

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 12/28/2011

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 10/19/2011

ACTION REQUESTED: Revision of a currently approved collection  
TYPE OF REVIEW REQUESTED: Regular  
ICR REFERENCE NUMBER: 201110-0648-010  
AGENCY ICR TRACKING NUMBER:  
TITLE: NMFS Alaskan Region American Fisheries Act Reports  
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: 12/31/2014

DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	155	101	38
New	164	425	56
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	1	104	2
Change due to Agency Adjustment	8	220	16
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 Report			50 CFR 679.61
Inshore Catcher Vessel Cooperative Pollock Catch report			50 CFR 679.61
Agent for Service of Process			50 CFR 679.61
Non-chinook bycatch reduction intercooperative agreement (from 0648-0608)			50 CFR 679.21(g)
Non-chinook ICA Annual Report (from 0648-0608)			50 CFR 679.21(g)
Application for an Incentive Plan Agreement (IPA) and List of IPA Participants (from 0648-0608)	NA	IPA Application	
Chinook Salmon IPA Annual Report (from 0648-0608 and revised per rule)			50 CFR 679.21(f)

# 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

### NMFS ALASKA REGION AMERICAN FISHERIES ACT REPORTS

OMB CONTROL NO. 0648-0401

This action revises the existing collection of information in support of the associated rule, RIN 0648-BA80, and supports the new Chinook Salmon Economic Data Reports (EDR) Program managed under the American Fisheries Act (AFA). In addition, this action merges OMB Control No. 0648-0608 into this collection. *This request is being resubmitted in conjunction with the final rule, with changes based on a comment on the proposed rule: the National Marine Fisheries Service (NMFS) will move pollock data formerly required in the AFA Cooperative Report, to the Incentive Plan Agreement (IPA) Annual Report, in order to provide a single location for Chinook and pollock data. See Question 8 for more information. There are no burden or cost changes to the individual information collections, or to the request overall.*

- ◆ *Incentive Plan Agreement (IPA) Annual Report.*  
*The IPA report must include Chinook PSC, pollock sub-allocation data, and number of salmon caught at the end of each season*
  
- ◆ *AFA Cooperative Report.*  
*The AFA Annual Cooperative Report must include retained and discarded catch of pollock and Chinook salmon PSC, as well as any additional data from each AFA cooperative on sub-allocations and catches of Chinook PSC and Pollock.*

NMFS Alaska Region manages the groundfish fisheries in the Exclusive Economic Zone off Alaska. 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). The FMP is implemented through regulations at 50 CFR part 679.

NMFS manages the Bering Sea pollock fishery under the American Fisheries Act (AFA) (16 U.S.C. 1851 note). The AFA “rationalized” the Bering Sea pollock fishery in part by allowing for the formation and management of fishery cooperatives in the three pollock sectors (catcher/processor, mothership, and inshore). A separate CDQ Program manages a portion of the Bering Sea pollock fishery. The AFA inshore sector is further subdivided into seven inshore cooperatives. Each sector or cooperative further subdivides pollock allocation among participants in the sector or cooperative through private contractual agreements. The cooperatives manage these allocations to ensure that individual vessels and companies do not harvest more than their agreed upon share of pollock. The cooperatives also facilitate transfers of pollock among the cooperative members, enforce contract provisions, and participate in an intercooperative agreement to reduce salmon PSC.

AFA fishing vessels harvest pollock using pelagic (mid-water) trawl gear, which consists of large nets towed through the water by the vessel. At times, Chinook salmon and pollock occur in

the same locations in the Bering Sea. Consequently, Chinook salmon are incidentally caught in the nets as pollock is harvested. This incidental catch is called bycatch and is also called prohibited species catch (PSC). Chinook salmon are defined as a prohibited species because they are caught by a vessel issued a Federal Fisheries Permit under § 679.4(b) while fishing for groundfish (pollock) in the Bering Sea and Aleutian Islands Management Area (BSAI) or Gulf of Alaska.

In December 2009, the Council recommended that NMFS implement the Chinook Salmon Economic Data Report (Chinook Salmon EDR) to evaluate the effectiveness of Chinook salmon bycatch management measures for the Bering Sea pollock fishery that were implemented under Amendment 91 to the BSAI FMP (5 FR 53026, August 30, 2010).

In addition to creation of the Chinook Salmon EDR (see OMB Control No. 0648-0633), NMFS will revise this collection, OMB Control No. 0648-0213 (Groundfish Family of Forms) and OMB Control No. 0648-0515 (eLandings Electronic Reporting System) to obtain additional data for the Chinook salmon analysis. Questions concerning vessel movements on the fishing grounds to avoid salmon bycatch are added to OMB Control No. 0648-0213. Questions on Chinook salmon and pollock allocations and transfers are added to the Incentive Plan Agreement (IPA) Final Report and the AFA Cooperative Report in OMB Control No. 0648-0401.

## A. JUSTIFICATION

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

Chinook salmon PSC management measures for the Bering Sea pollock fishery that previously were implemented under Amendment 91 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area.

The Chinook EDR Program will:

- ◆ Evaluate the effectiveness of the IPA incentives in times of high and low levels of salmon PSC abundance, the upper limit to Chinook salmon PSC, and the performance standard in terms of reducing salmon PSC.
- ◆ Determine where, when, and how pollock fishing and salmon PSC occur
- ◆ Provide data for NMFS to study and verify conclusions drawn by industry in the IPA annual reports

### 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.

Each year under Amendment 91, NMFS will allocate up to the 60,000 Chinook salmon PSC limit to the mothership sector, catcher/processor sector, inshore cooperatives, and CDQ groups

that participate in an incentive plan agreement (IPA) and remain in compliance with the performance standard. An IPA is a private contract that establishes incentives for participants to reduce Chinook salmon PSC. For those Bering Sea pollock participants that form an approved IPA, the allocations may be further sub-allocated to a sector, cooperative, or vessel owner and may be transferred among sectors, cooperatives, and their members.

Creation of individual accountability is one of the cornerstones of the PSC reduction measures in Amendment 91. However, the specific methods for creating individual accountability are left to the sectors, cooperatives, western Alaska Community Development Quota (CDQ) groups and IPAs. Annual IPA reports are required to include a comprehensive explanation of incentive measures in effect in the previous year, an assessment of how incentive measures affected individual vessels, and an evaluation of whether incentive measures were effective in achieving salmon savings beyond levels that would have been achieved in absence of the measures. In general, these requirements result in descriptions of the IPA and the individual accountability that arises under the IPA structure.

Each vessel will be allocated a share of the Chinook salmon PSC allocation in proportion to its share of Bering Sea pollock; the responsibility for the actual allocations will be made by cooperatives and IPAs. Therefore, NMFS may not have data on individual vessel salmon PSC allowances unless the sectors, cooperatives, and IPAs provide this data to the agency. This information could be documented in the annual IPA reports, including the formulas used to distribute the Chinook salmon PSC allocations and the allocation assigned to each vessel. If the members of an IPA are different than the members in an AFA inshore cooperative, mothership sector level entity, or catcher/processor sector level entity, then NMFS would require all of the data to be included in the AFA cooperative report.

The IPA reports, describing the distribution of individual PSC allowances will be the basis for measuring performance of individual vessels for those sectors which have formed IPAs. From this perspective, the IPA reports will be useful in determining the effectiveness of Amendment 91, assuming that the distribution of allowances is transparent.

The burden associated with the IPA and cooperative reports is difficult to predict, as the burden will likely depend on the structure of the IPA or cooperative and the rules applicable to distributions and transfers. A simple IPA structure that either directly limits or creates disincentives for transfers may have little associated reporting burden. On the other hand, a structure that either makes frequent distributions or favors transfers could have a substantial associated burden. In considering this burden, it should be noted that a structure with substantial disincentives for transfers of Chinook PSC allowances may reduce the reporting burden on IPAs, but create an incentive for pollock quota transfers that would increase the cooperative reporting burden.

With this action, NMFS would move some pollock data to the IPA Annual Report formerly requested in the AFA Cooperative Report to provide a single location for Chinook and pollock data. This data would include initial allocation, sub-allocations, NMFS-approved Chinook salmon PSC transfers, internal cooperative or sector-level entity Chinook PSC transfers, and catch by season and year for each catcher vessel, catcher/processor, or mothership participating in an IPA. NMFS would remove the requirement from the AFA cooperative report to report the

cooperative’s actual retained and discarded catch of pollock and Chinook PSC on an area-by-area and vessel-by-vessel basis.

**a. Chinook Salmon Incentive Plan Agreement (IPA) Annual Report**

This action would revise the IPA Annual Report to include the sub-allocation of Chinook salmon PSC and pollock to each participating vessel at the start of each fishing season and the number of Chinook salmon PSC and amount of pollock (mt) caught at the end of a season. The IPA Annual Report would also request information on transfers of Chinook salmon PSC regardless of whether the transfers were “compensated” transfers. This action would require each IPA representative to report additional sub-allocations or transfers of Chinook within a sector-level entity or between participants in two or more sector-level entities. This additional information will increase the time to complete the IPA Annual Report from 8 hr to 40 hr.

The IPA representative (estimated cost \$150/hr) must submit a written annual IPA Report to the Council at 605 West 4th Avenue, Suite 306, Anchorage, AK 99501, and must be postmarked or received by the Council no later than April 1 of each year following the year in which the IPA is first effective. The Council will make the annual report available to the public.

**Chinook Salmon IPA Annual Report**

- Incentive measures in effect in the previous year
- How incentive measures affected individual vessels
- How incentive measures affected salmon savings beyond current levels
- IPA amendments approved by NMFS since the last annual report and the reasons for amendments
- Sub-allocation to each participating vessel
  - number of Chinook PSC and amount of pollock (mt) at the start of each fishing season, and
  - number of Chinook PSC and amount of pollock (mt) caught at the end of each season
- Inseason transfers among entities of Chinook salmon PSC or pollock among AFA cooperatives, entities eligible to receive Chinook salmon PSC allocations, or CDQ groups
  - Date of transfer
  - Name of transferor and transferee
  - Number of Chinook salmon transferred
  - Amount of pollock (mt) transferred
- Transfers among IPA vessels
  - Date of transfer
  - Name of transferor and transferee
  - Number of Chinook salmon transferred
  - Amount pollock (mt) transferred

<b>IPA annual report, Respondent</b>	
<b>Estimated number of respondents</b>	<b>3</b>
<b>Total annual responses</b>	<b>3</b>
Response per respondent = 1	
<b>Total burden hours</b>	<b>120 hr</b>
Time per response = 40 hr	
<b>Total personnel cost = \$150/hr</b>	<b>\$18,000</b>
<b>Total miscellaneous costs (4.64)</b>	<b>\$5</b>
Photocopy (10 pg x .10 x 3 = 3)	
Postage (\$1.32 x 3 = 3.96)	

Agency cost is estimated to be \$35,000 associated with use of IPA and cooperative reports to collect transfer data. Individual reporting on compensated transfers that were administered

through intermediaries (e.g., IPAs or cooperatives) will need to be integrated with the IPA and cooperative reports to make full use of the data. The extent of these costs will depend on the number of compensated transactions and the IPA and cooperative structures adopted by industry. Structures that limit the number of transfers and simplify the transfer structure would reduce agency administrative costs.

<b>IPA annual report, Federal Government</b>	
<b>Total annual responses</b>	<b>3</b>
<b>Total burden hours = 40</b>	<b>120</b>
<b>Total personnel cost = 75</b>	<b>\$9,000</b>
<b>Total miscellaneous cost</b>	<b>\$35,000</b>
One-time data integration procedure	

**b. AFA cooperative annual report**

NMFS requires an annual AFA cooperative report to describe the fishing activities of each AFA cooperative through December 1 of each year. This report must be submitted and postmarked by April 1 of the following year or received by a private courier service by the submission deadline. Each AFA fishery cooperative must submit the cooperative report to the Council at 605 West 4th Avenue, Suite 306, Anchorage, AK 99501. The Council posts the reports on its website at <http://www.alaskafisheries.noaa.gov/npfmc/default.htm>.

The fishing industry accounting for the AFA cooperative report involves the services of a representative, Sea State, Inc., a company that provides catch accounting services (estimated at \$150/hr). Sea State works on a data release agreement between the industry and NMFS. Sea State, an independent contractor, receives data from the NMFS Observer Program via satellite from participating vessels.

Sea State regularly provides catch reports which include cumulative fleet-wide and vessel-level catch data as well as a tow-by-tow summary for each vessel. The Sea State program works as follows:

- ◆ Observers sample hauls and estimate catch and bycatch;
- ◆ Each vessel electronically transmits its observer data to Sea State which checks the data and performs statistical extrapolations to factor in any hauls that were not sampled;
- ◆ Position-specific data for each vessel is used to create a chart of vessel-specific bycatch rates that is faxed to participating vessels within 24 hours; and
- ◆ Vessels move away from high bycatch areas and exert peer pressure on any vessel that is reluctant to move.

AFA cooperative reports are one of the only sources of disaggregated catch data that are available to the public. In addition, the AFA cooperative reports are the only sources that can be used by analysts to report comprehensive data on individual AFA vessel harvests without

violating NMFS and State of Alaska Department of Fish and Game (ADF&G) data confidentiality rules.

With this action, the annual cooperative report does not request any information about pollock or Chinook salmon PSC. However, each AFA cooperative collects and summarizes information on its allocated target species all through the year and provides it to Sea State to perform 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. Sea State summarizes each cooperative’s target species and sideboard information and maintains analyses of cooperatives compared with each other in order to keep each and all cooperatives from overfishing.

**Cooperative annual report**

Allocated catch of pollock and sideboard species

Any sub-allocations of pollock and sideboard species made to individual vessels on a vessel-by-vessel basis

Cooperative's actual retained and discarded catch of pollock, sideboard species, and PSC

, on an area-by-area and vessel-by-vessel basis

Description of monitoring method for fisheries in which cooperative vessels participate

Description of any actions taken by the cooperative in response to any 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 salmon taken by species and season, and list each vessel’s number of appearances on the weekly “dirty 20” lists for non-Chinook salmon

<b>Cooperative annual report, Respondent</b>	
<b>Estimated number of respondents</b>	<b>11</b>
<b>Total annual responses</b>	<b>11</b>
Annual responses per respondent = 1	
<b>Total burden hours</b>	<b>88 hr</b>
Estimated hours per response = 8	
<b>Total personnel cost</b>	<b>\$13,200</b>
Personnel cost \$150/hr	
<b>Total miscellaneous costs (17.82)</b>	<b>\$18</b>
Postage cost (1.32 x 11 = 14.52)	
Photocopy cost (11 x 6 pg x 0.05 = 3.30)	

<b>Cooperative annual report, Federal Government</b>	
<b>Total annual responses</b>	<b>11</b>
<b>Total burden hours</b>	<b>33 hr</b>
Estimated hours per response = 3 hr	
<b>Total personnel cost</b>	<b>\$825</b>
Personnel cost \$25/hr	
<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. 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 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.**

No forms exist for the IPA Report, the AFA Cooperative Report, or the ICA; these reports may be submitted to the Council by mail or fax. A cooperative catch report may be submitted as an attachment to an e-mail or by fax. Information describing agent for service of process may be submitted by e-mail. An application for an Incentive Plan Agreement (IPA) and List of IPA Participants may be submitted online at <http://www.alaskafisheries.noaa.gov>.

**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.**

The proposed action applies only to those entities that participate in the directed pollock trawl fishery in the Bering Sea. The only small entities that are directly regulated by this action are the six western Alaska CDQ organizations. A significant increase in burden is estimated for the IPA annual report -- from 16 hr annually to 120 hr annually. An increased estimate for personnel cost is also due to figuring in the cost of the contractor (representative) at \$150/hr. These increases are the result of adjusting these figures to the cost of an independent contractor or representative.

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

This information collection is one of four components of the Chinook Salmon Economic Data Program developed to assess the effect that the BSAI Amendment 91 has on Chinook salmon prohibited species catch (PSC) in the pollock fishery.

The IPA Report and AFA Cooperative Report provide information on the number and characteristics of Chinook PSC transfers, in addition to other information. Without this data, NMFS will not be able to tell how vessels differ from each other in terms of efficient use of Chinook PSC or of the costs of avoiding Chinook PSC. Without this data, it will not be possible to determine if the tradable Chinook PSC is working or if it is not working, how to fix it.

If the information were not collected, NMFS would be unable to implement the socioeconomic goals and objectives of the AFA, the Magnuson-Stevens Act, and the FMP.

**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 information on 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 **submitted** a proposed rule (RIN 0648-BA80) coincident with this submission, requesting comments from the public. **The following comments were received on this collection-of-information.**

**Comment 1 (OMB 0648-0401):**

To avoid duplicate reporting of an AFA cooperatives' vessels sub-allocations and seasonal harvest of the number of Chinook salmon PSC and amount of pollock (mt), the proposed rule required these data be reported in **either** the IPA annual report in § 679.21(f)(13) **or** the AFA annual cooperative report in § 679.61(f)(2), but not both. The commenter requests that the reporting of these data be required **only** in the IPA annual report, and be optional for each AFA cooperative to report these data in the AFA cooperative report. Because each IPA may be formed by more than one cooperative, it is difficult for each AFA cooperative to be informed of a different AFA cooperative's records of sub-allocations and catches, complicating the coordination of data from multiple sources into a single report without some centralized depository for this data. In contrast, an IPA representative has the ability to request, organize and report that information from each AFA cooperative.

**Response to comment 1**

NMFS agrees with the commenter. The option for avoiding duplicate data reporting was proposed by NMFS by requiring all Chinook PSC and pollock sub-allocation data, and number of salmon caught at the end of each season be reported in either the AFA cooperative report or the IPA report (not both). NMFS originally believed that providing a choice for either an AFA cooperative representative or the IPA representative to submit that data would provide some additional flexibility for the industry. The commenter provides new information that this approach may create additional reporting burden and will not provide the flexibility intended by NMFS.

**Changes due to comment 1**

With this action, NMFS would move some pollock data formerly requested in the AFA Cooperative Report to the IPA Annual Report to provide a single location for Chinook and pollock data.

- ◆ **Incentive Plan Agreement (IPA) Annual Report.**  
The IPA report must include Chinook PSC, pollock sub-allocation data, and number of salmon caught at the end of each season

◆ AFA Cooperative Report.

The AFA Annual Cooperative Report must include retained and discarded catch of pollock and Chinook salmon PSC, as well as any additional data from each AFA cooperative on sub-allocations and catches of Chinook PSC and Pollock.

**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.**

None of the information in the IPA Report or the AFA Cooperative Report submitted under this collection of information, including individual vessel information, contains confidential business information. All of the information in the IPA Report and the AFA Cooperative Report will be posted on the NMFS Alaska Region webpage and made available to the public.

**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: 163, increased from 162. Estimated total burden: 424 hr, increased from 320 hr. Estimated total personnel costs: \$ 61,600, increased from \$ 33,800.

**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 costs: \$52.

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

Estimated total burden: 216 hr, increased from 19 hr. Estimated total personnel cost: \$13,900, increased from \$ 4,275. Estimated total one-time cost: \$35,000.

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

Adjustments in this collection are due to merging OMB Control No. 0648-0608 into this collection. The merger adds a net increase of 8 responses, 220 hours, \$31,300 personnel costs, and \$16 miscellaneous costs.

Non-chinook bycatch reduction intercooperative agreement (ICA) [added by 608]

An increase of 1 response, 1 instead of 0  
An increase of 40 hr burden, 40 hr instead of 0 hr  
An increase of \$6,000 personnel costs, \$6,000 instead of \$0  
An increase of \$2 miscellaneous costs, \$2 instead of 0

Non-chinook ICA annual report [added by 608]

An increase of 1 response, 1 instead of 0  
An increase of 4 hr burden, 4 hr instead of 0 hr  
An increase of \$100 personnel costs, \$100 instead of \$0  
An increase of \$2 miscellaneous costs, \$2 instead of 0

Application for an Incentive Plan Agreement (IPA) and List of IPA Participants [added by 608]

An increase of 4 responses, 4 instead of 0  
An increase of 160 hr burden, 160 hr instead of 0  
An increase of \$24,000 personnel costs, \$24,000 xx instead of 0  
An increase of \$7 miscellaneous costs, \$7 instead of 0

Chinook Salmon IPA Annual Report [added by 608]

an increase of 2 responses, 2 instead of 0  
an increase of 16 hr burden, 16 hr instead of 0  
an increase of \$1,200 personnel costs, \$1,200 instead of 0  
an increase of \$5 miscellaneous costs, \$5 instead of 0

Program changes in this collection are due to Proposed Rule 0648-BA80, regarding the Chinook Salmon Economic Data Reports.

Chinook Salmon IPA Annual Report [revised by EDR]

an increase of 1 respondent and response, 3 instead of 2  
an increase of 104 hr burden, 120 hr instead of 16 hr  
an increase of \$16,800 personnel costs, \$18,000 instead of \$1,200

AFA Cooperative Annual Report [revised by EDR]

an increase of \$11,000 personnel costs, \$13,200 instead of \$2,200

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

The IPA Annual Reports and AFA Cooperative Report are posted on the NMFS Alaska Region website at <http://www.alaskafisheries.noaa.gov/sustainablefisheries/default.htm>.

**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.**

Not applicable.

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

Not applicable.

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

This collection does not employ statistical methods. However, the information gathered in this collection will be used in the analyses for the Chinook Salmon EDR Program (see OMB 0648-0633).

**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;

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**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.

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**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.