conclusion of the oral hearing, the appellant may be given time by the appellate officer to submit any supplementary information that may assist in the resolution of the case.

(8) The appellate officer will close the record and issue a decision after determining that the information on the record is sufficient to render a decision.

***(o) Review by the Regional Administrator.***

An appellate officer's decision is subject to review by the Regional Administrator, as provided in this paragraph (o).

(1) The Regional Administrator may affirm, reverse, modify, or remand the appellate officer's decision before the 30-day effective date of the decision provided in paragraph (k) of this section.

(2) The Regional Administrator may take any of these actions on or after the 30-day effective date by issuing a stay of the decision before the 30-day effective date. An action taken under paragraph (o)(1) of this section takes effect immediately.

(3) The Regional Administrator must provide a written explanation why an appellate officer's decision has been reversed, modified, or remanded.

(4) The Regional Administrator must promptly notify the appellant(s) of any action taken under this paragraph (o).

(5) The Regional Administrator's decision to affirm, reverse, or modify an appellate officer's decision is a final agency action for purposes of judicial review.

***(p) Issuance of a non-transferable license.***

A non-transferable license will be issued to a person upon acceptance of his or her appeal of an initial administrative determination denying an

application for a license for license limitation groundfish, crab species under § 679.4(k) or scallops under § 679.4(g). This non-transferable license authorizes a person to conduct directed fishing for groundfish, crab species, or catch and retain scallops and will have specific endorsements and designations based on the person's claims in his or her application for a license. This non-transferable license expires upon the resolution of the appeal.