

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 09/26/2011

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 07/21/2011

ACTION REQUESTED: Revision of a currently approved collection  
TYPE OF REVIEW REQUESTED: Regular  
ICR REFERENCE NUMBER: 201107-0648-001  
AGENCY ICR TRACKING NUMBER:  
TITLE: Alaska Region Bering Sea and Aleutian Islands Crab Arbitration  
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change  
OMB CONTROL NUMBER: 0648-0516

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: 09/30/2014

DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	96	743	5,374
New	15	78	435,545
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	-85	-683	430,201
Change due to Agency Adjustment	4	18	-30
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
Combined Annual Arbitration Organization notification and report			50 CFR 680.20(d)(2)
Contract Arbitrator Report			50 CFR 680.20(g)
Combined Shared Arbitration Accounting Report			50 CFR 680.20(d)

# 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 CRAB ARBITRATION SYSTEM  
OMB CONTROL NO. 0648-0516**

**INTRODUCTION**

In January 2004, the United States (U.S.) Congress amended Section 313(j) of [Magnuson-Stevens Fishery Conservation and Management Act](#) to mandate the Secretary of Commerce to implement the Crab Rationalization Program (CR Program) for the Bering Sea and Aleutian Islands Management Area (BSAI) crab fisheries. The CR Program allocates BSAI crab resources among harvesters, processors, and coastal communities. The North Pacific Fishery Management Council (Council) prepared, and National Marine Fisheries Service (NMFS) approved, the Fishery Management Plan for BSAI King and Tanner Crabs (FMP). The FMP establishes criteria for the management of certain aspects of the BSAI crab fisheries by the State of Alaska Department of Fish and Game (ADF&G). The FMP is implemented by regulations at [50 CFR part 680](#).

Prior to the CR Program, the eight major Bering Sea and Aleutian Islands crab fisheries were managed under the License Limitation Program (LLP), a limited entry program under which licenses were allocated to harvesters based on historic participation. Licenses were endorsed for one or more area and species and were issued by operation type, catcher vessel or catcher processor.

Under the CR Program, eligible LLP license holders (see OMB Control No. 0648-0334) were issued quota shares (QS), which are long term shares, based on their qualifying harvest histories. These QS annually yield individual fishing quota (IFQ), which are privileges to harvest a particular amount of crab in pounds in a given season. Processor quota shares (PQS) are long term shares issued to processors. These PQS yield annual individual processor quota (IPQ), which represent a privilege to receive a certain amount of crab harvested with Class A IFQ.

Class A IFQ holders who are unaffiliated, or independent, of IPQ holders are commonly known as unaffiliated Class A IFQ holders. Conversely, Class A IFQ holders who are affiliated with IPQ holders through common ownership and control are known as affiliated Class A IFQ holders. Affiliated Class A IFQ holders are not eligible to use the arbitration system to settle price or other disputes. Affiliated Class A IFQ holders do not require an arbitration system because they are integrated with IPQ holders and do not have distinct and potentially adversarial negotiating positions as may be the case with unaffiliated Class A IFQ and IPQ holders. Regulations at 50 CFR 680 require that all unaffiliated IFQ holders join an Arbitration Organization (AO).

The CR Program Arbitration System (System) is a series of steps that harvesters and processors can use to negotiate delivery and price contracts. The System allows unaffiliated Class A IFQ holders to initiate an arbitration proceeding in the event of a dispute to allow an independent third party to provide a review of harvester and processor negotiation positions and provide an independent and binding resolution to issues under dispute.

This action is a request for a revision and extension of the CR Arbitration collection-of-information. Program details are found at:  
<http://www.alaskafisheries.noaa.gov/regs/680/default.htm>.

## A. JUSTIFICATION

The Council's problem statement for the CR Program specifically called for a program that

“...maintains healthy harvesting and processing sectors... and seeks to achieve equity between harvesting and processing sectors, including healthy, stable, and competitive markets.” Further, the Council stated “Share allocations to harvesters and processors...are intended to increase efficiencies, provide economic stability and facilitate compensated reduction of excess capacities in both harvesting and processing sectors. The binding arbitration is intended to resolve price disputes between harvesters and processors, which in the past have delayed fishing....”

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

Under the CR Program, NMFS created an arbitration system in regulations at 50 CFR 680.20. The CR Program arbitration system consists of:

- ◆ Arbitration Organization (AO) – establishes an Arbitration System through a series of contracts that define and govern the share matching and arbitration system among shareholders and the AO. The AO is responsible for selecting arbitrators, coordinating and disseminating information among participants, ensuring confidentiality of sensitive information, and collection and disbursement of arbitration costs.
- ◆ Price Formula Analyst -- prepares a non-binding price formula that describes the historic division of first wholesale values among harvesters and processors that can be used in price negotiations and arbitrations.
- ◆ Contract Arbitrator -- reviews the positions of the parties during an arbitration proceeding and issues a binding decision based on a last-best offer form of arbitration.
- ◆ Market Analyst -- provides a pre-season market report of likely market conditions for each crab fishery to aid in price negotiations and arbitrations.

In addition, a Third-party Data Provider arranges for the receipt and delivery of up-to-date information as required by an AO.

The CR Program requires that arbitration system costs be shared equally between IPQ holders and Class A IFQ holders – processors pay half and fishermen pay half.

**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.**

Since 2006, there exist the same two AOs in the CR Program: one unaffiliated harvester organization and one affiliated harvester/processor arbitration organization:

Unaffiliated Harvester Organization  
Bering Sea Arbitration Organization  
4917 Leary Ave NW  
Seattle, WA 98107

Affiliated Harvester/Processor Arbitration Organization  
Alaska Crab Processors Arbitration Organization  
719 Second Avenue, Ste 1150  
Seattle, WA 98104-1728

One representative, Seafood Datasearch, is annually contracted to provide services as Market Analyst and Price Formula Arbitrator for both of the AOs.

The crab fisheries are:

- BBR -- Bristol Bay red king crab (*Paralithodes camtshaticus*)
- BSS -- Bering Sea Snow crab (*Chionoecetes opilio*)
- EAG -- Eastern Aleutian Islands golden king crab (*Lithodes aequispinus*)
- EBT -- Eastern Bering Sea Tanner crab (*Chionoecetes bairdi*)
- PIK -- Pribilof red king and blue king crab (*Paralithodes camtshaticus* and *P. platypus*)
- SMB -- St. Matthew blue king crab (*Paralithodes platypus*)
- WAG -- Western Aleutian Islands golden king crab (*Lithodes aequispinus*)
- WAI -- Western Aleutian Islands red king crab (*Paralithodes camtshaticus*)
- WBT -- Western Bering Sea Tanner crab (*Chionoecetes bairdi*)

The following are shared arbitration system costs:

- ◆ The cost to produce the market report and non-binding pricing formula for each fishery;
- ◆ The third party data provider costs for each fishery;
- ◆ The contract arbitrator costs for each fishery;
- ◆ General liability insurance, and directors and officers insurance for each arbitration organization with policy limits acceptable to the Parties;
- ◆ The fees and expenses necessary for the participation in the Council's CR Program review process incurred by any arbitration organization authorized representative; and
- ◆ Attorneys fees of the arbitration organizations to: prepare, negotiate and administer the above contracts, obtain and review the above insurance, pursue Department of Justice

anti-trust review of the implementation of the arbitration system, contribute to and participate in the Council's CR Program review process, and otherwise implement the arbitration system, as amended from time-to-time by NMFS regulations. However, attorneys fees associated with the formation and administration of each arbitration organization shall be borne by each arbitration organization.

NMFS requires the following reports annually.

- ◆ Arbitration Organization Notification & Organization Report
- ◆ Contract Arbitrator Report
- ◆ Combined Shared Arbitration Accounting Report

NMFS requires that these reports be submitted as follows:

by mail to:

Regional Administrator, NMFS  
P.O. Box 21668  
Juneau, AK 99802

by courier to:

NMFS  
709 West 9th Street  
Juneau, AK 99801

by fax to: 907-586-7465

**a. Miscellaneous AO Reporting [Removed]**

**b. AO Annual Notification (formerly included under Miscellaneous AO Reporting)**

The AO for each crab fishery must notify NMFS annually of the persons selected as the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) for the fishery no later than June 1.

The notification shall include

- ◆ A list of Arbitration Organizations that mutually agreed to the selection of the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s)
- ◆ Signatures of representatives of those Arbitration Organizations
- ◆ A copy of the contract with Market Analyst, the Formula Arbitrator, and each Contract Arbitrator
- ◆ Curriculum vitae and other relevant biographical material for each of these individuals

Both of the AOs combine this report (AO Notification) with the AO Organization Report (Annual Report). One AO submits this report by email attachment, using a form that they developed. The other AO submits this report by mail.

**c. AO Annual Report**

Each Arbitration Organization must submit a complete Annual Arbitration Organization Report to NMFS

- ◆ An AO with members who are QS or PQS holders, by May 1 of each crab fishing year beginning on July 1 of that year.
- ◆ An AO with members who are IFQ or IPQ holders, by no later than 15 days after the issuance of IFQ and IPQ for that crab QS fishery.

Both of the AOs combine this report (AO Report) with the AO Notification. One AO submits the combined report by email attachment, and uses a form (attached). The other AO submits this combined report by mail.

**Arbitration Notification & Organization Report**

- A copy of the AO business license
- AO Information
  - Name of the AO
  - Permanent business mailing address
  - Name of contact persons
  - Additional contact information of the managing personnel
  - Resumes of management personnel
- Members of the organization
  - Amount of Arbitration QS and Arbitration IFQ held by each member
  - Amount of Non-Arbitration QS and Non-Arbitration IFQ or PQS and IPQ held by each member
- QS, PQS, IFQ, and IPQ ownership information on the AO members
- Management organization information
  - The bylaws of the Arbitration Organization
  - A list of key personnel not limited to, the board of directors, officers, representatives, and any managers
- A copy of all minutes of any meeting held by the AO or any members of the AO

<b>Combined Annual AO notification and report, Respondent</b>	
<b>Number of respondents</b>	<b>2</b>
<b>Total annual responses</b>	<b>2</b>
Frequency of response = 1	
<b>Total burden hours (5 x 2)</b>	<b>10 hr</b>
AO Notification, time per response = 1 hr	
AO Report, time per response – 4 hr	
<b>Total personnel cost (\$125 x 10)</b>	<b>\$1,250</b>
<b>Total miscellaneous cost (5.87)</b>	<b>\$6</b>
Postage (\$1.32 x 1 = 1.32)	
Email attachment (0.05 x 1 = 0.05)	
Copy 45 pp x 2 x .05 = 4.50	

<b>Combined Annual AO notification and report, Federal Government</b>	
<b>Total responses</b>	<b>2</b>
<b>Total burden hours (1 x 2)</b>	<b>2 hr</b>
<b>Total personnel costs (\$75 x 2)</b>	<b>\$150</b>
<b>Total miscellaneous costs</b>	<b>0</b>

- d. AO Market Report [Removed]**
- e. Price Formula Report [Removed]**
- f. Establish Market Price [Removed]**
- g. Contract Arbitrator Report**

The AO is required to establish a contract with all Contractor Arbitrators in each crab fishery that specifies that each Contract Arbitrator may be selected to resolve a dispute concerning the terms of delivery, price, or other factors to the fishery. The contract shall specify one of the following approaches for negotiation and binding arbitration among members of the AO:

- ◆ Restrictions on collective negotiation. An IFQ and an IPQ holder may negotiate individually. Groups of IFQ holders may negotiate collectively with an IPQ holder only under certain provisions

- ◆ Open negotiations. At any time prior to the date of the first crab fishing season of a crab fishing year for that crab QS fishery, any holder of uncommitted Arbitration IFQ may negotiate with any holder of uncommitted IPQ, the price and delivery terms for that season for any uncommitted IFQ and uncommitted IPQ.

- ◆ Lengthy season approach. Prior to the date of the first crab fishing season for that crab QS fishery in that crab fishing year a committed IPQ holder and one or more committed Arbitration IFQ holders may choose to adopt a Lengthy Season approach

A Lengthy Season approach allows a committed IPQ holder and a committed Arbitration IFQ holder to agree to postpone negotiation of specific contract terms until a time during the crab fishing year as agreed upon by the Arbitration IFQ holder and IPQ holder participating in the negotiation.

The Lengthy Season approach allows the Arbitration IFQ holders and IPQ holder involved in the negotiation to postpone Binding Arbitration, if necessary, until a time during the crab fishing year. If the parties reach a final agreement on the contract terms, Binding Arbitration is not necessary.

- ◆ Share Matching. At any time 120 hours (five days) after NMFS issues IFQ and IPQ for that crab QS fishery in that crab fishing year, holders of uncommitted Arbitration IFQ may choose to commit the delivery of harvests of crab to be made with that uncommitted Arbitration IFQ to an uncommitted IPQ holder. The issuance of IFQ and IPQ for a crab QS fishery occurs on the time and date that IFQ and IPQ amounts for that crab QS fishery are posted on the NMFS, Alaska Region website at <http://www.fakr.noaa.gov>. To commit Arbitration IFQ, the holder of uncommitted IFQ must offer an amount of Arbitration IFQ.

- ◆ Initiation of Binding Arbitration. If an Arbitration IFQ holder intends to initiate Binding Arbitration, the Arbitration IFQ holder must initiate the Binding Arbitration procedure not later

than 360 hours (15 days) after NMFS issues IFQ and IPQ for that crab QS fishery in that crab fishing year. Binding Arbitration is initiated after the committed Arbitration IFQ holder notifies a committed IPQ holder and selects a Contract Arbitrator. Binding Arbitration may be initiated to resolve price, terms of delivery, and other disputes. There will be only one Binding Arbitration Proceeding for an IPQ holder but multiple Arbitration IFQ holders may participate in this proceeding.

This limitation on the timing of Binding Arbitration proceedings does not include proceedings that arise due to: the lengthy season approach, performance disputes, and quality disputes.

◆ Joining a Binding Arbitration Proceeding. Any uncommitted Arbitration IFQ holder may join a Binding Arbitration proceeding as a party by committing the shares to the arbitration and providing notice to the IPQ holder and the Contract Arbitrator(s). An Arbitration IFQ holder may join a Binding Arbitration proceeding only if uncommitted IPQ is available. Once shares are committed to a Binding Arbitration Proceeding they cannot be uncommitted. The contract with the Contract Arbitrator may specify the terms and timing of joining the proceedings.

◆ Arbitration Schedule Meeting. The Contract Arbitrator shall meet with all parties to a Binding Arbitration proceeding as soon as possible once a Binding Arbitration proceeding has been initiated for the sole purpose of establishing a schedule for the Binding Arbitration. This schedule shall include the date by which the IPQ holder and Arbitration IFQ holder(s) must submit their last best offer and any supporting materials, and any additional meetings or mediation if agreed to by all parties. This meeting will discuss the schedule of the Binding Arbitration proceedings and not address terms of last best offers.

◆ Terms of Last Best Offers. The Contract Arbitrator will meet with the parties to the Binding Arbitration proceeding to determine the matters that must be included in the last best offer, which may include a fixed price or a price over a time period specified by the parties, a method for adjusting prices over a crab fishing year, or an advance price paid at the time of delivery.

◆ Submission of Last Best Offers. The parties to a Binding Arbitration proceeding shall each submit to the Contract Arbitrator(s) a last best offer defining all the terms specified for inclusion in a last best offer by the Contract Arbitrator. An Arbitration IFQ holder that is an FCMA cooperative may submit a last best offer that defines terms for the delivery of crab harvested by members of that FCMA cooperative with IFQ held by the cooperative. An Arbitration IFQ holder that is not an FCMA cooperative may submit a last best offer that defines the term of delivery of crab harvested with IFQ held by that person. The IPQ holder that is a party to the proceeding shall submit a single offer that defines terms for delivery of crab harvested with all IFQ that are subject to the proceedings.

◆ Arbitration Decisions. The Contract Arbitrator(s) shall decide among each offer received from an Arbitration IFQ holder and the offer received from the IPQ holder. Each arbitration decision shall result in a binding contract between the IPQ holder and the Arbitration IFQ holder defined by the terms of the offer selected by Contract Arbitrator(s). An arbitration decision applies to all committed IFQ and committed IPQ in that arbitration.

The Contract Arbitrator must provide NMFS with:

- ◆ A copy of any minutes from any meeting attended by that Contract Arbitrator between or among any PQS or IPQ holders concerning any negotiations under § 680.20;
- ◆ Any last-best offers made during the Binding Arbitration process, including all contract details, the names of other participants in the arbitration, whether the bid was accepted by the Contract Arbitrator; and
- ◆ A copy of any information, data, or documents given by the Contract Arbitrator to any person who is not a party to the particular arbitration for which that information was provided.

The Contract Arbitrator must provide any required information, documents, or data to the NMFS Alaska Regional Administrator no later than 30 days prior to the end of the crab fishing year for which the open negotiation or arbitration applied.

<b>Contract Arbitrator Report, Respondent</b>	
<b>Number of respondents</b>	<b>12</b>
<b>Total annual responses</b>	<b>12</b>
Frequency of response = 1	
<b>Total burden hours</b>	<b>48 hr</b>
Time per response = 4 hr	
<b>Total personnel cost</b> (\$125 x 4)	<b>\$500</b>
<b>Total miscellaneous cost</b> (23.50)	<b>\$24</b>
Postage (\$2.20 x 5 = 11)	
Copy 50 pp x 0.05 x 5 = 12.50	

<b>Contract Arbitrator Report, Federal Government</b>	
<b>Total responses</b>	<b>12</b>
<b>Total burden hours</b> (1 x 12)	<b>12 hr</b>
<b>Total personnel costs</b> (\$125 x 12)	<b>\$1,500</b>
<b>Total miscellaneous costs</b>	<b>0</b>

#### **h. Combined Shared Arbitration Accounting Report**

Each crab fishing year, the AO must enter into a contract with all other AOs for the payment of the following costs of arbitration:

- ◆ The Market Analyst, Formula Arbitrator, and Contract Arbitrator(s)
- ◆ Dissemination of information concerning uncommitted IPQ to holders of uncommitted Arbitration IFQ
- ◆ The costs of such persons associated with lengthy season approach, share matching approach, Binding Arbitration, quality and performance disputes

These costs are to be shared equally so that IPQ holders pay 50 percent of the costs and Arbitration IFQ holders and Class A IFQ holders pay 50 percent of the costs.

Copies of the AO shared arbitration system accounting report are sent to NMFS, the Council, and the other AOs.

<b>Combined Shared Arbitration Accounting Report, Respondent</b>	
<b>Number of respondents</b>	<b>1</b>
<b>Total annual responses</b>	<b>1</b>
Frequency of response = 1	
<b>Total burden hours</b>	<b>20 hr</b>
Time per response = 20 hr	
<b>Total personnel cost (\$125 x 20)</b>	<b>\$2,500</b>
<b>Total miscellaneous cost (435,515.20)</b>	<b>\$435,515</b>
Postage = \$2.20	
Copy 100 pp x 0.05 = \$5	
Third Party Data Provider = \$ 17,000	
Market Report/Price Formula = \$ 130,508	
Contract Arbitrators	
@ \$15,000 x 12 = \$ 180,000	
Legal Fees = \$100,000	
Insurance = \$8,000	
General Liability, Directors & Officers	
3 arbitration organizations	

<b>Combined Shared Arbitration Accounting Report, Federal Government</b>	
<b>Total responses</b>	<b>1</b>
<b>Total burden hours (4 x 1)</b>	<b>4 hr</b>
<b>Total personnel costs (\$125 x 4)</b>	<b>\$500</b>
<b>Total miscellaneous costs</b>	<b>0</b>

It is anticipated that the information collected will not 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 response to Question No. 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.**

Some reports are submitted by mail: Contract Arbitrator Report and Combined Shared Arbitration Accounting Report, and the Combined Annual AO Notification and Report may be sent as an attachment to e-mail.

**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 respondents of this collection of information are arbitration organizations and contract arbitrators in the CR Program. These organizations are not estimated to be small entities. Thus, the collection of information does not impose a significant impact on small entities.

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

Without the collection of specified information to support the crab arbitration system, the CR Program would be jeopardized. The consequences of not collecting this information would be that NMFS could not fulfill the intent of the law created under Pub. L. No. 108-199. This law also requires that each component of the CR Program enacted by Congress must be implemented or the whole program must be withdrawn. Thus, disapproval of this data collection program would threaten all components of P.L. No. 108-199.

**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.**

A Federal Register notice, 76 FR 3089, published January 19, 2011, solicited public comment, and no comments were received.

Persons consulted outside the agency:

- ◆ L. John Iani, President  
Alaska Crab Processors Arbitration Organization  
719 Second Avenue, Suite 1150  
Seattle, WA 98104

- ◆ Erling E. (Jake) Jacobsen, Executive Director  
Bering Sea Arbitration Organization  
4917 Leary Ave NW  
Seattle, WA 98107
  
- ◆ John Sackton  
Seafood Datasearch  
8 White Pine Lane  
Lexington, MA 02421

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

No payment or gift will be provided under this program.

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

As stated in the regulations (which are easily accessed by the fishermen on the regional Web site and of which the fishermen do keep track), the information collected is confidential under section 303(d) of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) and under [NOAA Administrative Order \(AO\) 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: 14, decreased from 49. Estimated total responses: 15, decreased from 96. Estimated total burden: 78, decreased from 743 hr. Estimated total personnel costs: \$4,250, decreased from \$18,550.

**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: \$435,545, increased from \$5,374.

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

Estimated total burden: 30 hr, decreased from 92 hr. Estimated total personnel costs: \$2,150, decreased from \$2,300.

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

This action is a revision/renewal with program changes and adjustments.

NMFS has changed the Arbitration information collection requirements based on information that recently became available. These program changes provide a more transparent view of the different reports and activities. Total estimated changes are shown below.

- ◆ Miscellaneous AO reporting [Removed]  
This item is removed; the information is included elsewhere  
Respondents changed from 10 to 0  
Responses changed from 40 to 0  
Burden hours changed from 40 hours to 0 hours  
Miscellaneous costs changed from \$1,000 to \$0
  
- ◆ AO Market Report [Removed]  
This item is removed; the information is included elsewhere  
Respondents and responses changed from 8 to 0  
Burden hours changed from 320 hours to 0 hours  
Personnel costs changed from \$8,000 to \$0  
Miscellaneous costs changed from \$48 to \$0
  
- ◆ AO Price Formula Report [Removed]  
This item is removed; the information is included elsewhere  
Respondents changed from 1 to 0  
Responses changed from 8 to 0  
Burden hours changed from 320 hours to 0 hours  
Personnel costs changed from \$8,000 to \$0  
Miscellaneous costs changed from \$4 to \$0
  
- ◆ Establish price for arbitration negotiations [Removed]  
This item is removed; the information is included elsewhere  
Respondents and responses changed from 30 to 0  
Burden hours changed from 23 hours to 0 hours  
Personnel costs changed from \$550 to \$0  
Miscellaneous costs changed from \$180 to \$ 0
  
- ◆ Combined Annual AO Notification and Report  
The Organization Report combined with the Notification Report  
Respondents and responses changed from 10 to 2  
Burden hours changed from 40 hours to 10 hours  
Personnel costs changed from \$1,000 to \$1,250  
Miscellaneous costs changed from \$60 to \$6

◆ Combined Shared Arbitration Accounting Report [New]

Miscellaneous reports, the Market Report, and Price Formula Report are combined

Respondents and responses = 1

Burden hours = 20 hours

Personnel costs = \$2,500

Miscellaneous costs = \$435,515

A significant amount of burden and cost for the Market and Price Formula Reports was not shown in previous analyses, because that information was not available. The previous costs and burden were visualized as costs per respondent, with respondents individually doing their own report. We have since discovered that the report for all respondents is done by two entities and the costs then are distributed to all members. Some costs were previously not listed individually because of inadequate, informal information. With the detailed invoice that became available from the two organizations, the actual costs are now clear.

The estimated miscellaneous cost dramatically increased because the contractors charged a single cost per report (Market Report/Price Formula = \$ 130,508), based on a much higher, unknown hourly rate. In addition, costs are shown in the combined report that were not included previously in any report. These included cost for data (Third Party Data Provider = \$ 17,000), Contract Arbitrators @ \$15,000 x 12 = \$ 180,000, Legal Fees = \$100,000, and Insurance (General Liability, Directors and Officers, 3 arbitration organizations = \$8,000).

Adjustments:

◆ Contract Arbitrator Report [New]

This report was inadvertently omitted from previous analyses

Respondents and responses = 12

Burden hours = 48 hours

Personnel costs = \$500

Miscellaneous costs = \$24.

**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.**

Not Applicable.

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

Not Applicable.

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

This collection does not employ statistical methods.

**104-297**

(i) FULL RETENTION AND UTILIZATION.—

(1) The North Pacific Council shall submit to the Secretary by October 1, 1998 a report on the advisability of requiring the full retention by fishing vessels and full utilization by United States fish processors of economic discards in fisheries under its jurisdiction if such economic discards, or the mortality of such economic discards, cannot be avoided. The report shall address the projected impacts of such requirements on participants in the fishery and describe any full retention and full utilization requirements that have been implemented.

(2) The report shall address the advisability of measures to minimize processing waste, including standards setting minimum percentages which must be processed for human consumption. For the purpose of the report, 'processing waste' means that portion of any fish which is processed and which could be used for human consumption or other commercial use, but which is not so used.

**108-199**

(j) BERING SEA AND ALEUTIAN ISLANDS CRAB RATIONALIZATION.

(1) By not later than January 1, 2005, the Secretary shall approve and hereafter implement by regulation the Voluntary Three-Pie Cooperative Program for crab fisheries of the Bering Sea and Aleutian Islands approved by the North Pacific Fishery Management Council between June 2002 and April 2003, and all trailing amendments including those reported to Congress on May 6, 2003. This section shall not preclude the Secretary from approving by January 1, 2005, and implementing any subsequent program amendments approved by the Council.

(2) Notwithstanding any other provision of this Act, in carrying out paragraph (1) the Secretary shall approve all parts of the Program referred to in such paragraph. Further, no part of such Program may be implemented if, as approved by the North Pacific Fishery Management Council, individual fishing quotas, processing quotas, community development quota allocation, voluntary cooperatives, binding arbitration, regional landing and processing requirements, community protections, economic data collection, or the loan program for crab fishing vessel captains and crew members, is invalidated subject to a judicial determination not subject to judicial appeal. If the Secretary determines that a processor has leveraged its Individual Processor Quota shares to acquire a harvesters open-delivery "B shares", the processor's Individual Processor Quota shares shall be forfeited.

(3) Subsequent to implementation pursuant to paragraph (1), the Council may submit and the Secretary may implement changes to or repeal of conservation and management measures, including measures authorized in this section, for crab fisheries of the Bering Sea and Aleutian Islands in accordance with applicable law, including this Act as amended by this subsection, to achieve on a continuing basis the purposes identified by the Council.

(4) The loan program referred to in paragraph (2) shall be carried out pursuant to the authority of sections 1111 and 1112 of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f, 1279g).

(5) For purposes of implementing this section \$ 1,000,000 shall be made available each year until fully implemented from funds otherwise made available to the National Marine Fisheries Service for Alaska fisheries activities.

(6) Nothing in this Act shall constitute a waiver, either express or implied, of the antitrust laws of the United States. The Secretary, in consultation with the Department of Justice and the Federal Trade Commission, shall develop and implement a mandatory information collection and review process to provide any and all information necessary for the Department of Justice and the Federal Trade Commission to determine whether any illegal acts of anti-competition, anti-trust, or price collusion have occurred among persons receiving individual processing quotas under the Program. The Secretary may revoke any individual processing quota held by any person found to have violated a provision of the antitrust laws of the United States.

(7) An individual processing quota issued under the Program shall be considered a permit for the purposes of sections 307, 308, and 309, and may be revoked or limited at any time in accordance with this Act. Issuance of an individual processing quota under the program shall not confer any right of compensation to the holder of such individual processing quota if it is revoked or limited and shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is purchased from an individual fishing quota holder.

(8) The restriction on the collection of economic data in section 303 shall not apply with respect to any fish processor who is eligible for, or who has received, individual processing quota under the Program. The restriction on the disclosure of information in section 402(b)(1) shall not apply when the information is used to determine eligibility for or compliance with an individual processing quota program.

(9) The provisions of sections 308, 310, and 311 shall apply to the processing facilities and fish products of any person holding individual processing quota, and the provisions of subparagraphs (D), (E), and (L) of section 307(l) shall apply to any facility owned or controlled by a person holding individual processing quota.

104-297

**SEC. 402. INFORMATION COLLECTION**

16 U.S.C. 1881a

109-479

(a) COLLECTION PROGRAMS.—

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

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

109-479

(b) CONFIDENTIALITY OF INFORMATION.—

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

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

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

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

(D) when required by court order;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) **RESOURCE ASSESSMENTS.**—

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

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

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

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

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

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

**104-297**

**SEC. 403. OBSERVERS**

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

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

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

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

## Subpart B--Management Measures

### § 680.20 Arbitration System.

#### (a) *Applicability.*

##### (1) Arbitration System.

All CVO QS, Arbitration IFQ, Class A IFQ holders, PQS and IPQ holders must enter the contracts as prescribed in this section that establish the Arbitration System. Certain parts of the Arbitration System are voluntary for some parties, as specified in this section. All contract provisions will be enforced by parties to those contracts.

##### (2) Open negotiation.

Any holder of uncommitted IFQ may negotiate with any holder of uncommitted IPQ, the price and delivery terms for that season or for future seasons for any uncommitted IFQ and uncommitted IPQ. Uncommitted IFQ holders and uncommitted IPQ holders may freely contact each other and initiate open negotiations.

##### (3) Document submittal information.

**Submit documents and reports to NMFS as follows:**

**by mail to**

**the Regional Administrator, NMFS,  
P.O. Box 21668,  
Juneau, AK 99802;**

**by courier to**

**NMFS,  
709 West 9th Street,  
Juneau, AK 99801;**

**or by fax to 907-586-7465.**

#### (b) *Eligibility for Arbitration System.*

##### (1) Arbitration Organization.

The following persons are the only persons eligible to join an Arbitration Organization:

(i) Holders of CVO QS,

(ii) Holders of PQS,

(iii) Holders of Arbitration IFQ,

(iv) Holders of Class A IFQ affiliated with a PQS or IPQ holder, and

(v) Holders of IPQ.

##### (2) Persons Eligible to Use Negotiation and Binding Arbitration Procedures.

The following persons are the only persons eligible to enter contracts with a Contract Arbitrator to use the negotiation and Binding Arbitration procedures described in paragraph (h) of this section to resolve price and delivery disputes or negotiate remaining contract terms not previously agreed to by IFQ and IPQ holders under other negotiation approaches:

(i) Holders of Arbitration IFQ, and

(ii) Holders of IPQ.

##### (3) Persons Ineligible to Use Negotiation and Binding Arbitration Procedures.

Holders of IFQ that are affiliated with holders of PQS or IPQ are ineligible to enter contracts with a Contract Arbitrator to use the negotiation and Binding Arbitration procedures described in paragraph (h) of this section to resolve price and delivery disputes or negotiate remaining contract terms not previously agreed to by IFQ and IPQ holders under other negotiation approaches.

#### (c) *Preseason requirements for joining an Arbitration Organization.*

All holders of CVO QS, PQS, Arbitration IFQ, Class A IFQ affiliated with a PQS or IPQ holder, and IPQ must join and maintain a membership in an Arbitration Organization as specified in paragraph (d) of this section. All holders of QS, PQS, IFQ, or IPQ identified in the preceding sentence must join an Arbitration Organization at the following times:

(1) For QS holders and PQS holders except as provided for in paragraph (c)(3) of this section, not later than May 1 of each year for the crab fishing year that begins on July 1 of that year.

(2) For IFQ holders and IPQ holders, not later than 15 days after the issuance of IFQ and IPQ for that crab QS fishery if that IFQ or IPQ holder does not also hold QS or PQS.

(3) During 2005, QS and PQS holders must join an Arbitration Organization as described in paragraph (d) of this section not later than August 15, 2005.

(4) Persons receiving QS, PQS, IFQ, or IPQ by transfer after these dates must join an Arbitration Organization at the time of receiving the QS, PQS, IFQ, or IPQ by transfer.

***(d) Formation process for an Arbitration Organization.***

(1) Arbitration Organizations must be formed to select and contract a Market Analyst, Formula Arbitrator, Contract Arbitrator(s), and establish the Arbitration System, including the payment of costs of arbitration, described in this section for each crab QS fishery. All persons defined in paragraph (a)(1) of this section must join an Arbitration Organization.

(i) Arbitration QS/IFQ Arbitration Organization. Holders of Arbitration QS and Arbitration IFQ must join an Arbitration QS/IFQ Arbitration Organization. This Arbitration Organization may not have members who are not holders of Arbitration QS or Arbitration IFQ. Arbitration QS holders and Arbitration IFQ holders may join separate Arbitration QS/IFQ Arbitration Organizations. The mechanism for forming an Arbitration Organization is determined by the members of the organization.

(ii) PQS/IPQ Arbitration Organization. Holders of PQS or IPQ must join a PQS/IPQ Arbitration Organization. This Arbitration Organization may not have members who are not holders of PQS or IPQ. PQS holders and IPQ holders may join separate PQS/IPQ Arbitration Organizations. The mechanism for forming an Arbitration Organization is determined by the members of the organization.

(iii) Affiliated QS/IFQ Arbitration Organization. Holders of CVO QS or Class A IFQ affiliated with a PQS or IPQ holder must join an Affiliated QS/IFQ Arbitration Organization. This Arbitration Organization may not have members who are not holders of QS or IFQ affiliated with a PQS or IPQ holder. CVO QS holders and Class A IFQ holders may join separate Affiliated QS/IFQ Arbitration Organizations. The mechanism for forming an Arbitration Organization is determined by the members of the organization.

(iv) Limitation on joining an Arbitration Organization. For a crab QS fishery during a crab fishing year, a person who holds:

(A) PQS/IPQ may join only one PQS/IPQ Arbitration Organization;

(B) Affiliated QS/IFQ may join only one Affiliated QS/IFQ Arbitration Organization; and

(C) Arbitration QS/IFQ may join only one Arbitration QS/IFQ Organization.

(2) Each Arbitration Organization must submit a complete Annual Arbitration Organization report to NMFS. A complete report must include:

(i) A copy of the business license of the Arbitration Organization;

(ii) A statement identifying the members of the organization and the amount of Arbitration QS and Arbitration IFQ, Non-Arbitration QS and Non-Arbitration IFQ, or PQS and IPQ held by each member and represented by that Arbitration Organization;

(iii) QS, PQS, IFQ, and IPQ ownership information on the members of the organization;

(iv) Management organization information, including:

(A) The bylaws of the Arbitration Organization;

(B) A list of key personnel of the management organization including, but not limited to, the board of directors, officers, representatives, and any managers;

(v) The name of the Arbitration Organization, permanent business mailing addresses, name of contact persons and additional contact information of the managing personnel for the Arbitration Organization, resumes of management personnel; and

(vi) A copy of all minutes of any meeting held by the Arbitration Organization or any members of the Arbitration Organization.

(3) An Arbitration Organization, with members who are QS or PQS holders, must submit a complete Annual Arbitration Organization Report to NMFS **in accordance with paragraph (a)(3) of this section** by August 20, 2005, for the crab fishing year beginning on July 1, 2005, **and** by May 1 of each subsequent year for the crab fishing year beginning on July 1 of that year.

(4) An Arbitration Organization, with members who are IFQ or IPQ holders, must submit a complete Annual Arbitration Organization Report to NMFS **in accordance with paragraph (a)(3) of this section** by not later than 15 days after the issuance of IFQ and IPQ for that crab QS fishery.

*(e) Role of Arbitration Organization(s) and annual requirements.*

(1) General.

The members of each Arbitration Organization must enter into a contract that specifies the terms and conditions of participation in the organization.

(i) The contract among members of an Arbitration QS/IFQ Arbitration Organization, or a PQS/IPQ Arbitration Organization shall include the terms, conditions, and provisions specified in paragraph (e)(2) of this section.

(ii) The contract among members of an Affiliated QS/IFQ Arbitration Organization shall include the terms, conditions, and provisions in paragraph (e)(3) of this section.

(2) Provisions for Arbitration QS/IFQ Arbitration Organizations, and PQS/IPQ Arbitration Organizations.

(i) Selection of Market Analyst, Formula Arbitrator, and Contract Arbitrator(s). A provision authorizing the Arbitration Organization to act on behalf of its members in the selection of and contracting with the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) under paragraph (e)(4) of this section.

(ii) Confidentiality of information. A provision that a member that is a party to a Binding Arbitration proceeding shall sign a confidentiality agreement with the party with whom it is arbitrating stating they will not disclose at any time to any person any information received from the Contract Arbitrator or any other party in the course of the arbitration. That confidentiality agreement shall specify the potential sanctions for violating the agreement.

(iii) Provision of information to members. A provision requiring the Arbitration Organization to provide to its members:

(A) A copy of the contracts for the Market Analyst, Formula Arbitrator, and Contract Arbitrator for each fishery in which the member participates; and

(B) A copy of the Market Report and the Non-Binding Price Formula for each fishery in which the member participates within 5 days of its release.

(iv) Information release.

(A) A provision requiring that the Arbitration Organization deliver to NMFS any data, information, and documents generated pursuant to this section.

(B) In the case of a PQS/IPQ Arbitration Organization(s):

(1) A provision that requires the PQS/IPQ Arbitration Organization to provide for the delivery of the names of and contact information for its members who hold uncommitted IPQ, and to identify the regional designations and amounts of such uncommitted IPQ, to Arbitration QS/IFQ Arbitration Organizations either directly or through a third-party data provider so the information may be provided to any persons that hold uncommitted Arbitration IFQ for purposes of Share Matching, Binding Arbitration, and Post Arbitration Opt-in;

(2) A provision that prohibits the disclosure of any information received under this provision to any person except those Arbitration QS/IFQ Arbitration Organizations, or their third-party data provider so that information may be provided to holders of uncommitted Arbitration IFQ. The provision will require that information concerning uncommitted IPQ be updated within 24 hours of a change of any such information, including any commitment of IPQ, and that information be provided to those persons that hold uncommitted Arbitration IFQ. This provision may include a mechanism to provide information to uncommitted Arbitration IFQ holders through a secure website, or through other electronic means;

(3) A provision that requires the PQS/IPQ Arbitration Organization to arrange for the delivery to all holders of uncommitted Arbitration IFQ through the Arbitration QS/IFQ Arbitration Organizations holders or their third-party data provider the terms of a decision of a Contract Arbitrator in a Binding Arbitration proceeding involving a member that holds uncommitted IPQ within 24 hours of notice of that decision. This provision may include a mechanism to provide information to uncommitted Arbitration IFQ holders through a secure website, or through other electronic means; and

(4) A provision that requires the holders of uncommitted IPQ to provide information concerning such uncommitted IPQ as necessary for the PQS/IPQ Arbitration Organization to comply with this paragraph and prohibits the disclosure of any such information by such holder to any person, except as directed in this paragraph.

(C) In the case of a Arbitration QS/IFQ Organization(s):

(1) A provision that requires Arbitration QS/IFQ Arbitration Organizations holders, or their third-party data provider to provide information concerning uncommitted IPQ from PQS/IPQ Arbitration

Organization(s) as necessary for the Arbitration IFQ holder to use that information in a timely manner.

(2) A provision that prohibits the disclosure of any such information concerning uncommitted IPQ from PQS/IPQ Arbitration Organization to any person, except as directed therein.

(D) Third-party Data Provider provision.

Notwithstanding any provision in this section, an Arbitration Organization required to supply or receive information under this section must hire administrative personnel or may contract with a person who will arrange for the receipt and delivery of information as required. Any such third party that receives such information cannot be affiliated with or employed by or related to any QS, PQS, IFQ, or IPQ holder in any crab QS fishery and must enter a contract that:

(1) Prohibits such third person from releasing any information received to any person except as specifically provided by this section; and

(2) Prohibits such third person from entering taking any employment from or establishing any relationship, except under a contract meeting the requirements of this section for a period of 3 years after the termination of the contract.

(v) Costs. A provision that authorizes the Arbitration Organization to enter into a contract with all other Arbitration Organizations for the payment of the costs of arbitration as specified under this section.

(A) The Arbitration Organizations must establish a contract that requires the payment of all costs of the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s), dissemination of information concerning uncommitted IPQ to holders of uncommitted Arbitration IFQ, and the costs of such persons associated with lengthy season approach, share matching approach, Binding Arbitration, quality and performance disputes, to be shared equally so that IPQ holders pay 50 percent of the costs and Arbitration IFQ holders and Class A IFQ holders pay 50 percent of the costs.

(B) Each person shall pay an amount of the cost based on the amount of IPQ or IFQ held by that person at the time of application to an Arbitration Organization.

(C) PQS holders shall advance all costs and shall collect the contribution of IFQ holders at landing subject to terms mutually agreed to by the Arbitration Organizations.

(vi) Negotiation methods. A provision that prohibits the Arbitration Organization from engaging in any contract negotiations on behalf of its members, except for those necessary to hire the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s).

(vii) Enforcement of the contract. Violations of the contract shall be enforced under civil law.

(3) Provisions applying to Affiliated QS/IFQ Arbitration Organizations.

The provisions that allow for the provision of information to members, payment of costs, limits on the transfer of QS, PQS, IFQ, and IPQ, and enforcement of the contract as described under paragraphs (e)(2)(iv), (v), (vii), and (viii) will apply to the contract among members of an Affiliated QS/IFQ Arbitration Organization(s).

(4) Process for selection of Market Analyst, Formula Arbitrator, and Contract Arbitrator(s).

(i) For each crab fishing year, QS holders who are members of Arbitration QS/IFQ Arbitration Organization(s) and PQS holders who are members of PQS/IPQ Arbitration Organization(s), by mutual agreement, will select one Market Analyst, one Formula Arbitrator, and Contract Arbitrator(s) for each crab QS fishery. The number of Contract Arbitrators selected for each fishery will be subject to the mutual agreement of those Arbitration Organizations. The selection of the Market Analyst and the Formula Arbitrator must occur in time to ensure the Market Report and non-binding price formula are produced within the time line established in paragraph (e)(4)(ii) of this section.

(ii) The Arbitration Organizations representing Arbitration QS holders and PQS holders in a crab fishery shall establish by mutual agreement the contractual obligations of the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) for each fishery, which shall provide that the Market Report and Non-Binding Price Formula are produced not later than 50 days prior to the first crab fishing season for that crab QS fishery in that crab fishing year except as provided in paragraph (e)(6) of this section. The contractual obligations of the Market Analyst, the Formula Arbitrator and Contract Arbitrators will be enforced by the parties to the contract.

(iii) The same person may be chosen for the positions of Market Analyst and Formula Arbitrator for a fishery.

(iv) A person selected to be a Contract Arbitrator may not be the Market Analyst or Formula Arbitrator, and shall not be affiliated with, employed by, or

otherwise associated with, the Market Analyst or Formula Arbitrator, for that fishery.

(5) Notification to NMFS.

Not later than June 1 for that crab fishing year, except as provided in paragraph (e)(6) of this section, the Arbitration Organizations representing the holders of Arbitration QS and PQS in each fishery shall notify NMFS of the persons selected as the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) for the fishery **in accordance with paragraph (a)(3) of this section.**

The Arbitration Organizations shall include a list of Arbitration Organizations that mutually agreed to the selection of the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) and signatures of representatives of those Arbitration Organizations and a copy of the contract with Market Analyst, the Formula Arbitrator, and each Contract Arbitrator. The notification must include a curriculum vitae and other relevant biographical material for each of these individuals.

(6) First-year implementation.

During 2005, the selection of and establishment of the contractual obligations of the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s) as required under this section shall occur not later than September 1, 2005.

(7) IFQ and IPQ issuance and selection of the Market Analyst, Formula Arbitrator, and Contract Arbitrator(s).

NMFS will not issue CVO IFQ and IPQ for a crab QS fishery until Arbitration Organizations establish by mutual agreement contracts with a Market Analyst, Formula Arbitrator, and Contract Arbitrators for that fishery and notify NMFS.

***(f) Roles and standards for the Market Analyst and process for producing the Market Report.***

(1) For each crab QS fishery, the Arbitration QS/IFQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations shall establish a contract with the Market Analyst to produce a Market Report for the fishery. The terms of this contract must specify that the Market Analyst must produce a Market Report that shall provide an analysis of the market for products of that fishery.

(2) The contract with the Market Analyst must specify that:

(i) The Market Analyst shall base the Market Report on:

(A) A survey of the market for crab products produced by the fishery; and

(B) Information provided by the IPQ and IFQ holders regarding market conditions and expectations.

(ii) To the extent IPQ and IFQ holders provide information requested by the Market Analyst, they must provide such information directly to the Market Analyst and not to any other IPQ holder or IFQ holder, except that IFQ holders that are members of any single FCMA cooperative may share such information with other members of the same FCMA cooperative who are authorized to participate in the arbitration system.

(iii) The Market Analyst:

(A) May meet with IFQ holders who are members of any single FCMA cooperative collectively;

(B) Shall meet with IPQ holders individually;

(C) Shall meet with distinct crab FCMA cooperatives individually; and

(D) Shall meet with IFQ holders who are not members of the same FCMA cooperatives individually.

(iv) The information provided to the Market Analyst by IPQ and IFQ holders must be historical information based on activities occurring more than three months prior to the generation of the Market Report.

(v) The Market Analyst shall keep confidential the identity of the source of any particular information contained in the report. The Market Analyst may note generally the sources from which it gathered information. The report shall:

(A) Include only data that is based on information regarding activities occurring more than three months prior to the generation of the Market Report;

(B) Include only statistics for which there are at least five providers reporting data upon which each statistic is based and for which no single provider's data represents more than 25 percent of a weighted basis of that statistic; and

(C) Sufficiently aggregate any information disseminated in the report such that it would not identify specific price information by an individual provider of information.

(vi) The Market Report shall consider the following factors:

(A) Current ex-vessel prices, including ex-vessel prices received for crab harvested under Class A IFQ, Class B IFQ, and CVC IFQ permits;

(B) Consumer and wholesale product prices for the processing sector and the participants in the arbitration (recognizing the impact of sales to affiliates on wholesale pricing);

(C) Innovations and developments of the harvesting and processing sectors and the participants in the arbitration (including new product forms);

(D) Efficiency and productivity of the harvesting and processing sectors (recognizing the limitations on efficiency and productivity arising out of the management program structure);

(E) Quality (including quality standards of markets served by the fishery and recognizing the influence of harvest strategies on the quality of landings);

(F) The interest of maintaining financially healthy and stable harvesting and processing sectors;

(G) Safety and expenditures for ensuring adequate safety;

(H) Timing and location of deliveries; and

(I) The cost of harvesting and processing less than the full IFQ or IPQ allocation (underages) to avoid penalties for overharvesting IFQ and a mechanism for reasonably accounting for deadloss.

(vii) There shall only be one annual Market Report for each fishery.

(viii) The Market Analyst shall not issue interim or supplemental reports for each fishery.

(3) The Market Analyst shall not disclose any information to any person not required under this section.

(4) In 2005, the Market Report shall be produced not later than September 30, 2005 or 25 days prior to the first crab fishing season for that crab QS fishery whichever is later in that crab fishing year as required under this section.

(i) In all subsequent years, the Market Report shall be produced not later than 50 days prior to the first crab fishing season for that crab QS fishery.

(ii) The contract with the Market Analyst must specify that the Market Analyst will provide in that crab fishing year to:

(A) Each Arbitration Organization in that fishery;

(B) NMFS **Alaska Region in accordance with paragraph (a)(3) of this section**; and

(C) The Formula Arbitrator and any Contract Arbitrator(s) for the fishery.

***(g) Roles and standards for the Formula Arbitrator.***

(1) For each crab QS fishery, the Arbitration QS/IFQ Arbitration Organizations and the PQS/IPQ Arbitration Organizations shall establish a contract with the Formula Arbitrator to develop a Non-Binding Price Formula.

(2) The contract with the Formula Arbitrator must specify that:

(i) The Formula Arbitrator will conduct a single annual fleet-wide analysis of the markets for crab to establish a Non-Binding Price Formula under which a fraction of the weighted average first wholesale prices for crab products from the fishery may be used to set an ex-vessel price; and

(ii) The Non-Binding Price Formula shall:

(A) Be based on the historical distribution of first wholesale revenues between fishermen and processors in the aggregate based on arm's length first wholesale prices and ex-vessel prices, taking into consideration the size of the harvest in each year; and

(B) Establish a price that preserves the historical division of revenues in the fishery while considering the following:

(1) Current ex-vessel prices, including ex-vessel prices received for crab harvested under Class A, Class B, and CVC IFQ permits;

(2) Consumer and wholesale product prices for the processing sector and the participants in arbitrations (recognizing the impact of sales to affiliates on wholesale pricing);

(3) Innovations and developments of the harvesting and processing sectors and the participants in arbitrations (including new product forms);

(4) Efficiency and productivity of the harvesting and processing sectors (recognizing the limitations on efficiency and productivity arising out of the management program structure);

(5) Quality (including quality standards of markets served by the fishery and recognizing the influence of harvest strategies on the quality of landings);

(6) The interest of maintaining financially healthy and stable harvesting and processing sectors;

(7) Safety and expenditures for ensuring adequate safety;

(8) Timing and location of deliveries; and

(9) The cost of harvesting and processing less than the full IFQ or IPQ allocation (underages) to avoid penalties for overharvesting IFQ and a mechanism for reasonably accounting for deadloss.

(C) Include identification of various relevant factors such as product form, delivery time, and delivery location.

(D) Consider the “highest arbitrated price” for the fishery from the previous crab fishing season, where the “highest arbitrated price” means the highest arbitrated price for arbitrations of IPQ and Arbitration IFQ which represent a minimum of at least 7 percent of the IPQ resulting from the PQS in that fishery. For purposes of this process, the Formula Arbitrator may aggregate up to three arbitration findings to collectively equal a minimum of 7 percent of the IPQ. When arbitration findings are aggregated with 2 or more entities, the lesser of the arbitrated prices of the arbitrated entities included to attain the 7 percent minimum be considered for the highest arbitrated price.

(iii) The Non-Binding Price Formula may rely on any relevant information available to the Formula Arbitrator, including, but not limited to,

(A) Information provided by the QS, PQS, IPQ and IFQ holders in the fishery, and

(B) The Market Report for the fishery.

(iv) The Formula Arbitrator:

(A) May meet with IFQ holders who are members of any single FCMA cooperative collectively;

(B) Shall meet with IPQ holders individually;

(C) Shall meet with distinct FCMA cooperatives individually; and

(D) Shall meet with IFQ holders who are not members of the same FCMA cooperative individually.

(v) The Formula Arbitrator may request any relevant information from QS, PQS, IPQ, and IFQ holders in the fishery, but the Formula Arbitrator shall not have subpoena power.

(vi) The Formula Arbitrator may obtain information from persons other than QS, PQS, IPQ, and IFQ holders in the fishery, if those persons agree to provide such data. Any information that is provided must be based on activities occurring more than three months prior to the date of submission to the Formula Arbitrator.

(vii) The Formula Arbitrator shall keep confidential the information that is not publicly available and not disclose the identity of the persons providing specific information.

(viii) (A) In 2005, the non-binding price formula shall be produced not later than September 30, 2005 or 25 days prior to the first crab fishing season for that crab QS fishery whichever is later in that crab fishing year as required under this section.

(B) In all subsequent years, the non-binding price formula shall be produced not later than 50 days prior to the first crab fishing season for that crab QS fishery.

(C) The contract with the Formula Arbitrator must specify that the Formula Arbitrator will provide the non-binding price formula in that crab fishing year to:

(1) Each Arbitration Organization in that fishery;

(2) NMFS **in accordance with paragraph (a)(3) of this section;** and

(3) The Market Analyst and all Contract Arbitrators in the fishery.

(ix) The Formula Arbitrator shall not disclose any information to any person unless required under this section.

***(h) Roles and standards for the Contract Arbitrator(s).***

(1) General.

For each crab QS fishery, the Arbitration QS/IFQ Arbitration Organizations and PQS/IPQ Arbitration Organizations shall establish a contract with all Contract Arbitrators in that fishery that specifies that each Contract Arbitrator may be selected to resolve a dispute concerning the terms of delivery, price, or other factors in the fishery.

(2) Selection of Contract Arbitrators.

The contract with the Contract Arbitrator shall specify the means by which the Contract Arbitrator will be selected to resolve specific disputes. This contract must specify that for any dispute for which the Contract Arbitrator is selected, the Contract Arbitrator will comply with the last best offer arbitration method as set forth in this section.

(3) Negotiation and Binding Arbitration Procedure.

The contract with the Contract Arbitrator(s) shall specify the following approaches for negotiation and Binding Arbitration among members of the Arbitration Organizations:

(i) Restrictions on collective negotiation. An IFQ and an IPQ holder may negotiate individually. Groups of IFQ holders may negotiate collectively with an IPQ holder only under the following provisions:

(A) Members of an FCMA cooperatives may participate collectively with other members of the same FCMA cooperative in Binding Arbitration except as otherwise provided under this section.

(B) Members of different FCMA cooperatives shall not participate collectively in Binding Arbitration.

(C) IPQ holders shall not participate collectively. Only one IPQ holder shall enter into Binding Arbitration with any IFQ holder or IPQ holder(s).

(D) An Arbitration Organization must not negotiate on behalf of a member. This shall not prohibit the members of an Arbitration IFQ Arbitration Organization from negotiation if the Arbitration Organization qualifies as an FCMA cooperative.

(ii) Open negotiations. At any time prior to the date of the first crab fishing season of a crab fishing year for that crab QS fishery, any holder of uncommitted Arbitration IFQ may negotiate with any holder of uncommitted IPQ, the price and delivery terms for that season for any uncommitted IFQ and uncommitted IPQ.

(A) Uncommitted Arbitration IFQ holders and Uncommitted IPQ holders may freely contact each other and initiate open negotiations.

(B) If Arbitration IFQ holders and IPQ holders do not reach an agreement on price, delivery terms, or other terms after committing shares, an Arbitration IFQ holder may initiate Binding Arbitration in accordance with the procedures specified in this section in order to resolve disputes in those price, delivery terms, or other terms.

(C) Once IFQ or IPQ has been committed, the IFQ holder and IPQ holder cannot engage in open negotiation using those shares.

(iii) Lengthy season approach.

(A) Prior to the date of the first crab fishing season for that crab QS fishery in that crab fishing year a committed IPQ holder and one or more committed Arbitration IFQ holders may choose to adopt a Lengthy Season approach. The Lengthy Season approach is an alternative method to the Binding Arbitration proceedings.

(B) A Lengthy Season approach allows a committed IPQ holder and a committed Arbitration IFQ holder to agree to postpone negotiation of specific contract terms until a time during the crab fishing year as agreed upon by the Arbitration IFQ holder and IPQ holder participating in the negotiation. The Lengthy Season approach allows the Arbitration IFQ holders and IPQ holder involved in the negotiation to postpone Binding Arbitration, if necessary, until a time during the crab fishing year. If the parties reach a final agreement on the contract terms, Binding Arbitration is not necessary.

(C) If a committed IPQ holder and one or more committed Arbitration IFQ holder(s) are unable to reach an agreement on whether to adopt a Lengthy Season approach, they may request mediation to assist the parties in determining whether to adopt a Lengthy Season approach. The parties may request a Contract Arbitrator to act as a mediator. If the mediation proves unsuccessful or is not selected, the Arbitration IFQ holder may initiate enter Binding Arbitration to determine whether to adopt a lengthy season approach.

(1) Binding Arbitration may begin immediately with the same Contract Arbitrator.

(2) If the Contract Arbitrator serves as a mediator in an unsuccessful mediation, either party may request another Contract Arbitrator for the Binding Arbitration.

(iv) Share Matching.

(A) At any time 120 hours (five days) after NMFS issues IFQ and IPQ for that crab QS fishery in that crab fishing year, holders of uncommitted Arbitration IFQ may choose to commit the delivery of harvests of crab to be made with that uncommitted Arbitration IFQ to an uncommitted IPQ holder. The issuance of IFQ and IPQ for a crab QS fishery occurs on the time and date that IFQ and IPQ amounts for that crab QS fishery are posted on the NMFS, Alaska Region website at <http://www.fakr.noaa.gov>.

(B) To commit Arbitration IFQ, the holder of uncommitted IFQ must offer an amount of Arbitration IFQ:

(1) not less than 50 percent of the Arbitration IFQ holder's total uncommitted Arbitration IFQ, or an amount of uncommitted Arbitration IFQ equal to the total amount of uncommitted IPQ available, whichever is less, if the Arbitration IFQ holder is not an FCMA cooperative; and

(2) not less than 25 percent of the Arbitration IFQ holder's total uncommitted Arbitration IFQ, or an amount of uncommitted Arbitration IFQ equal to the total amount of uncommitted IPQ available, whichever is less, if the Arbitration IFQ holder is an FCMA cooperative.

(C) Any holder of uncommitted IPQ must accept all proposed Arbitration IFQ commitments, up to the amount of its uncommitted IPQ. The commitment of IPQ will take place on receipt of notice from the holder of uncommitted Arbitration IFQ of the intention to commit that IFQ.

(D) After matching, an Arbitration IFQ holder and an IPQ holder may decide to enter mediation to reach agreement on contract terms. The Arbitration IFQ holder and IPQ holder may request a Contract Arbitrator to act as a mediator to facilitate an agreement.

(1) If the mediation proves unsuccessful, or if mediation is not selected, the Arbitration IFQ holder may initiate Binding Arbitration which may begin immediately with the same Contract Arbitrator.

(2) If the Contract Arbitrator serves as a mediator in an unsuccessful mediation, the Arbitration IFQ holder may request another Contract Arbitrator for the Binding Arbitration.

(v) Initiation of Binding Arbitration. If an Arbitration IFQ holder intends to initiate Binding Arbitration, the Arbitration IFQ holder must initiate the Binding Arbitration procedure not later than 360 hours (15 days) after NMFS issues IFQ and IPQ for that crab QS fishery in that crab fishing year. Binding Arbitration is initiated after the committed Arbitration IFQ holder notifies a committed IPQ holder and selects a Contract Arbitrator. Binding Arbitration may be initiated to resolve price, terms of delivery, and other disputes. There will be only one Binding Arbitration Proceeding for an IPQ holder but multiple Arbitration IFQ holders may participate in this proceeding. This limitation on the timing of Binding Arbitration proceedings does not include proceedings that arise due to:

(A) The lengthy season approach;

(B) Performance disputes; and

(C) Quality disputes.

(vi) Joining a Binding Arbitration Proceeding. Any uncommitted Arbitration IFQ holder may join a Binding Arbitration proceeding as a party by committing the shares to the arbitration and providing notice to the IPQ holder and the Contract Arbitrator(s). An Arbitration IFQ holder may join a Binding Arbitration proceeding only if uncommitted IPQ is available. Once shares are committed to a Binding Arbitration Proceeding they cannot be uncommitted. The contract with the Contract Arbitrator may specify the terms and timing of joining the proceedings.

(vii) Arbitration Schedule Meeting. The Contract Arbitrator shall meet with all parties to a Binding Arbitration proceeding as soon as possible once a Binding Arbitration proceeding has been initiated for the sole purpose of establishing a schedule for the Binding Arbitration. This schedule shall include the date by which the IPQ holder and Arbitration IFQ holder(s) must submit their last best offer and any supporting materials, and any additional meetings or mediation if agreed to by all parties. This meeting will discuss the schedule of the Binding Arbitration proceedings and not address terms of last best offers.

(viii) Terms of Last Best Offers. The Contract Arbitrator will meet with the parties to the Binding Arbitration proceeding to determine the matters that must be included in the last best offer, which may include a fixed price or a price over a time period specified by the parties, a method for adjusting prices over a crab fishing year, or an advance price paid at the time of delivery.

(ix) Submission of Last Best Offers. The parties to a Binding Arbitration proceeding shall each submit to the Contract Arbitrator(s) a last best offer defining all the terms specified for inclusion in a last best offer by the Contract Arbitrator. An Arbitration IFQ holder that is an FCMA cooperative may submit a last best offer that defines terms for the delivery of crab harvested by members of that FCMA cooperative with IFQ held by the cooperative. An Arbitration IFQ holder that is not an FCMA cooperative may submit a last best offer that defines the term of delivery of crab harvested with IFQ held by that person. The IPQ holder that is a party to the proceeding shall submit a single offer that defines terms for delivery of crab harvested with all IFQ that are subject to the proceedings.

(x) Arbitration Decisions. The Contract Arbitrator(s) shall decide among each offer received

from an Arbitration IFQ holder and the offer received from the IPQ holder. Each arbitration decision shall result in a binding contract between the IPQ holder and the Arbitration IFQ holder defined by the terms of the offer selected by Contract Arbitrator(s). An arbitration decision applies to all committed IFQ and committed IPQ in that arbitration.

(xi) Announcement of Decisions.

(A) If last best offers are submitted at least 15 days before the first crab fishing season for that crab fishing year for that crab QS fishery, arbitration decisions shall be issued no later than 10 days before the first crab fishing season for that crab fishing year for that crab QS fishery. Otherwise, the Contract Arbitrator will notify the parties of the arbitration decision within 5 days of the parties submitting their last best offers.

(B) The Contract Arbitrator will notify the parties by providing each Arbitration IFQ holder and IPQ holder that is a party to the Binding Arbitration proceeding, a copy of any decision. The decision is binding on the parties to the Binding Arbitration proceeding.

(4) Basis for the Arbitration Decision.

The contract with the Contract Arbitrator shall specify that the Contract Arbitrator will be subject to the following provisions when deciding which last best offer to select.

(i) The Contract Arbitrator's decision shall:

(A) Be based on the historical distribution of first wholesale revenues between fishermen and processors in the aggregate based on arm's length first wholesale prices and ex-vessel prices, taking into consideration the size of the harvest in each year; and

(B) Establish a price that preserves the historical division of revenues in the fishery while considering the following:

(1) Current ex-vessel prices, including ex-vessel prices received for crab harvested under Class A IFQ, Class B IFQ, and CVC IFQ permits;

(2) Consumer and wholesale product prices for the processing sector and the participants in the arbitration (recognizing the impact of sales to affiliates on wholesale pricing);

(3) Innovations and developments of the harvesting and processing sectors and the participants in the arbitration (including new product forms);

(4) Efficiency and productivity of the harvesting and processing sectors (recognizing the limitations on efficiency and productivity arising out of the management program structure);

(5) Quality (including quality standards of markets served by the fishery and recognizing the influence of harvest strategies on the quality of landings);

(6) The interest of maintaining financially healthy and stable harvesting and processing sectors;

(7) Safety and expenditures for ensuring adequate safety;

(8) Timing and location of deliveries; and

(9) The cost of harvesting and processing less than the full IFQ or IPQ allocation (underages) to avoid penalties for overharvesting IFQ and a mechanism for reasonably accounting for deadloss.

(C) Consider the Non-Binding Price Formula established in the fishery by the Formula Arbitrator.

(ii) The Contract Arbitrator's decision may rely on any relevant information available to the Contract Arbitrator, including, but not limited to:

(A) Information provided by the QS, PQS, IPQ and IFQ holders in the fishery regarding the factors identified in paragraph (h)(4)(i) of this section; and

(B) The Market Report for the fishery.

(iii) Each of the Arbitration IFQ holders and the IPQ holders that is party to the proceeding may provide the Contract Arbitrator with additional information to support its last best offer. The Contract Arbitrator must receive and consider all data submitted by the parties.

(iv) The Contract Arbitrator may request specific information from the Arbitration IFQ holder(s) and IPQ holder that will be useful in reaching a final decision. The Contract Arbitrator will not have subpoena power and it is in the sole discretion of the person from whom information is requested as to whether to provide the requested information.

(5) Limits on the Release of Data.

The parties to a Binding Arbitration proceeding shall be precluded from full access to the information provided to the Contract Arbitrator.

(i) Arbitration IFQ holders that are party to an arbitration proceeding shall have access only to information provided directly by the IPQ holder to the

Contract Arbitrator for that Binding Arbitration proceeding.

(ii) IPQ holders that are party to an arbitration proceeding shall have access only to information provided directly by an Arbitration IFQ holder to the Contract Arbitrator for that Binding Arbitration proceeding.

(iii) The Contract Arbitrator shall keep confidential the information provided by any QS, PQS, IFQ, or IPQ holders in the fishery and not disclose the identity of the persons providing specific information except as provided in paragraph (h)(6) of this section.

(iv) The Arbitration IFQ holders and IPQ holders shall not release information received in a Binding Arbitration proceeding to persons who were not party to that Binding Arbitration proceeding other than the final result of that arbitration proceeding except as provided for in paragraph (h)(6) of this section.

**(6) Information Provided to NMFS.**

The Contract Arbitrator must provide any information, documents, or data required under this paragraph to NMFS **in accordance with paragraph (a)(3) of this section** not later than 30 days prior to the end of the crab fishing year for which the open negotiation or arbitration applied. The contract with the Contract Arbitrator must specify that the Contract Arbitrator provide NMFS with:

(i) A copy of any minutes from any meeting attended by that Contract Arbitrator between or among any PQS or IPQ holders concerning any negotiations under this section;

(ii) Any last-best offers made during the Binding Arbitration process, including all contract details, the names of other participants in the arbitration, and whether the bid was accepted by the Contract Arbitrator; and

(iii) A copy of any information, data, or documents given by the Contract Arbitrator to any person who is not a party to the particular arbitration for which that information was provided. The Contract Arbitrator must identify the arbitration to which the information, data, or documents apply, and the person to whom those information, data, or documents were provided.

**(7) Enforcement of Binding Arbitration decisions.** The decision of the Contract Arbitrator for Binding Arbitration shall be enforced among the parties to that arbitration.

**(8) Failure of Contract Arbitrator(s).**

Except as provided for in paragraph (h)(6) of this section, the failure of a Contract Arbitrator to perform shall be enforced by the Arbitration Organizations.

**(9) Post Binding Arbitration opt-in.**

(i) An Arbitration IFQ holder with uncommitted IFQ, may opt-in to any contract that results from a completed a Binding Arbitration procedure with any IPQ holder that has uncommitted IPQ.

(A) All the terms from the arbitrated contract will apply. The Contract Arbitrator may determine fees and a time frame by which a Post Binding Arbitration opt-in may occur if those terms are not specified in the arbitrated contract.

(B) Once exercised, the opt-in results in a contract that is binding on both the Arbitration IFQ and IPQ holder.

(ii) To initiate the opt-in process, the holder of uncommitted Arbitration IFQ will notify the holder of uncommitted IPQ in writing of its intent to opt-in.

(iii) Holders of uncommitted Arbitration IFQ may opt-in to a contract resulting from a completed Binding Arbitration procedure with a person that holds uncommitted IPQ for that fishery.

(iv) If the IPQ holder and the Arbitration IFQ holder are unable to resolve a dispute regarding whether the opt-in offer is consistent with the original contract from the completed Binding Arbitration procedure, the dispute may be decided by the Contract Arbitrator to the original arbitration that resulted in the contract to which the Arbitration IFQ holder is seeking to opt-in. The Contract Arbitrator will decide only whether the proposed opt-in terms are consistent with the original contract.

**(10) Performance disputes.**

If an IPQ holder and an Arbitration IFQ holder are unable to resolve disputes regarding the obligations to perform specific contract provisions after substantial negotiations or when time is of the essence, the issues of that dispute shall be submitted for Binding Arbitration before a Contract Arbitrator for that fishery.

(i) Binding Arbitration resulting from a performance dispute can occur at any point during or after the crab fishing year. The dispute must be raised by the IPQ holder or the Arbitration IFQ holder. Arbitration of that performance dispute must be initiated prior to the date of the first crab fishing season

for the following crab fishing year in that crab QS fishery.

(ii) Performance dispute arbitration shall follow the applicable procedures described for a Binding Arbitration in paragraph (h)(3) of this section, except that the time frame for the procedure applicable to a performance dispute will be determined by the Contract Arbitrator once the dispute has been raised.

(iii) If a party fails to abide by the arbitration decision, a party may pursue available contract remedies.

(iv) The costs of arbitrating performance disputes shall be provided from the general fees collected by the Arbitration Organizations pursuant to paragraph (e) of this section.

(v) The Contract Arbitrator may assign fees to any party bringing frivolous complaints. Any such fees shall be paid by the party and not from the fees collected under paragraph (e)(2)(vi) of this section.

(11) Quality disputes.

When disputes regarding the quality of the harvested crab arise within the context of an existing contract, the parties may settle the disputes within the context of the arbitration system according to the following:

(i) In cases where the IPQ holder and Arbitration IFQ holder(s) have agreed to a formula-based price for crab but where they cannot reach an agreement on the quality and price of the crab, the IPQ holder and Arbitration IFQ holder(s) will receive their share of the value of the amount of crab delivered based on the provisions of the contract.

(ii) In quality disputes where the Arbitration IFQ holders prefer to use actual ex-vessel price and not a formula-based price and a dispute arises regarding crab quality and price, the dispute should be referred to a mutually agreeable independent quality specialist firm. This independent quality specialist firm will determine the quality of the crab. This information will be used as the basis for subsequent price determinations. The IPQ holder and Arbitration IFQ holder(s) with this quality dispute shall share the cost of hiring the specialist firm and agree to abide by its findings according to the terms of their agreement.

fisheries. Program components include quota share allocation, processor quota share allocation, individual fishing quota and individual processing quota issuance, quota transfers, use caps, crab harvesting cooperatives, protections for Gulf of Alaska groundfish fisheries, arbitration system, monitoring, economic data collection, and cost recovery fee collection.

## II. Method of Collection

On paper (faxed or mailed) or electronically. The Annual RCR Ex-Vessel Volume and Value Report, Crab Inter-Cooperative IFQ Transfer, and Transfer of Crab IPQ may be completed online.

## III. Data

*OMB Control Number:* 0648–0514.

*Form Number:* None.

*Type of Review:* Regular Submission (extension of a currently approved collection).

*Affected Public:* Business or other for-profit organizations; individuals or households.

*Estimated Number of Respondents:* 1,920.

*Estimated Time per Response:* 2.5 hours for Application for Crab Individual Fishing Quota (IFQ) permit; 2.5 hours for Application for Crab Individual Processor Quota (IPQ) permit; 2.5 hours for Application for annual crab harvesting cooperative IFQ permit; 30 minutes for Application for Registered Crab Receiver (RCR) permit; 35 minutes for Application for crab IFQ hired master; 35 minutes for Application for Federal crab vessel permit; 2.5 hours for Application to become an eligible crab community organization (ECCO); 2 hours for Application for eligibility to receive Crab QS/IFQ or PQS/IPQ by transfer; 2 hours for Application for transfer of Crab QS/IFQ or PQS/IPQ; 2 hours for Application to transfer QS/IFQ to or from an ECCO; 2 hours for Application for Transfer of IFQ between Crab Harvesting Cooperatives; 30 minutes for RCR fee submission form; 40 hours for Right of First Refusal Provisions (ROFR); 30 minutes for ROFR Waiver; and 4 hours to file an appeal to NMFS Permit Decisions.

*Estimated Total Annual Burden Hours:* 4,472.

*Estimated Total Annual Cost to Public:* \$ 12,425 in recordkeeping/reporting costs.

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 13, 2011.

### Gwellnar Banks,

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2011–957 Filed 1–18–11; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Proposed Information Collection; Comment Request; Alaska Region; Bering Sea and Aleutian Islands Crab Arbitration

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before March 21, 2011.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, (907) 586–7008 or [patsy.bearden@noaa.gov](mailto:patsy.bearden@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

## I. Abstract

This is an extension of a currently approved collection.

The Crab Rationalization Program allocates Bering Sea and Aleutian Islands (BSAI) crab resources among harvesters, processors, and coastal communities through a limited access system that balances the interests of these groups who depend on these fisheries. Program components include quota share allocation, processor quota share allocation, individual fishing quota and individual processing quota issuance, quota transfers, use caps, crab harvesting cooperatives, protections for Gulf of Alaska groundfish fisheries, arbitration system, monitoring, economic data collection, and cost recovery fee collection.

The Crab Rationalization Program Arbitration System is established by the contracts required pursuant to 50CFR 680.20, including the process by which the Market Report and Non-Binding Price Formula are produced, as well as the negotiation approaches, the Binding Arbitration process, and fee collection.

## II. Method of Collection

Responses are mailed, except the Non-Binding Price Formula Report may be submitted electronically.

## III. Data

*OMB Control Number:* 0648–0516.

*Form Number:* None.

*Type of Review:* Regular Submission (extension of a currently approved collection).

*Affected Public:* Business or other for-profit organizations; individuals or households.

*Estimated Number of Respondents:* 49.

*Estimated Time per Response:* Market Reports and Non-Binding Price Formula Reports, 40 hours each; Annual Arbitration Organization Reports, 4 hours; Miscellaneous Organization Reports, 1 hour; establishing price for arbitration negotiations, 45 minutes.

*Estimated Total Annual Burden Hours:* 743.

*Estimated Total Annual Cost to Public:* \$ 5,374 in recordkeeping/reporting costs.

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and

clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 13, 2011.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2011-956 Filed 1-18-11; 8:45 am]

**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XA153**

**Fisheries of the South Atlantic and Gulf of Mexico; South Atlantic Fishery Management Council; Public Meeting**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of a public meeting.

**SUMMARY:** The South Atlantic Fishery Management Council's Scientific and Statistical Committee will hold a meeting of its SSC to discuss the findings of its Socio-Economic sub-panel. *See SUPPLEMENTARY INFORMATION.*

**DATES:** The meeting will be held March 3, 2011, via conference call. *See SUPPLEMENTARY INFORMATION.*

**SUPPLEMENTARY INFORMATION.**

**ADDRESSES:** The meeting will be held by conference call from 10 a.m. to 12 p.m., EST on Thursday, March 3, 2011.

Listening stations are available at the South Atlantic Fishery Management Council, 4055 Faber Place Drive #201, North Charleston, SC 29405.

**FOR FURTHER INFORMATION CONTACT:** Kim Iverson, Public Information Officer, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571-4366; e-mail: [Kim.Iverson@safmc.net](mailto:Kim.Iverson@safmc.net).

**SUPPLEMENTARY INFORMATION:** Under the Magnuson-Stevens Reauthorized Act, the SSC is the body responsible for reviewing the Council's scientific materials. The SSC will discuss recommendations of the Council's Social and Economic Sciences sub-Panel and develop recommendations for Regulatory Amendment 9 to the

Snapper-Grouper Regulatory FMP. The amendment addresses commercial trip limits alternatives for greater amberjack, vermilion snapper, black sea bass, and gag.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (*see ADDRESSES*) at least 3 business days prior to the meeting.

Dated: January 12, 2011.

**Tracey L. Thompson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2011-941 Filed 1-18-11; 8:45 am]

**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XA133**

**National Annual Catch Limit Science Workshop; Meeting Announcement**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of a public meeting.

**SUMMARY:** NMFS announces a workshop which will focus potential areas of improvement in scientific information needed to support Annual Catch Limits (ACL) and Accountability Measures (AM). The meeting will be held on February 15-17, 2011, at the Crowne Plaza, Silver Spring, MD. Meeting topics are provided under the **SUPPLEMENTARY INFORMATION** section of this notice.

**DATES:** The meeting will be held on February 15-17, 2011, from 9 a.m. to 5 p.m. EST.

**ADDRESSES:** The meeting will be held at the Crowne Plaza, Silver Spring, 8777 Georgia Avenue, Silver Spring, MD, telephone 1-877-270-1393.

**FOR FURTHER INFORMATION CONTACT:** Richard Methot, Office of Science and Technology, NMFS at [richard.methot@noaa.gov](mailto:richard.methot@noaa.gov), or at (206) 860-3365.

**SUPPLEMENTARY INFORMATION:** NOAA Fisheries Service is announcing a National Annual Catch Limit (ACL) Science Workshop on February 15-17, 2011, in Silver Spring, MD. The meeting will be held in conjunction with the regional Fishery Management Councils (Councils) and will involve NOAA Fisheries Service staff, Council representatives and nationally recognized fishery science experts.

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) was amended in 2007, to include a requirement to implement ACLs and accountability measures in the nation's fisheries. This mandate, and the subsequent update of National Standard 1 Guidelines, substantially changed the nature and amount of data needed to manage the nation's fisheries. The workshop will focus on scoping potential improvements in the state of scientific information needed to support implementation of the MSA, particularly the determination and implementation of Annual Catch Limits (ACL). The scope of this science issues associated with ACLs is quite broad, and not all topics can be fully covered. The proposed topics to be addressed include:

- Identifying data needs, and related costs, of conducting additional stock assessments.
- Calculating and communicating uncertainty in stock assessments.
- Considering socio-economic and ecosystem considerations, in the definition of optimum yield.
- Developing cost-effective approaches to developing ACLs and AMs for data-poor stocks.
- How to best use cooperative research programs to augment needed data.
- Coordinating the roles of Science Centers, SSCs, and peer review systems in providing the best scientific information available.
- Identifying improvements to commercial and recreational fishery monitoring programs to provide scientists and managers with the data they need.

**Special Accommodations**

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mark Nelson at (301) 713-2341 at least five working days prior to the meeting.