

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 11/04/2007

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

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 06/08/2007

ACTION REQUESTED: New collection (Request for a new OMB Control Number)
TYPE OF REVIEW REQUESTED: Regular
ICR REFERENCE NUMBER: 200704-0648-005
AGENCY ICR TRACKING NUMBER:
TITLE: Regional Economic Data Collection Program for Gulf Coast Alaska
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change
OMB CONTROL NUMBER: 0648-0571

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: 11/30/2010

DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	0	0	0
New	500	171	0
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	500	171	0
Change due to Agency Adjustment	0	0	0
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE:

OMB Authorizing Official:

Kevin F. Neyland
Deputy Administrator,
Office Of Information And Regulatory Affairs

List of ICs

IC Title	Form No.	Form Name	CFR Citation
Large, medium and small vessel surveys	NA, NA, NA	Vessel phone follow-up interview (alternative to mail survey), Small vessel mail survey, Large and medium vessel mail survey	
Phone interview with small businesses	NA	Phone Interview Scripts	
Phone interviews with fish processors	NA	Phone Interview Scripts	

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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 b. <input type="checkbox"/> None 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
REGIONAL ECONOMIC DATA COLLECTION PROGRAM
FOR THE GULF COAST REGION OF ALASKA
OMB CONTROL NO. 0648-xxxx**

A. JUSTIFICATION

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

Regional or community economic analysis of proposed fishery management policies is required by the Magnuson-Stevens Fishery Conservation and Management Act ([MSA](#)) as amended in [2006](#), National Environmental Policy Act ([NEPA](#)), and [Executive Order 12866](#), among others. To satisfy these mandates and inform policymakers and the public of the likely regional economic impacts associated with fishery management policies, appropriate economic models and the data to implement these models are needed.

Much of the data required for regional economic analysis associated with the Gulf Coast region of Alaska fisheries are either unavailable or unreliable. Accurate fishery-level data on employment, labor income, and expenditures in the Gulf Coast region of Alaska fishery and related industries are not currently available but are needed to estimate the effects of fisheries on the economy of the Gulf Coast region of Alaska. To remedy this information gap, this information collection will gather data from industry sources (i.e., commercial fishing vessel owners, local businesses) on these important regional economic variables needed to develop models that will provide more reliable estimates and significantly improve policy-makers' ability to assess policy effects on fishery-dependent communities in the Gulf Coast region.

For the same reasons as stated above, this information will also be collected from vessels in the Southwest region of Alaska. An information collection request was submitted to OMB in March 2007.

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

The information collected will be summarized and used by the economists conducting the data collection program [an Alaska Fisheries Science Center (AFSC) economist and a contractor at the University of Alaska, Fairbanks(UAF)] to revise the deficient fishery data in IMPLAN (IMpact analysis for PLANning, Minnesota IMPLAN Group) which is a commercially available regional economic data set. After revision of the IMPLAN data is completed, the revised IMPLAN data will be used to develop regional economic models for fisheries in the Gulf Coast region of Alaska, including models such as input-output (IO) models and computable general equilibrium (CGE) models. The resulting regional economic models will be used to estimate the impacts of fisheries resulting from

changes in fishery management policies for the fisheries in the Gulf Coast region of Alaska, and thus provide policy-makers with additional information to aid in decision making.

In this project, two different data collection methods will be used: (1) a mail survey of vessel owners and (2) telephone interviews with local businesses including fish processors. The mail survey will be used for three different vessel classes – small, medium, and large vessels. The Small vessel class includes all vessels 32 ft and smaller. The Medium vessel class includes all vessels that are larger than 32 ft, but equal to or smaller than 90 ft. The Large vessel class includes all vessels larger than 90 ft.¹ Two different versions of the mail survey were developed, one for the small vessel sector and the other for medium and large vessel sectors. Attachment A contains the two different versions of the survey. Telephone interviews with local businesses and fish processors will also be conducted. The phone scripts for interviews with these businesses are found in Attachment B. Each of these two data collection methods is described below. Attachment C contains (a) an advance letter for the mail survey, (b) an initial mailing letter (or cover letter) for the mail survey, (c) a postcard reminder for the mail survey, (d) a follow-up phone call script for the mail survey, and (e) an advance letter that will be sent to local businesses contacted for the phone interview.

Mail Surveys for Vessel Owners

The surveys for the fishers are structured to gather a limited amount of information related to specific IMPLAN data requirements for employment and specific components of personal income and value added. This includes questions about numbers of crew

¹ IMPLAN data provides only aggregate information on harvesting activity; there is only one single harvesting sector in IMPLAN data. To estimate the potential impacts of fishery management actions on individual harvesting sub-sectors, it is necessary to disaggregate the whole harvesting sector into different sub-sectors. Since Alaska fisheries are very complicated, there are many different ways of dividing the harvesting sector into sub-sectors. There is no ideal, clear-cut way of dividing the harvesting sector. In this project, the Gulf Coast harvesting sector is divided into three vessel classes depending on various factors such as (1) sizes of the vessels, (2) species caught, (3) geographic distribution of the economic impacts, (4) other factors. This division of vessel classes was supported by Alaska fisheries experts as well as University of Alaska, Fairbanks (UAF) economists familiar with Gulf Coast fisheries. The following is the rationale used to divide the harvesting sector into three different vessel classes.

Small vessel class: The 32 ft upper limit is set because it is the size limit in some major Alaska fisheries on drift netters and gillnetters which catch mostly salmon. These vessels are characterized by very similar expenditures and income. This vessel class includes 831 vessels (population size) in the Gulf Coast fishery. Also, the economic impacts (expenditures and income) associated with small vessel fisheries occur mostly within local areas.

Medium and large vessel class: It is generally accepted that 90 ft is the limit for safe operation on the high seas. Operation of sub-90 ft vessels (medium vessels) is generally more local than over-90 ft vessels (large vessels). Therefore, medium vessels' local spending per unit of output is higher than that of large vessels which transit from home port (located mostly in Washington or Oregon) to fishing grounds. Medium vessels' activity will thus likely have most of their economic impacts on the Gulf Coast region while large vessels' activity are more likely to have multi-regional impacts on both the Gulf Coast, other regions of Alaska, and the West Coast. Most of the fish species caught by large vessels is groundfish while those by medium vessels are more varied.

members and skippers, crew share, ownership, and participation of owners in fishing activities to identify labor and capital income components of owner's fishing income. Additional questions are targeted to identify specific fisheries-related crew, skipper, and ownership shares of income from ex-vessel value. The resulting information will provide a complete set of IMPLAN data for use in constructing three fishing vessel sectors in the Gulf Coast region of Alaska, specifically the components of value added and employment.

The following is a discussion of specific questions in the small vessel survey (Attachment A). Since the questions in the large/medium vessel survey are the same as those in the small vessel survey except that the small vessel survey has an additional question (Question 6), discussion of the questions in the large/medium vessel survey will not be provided. The explanation of each question relates the purpose of the question to the data needs of the regional economic model for the Gulf Coast region of Alaska.

Questions on Vessel Information: Question 1 is intended to determine the accuracy of data that is already in the possession of the researchers. Determination of accuracy is critical to the cost engineering component of the study which will be conducted to impute operating costs after the data collection is completed².

Questions on Skipper and Crew Payment and Employment Information: The first three questions (Questions 2 to 4) ask about employment of skippers, crew, and owners. Question 5 obtains information on the residency of crew, skipper(s), and owners who provided labor in harvesting fish. Question 6 obtains information on fishery-based employment for fisheries that are not year round. Question 7 is used to estimate payments to the crew and skipper. More detailed explanation of each question is given below.

² The cost engineering study will rely on this vessel information to specify an average vessel for determination of operating, maintenance, and depreciation costs associated with each vessel class. For more details and examples of this type of study, see:

Cross, T. 1998. "Machinery Cost Calculation Methods." Agricultural Extension Service, University of Tennessee Institute of Agriculture, AE&RD No. 13.

Patterson, P. and R. Smathers. 2006. "Custom Rates for Idaho Agricultural Operations, 2005-06." University of Idaho College of Agricultural and Life Sciences, Bul 729.
<http://info.ag.uidaho.edu/pdf/BUL/BUL0729.pdf>

Pacific Northwest Cooperative Extension. 1998 (revised in 2001). "Costs of Owning and Operating Farm Machinery in the Pacific Northwest" PNW0346.
<http://cru84.cahe.wsu.edu/cgi-bin/pubs/PNW0346.html>

- Question 2 provides the gross employment numbers to be used in the IMPLAN model.
- Question 3 provides information on how many months in the calendar year the survey respondent was an owner of the vessel. If the owner owned the vessel for less than a full year, the information from this question could be used with the data from Question 7 to approximate the annual income to crew and skipper(s).
- Question 4 is the most complex and provides information needed to determine employment by fishery, and to provide information which will be needed to estimate employee compensation, proprietor income, and other property income when combined with answers to questions that follow.
- Question 5 will account for regional (the Gulf Coast region of Alaska) employment of crew, skipper(s), and owners (by species).
- Since P&I payments only occur during the active season, information from Question 6 will allow us to calculate fishery-based employment for fisheries that are not year around. For the large/medium vessel survey, this question is not included, as the large/medium vessel owners that we spoke to indicated that it would not be appropriate for them.
- Question 7 will allow the estimation of crew and skipper payments. This information contributes to the research goal of determining employee compensation and proprietor income.

The survey concludes with space for respondents to comment on the survey or the general study.

Telephone Interviews with Local Businesses

The objective of conducting telephone interviews with local businesses is to gain information on what amount (in dollars) of the intermediate inputs were sold by local businesses to each vessel class. Since each local business typically sells goods and services in a single North American Industry Classification System (NAICS) sector and the NAICS sector that the business is in will be known from the Alaska Division of Community Advocacy (http://www.dced.state.ak.us/dca/commdb/CF_COMMDB.htm), interviews with businesses in the Gulf Coast region of Alaska will be based on only a few questions. Attachment B has the phone scripts with the detailed questions. Several days before phone calls are made to local businesses, an advance letter will be sent to them informing them of the purpose of the study, indicating that they will soon be called to participate in the study, and letting them know what type of questions will be asked. The advance letter is contained in Attachment C. Once the information on input sales to the vessel classes is obtained, it will be mapped into IMPLAN sectors, and be used to revise IMPLAN data. The interviews with local businesses will gain a very limited piece of information from each business that will be used to construct the Gulf Coast region of Alaska production function in IMPLAN.

Telephone Interviews with Fish Processors

Because fish processors are the most important local businesses for the fleet, their interactions with the fleet are very important in the Gulf Coast regional economic models. The questions that are asked of them will be slightly more complicated because they are a multi-commodity and multi-service provider to individual vessels. Their activities are limited mainly to selling the following to the fleet(s): fuel and lubricants, groceries, fishing gear, vessel mechanical parts, vessel equipment, repair services, and bait. Extensive interviews with processors provided guidelines in terms of how to ask these questions. In the phone interview³ with fish processors, we will ask them about their sales of the above goods and services to each of the three vessel classes. Attachment B contains the phone scripts with the detailed questions for fish processors. Since the investigators have already established personal relationships with the principal fish processors and they know that they will be contacted, no advance letter needs to be sent. Once the information on fish processors' sales to the vessel classes is obtained, it will be used to revise the IMPLAN data and the production functions in the data.

As explained in the preceding paragraphs explaining the two methods of data collection, the information to be 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 Item #10 below 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. Although the information collected is not expected to be disseminated directly to the public, results may be used in scientific, management, technical or general informational publications. Should NOAA Fisheries decide to disseminate the information, it will be subject to the quality control measures and 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.

³ The fish processors have very sophisticated accounting systems, and have detailed cost information which the interviewers will be requesting. There are several reasons why a phone interview approach was chosen as the method of collecting information from fish processors. First, in gathering information from people engaged in fisheries in Alaska including fish processors, it is very important to build a personal relationship to obtain the necessary information. Based on this relationship, a telephone interview is more effective than a mail-out survey. Second, respondents to mail-out survey, especially those respondents engaged in fishery-related activities in Alaska such as vessel owners, local businesses, and fish processors, suffer from "survey respondent fatigue" since so many agencies, universities, and other institutions are sending them various surveys. Most of the mail-out survey respondents, especially if the survey is voluntary and does not provide any monetary or non-monetary reward, will just ignore and throw away the mailed surveys when they receive them. This is why the response rates of mail-out surveys for fisheries have traditionally been so low. For the vessel owner survey in this project, it is infeasible to conduct phone interviews for each of the vessel owners since the population is so large. However, if the population size is relatively small as in the case of fish processors, telephone interview will generate higher response rate when conducted based on the personal relationship already established.

The information collection does not involve use of any of the above information technology techniques. While it is easier for the investigators to collect the necessary information through emails in this project, most of the survey respondents (including vessel owners, local businesses, and fish processors) would find it more inconvenient to respond in emails compared with telephone interviews or even mail-out surveys - and they may not have internet access. More importantly, in the case of obtaining information on Alaska fisheries, it is the personal relationship that is being developed that will lead to responses, not the survey method. Therefore, unless personal contact or relationship between investigators and the respondents are developed, the respondents will simply ignore the e-mail surveys.

4. Describe efforts to identify duplication.

An extensive search was conducted to find studies that collect regional economic information for the study region, but did not yield any applicable studies. However, several other data collection efforts for other regions in Alaska are noteworthy. One study collected regional economic information for Southeast Alaska from 1995-96 (for year 1994)⁴. Another study that tried to collect regional economic information in Alaska is a study related to the snow crab fishery in the Bering Sea and Aleutian Islands region⁵. Thus, the present project represents the first regional economic data collection project for the study region and covers all fisheries instead of focusing solely on a subset of fisheries.

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

Telephone interviews with small local businesses (suppliers) in the Gulf Coast region of Alaska will be used to obtain information about vessel expenditures on groceries and other goods and services provided to commercial fishermen. To minimize the burden, only a few questions will be asked of them and the phone call per business entity will be less than 15 minutes. Some of fish processors are small businesses and the phone call for each of these processors will be less than 40 minutes. This is a minimum amount of time required to obtain the necessary information from the processors. The survey of vessel owners was constructed so as to minimize the amount of time required to answer questions. For example, questions on vessel expenditures are omitted from the survey to minimize burden. Also, characteristics specific to the vessel are pre-printed in each individual survey so that the respondent does not have to spend time on recalling or looking them up. This will also contribute to minimizing burden. Questions are limited in number and scope, thereby minimizing the burden to each respondent.

⁴ Hartman, J. 2002. *Economic Impact Analysis of the Seafood Industry in Southeast Alaska: Importance, Personal Income, and Employment in 1994*. Regional Information Report No. 5J02-07. Alaska Department of Fish and Game.

⁵ Herrmann, M., J. Greenberg, C. Hamel, and H. Geier. 2004. *Regional Economic Impact Assessment of the Alaska Snow Crab Fishery Integrated with an International Snow Crab Market Model*. University of Alaska, Fairbanks, School of Management Working Series Report 2004-001.

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

No other entity is likely to collect the information needed for resolving the IMPLAN deficiencies. Therefore, if the data collection is not conducted by us, the deficiencies in the IMPLAN data will not be fixed, and therefore, the mandates of MSA, NEPA, and Executive Order 12866 described in Item #1 above will not be satisfied.

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

None.

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.

During the public notice period, three individuals asked for copies of the mail survey forms. In response to the requests, we provided the forms to them. One of them also asked for information on the sampling procedures, and asked about data collection and estimation methods (such as population sizes, sample sizes, and out-of-region expenditures). We replied to him with the requested information. Another person also asked about the methods to be used for the project, including questions about what information we will collect and what methods (mail survey, phone interview) we will use. We provided the answers to her.

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

We do not have any plan to provide any payments or other gifts to the respondents.

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

On the first page of the survey, we provided a confidentiality statement as follows:

CONFIDENTIALITY: Per Section 402(b) of the Magnuson-Stevens Act (16 U.S.C. 1801, et seq.), all individual surveys will be held by only a limited number of researchers at UAF who will enter or work with the data. After the data are entered in an electronic format, only these researchers will have password-protected access to the data. After data from the surveys have been entered into an electronic format, the hard copies will be kept

in a locked metal cabinet. These individual surveys will be destroyed upon completion of the study. Your name, vessel identification and address will be used only for mailing and survey administration purposes. Only summary results will be reported to the public. NMFS and other agencies will receive only aggregate results in summary form.

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.

No sensitive questions will be asked.

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

The estimated number of respondents is 500. The estimated total annual burden hours are 171. These numbers are derived as follows: According to the Gulf Coast of Alaska vessel revenue data for year 2005⁶ (Commercial Fisheries Entry Commission), the population size (the total number of harvesting vessels that landed fish at Gulf Coast region ports) is 1,846. This population consists of three subpopulations – small vessels (831), medium vessels (964), and large vessels (51). The optimal sample size⁷ for each subpopulation is calculated using the sampling procedures described in Attachment D assuming a ±10% error in the estimate of population totals of interest and an alpha of 0.05. The resulting optimal sample sizes are 197 and 180 for small and medium vessel classes, respectively. To achieve these numbers of respondents for the two vessel classes (small and medium), assuming a 55% response rate, 359 surveys for the small vessel class and 327 surveys for the medium vessel class need to be mailed out. Since the population size of the large vessel class is very small (51), we will send the surveys to all the large vessel owners.⁸ This means that a total of 737 surveys need to be mailed out

⁶ We plan to collect 2005 data since the latest IMPLAN data to be revised with the survey data will also be from 2005.

⁷ Optimal sample size as used here is the number of vessels needed for analysis to achieve the level of precision desired given an allowed error of population estimate and an alpha.

⁸ Here, we are conducting a census for the large vessel class, where the sample size is equal to population size (N). Since the survey is a voluntary survey, there will be some non-respondents. In this case, the population totals (employment and labor income) will be estimated simply as:

$$\hat{Y} = \left(\frac{\sum_{i=1}^N X_i}{\sum_{i=1}^r X_i} \right) \sum_{i=1}^r y_i$$

where X_i : auxiliary variable (vessel revenue) of i^{th} unit,
 r : number of respondents,
 y_i : response sample data of i^{th} unit (employment or labor income), and

and a total of 405 vessels are expected to complete surveys assuming a 55% response rate. Regarding the number of respondents from telephone interviews, all the units in the population (146) will be contacted. Assuming a 65% response rate⁹, the estimated number of respondents will be about 95 (66 local businesses and 29 fish processors). Therefore, the total number of respondents from mail survey and telephone interviews is estimated to be 500. Since it is estimated that about 20, 15, and 40 minutes will be taken to conduct vessel owner survey, local business phone interview, and fish processor phone interview, respectively, the estimated total annual burden hours are 171. See the table below for details.

$$\frac{\sum_{i=1}^N X_i}{\sum_{i=1}^r X_i} : \text{adjustment factor for non-response.}$$

We will assume that a sampling unit is either always a respondent or always a nonrespondent (i.e., the response mechanism is fixed). This will imply that the variance of the estimate is zero. Under this assumption, all of the error in the estimate is due to nonsampling error. Therefore we will publish the response rate in conjunction with the estimate so that the data user can have some intuitive feel for the quality of the estimate. The above assumption that the sampling unit is always a respondent or always a nonrespondent is more than likely not totally true. This may be true for many sampling units, but for other sampling units the probability of responding is greater than zero and less than one. Variance formulas could be derived if these probabilities of responding were known, but since they're not, we will assume that they are either zero or one (Personal Communication, John Slanta, U.S. Census Bureau, 2007). For the other two vessel classes (medium and small vessel classes), we will use unequal probability sampling (UPS), which is described in detail in Attachment D.

⁹ We assume a 65% response rate based on previous studies which show that, on average, about 65% response rate was achieved for phone interviews with local businesses and fish processors. These studies include:

Herrmann, M., J. Greenberg, C. Hamel, and H. Geier, March 4, 2004. "Regional Economic Impact Assessment of the Alaska Snow Crab Fishery Integrated with an International Snow Crab Market Model." University of Alaska Fairbanks School of Management Working Series Report 2004-001.

Greenberg, J., M. Herrmann, H. Geier, and C. Hamel, January 2002. "Wild Salmon Risk Management in Bristol Bay Alaska: Draft Final Report." University of Alaska Fairbanks. Report to the United States Department of Agriculture.

Herrmann, M., S.T. Lee, C. Hamel, K. Criddle, H. Geier, J. Greenberg, and C. Lewis. June 2000. An Economic Assessment of the Marine Sport Fisheries for Halibut, and Chinook and Coho Salmon in Lower Cook Inlet. @ OCS Study Minerals Management Service 2000-046. Annual Report No. 6. Coastal Marine Institute, University of Alaska.

Information Collection	Number of respondents	Responses per respondent	Estimated time per response	Estimated hours (responses multiplied by time per response)
Small Vessel mail survey	197	1	20 minutes	65.7
Medium Vessel mail survey	180	1	20 minutes	60.0
Large Vessels mail survey	28	1	20 minutes	9.3
Local business phone interviews	66	1	15 minutes	16.5
Fish processor phone interviews	29	1	40 minutes	19.3
TOTALS	500			170.8

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

The estimated total annual cost to public is \$0.

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

The total cost of this data collection project is estimated to be \$6,187, which covers (a) labor cost for implementing the survey and (b) mailing costs (for mail surveys, advance letters, and postcard reminder) and telephone calls for interviews. Since we will use the same survey questions as those developed for Southwest Alaska regional economic data collection project, the survey development costs for the current project (Gulf Coast project) are zero. The project will take one year and therefore, the annualized cost is \$6,187.

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

This is a new program.

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

The data collected will be used to revise IMPLAN data for the study region. The collection of data is expected to start in August 2007. Based on this estimated starting

time, the revision of IMPLAN data and generation of a balanced social accounting matrix (SAM) will be completed by February 2008. Summary results of data collection will be published in a project report, but will not be made available on the Alaska Fisheries Science Center's website. Results from regional economic models to be developed using the data will be published in a peer-reviewed journal.

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

The expiration date will be displayed.

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

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

1. Describe (including a numerical estimate) the potential respondent universe and any sampling or other respondent selection method to be used. Data on the number of entities (e.g. establishments, State and local governmental units, households, or persons) in the universe and the corresponding sample are to be provided in tabular form. The tabulation must also include expected response rates for the collection as a whole. If the collection has been conducted before, provide the actual response rate achieved.

For the vessel surveys, the overall population consists of all fishing vessels landing raw fish at a port in Gulf Coast region, Alaska during 2005. For that year, there were 1,846 vessels. This population consists of three vessel classes – small, medium, and large vessel classes. The population sizes are 831, 964, and 51, respectively for small, medium, and large vessels classes. An unequal probability sampling (UPS) procedure is used to determine the sample sizes needed for the analysis for small and medium vessel classes, which is described in Item #2 below and in Attachment D. Since the population size of the large vessel class is very small (51), we will mail out the surveys to all large vessel owners.¹⁰ The population sizes of local businesses and fish processors are 102 and 44, respectively.

¹⁰ There is population overlap between vessels landing fish in the Gulf coast region (current project) and Southwest region. According to Commercial Fisheries Entry Commission data, there are a total of 295 vessels that land at both Gulf Coast region and Southwest region. Out of these 295 vessels, 72 are in the small vessel class, 170 are in the medium vessel class, and 48 are in the large vessel class. The remainder does not report vessel length. Thus, nearly all of the large vessel class landing at Gulf Coast ports (48 vessels out of a total of 51 large vessels) also land at Southwest ports. The questions in the surveys for Gulf Coast and Southwest data collection projects are the same except for the region name in the questions asking about the residency of crew, skipper, and owners. Therefore, if any of the 295 vessels are selected via Pareto sampling into the mailout samples for Gulf Coast project, we will send the selected vessel owners only those questions which ask about the residency of the fishermen, excluding all the other questions, thus reducing public burden. We will also acknowledge this sample overlap in our cover letter to the vessel owners who land at both Gulf Coast and Southwest regions.

The expected response rates for the vessel surveys are based on consideration of the following factors. First, compared with a previous data collection project conducted for Southeast Alaska (Hartman 2002), which achieved an overall response rate of about 30%, the number of questions in the present project is much smaller and the quantity of information being asked is much smaller. Second, in the present study, questions about sensitive information such as vessel cost and expenditures are omitted. The previous Southeast study included these sensitive questions, which significantly contributed to the low response rate. Third, input from select members of the respondent populations helped guide survey design and question wording. Fourth, follow-up telephone calls will also increase the response rate. Based on these factors, it is expected that, overall, the response rate for mail survey of fishermen for the present project will be about 55% which is much higher than in the Southeast study. For telephone interviews with local businesses (including fish processors), a response rate of 65% is expected. For a more detailed description of the methods we used, and will use, to increase the response rate, see Item #3 below.

Vessel Class	Population size	Mail or phone interview sample size	Expected number of respondents	Expected response rate
Small vessel	831	359	197	55%
Medium vessel	964	327	180	55%
Large vessel	51	51	28	55%
Local businesses including fish processors	146	146	95	65%

2. Describe the procedures for the collection, including: the statistical methodology for stratification and sample selection; the estimation procedure; the degree of accuracy needed for the purpose described in the justification; any unusual problems requiring specialized sampling procedures; and any use of periodic (less frequent than annual) data collection cycles to reduce burden.

Since the majority of gross revenue within each harvesting sector comes from a small number of vessels, a simple random sampling (SRS) of vessels would only include a small portion of the total ex-vessel value, and therefore, would be misleading. As a result, for the present project an unequal probability sampling (UPS) method without replacement is used that accounts for this unequal harvest in each target population. The objective of implementing the sampling task is to estimate the employment and labor income information for each of three disaggregated harvesting sectors using as an auxiliary variable the ex-vessel revenues provided by Commercial Fisheries Entry Commission (CFEC) earnings data. Since each sector will be used as a separate economic sector in IMPLAN model, we face three separate problems for three different sectors in sampling. For small and medium vessel sectors, we use a UPS without replacement method to identify sampling units. Details on our sampling methodology are described in Attachment D. Since the population size of the large vessel class is small (51), we will mail out the surveys to all large vessel owners.

3. Describe the methods used to maximize response rates and to deal with non-response. The accuracy and reliability of the information collected must be shown to be adequate for the intended uses. For collections based on sampling, a special justification must be provided if they will not yield "reliable" data that can be generalized to the universe studied.

(a) Maximizing Response Rates

Previous applications of voluntary commercial fishing surveys in Alaska (e.g., Hartman 2002) were hampered by low response rates that principally resulted from the use of long and complicated survey instruments. Commercial fishermen are frequently asked, and often required, to participate in surveys from numerous organizations including NOAA, Alaska Department of Fish and Game (ADF&G), and universities. As a result, commercial fishermen are less likely to complete voluntary surveys that are lengthy, poorly-designed, and do not clearly involve issues that are important to them. In this data collection, significant efforts were made to ensure the survey instruments were short in length, contained well-designed questions, and clearly conveyed the importance of the data collection to issues that are important to commercial fishermen.

The mail surveys are short (6 to 7 questions depending upon the survey version, all of which span eight pages) and avoid many sensitive questions compared with many previously-fielded commercial fishing surveys. The set of questions was limited to only those that are essential for achieving the objectives of the project as outlined in Part A, Item #1 above. There is only a fraction of the number of questions asked compared with the Southeast Alaska commercial fishing survey discussed earlier, which achieved an overall response rate of about 30%. In the mail surveys, numerous questions on vessel expenditures that are often included in surveys of commercial fishermen are omitted here to avoid the added complexity and likely sensitivity of asking for this type of information from respondents.¹¹

The telephone scripts for use in interviews with local businesses and fish processors were developed with similar goals in mind. Specifically, each phone script was constructed to include only the most essential questions to ensure the telephone interviews were short in length to minimize the time burden on respondents.

Pretesting activities that included a small focus group and several interviews with fishermen and fish processors (totaling less than 10 individuals) were used to evaluate the content and presentation of the survey materials, as well as to ensure input by the fishing community. Feedback from these pretesting activities aided in non-trivial ways to the development of the survey questions. For instance, considerable effort was made to ensure that the survey instrument reflected considerations for the record-keeping systems kept by fishermen and used common terms and wording used by fishermen. Participants in pretesting activities also indicated that previous voluntary surveys often did not

¹¹ Vessel expenditures will be estimated using (1) the sales data collected from telephone interviews with local businesses and fish processors and (2) a cost engineering approach.

provide adequate assurances that the information being requested would be handled confidentially, which often deterred them from responding. To ensure respondents that the data they share will be kept confidential, a detailed confidentiality statement is presented on the first page of the mail survey and mentioned upfront in the telephone interviews. A similar statement is made in the cover letter accompanying the mail survey.

Another reason believed to have caused low response rates in previous survey efforts is the disinterest among respondents toward the survey purpose. Surveys that collect information that will clearly benefit or interest respondents are more likely to be completed. The importance and benefits of this data collection project to the respondents (fishermen, local businesses, and fish processors) will be emphasized in the advance letter, cover letter, mail survey, and telephone interviews. In these letters and phone interviews, the investigators clearly state that with the help of the respondents, the important role of the respondents' fishing and business activities in the regional economy can be better identified and that the information they provide will be used to enhance the fishery management practices of NOAA fisheries, and, thereby, to increase the long-run economic benefits to the fishermen and local businesses. Making a clear link between the survey, their participation, and the fishery and regional economy is expected to help increase the response rate relative to previous studies.

In addition to the above steps taken to maximize response rates, the survey instruments (mail and telephone) were subjected to significant review by several researchers with expertise on Alaska fisheries and economic surveys to ensure the quality of the materials.

In addition to high-quality survey instruments, the set of survey protocols to be followed in implementation was designed to maximize response rates. For the mail survey, a modified Dillman (2000) approach will be employed that includes four survey contacts as follows (All the letters, postcard reminder, and follow-up phone scripts for these four contacts are attached in Attachment C):

- An **advance letter** notifying the respondents a few days before they receive the survey questionnaire. This will be the first contact with the respondent.
- An **initial mailing** sent a few days after the advance letter. Each mailing will contain a cover letter, personalized questionnaire, and a pre-addressed stamped return envelope.
- A **postcard follow-up reminder** mailed 5-7 days following the initial mailing.
- A **follow-up phone call** to encourage response and identify individuals that have misplaced or need another copy of the survey. If the respondent agrees, the mail survey will be completed over the phone.¹² Up to three attempts will

¹² In this case, the ex-vessel values (by species) of the vessel will be provided to the vessel owners so that they will not have to access their records, which should greatly simplify the question and allow them to calculate the crew and skipper payments easily. In doing this, we will make sure that the person we will be interviewing on the phone is the true owner of the vessel. This is because we do not want to breach the confidentiality by providing the sensitive information to the wrong person. As is seen in the mail survey questions (Attachment A), however, this ex-vessel information will not be given to the respondent in the mail survey.

be made to contact each respondent for the telephone interview. Individuals needing an additional copy of the survey will be sent one with another cover letter and return envelope.

A strict Dillman approach is not warranted given negative input from commercial fishermen about repeated contacts beyond the phone contact.

The result of the efforts described above are compact and high-quality survey instruments that contain questions vessel owners, local businesses, and fish processors can answer with minimal effort. As a result, the expected response rate for the mail survey of fishermen is expected to exceed previous survey efforts and achieve a response rate of approximately 55%. This response rate is much higher than that in the longer and more complicated Southeast Alaska study (30% response rate). For the telephone interviews with local businesses (including fish processors), a response rate of 65% is assumed based on previous experience.¹³

(b) Non-response

To better understand the differences between them, comparisons will be drawn between respondents and non-respondents with respect to several observable characteristics: (1) geographical area of landed fish, (2) ex-vessel value, and (3) species that vessels catch. This information is available from government data for each vessel. If significant and systematic differences between the two groups are discovered, the population parameter estimates of interest may be adjusted by using weights formed from these variables.

4. Describe any tests of procedures or methods to be undertaken. Tests are encouraged as effective means to refine collections, but if ten or more test respondents are involved OMB must give prior approval.

There are no plans to conduct a pilot survey or other tests involving more than ten respondents.

5. Provide the name and telephone number of individuals consulted on the statistical aspects of the design, and the name of the agency unit, contractor(s), grantee(s), or other person(s) who will actually collect and/or analyze the information for the agency.

John Slanta (Census Bureau) and Dr. Dan Lew (NMFS) assisted in the development and review of sampling procedures for this project. Their phone numbers are 301-763-4773 and 206-526-4252, respectively.

Several NMFS economists with experience in economic survey design and implementation reviewed the survey materials and survey protocols, including Dr. Dan Lew, Dr. Ron Felthoven, and Dr. Brian Garber-Yonts.

¹³ See Section A #12, Footnote 6.

Professor Hans Geier (University of Alaska, Fairbanks) is the contractor who will conduct the data collection project, revise the IMPLAN data, and participate in developing regional economic models.

Dr. Chang Seung (Alaska Fisheries Science Center) will conduct the statistical analysis of the information collected, and develop regional economic models with Professor Geier.

2005

Gulf Coast Alaska Fisheries Economic Activity Survey

SAMPLING PROCEDURES FOR HARVESTING SECTORS¹

The overall project objective is to estimate the employment and labor income information for each of three disaggregated harvesting sectors using data to be collected via a mail survey. Using ex-vessel revenue information, an unequal probability sampling (UPS) procedure will be employed to determine the sampling plan for each of the three harvesting sectors. The procedure is described below.

In the literature, there exist many methods for conducting UPS without replacement (see, for example, Brewer and Hanif 1983; Sarndal 1992). One critical weakness with most of these methods is that the variance estimation is very difficult because the structure of the 2nd order inclusion probabilities $(\pi_{ij})^2$ is complicated. One method that overcomes this problem is Poisson sampling. However, one problem with Poisson sampling is that the sample size is a random variable, which increases the variability of the estimates produced. An alternative method that is similar to Poisson sampling but overcomes the weakness of the Poisson sampling is Pareto sampling (Rosen 1997)³ which yields a fixed sample size.

In this project, there are two tasks that we need to do for estimating the population parameters using UPS without replacement. First, the optimal sample size needs to be determined. Second, once the optimal sample size is determined, the population parameters and confidence intervals need to be estimated. For the first task, we will use the variance of Horvitz-Thompson (HT) estimator from Poisson sampling in Part I below.⁴ For the second task, we will use the Pareto sampling method described in Part II below (Slanta 2006). In determining the optimal sample size in Part I, we will use information on an auxiliary variable (ex-vessel revenue). To estimate the population parameters in Part II, we use actual response sample information on the variables of interest (employment and labor income).

Part I: Estimating Sample Size

Step 1: Estimation of Optimal Sample Size (n*)

(A) Obtaining Initial Probabilities

To obtain the initial values of the inclusion probabilities (π_i) for unit i in the population, we multiply the auxiliary value of unit i (X_i , i.e., the ex-vessel value of vessel i in the population) by a proportionality constant (t)⁵:

$$\pi_i = t X_i \quad (1)$$

where π_i : probability of vessel i being included in the survey sample
 X_i : value of the auxiliary variable (ex-vessel value of vessel i in the population)

Here, t is given by

$$t = \frac{\sum_i^N X_i}{V + \sum_i^N X_i^2} \quad (2)$$

where N : population size
 V : desired variance (of HT estimator of the population total); Poisson variance. Here, V is given as:

$$V = \left(\frac{\varepsilon X}{z_{1-(\alpha/2)}} \right)^2$$

where ε is the error allowed by the investigator [e.g., if ε is 0.1, then 10% error of true population total ($X = \sum_{i=1}^N X_i$) is allowed]; and z is percentile of the standard normal distribution. Therefore, choosing a desired variance V is equivalent to

setting the values of ε and z . The value of V calculated using $V = \sum_{i=1}^N \frac{(1-\pi_i)X_i^2}{\pi_i}$

(Poisson variance; Brewer and Hanif 1983, page 82) with π_i 's being the final values of N inclusion probabilities obtained from Step 1, will be equal to the desired variance given at the beginning of Step 1.

Some of the resulting π_i 's could be larger than one. The number of certainty units (i.e., the number of units for which $\pi_i > 1$) is denoted C_1 . If $\pi_i > 1$, then we force this inclusion probability to equal one ($\pi_i = 1$).

(B) Iterations and Determination of Optimal Sample Size

We recalculate t using the noncertainty units (i.e., the units for which $\pi_i < 1$) obtained in (A) above, i.e.,

$$t = \frac{\sum_i^{M_1} X_i}{V + \sum_i^{M_1} X_i^2} \quad (2')$$

where M_1 : number of noncertainty units from (A), where $M_1 = N - C_1$.

Using equation (1) above, we calculate the inclusion probabilities for the noncertainty units by multiplying the t value [from equation (2')] by the ex-vessel values of the noncertainty units. If the resulting π_i 's are larger than one, we force them to equal one. The resulting numbers of certainty and noncertainty units are denoted C_2 ($= C_1 +$ additional number of certainty units) and M_2 ($= M_1 -$ additional number of certainty units), respectively, where $C_2 + M_2 = N$. Next, for M_2 units of noncertainty, we calculate the t and π_i 's again. This is an iterative process. We continue this process until the noncertainty population stabilizes (i.e., until there is no additional certainty unit).

If the noncertainty population stabilizes after k th iteration, there will be C_k units of certainty units and M_k units of noncertainty units and $C_k + M_k = N$. Summing over the probabilities for all these certainty and noncertainty units, we obtain the optimal sample size (n^*) as:

$$n^* = \sum_i^N \pi_i \quad (3)$$

At this stage the optimal sample size may not be an integer number. In this stage, we also compute the optimal sample size under simple random sampling (SRS)⁶, n_{srs} , and compare it with n^* .

Step 2: Determining Number of Mailout Surveys

(A) Adjustment of Probabilities

Once the optimal sample size (n^*) is determined in Step 1, we divide the sample size (n^*) by the expected response rate (obtained from previous studies) to determine the number of surveys that need to be mailed out to achieve n^* . The number thus derived is denoted n_a (this number may not still be an integer value). We next adjust the inclusion probabilities for the M_k noncertainty units obtained in Step 1 above as:

$$\pi_i = (n_a - C_k) \left[\frac{\pi_i}{\sum_i^{M_k} \pi_i} \right] \quad (4)$$

If the resulting probabilities are larger than one ($\pi_i > 1$), we make them certainties ($\pi_i = 1$). The resulting numbers of certainty and noncertainty units are denoted C_{k+1} and M_{k+1} , respectively. Next, we adjust the probabilities of the new set of noncertainty units (M_{k+1}) in a similar way using equation (4') below:

$$\pi_i = (n_a - C_{k+1}) \left[\frac{\pi_i}{\sum_i^{M_{k+1}} \pi_i} \right] \quad (4')$$

We continue this process until the noncertainty population stabilizes. The resulting numbers of certainty and noncertainty units are C_q and M_q , respectively.

(B) Apply Minimum Probability Rule

At this point, we impose a minimum probability rule. UPS can have excessively large weights ($= 1/\pi_i$) and if they report a large value, then the population estimate and its variance would be very large. In order to avoid this problem, we can impose a minimum value of the inclusion probabilities. If m is the minimum imposed probability, then we do the following:

If $\pi_i < m$, then set $\pi_i = m$ for each i , where $i = 1, \dots, N$.

The value for m here is determined arbitrarily. The only cost involved in using this rule is a small increase in sample size.⁷

(C) Finding an Integer Value for Sample Size

Next, we add up all the resulting inclusion probabilities. The resulting sum is denoted n_b ($> n_a$), which may not be an integer value. Next, we adjust again the probabilities for noncertainty units including the units for which the minimum probabilities were imposed as:

$$\pi_i = (n_c - C_q) \left[\frac{\pi_i}{\sum_i^{M_q} \pi_i} \right] \quad (5)$$

where n_c is the smallest integer value larger than n_b (e.g., if $n_b = 15.3$, then $n_c = 16$). Finally, we add up the resulting (certainty and noncertainty) probabilities. The sum of all these probabilities is the final survey sample size (i.e., the number of surveys to be sent out to), and is denoted n_m ($= n_c$).

Part II: Estimation of Population Parameters and Confidence Intervals

Step 3: Implementation of Pareto Sampling

After the mailout sample size (n_m) for each sector is determined in Step 2, the mailout sample is selected from each sector's population using Pareto sampling. The probability of each unit (vessel) being in the sample in a given sector is proportional to the unit's (vessel's) ex-vessel revenue. Because the majority of gross revenue within each sector comes from a small number of vessels, a random sample of vessels would only include a small portion of the total ex-vessel values.

According to Brewer and Hanif (1983), there are fifty different approaches that are used for UPS. Most of these approaches suffer from the weakness that it is very hard to estimate the variance. Poisson sampling overcomes this problem, and is relatively easy to implement. However, the limitation of Poisson sampling is that the sample size is a random variable. Therefore, in this project, we will use Pareto sampling (Rosen 1997 and Saavedra 1995) which overcomes the limitation of Poisson sampling. The mailout sample size will be n_m as determined in Step 2 (C) above. We will use the inclusion probabilities obtained from Equation (5) above in implementing Pareto sampling.

The procedure of this sampling method (Block and Crowe 2001) is briefly described here:

1. Determine the probability of selection (π_i) for each unit i as in Equation (5) above.
2. Generate a Uniform (0,1) random variable U_i for each unit i
3. Calculate $Q_i = U_i (1 - \pi_i) / [\pi_i (1 - U_i)]$
4. Sort units in ascending order by Q_i , and select n_m smallest ones in sample.

From the above, it is clear that we will have a fixed sample size with Pareto sampling.

Step 4: Mailing out Surveys and Obtaining Actual Response Sample

Next, we will send out the surveys to the n_m units (vessel owners). Actual response sample will be obtained and the size of the actual response sample is denoted r .

Step 5: Estimation of Population Parameters (Population Total)

Using the information in the actual response sample, we calculate population parameters *for variables of interest* (employment and labor income in our project), *not for ex-vessel revenue*, using HT estimator (Horvitz and Thompson 1952). We are interested in estimating the population totals (not population means) of the variables of interest. The HT estimator is given as:

$$\hat{Y}_{HT} = \sum_{i=1}^r w_i y_i \quad (6)$$

where r : number of respondents
 w_i : weight for i th unit ($= 1/\pi_i$). Note that the weights are calculated here using the information on the auxiliary variable, not that on the variables of interest
 y_i : response sample data of i^{th} unit (employment or labor income)

However, the HT estimator needs to be adjusted for non-response. The estimator is adjusted in the following way.

$$\hat{Y} = \left(\frac{\sum_{j=1}^N X_j}{\sum_{i=1}^r w_i X_i} \right) \hat{Y}_{HT} \quad (7)$$

where N : population size
 X_i : auxiliary variable of i^{th} unit (respondents only)

Usually, we apply this adjustment to the certainties separately from the noncertainties, and then add the two together to get a final estimate. If there are no respondents within any of the two groups of certainty units and noncertainty units, then we collapse the two groups before applying the adjustment. Specifically, the final estimate of population total is given by:

$$\hat{Y} = \left(\frac{\sum_{j=1}^{N_1} X_j}{\sum_{i=1}^{r_1} w_i X_i} \right) \sum_{i=1}^{r_1} w_i y_i + \left(\frac{\sum_{j=1}^{N_2} X_j}{\sum_{i=1}^{r_2} w_i X_i} \right) \sum_{i=1}^{r_2} w_i y_i \quad (8)$$

where N_1 : number of certainty units in the population
 N_2 : number of noncertainty units in the population
 r_1 : number of respondents from certainty units
 r_2 : number of respondents from noncertainty units, and
 $N_1 + N_2 = N$ and $r_1 + r_2 = r$.

Step 6: Estimation of Variance for \hat{Y}_{HT} and \hat{Y}

Here we will calculate the variances of the population estimates for the variables of interest. The variance estimate for Pareto sampling is given in Rosen (1997, Equation (4-11), p. 173) as:

$$Var(\hat{Y}_{HT}) = \frac{n_m}{n_m - 1} \left\{ \left[\sum_{i=1}^{n_m} (1 - \pi_i) \left(\frac{y_i}{\pi_i} \right)^2 \right] - \frac{\left[\sum_{i=1}^{n_m} y_i \left(\frac{1 - \pi_i}{\pi_i} \right) \right]^2}{\sum_{i=1}^{n_m} (1 - \pi_i)} \right\} \quad (9)$$

Since we have adjusted for nonresponse, we need to incorporate the variability due to nonresponse into the variance. If we assume that the response mechanism is fixed ⁸, then we have a ratio estimator and its variance can be found in Hansen, Hurwitz, and Madow (1953, page 514). This variance is a Taylor expansion, and is given as:

$$Var(\hat{Y}) = \hat{Y}^2 \left(\frac{\hat{\sigma}^2(A)}{A^2} + \frac{\hat{\sigma}^2(B)}{B^2} - \frac{2COV(A,B)}{AB} \right) \quad (10)$$

where

$$A = \sum_{i=1}^r w_i y_i$$

$$B = \sum_{i=1}^r w_i X_i$$

$$\hat{\sigma}^2(A) = \frac{n_m}{n_m - 1} \left\{ \left[\sum_{i=1}^r (1 - \pi_i) (w_i y_i)^2 \right] - \frac{\left[\sum_{i=1}^r (1 - \pi_i) (w_i y_i) \right]^2}{\sum_{i=1}^{n_m} (1 - \pi_i)} \right\}$$

$$\hat{\sigma}^2(B) = \frac{n_m}{n_m - 1} \left\{ \left[\sum_{i=1}^r (1 - \pi_i) (w_i X_i)^2 \right] - \frac{\left[\sum_{i=1}^r (1 - \pi_i) (w_i X_i) \right]^2}{\sum_{i=1}^{n_m} (1 - \pi_i)} \right\}$$

$$COV(A,B) = \frac{n_m}{n_m - 1} \left\{ \left[\sum_{i=1}^r (1 - \pi_i) w_i^2 y_i X_i \right] - \frac{\left[\sum_{i=1}^r (1 - \pi_i) (w_i y_i) \right] \left[\sum_{i=1}^r (1 - \pi_i) (w_i X_i) \right]}{\sum_{i=1}^{n_m} (1 - \pi_i)} \right\}.$$

Step 7: Calculation of Confidence Intervals

Confidence intervals are calculated using response sample statistics obtained in steps 5 and 6. We only choose one sample, but if there were many independent samples chosen then we would expect on average that approximately $100(1-\alpha) \%$ of the confidence intervals constructed in the following manner will contain the truth.

$$\left(\hat{Y} - z_{\alpha/2} \sqrt{Var(\hat{Y})}, \hat{Y} + z_{\alpha/2} \sqrt{Var(\hat{Y})} \right) \quad (11)$$

where \hat{Y} : Estimated population total for employment or labor income.

Note that it is possible to use t-statistics if the sample size is small.

Footnotes

1. In the process of developing this document, several experts in UPS sampling assisted me by providing helpful comments and inputs. The experts include John Slanta (U.S. Census Bureau), Bengt Rosen (Uppsala University), Pedro Saavedra (ORC Macro), Holmberg Anders (Statistics Sweden), Paolo Righi (ISTAT, Italy), and Bob Fay (U.S. Census). In particular, I would like to thank John Slanta very much for his time and effort in providing valuable inputs and advice. His suggestions and comments contributed significantly to the development of the sampling procedures in this document. Many thanks go to Dan Lew (NMFS) for his rigorous review and valuable suggestions which contributed in a significant way to the improvement of this document. I also benefited from discussions of UPS with Norma Sands at NWFSC and from the Excel file that she developed.
2. 2nd order inclusion probability (π_{ij}) is defined as the joint probability of including in sample the i^{th} and j^{th} population units.
3. Saavedra (1995) independently developed the same sampling methodology as Rosen (1997), which he called Odds Ratio Sequential Poisson Sampling (ORSPPS).
4. Although we do not use Poisson sampling itself, we do use the Poisson variance of HT estimator of the population total.
5. Equation (1) is derived as follows.

HT estimator, $\hat{X}_{HT} = \sum_i \frac{X_i}{\pi_i}$, has variance,

$$V(\hat{X}_{HT}) = \sum_{i=1}^N \frac{X_i^2}{\pi_i} (1 - \pi_i) = \sum_{i=1}^N \frac{X_i^2}{\pi_i} - \sum_{i=1}^N X_i^2 \quad (\text{Brewer and Hanif 1983, page 82}) \quad (\text{A})$$

For an expected sample size n ,

$$\pi_i = n \left(\frac{X_i}{\sum_{i=1}^N X_i} \right) \quad (\text{B})$$

Substituting (B) into (A) and solving for n ,

$$n = \left(\sum_{i=1}^N X_i \right)^2 / \left(V(\hat{X}_{HT}) + \sum_{i=1}^N X_i^2 \right) \quad (\text{C})$$

Substituting (C) into (B),

$$\pi_i = \left[\frac{\sum_{i=1}^N X_i}{V(\hat{X}_{HT}) + \sum_{i=1}^N X_i^2} \right] X_i, \quad i = 1, 2, \dots, N, \quad (\text{D})$$

where $V(\hat{X}_{HT})$ is the desired variance.

6. The optimal sample size under SRS is determined using the following standard formula:

$$n_{srs} \geq \frac{z^2 N (CV_p)^2}{z^2 (CV_p)^2 + (N-1) \epsilon^2} \quad (\text{Levy and Lemeshow, formula (3.14) on page 74})$$

where n_{srs} : optimal sample size under SRS
 CV_p : coefficient of variation of the population parameter. Since the information on the population parameters (i.e., employment and labor income) is not available, we use ex-vessel revenue, for which the population information is available from CFEC. Therefore, CV_p is defined as standard deviation of the ex-vessel revenue in the population divided by the mean.

7. This minimum probability rule is used, for example, in the Manufacturing and Construction Division of the Census Bureau. To date, there has not been any research on the minimum probability in the sampling literature. It is an arbitrary value and in applications has sometimes varied between strata in the same survey. Some researchers determine the minimum probability such that the resulting weight, which is the reciprocal of the minimum probability, is less than or equal to the population size. Generally speaking, this minimum probability rule has little effect on the sample size.
8. Fixed response mechanism means that a unit included in a sample is always a respondent or non-respondent no matter what sample the unit is included in. In other words, the probability of the unit being a respondent is either one or zero but nothing in-between.

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Small vessel version



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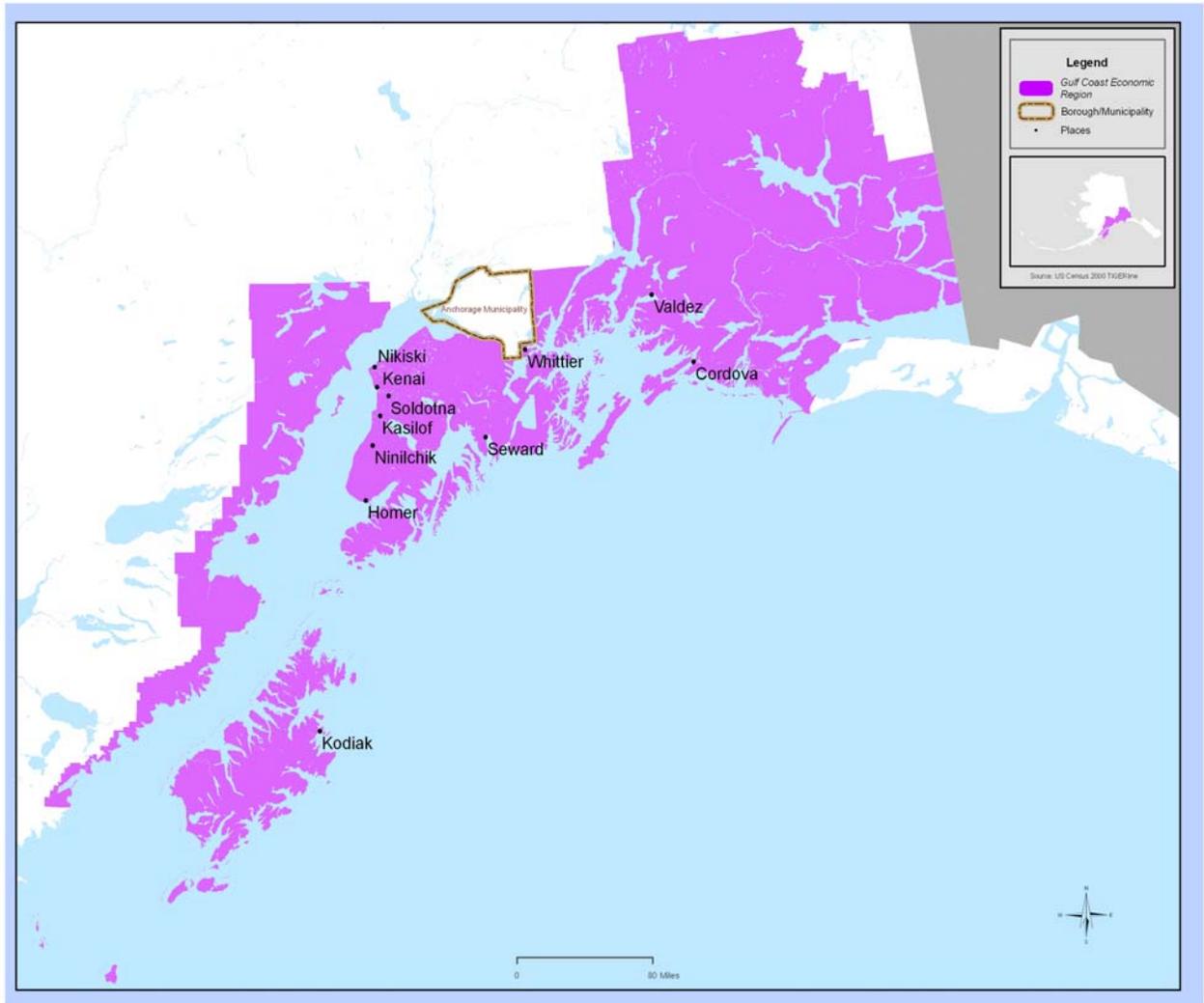
University of Alaska, Fairbanks (UAF)

and

National Marine Fisheries Service (NMFS)

OMB Control No.: 0648-XXXX
Expiration Date: MM/DD/YYYY

Gulf Coast of Alaska



CONFIDENTIALITY: Per Section 402(b) of the Magnuson-Stevens Act (16 U.S.C. 1801, et seq.), all individual surveys will be held by only a limited number of researchers at UAF who will enter or work with the data. After the data are entered in an electronic format, only these researchers will have password-protected access to the data. After data from the surveys have been entered into an electronic format, the hard copies will be kept in a locked metal cabinet. These individual surveys will be destroyed upon completion of the study. Your name, vessel identification and address will be used only for mailing and survey administration purposes. Only summary results will be reported to the public. NMFS and other agencies will receive only aggregate results in summary form.

Your Vessel Information

1. Please examine the table containing information about you and your vessel, and make any corrections that are needed in Column 3. The vessel characteristics information in Column 2 is public information, and is from Commercial Fisheries Entry Commission (Alaska Department of Fish and Game) data.

Column 1 Item	Column 2 Information on Record	Column 3 Corrections (if any)
Owner's name	<i>Phish Erman</i>	
Owner's address	<i>Rt. 1, Box 368, Stewart, MN 55385</i>	
Vessel name	<i>Lutefisk</i>	
USCG vessel ID	<i>3333666</i>	
State/vessel ID	<i>AK/FV33336</i>	
Vessel home port	<i>Cordova, AK</i>	
Length (feet)	<i>32</i>	
Fuel capacity	<i>600 gal.</i>	
Engine horsepower	<i>300</i>	
Fuel type	<i>Diesel</i>	
Net tonnage	<i>15 tons</i>	
Gross tonnage	<i>35 tons</i>	
Refrigeration system?	<i>Yes</i>	
Freezing system?	<i>No</i>	

Skipper and Crew Payment and Employment Information

The following questions are about employment of crew and skipper(s) and payments to them during the 2005 calendar year (January 1 – December 31).

2. On average, in 2005, how many total crew and skipper jobs (positions) did this vessel have while fishing or having maintenance or repairs performed?

3. During 2005, for how many months (0 to 12) were you an owner of this vessel?

4. For the species listed in Column 1 of the table below, please indicate the total number of crew members (Column 2), skippers (Column 3), and owners serving as skippers (Column 4) employed by this vessel in 2005.

- If a crew member (or skipper) fished for more than one species, count them as employed for each species they fished.

Column 1 Species this vessel landed in 2005	Column 2 Number of crew employed	Column 3 Number of skippers employed	Column 4 Number of owners that served as skippers
Salmon (all)			
Herring			
Halibut and black cod (sablefish)			
Crab (all)			
Groundfish (all)			
Other species (all)			

The following question asks for information specific to crew members, skippers, and owners who reside in the Gulf Coast region of Alaska only (see map on Page 1).

5. For each of the species listed in Column 1, please indicate the number of crew members (Column 2), skippers (Column 3), and owners that served as skippers (Column 4) you employed on this vessel that were Gulf Coast region residents in 2005.

- For determining the residency, please use the addresses on record of the crew members, skippers, and owners that served as skippers.
- If a crew member (or skipper) fished for more than one species, count them as employed for each species they fished.

Column 1 Species this vessel landed in 2005	Column 2 Number of Gulf Coast region resident crew members	Column 3 Number of Gulf Coast region resident skippers	Column 4 Number of Gulf Coast region resident owners that served as skippers
Salmon (all)			
Herring			
Halibut and black cod (sablefish)			
Crab (all)			
Groundfish (all)			
Other species (all)			

6. For each species listed in Column 1 of the table below, please record the number of days during 2005 you paid P&I (crew liability insurance) on your vessel's crew (Column 2).

Column 1 Species this vessel landed during 2005	Column 2 Number of days you paid P & I on your vessel's crew
Salmon (all)	
Herring	
Halibut and black cod (sablefish)	
Crab (all)	
Groundfish (all)	
Other species (all)	

The following question is about your payments to crew and skipper(s) for the 2005 calendar year. Information contained on delivery settlement sheets may assist you in accurately answering the question.

7. For each species this vessel landed, please record the payment (in dollars) made to crew (Column 2) and skipper(s) (Column 3).

Column 1 Species this vessel landed in 2005	Column 2 Total crew payments in 2005	Column 3 Total skipper payments in 2005
Salmon (all)	\$	\$
Herring	\$	\$
Halibut and Black Cod (Sablefish)	\$	\$
Crab (all)	\$	\$
Groundfish (all)	\$	\$
Other species (all)	\$	\$

Comments

Please use this space to provide us with any comments that you feel would assist us to report the economic contribution of fishers like you to the economy of the Gulf Coast region.

Paperwork Reduction Act (PRA) Statement

Public reporting burden for this collection of information is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other suggestions for reducing this burden to Chang Seung, Alaska Fisheries Science Center (Address: 7600 Sand Point Way NE Seattle WA 98115-6349, Phone: 206-526-4250)

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subjected to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

THANK YOU FOR PARTICIPATING IN THE SURVEY!

Please direct any questions to Hans Geier at the University of Alaska, Fairbanks by phone (907) 474-7727 or by e-mail at ffhtg@uaf

OMB Control No.: 0648-XXXX
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Large/Medium Vessel Version

2005

Gulf Coast Alaska Fisheries Economic Activity Survey



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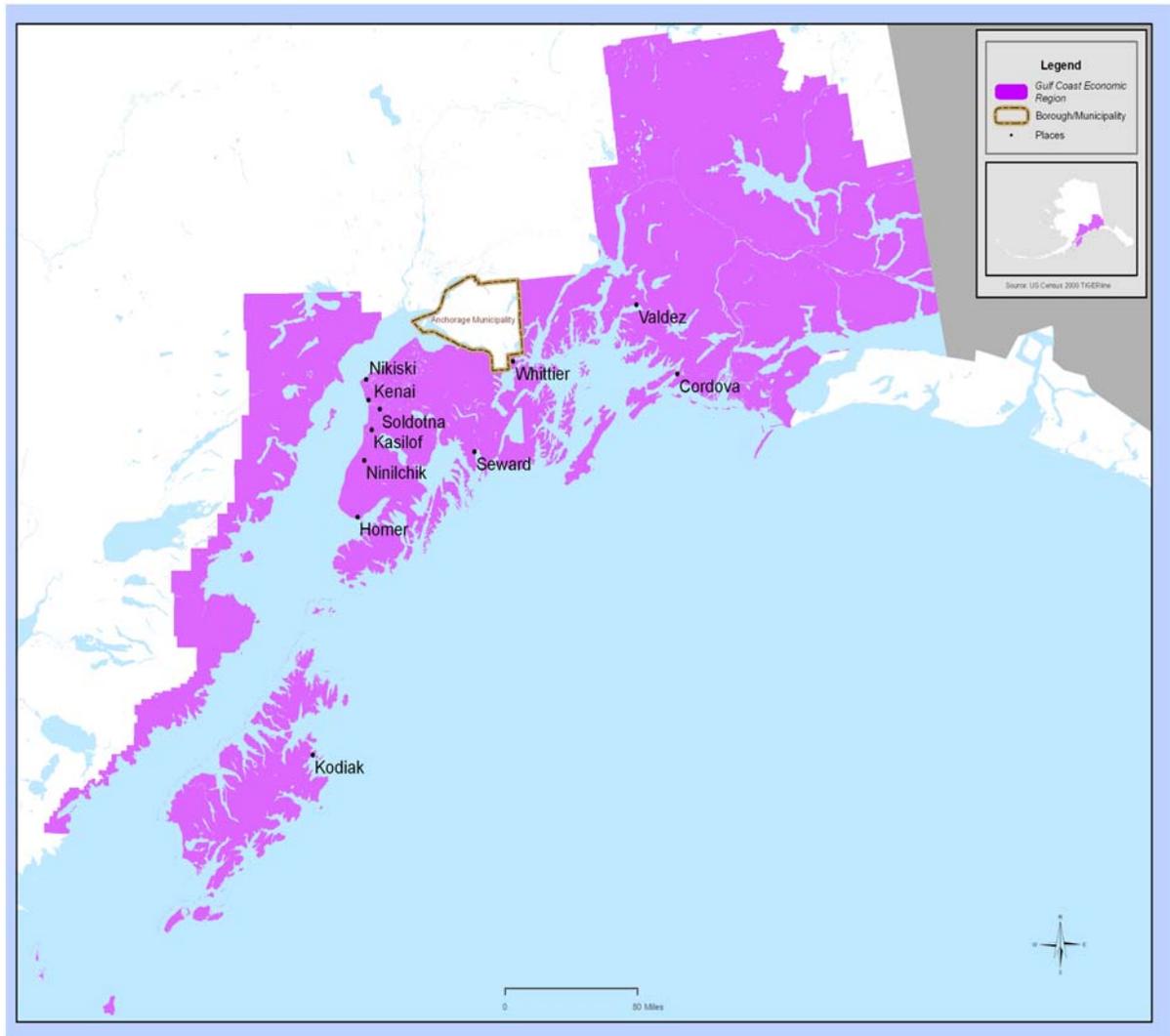
University of Alaska, Fairbanks (UAF)

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Gulf Coast of Alaska



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Your Vessel Information

1. Please examine the table containing information about you and your vessel, and make any corrections that are needed in Column 3. The vessel characteristics information in Column 2 is public information, and is from Commercial Fisheries Entry Commission (Alaska Department of Fish and Game) data.

Column 1 Item	Column 2 Information on Record	Column 3 Corrections (if any)
Owner's name	<i>Phish Erman</i>	
Owner's address	<i>Rt. 1, Box 368, Stewart, MN 55385</i>	
Vessel name	<i>Lutefisk</i>	
USCG vessel ID	<i>3333666</i>	
State/vessel ID	<i>AK/FV33336</i>	
Vessel home port	<i>Kodiak, AK</i>	
Length (feet)	<i>125</i>	
Fuel capacity	<i>8,000 gal.</i>	
Engine horsepower	<i>800</i>	
Fuel type	<i>Diesel</i>	
Net tonnage	<i>63 tons</i>	
Gross tonnage	<i>158 tons</i>	
Refrigeration system?	<i>No</i>	
Freezing system?	<i>Yes</i>	

Skipper, Crew, and Owner Employment Information

The following questions are about employment of crew, skipper(s), and owner(s) for your fishing-related activities during the 2005 calendar year (January 1 – December 31).

2. On average, in 2005, how many total crew and skipper jobs (positions) did this vessel have while fishing or having maintenance or repairs performed?

3. During 2005, how many months (0 to 12) were you an owner of this vessel?

4. For the species listed in Column 1 of the table below, please indicate the total number of crew members (Column 2), skippers (Column 3), and owners serving as skippers (Column 4) employed by this vessel in 2005.

- If a crew member (or skipper) fished for more than one species, count them as employed for each species they fished.

Column 1 Species this vessel landed in 2005	Column 2 Number of crew employed	Column 3 Number of skippers employed	Column 4 Number of owners that served as skippers
Salmon (all)			
Herring			
Halibut and black cod (sablefish)			
Crab (all)			
Groundfish (all)			
Other species (all)			

The following question asks for information specific to crew members, skippers, and owners who reside in the Gulf Coast region of Alaska only (see map on Page 1).

5. For each of the species listed in Column 1, please indicate the number of crew members (Column 2), skippers (Column 3), and owners that served as skippers (Column 4) you employed on this vessel that were Gulf Coast region residents in 2005.

- For determining the residency, please use the addresses on record of the crew members, skippers, and owners that served as skippers.
- If a crew member (or skipper) fished for more than one species, count them as employed for each species they fished.

Column 1 Species this vessel landed in 2005	Column 2 Number of Gulf Coast region resident crew members	Column 3 Number of Gulf Coast region resident skippers	Column 4 Number of Gulf Coast region resident owners that served as skippers
Salmon (all)			
Herring			
Halibut and black cod (sablefish)			
Crab (all)			
Groundfish (all)			
Other species (all)			

Crew and Skipper Payment Information

The following question is about your payments to crew and skipper(s) for the 2005 calendar year. Information contained on delivery settlement sheets may assist you in accurately answering the question.

6. For each species this vessel landed, please record the payment (in dollars) made to crew (Column 2) and skipper(s) (Column 3).

Column 1 Species this vessel landed in 2005	Column 2 Total crew payments in 2005	Column 3 Total skipper payments in 2005
Salmon (all)	\$	\$
Herring	\$	\$
Halibut and Black Cod (Sablefish)	\$	\$
Crab (all)	\$	\$
Groundfish (all)	\$	\$
Other species (all)	\$	\$

Comments

Please use this space to provide us with any comments that you feel would assist us to report the economic contribution of fishers like you to the economy of the Gulf Coast region of Alaska.

Paperwork Reduction Act (PRA) Statement

Public reporting burden for this collection of information is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other suggestions for reducing this burden to Chang Seung, Alaska Fisheries Science Center (Address: 7600 Sand Point Way NE Seattle WA 98115-6349, Phone: 206-526-4250)

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THANK YOU FOR PARTICIPATING IN THE SURVEY!

Please direct any questions to Hans Geier at the University of Alaska, Fairbanks by phone (907) 474-7727 or by e-mail at ffhtg@uaf

OMB Control No.: 0648-XXXX
Expiration Date: MM/DD/YYYY

LETTERS, POSTCARD, AND FOLLOW-UP PHONE SCRIPT

1. Advance Letter for Fishing Vessel Survey

<DATE>

Phish Erman
<Vessel Name>
Address
City, state, zip

Dear Mr. Erman:

The University of Alaska, Fairbanks (UAF), in cooperation with NOAA Fisheries (the National Marine Fisheries Service), is conducting a voluntary survey to learn more about commercial fishing activity in the Gulf Coast region of Alaska. With your help, we can identify the important role fishing activity plays for the economy of the Gulf Coast region and provide better information to fishery managers to enhance fishery management practices.

Your name was selected at random from commercial fishermen who landed fish at ports in the Gulf Coast region of Alaska during 2005. Very few fishermen were chosen for the study, so your help is critical to its success. In the next few days, you will receive a survey in the mail from UAF.

The survey asks about employment and earnings of crew and skipper(s) working on your vessel. We recognize the sensitivity of the information to be collected, and want to assure you it will be handled confidentially. All individual surveys will be held by the researchers at UAF and destroyed upon completion of the study.

You are one of a small number of fishermen who are fishing in waters off Alaska and landing at ports in the Gulf Coast region of Alaska selected to help. To keep costs low and make sure that the information obtained correctly represents Gulf Coast region fishing activity, we need to hear from you.

Thank you in advance for your help.

Sincerely,

Hans Geier
Project Director
University of Alaska, Fairbanks

2. Initial Mailing Letter for Fishing Vessel Survey (Cover Letter)

<Date>

Mr. Phish Erman
<Vessel Name>
Address
City, state, zip

Dear Mr. Erman:

As you know, commercial fishing plays a significant role in the economy of the Gulf Coast region of Alaska. One way commercial fishing contributes to the region's economy is through the jobs held by fishing vessel crew and skippers, and the income these crew and skippers spend in the region. Information about employment and income from commercial fishing is needed by local and state governments, businesses, and others who make decisions that affect people and industries in the Gulf Coast region of Alaska.

To help us improve our understanding of commercial fishing's role in the economy of the Gulf Coast region of Alaska, we ask that you complete the enclosed voluntary survey. The survey is being conducted in cooperation with the National Marine Fisheries Service (NMFS) and collects employment and income information related to the landings by your vessel, the <Vessel name>. The information you provide will be used to enhance the fishery management practices of NMFS, and, thereby, increase the long-run economic benefits to those who engage in fishing activities, including you.

We recognize the sensitivity of the information being collected, and want to assure you it will be handled confidentially. All individual surveys will be held by the researchers at University of Alaska, Fairbanks (UAF) and destroyed upon completion of the study. Your name and address will only be used for mailing purposes. Only summary results will be reported to the public and no data identifying you or your individual vessel will be provided to the public, NMFS, or other agencies that receive the study results.

Most of the information you need to complete the survey is available on your **2005** federal business tax return documents and your crew settlement sheets. With these materials, the survey should take about 20 minutes to complete and mail back in the enclosed self-addressed stamped envelope.

You are one of only a few vessel owners being asked to participate in this study. You were randomly selected from all vessel owners who delivered fish to seafood processing plants in the Gulf Coast region of Alaska. To ensure the results of the study truly represent vessels like yours, it is very important that you complete and return the survey.

I would be happy to answer any questions you may have about this study. Please call me at 907-474-7727 or email at ffhtg@uaf.edu. Thank you very much for your assistance.

Sincerely,

Hans Geier
Project Director
University of Alaska, Fairbanks

3. Postcard Reminder for Fishing Vessel Survey

Last week a survey was mailed to you seeking information about your commercial fishing activity for the Gulf Coast region of Alaska.

If you have already completed and returned the survey, please accept our sincere thanks. If you have not completed and returned the survey, we ask that you do so today.

It is very important that we hear from you. You are one of a small number of fishermen selected to participate in this study. Your response will help us improve understanding of commercial fishing's role in the economy of the Gulf Coast region of Alaska. However, a high rate of participation is required to make sure we have a sufficient number of respondents to understand the role fishing activity plays in the Gulf Coast economy.

If you need another copy of the survey, please call me at 907-474-7727 and another survey will be mailed to you.

Thank you for your help.

Hans Geier
Project Director
University of Alaska, Fairbanks

4. Script of Follow-up Telephone Interview with Vessel owners

Hello, my name is _____ and I am calling from the University of Alaska, Fairbanks. I am trying to reach [vessel owner].

[IF NOT AVAILABLE] → Thank you, I will call back later. When would be a good time to reach [vessel owner]?

[IF QUALIFIED RESPONDENT IS ON THE PHONE]

QA Recently, we mailed you a survey asking you about your recent fishing activity, entitled “Gulf Coast Alaska Fisheries Economic Activity Survey.” Do you remember receiving that survey?

- 1 YES [SKIP TO QA1]
- 2 NO [SKIP TO QA2]

QA1 As of today, we have not received your completed survey. You are one of a small group of vessel owners who landed fish at ports in the Gulf Coast region of Alaska we are asking for input, so your response is very important. All of your answers are confidential and your name will not be revealed to anyone. If we send you another survey, would you be able to complete the survey and return it to us within a week of receiving it?

- 1 YES – SEND NEW SURVEY [SKIP TO VERIFY]
- 2 YES – DO NOT NEED ANOTHER SURVEY [Thanks. We will be looking forward to receiving your completed survey.]
- 3 SURVEY HAS ALREADY BEEN RETURNED [THANK AND TERMINATE]
- 4 NO [SKIP TO QA3]

QA2 We are collecting employment and labor income information for your vessel to help us understand better the important role that your fishing activity plays in the economy of the Gulf Coast region of Alaska. You are one of a small group of vessel owners we are asking for the information, so your response is very important. I’d like to remind you that all of your answers are confidential and your name will not be revealed to anyone. If we send you another survey, could you return the survey to us within a week after you receive it?

- 1 YES – SEND NEW SURVEY [SKIP TO VERIFY]
- 2 YES – DO NOT NEED ANOTHER SURVEY [Thanks. We will be looking forward to receiving your completed survey.]
- 3 NO [SKIP TO QA3]

VERIFY (If new survey needs to be sent)

I would like to verify some information that I have. I have your name as...

NAME _____
STREET ADDRESS _____
CITY _____ STATE _____ ZIP _____
PHONE _____

Thank you, I will send another survey out today.

QA3 It is extremely important for our analysis that we obtain the information from fishermen like you. The information you provide will help us understand how your fishing activity have contributed to the community's economy, and be used to enhance the fishery management practices of NOAA Fisheries, and, thereby, increase the long-run economic benefits to the fishermen like you. If it is convenient for you, we can administer phone interview with you now. Would you be able to spend about 20 minutes to provide the information now?

- 1 YES [SKIP TO PHONE]
- 2 NO [THANK AND TERMINATE]

PHONE

Thank you very much. I am going to ask you first about the characteristics of your vessel.

Q1 I would like to verify some information about your name, address, and characteristics of your vessel. The information is public information, and is from a government data source (Commercial Fisheries Entry Commission, Alaska Department of Fish and Game). I have your name as...

Column 1 Item	Column 2 Information on Record	Column 3 Corrections (if any)
Owner's name	<i>Phish Erman</i>	
Owner's address	<i>Rt. 1, Box 368, Stewart, MN 55385</i>	
Vessel name	<i>Lutefisk</i>	
USCG vessel ID	<i>3333666</i>	
State/vessel ID	<i>AK/FV33336</i>	
Vessel home port	<i>Cordova, AK</i>	
Length (feet)	<i>32</i>	
Fuel capacity	<i>600 gal.</i>	
Engine horsepower	<i>300</i>	
Fuel type	<i>Diesel</i>	
Net tonnage	<i>15 tons</i>	
Gross tonnage	<i>35 tons</i>	
Refrigeration system?	<i>Yes</i>	
Freezing system?	<i>No</i>	

NOTE FOR RESPONDENTS (Say the following to the respondents)

In the remaining questions, I am going to ask you about employment of crew and skipper(s) and payments to them during the 2005 calendar year (January 1 – December 31).

Q2 On average, in 2005, how many total crew and skipper jobs (positions) did this vessel have while fishing or having maintenance or repairs performed?

Q3 During 2005, for how many months (0 to 12) were you an owner of this vessel?

Q4 I am going to list six (groups of) species for which I am interested in estimating the employment. They are salmon (all), herring, halibut and black cod (sablefish), crab (all), groundfish (all), and other species (all). For each of these species, can you tell me the total number of crew members, skippers, and owners serving as skippers employed by this vessel in 2005? If a crew member (or skipper) fished for more than one species, count them as employed for each species they fished.

Column 1 Species this vessel landed in 2005	Column 2 Number of crew employed	Column 3 Number of skippers employed	Column 4 Number of owners that served as skippers
Salmon (all)			
Herring			
Halibut and black cod (sablefish)			
Crab (all)			
Groundfish (all)			
Other species (all)			

Q5 For each of the species that I listed in the previous question, can you tell me the number of crew members, skippers, and owners that served as skippers you employed for this vessel that were Gulf Coast region residents in 2005? (IF THE RESPONDENT DOES NOT HAVE THE SURVEY THAT HAS THE GULF COAST REGION MAP OR IF HE/SHE DOES NOT KNOW GULF COAST REGION, EXPLAIN THE REGION TO HIM/HER, BY PROVIDING DESCRIPTIONS OF THE REGION.) For determining the residency, please use the addresses on record of the crew members, skippers, and owners that served as skippers. If a crew member (or skipper) fished for more than one species, count them as employed for each species they fished.

Column 1 Species this vessel landed in 2005	Column 2 Number of Gulf Coast region resident crew members	Column 3 Number of Gulf Coast region resident skippers	Column 4 Number of Gulf Coast region resident owners that served as skippers
Salmon (all)			
Herring			
Halibut and black cod (sablefish)			
Crab (all)			
Groundfish (all)			
Other species (all)			

Q6 For each species that I listed in an earlier question, please tell me the number of days during 2005 you paid P&I (crew liability insurance) on your vessel's crew.

Column 1 Species this vessel landed during 2005	Column 2 Number of days you paid P & I on your vessel's crew
Salmon (all)	
Herring	
Halibut and black cod (sablefish)	
Crab (all)	
Groundfish (all)	
Other species (all)	

Q7 For each species that I listed in an earlier question, can you tell me the payment (in dollars) made to crew and skipper(s) for the 2005 calendar year. To help you figure out the payments to crew and skipper(s), I will give you the ex-vessel value of each landed species in 2005, which was obtained from a government data source (Commercial Fisheries Entry Commission, Alaska Department of Fish and Game). Information contained on delivery settlement sheets may assist you in accurately answering the question. The government data says that the ex-vessel value of salmon is _____ dollars in 2005...

Column 1 Species this vessel landed in 2005	Column 2 2005 Ex-vessel value reported by species for this vessel	Column 3 Total crew payments	Column 4 Total skipper payments
Salmon (all)	\$175,000	\$	\$
Herring	\$52,000	\$	\$
Halibut and Black Cod (Sablefish)	\$0	\$	\$
Crab (all)	\$0	\$	\$
Groundfish (all)	\$0	\$	\$
Other species (all)	\$0	\$	\$

COMMENTS

That’s all the questions I have for you. Thank you very much. Do you have any comments that you feel would assist us to report the economic contribution of fishers like you to the economy of the Gulf Coast region of Alaska.

- 1 YES [OBTAIN THE COMMENTS AND GO TO CONCLUDE]
- 2 NO [GO TO CONCLUDE]

CONCLUDE

Thank you for your time. We really appreciate your participation. If you have any further questions, please contact me (Hans Geier) at the University of Alaska, Fairbanks by phone (907) 474-7727 or by e-mail at ffhtg@uaf

QUESTIONS/COMMENTS AND ANSWERS

[If concerned about purpose of the call] This is not a marketing or sales call. We are collecting information on your fishing activity. I want to assure you that your answers will be kept confidential and your name will not be revealed to anyone.

[If asking about the study sponsor] This survey is being conducted in cooperation with NOAA Fisheries, also known as the National Marine Fisheries Service, a U.S. government agency charged with understanding the effects of federal management actions and policies affecting the nation's saltwater fisheries.

PAPERWORK REDUCTION ACT (PRA) STATEMENT

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5. Advance Letter for Local Business Phone Interview

<DATE>

Business Manager or Owner

<Business Name>

Address

City, state, zip

Dear [Manager or Owner Name]:

The University of Alaska, Fairbanks (UAF), in cooperation with NOAA Fisheries (also known as the National Marine Fisheries Service), will conduct a telephone interview with businesses in your community on your sales to fishing vessels. This telephone survey will be a voluntary survey. With your help, we will be able to identify the important role your business plays for your community's economy, and provide better information to fishery managers to enhance fishery management practices.

You are one of a small group of business owners we will be asking to provide this information, so your response will be very important. I want to assure you that your answers will be kept confidential and your name will not be revealed to anyone. In the next few days, I will call you to ask about your sales of goods and services to fishing vessels in 2005. It will take less than 15 minutes to answer the questions. To keep costs low and make sure that the information correctly represents the activity of businesses like yours, your participation is needed.

Thank you in advance for your help.

Sincerely,

Hans Geier

Project Director

University of Alaska, Fairbanks

SCRIPTS FOR PHONE INTERVIEWS

1. Script of Phone Interview with Local Businesses

[IF NOT MANAGER OR OWNER – Ask to speak with the manager or owner]

Hello, my name is _____ and I am calling from the University of Alaska, Fairbanks. I am trying to reach [name on address].

[IF NOT AVAILABLE] → Thank you, I will call back later. When would be a good time to reach [name on address]?

[IF QUALIFIED RESPONDENT IS ON THE PHONE]

QA This is a voluntary survey. I am conducting a telephone interview with businesses in your community to collect information on sales of goods and services to fishing vessels. This is being done as part of a project being conducted in cooperation with NOAA Fisheries (also known as the National Marine Fisheries Service). The information you provide will help us identify the important role that your business activity plays in the regional economy, be used to enhance the fishery management practices of NOAA fisheries, and, thereby, increase the long-run economic benefits to local businesses like yours. I have only a few questions about your sales to fishing vessels. Your answers will be kept confidential and your name will not be revealed to anyone. To answer these questions, you need to have a record of sales to fishing vessels for 2005. Would you be able to spend 15 minutes answering these questions?

- 1 YES [SKIP TO Q1]
- 2 NO [SKIP TO QB]

QB It is very important for our analysis that we obtain information on your sales of goods and services to fishing vessels, which will help us understand how your business and businesses like yours have contributed to your community's economy. You are one of a small group of business owners we are asking to provide this information, so your response is very important. I want to assure you that your answers will be kept confidential and your name will not be revealed to anyone. If this is not a good time for you to participate in this phone interview, would you like us to schedule a later date and time?

- 1 YES [SKIP TO QC]
- 2 NO [THANK AND TERMINATE]

QC What date and time would be the best for you to participate in the phone interview?

Date: _____ Time: _____

Thanks. We will contact you at the scheduled time.

Q1 To answer this question, you may need to get the record of sales to fishing vessels for 2005 in front of you. Please let me know when you have it and you are ready to answer. [WAIT UNTIL RESPONDENT IS READY] What was the total amount of sales (in dollar value) you made to fishing vessels in 2005?

\$ _____

[If the dollar amount is not zero, SKIP TO Q2]

[If the dollar amount is zero, THANK AND TERMINATE.]

Q2 There are 3 vessel classes commonly used to describe vessels in the fishing fleet: Small vessels include all vessels 32 ft and smaller. Medium vessels include all vessels that are larger than 32 ft but equal to or smaller than 90 ft. Large vessels include all vessels larger than 90 ft. How much did you sell to each of these three vessel classes in 2005?

Vessel size	Total sales
Small (32 feet or smaller)	\$ _____
Medium (between 32 and 90 feet)	\$ _____
Large (greater than 90 feet)	\$ _____

CONCLUDE

That's all the questions I have for you. Thank you for your time. We really appreciate your participation in this survey. Have a good evening.

QUESTIONS/COMMENTS AND ANSWERS

[If concerned about purpose of the call] This is not a marketing or sales call. We are collecting information on your sales to fishing vessels. I want to assure you that your answers will be kept confidential and your name will not be revealed to anyone.

[If asking about the study sponsor] This survey is being conducted in cooperation with NOAA Fisheries, also known as the National Marine Fisheries Service, a U.S.

government agency charged with understanding the effects of federal management actions and policies affecting the nation's saltwater fisheries.

PAPERWORK REDUCTION ACT (PRA) STATEMENT

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other suggestions for reducing this burden to Chang Seung, Alaska Fisheries Science Center (Address: 7600 Sand Point Way NE Seattle WA 98115-6349, Phone: 206-526-4250)

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subjected to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

2. Script of Phone Interview with Fish Processors

[IF NOT MANAGER OR OWNER – Ask to speak with the manager or owner]

Hello, my name is _____ and I am calling from the University of Alaska, Fairbanks. I am trying to reach [name on address].

[IF NOT AVAILABLE] → Thank you, I will call back later. When would be a good time to reach [name on address]?

[IF QUALIFIED RESPONDENT IS ON THE PHONE]

QA This survey is a voluntary survey. I am conducting a telephone interview with fish processors in your community to obtain some information on your sales to fishing vessels. This is being done as part of a project being conducted in cooperation with NOAA Fisheries (also known as the National Marine Fisheries Service). The information you provide will help us identify the important role that your business activity plays in the regional economy, be used to enhance the fishery management practices of NOAA fisheries, and, thereby, increase the long-run economic benefits to the local business like yours. I have some questions about your sales to fishing vessels. Your answers will be kept confidential and your name will not be revealed to anyone. Do you have about 40 minutes to participate?

- 1 YES [SKIP TO Q1]
- 2 NO [SKIP TO QB]

QB It is very important for our analysis that we obtain information on your sales of goods and services to fishing vessels, which will help us understand how your business and businesses like yours have contributed to the community's economy. You are one of a small group of fish processors we are asking to provide this information, so your response is very important. I want to assure you that your answers will be kept confidential and your name will not be revealed to anyone. If this is not a good time for you to participate in this phone interview, would you like us to schedule a later date and time?

- 1 YES [SKIP TO QC]
- 2 NO [THANK AND TERMINATE]

QC What date and time would be the best for you to participate in the phone interview?

Date: _____ Time: _____

Thanks. We will contact you at the scheduled time.

Q1 To answer my questions, you may need to get the record of sales to fishing vessels for 2005 in front of you. Please let me know when you have it and you are ready for my questions. [WAIT UNTIL RESPONDENT IS READY] Could you tell me the total amount of sales (in dollar value) to fishing vessels in 2005?

\$ _____

1. If the dollar amount is not zero, SKIP TO NOTE FOR RESPONDENTS.
2. If the dollar amount is zero, THANK AND TERMINATE.

NOTE FOR RESPONDENTS (Say the following to the respondents)

There are 3 vessel classes commonly used to describe vessels in the fishing fleet: Small vessels include all vessels 32 ft or smaller. Medium vessels include all vessels that are larger than 32 ft but equal to or smaller than 90 ft. Large vessels include all vessels larger than 90 ft. These vessels often purchase the following seven types of goods and services from fish processors like you: (a) Fuel and lubricants, (b) Groceries, (c) Fishing gear (nets, hooks, lines, etc.), (d) Vessel mechanical parts (hydraulics, engine parts, drive train, etc.), (e) Vessel equipment (generators, engines, etc.), (f) Repair services (labor, shop time), and (g) Bait. My first question is this.

Q2 What was the total amount in sales you made to small vessels (32 feet or smaller) during 2005?

\$ _____

1. If the dollar amount is not zero, SKIP TO Q2A
2. If the dollar amount is zero, SKIP TO Q3.

Q2A I am going to list the seven types of goods and services I mentioned earlier. For each one, please tell me the total amount you sold to all small vessels during 2005.

(a) Fuel and lubricants

\$ _____

(b) Groceries

\$ _____

(c) Fishing gear (nets, hooks, lines, etc.)

\$ _____

(d) Vessel mechanical parts (hydraulics, engine parts, drive train, etc.)?

\$ _____

(e) Vessel equipment (generators, engines, etc.)

\$ _____

(f) Repair services (labor, shop time)

\$ _____

(g) Bait

\$ _____

Q3 What was the total amount in sales you made to medium vessels (larger than 32 feet but equal to or smaller than 90 feet) during 2005?

\$ _____

1. If the dollar amount is not zero, SKIP TO Q3A
2. If the dollar amount is zero, SKIP TO Q4.

Q3A I am going to list the seven types of goods and services I mentioned earlier. For each one, please tell me the total amount you sold to all medium vessels during 2005.

(a) Fuel, lubricants \$ _____

(b) Groceries \$ _____

(c) Fishing gear (nets, hooks, lines, etc.) \$ _____

(d) Vessel mechanical parts (hydraulics, engine parts, drive train, etc.)
\$ _____

(e) Vessel equipment (generators, engines, etc.) \$ _____

(f) Repair services (labor, shop time) \$ _____

(g) Bait \$ _____

Q4 What was the total amount in sales you made to large vessels (larger than 90 feet) during 2005?

\$ _____

1. If the dollar amount is not zero, SKIP TO Q4A
2. If the dollar amount is zero, SKIP TO CONCLUDE.

Q4A I am going to list the seven types of goods and services I mentioned earlier. For each one, please tell me the total amount you sold to all large vessels during 2005.

- | | |
|---|----------|
| (a) Fuel, lubricants | \$ _____ |
| (b) Groceries | \$ _____ |
| (c) Fishing gear (nets, hooks, lines, etc.) | \$ _____ |
| (d) Vessel mechanical parts (hydraulics, engine parts, drive train, etc.) | \$ _____ |
| (e) Vessel equipment (generators, engines, etc.) | \$ _____ |
| (f) Repair services (labor, shop time) | \$ _____ |
| (g) Bait | \$ _____ |

CONCLUDE

That's all the questions I have for you. Thank you for your time. We really appreciate your participation. Have a good evening.

QUESTIONS/COMMENTS AND ANSWERS

[If concerned about purpose of the call] This is not a marketing or sales call. We are collecting information on your sales to fishing vessels. I want to assure you that your answers will be kept confidential and your name will not be revealed to anyone.

[If asking about the study sponsor] This survey is being conducted in cooperation with NOAA Fisheries, also known as the National Marine Fisheries Service, a U.S. government agency charged with understanding the effects of federal management actions and policies affecting the nation's saltwater fisheries.

PAPERWORK REDUCTION ACT (PRA) STATEMENT

Public reporting burden for this collection of information is estimated to average 40 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other suggestions for reducing this burden to Chang Seung, Alaska Fisheries Science Center (Address: 7600 Sand Point Way NE Seattle WA 98115-6349, Phone: 206-526-4250). Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subjected to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 56003, Nov. 29, 1978, unless otherwise noted.

Sec. 1508.1 Terminology.

The terminology of this part shall be uniform throughout the Federal Government.

Sec. 1508.2 Act.

"Act" means the National Environmental Policy Act, as amended (42 U.S.C. 4321, et seq.) which is also referred to as "NEPA."

Sec. 1508.3 Affecting.

"Affecting" means will or may have an effect on.

Sec. 1508.4 Categorical exclusion.

"Categorical exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (Sec. 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in Sec. 1508.9 even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

Sec. 1508.5 Cooperating agency.

"Cooperating agency" means any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in Sec. 1501.6. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency.

Sec. 1508.6 Council.

"Council" means the Council on Environmental Quality established by Title II of the Act.

Sec. 1508.7 Cumulative impact.

"Cumulative impact" is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.

Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

Sec. 1508.8 Effects. "Effects" include:

- (a) Direct effects, which are caused by the action and occur at the same time and place.
- (b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

Sec. 1508.9 Environmental assessment. "Environmental assessment":

(a) Means a concise public document for which a Federal agency is responsible that serves to:

1. Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.
2. Aid an agency's compliance with the Act when no environmental impact statement is necessary.
3. Facilitate preparation of a statement when one is necessary.

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

Sec. 1508.10 Environmental document.

"Environmental document" includes the documents specified in Sec. 1508.9 (environmental assessment), Sec. 1508.11 (environmental impact statement), Sec. 1508.13 (finding of no significant impact), and Sec. 1508.22 (notice of intent).

Sec. 1508.11 Environmental impact statement.

"Environmental impact statement" means a detailed written statement as required by section 102(2)(C) of the Act.

Sec. 1508.12 Federal agency.

"Federal agency" means all agencies of the Federal Government. It does not mean the Congress,

the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. It also includes for purposes of these regulations States and units of general local government and Indian tribes assuming NEPA responsibilities under section 104(h) of the Housing and Community Development Act of 1974.

Sec. 1508.13 Finding of no significant impact.

"Finding of no significant impact" means a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (Sec. 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (Sec. 1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

Sec. 1508.14 Human environment.

"Human environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See the definition of "effects" (Sec. 1508.8).) This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

Sec. 1508.15 Jurisdiction by law.

"Jurisdiction by law" means agency authority to approve, veto, or finance all or part of the proposal.

Sec. 1508.16 Lead agency.

"Lead agency" means the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement.

Sec. 1508.17 Legislation.

"Legislation" includes a bill or legislative proposal to Congress developed by or with the significant cooperation and support of a Federal agency, but does not include requests for appropriations. The test for significant cooperation is whether the proposal is in fact predominantly that of the agency rather than another source. Drafting does not by itself constitute significant cooperation. Proposals for legislation include requests for ratification of treaties. Only the agency which has primary responsibility for the subject matter involved will prepare a legislative environmental impact statement.

Sec. 1508.18 Major Federal action.

"Major Federal action" includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (Sec. 1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.

(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (Secs. 1506.8, 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 et seq., with no Federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

(b) Federal actions tend to fall within one of the following categories:

1. Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 et seq.; treaties and international conventions or agreements; formal documents establishing an agency's policies which will result in or substantially alter agency programs.
2. Adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of Federal resources, upon which future agency actions will be based.
3. Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.
4. Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.

Sec. 1508.19 Matter.

"Matter" includes for purposes of Part 1504: (a) With respect to the Environmental Protection Agency, any proposed legislation, project, action or regulation as those terms are used in section 309(a) of the Clean Air Act (42 U.S.C. 7609). (b) With respect to all other agencies, any proposed major federal action to which section 102(2)(C) of NEPA applies.

Sec. 1508.20 Mitigation. "Mitigation" includes:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (e) Compensating for the impact by replacing or providing substitute resources or environments.

Sec. 1508.21 NEPA process.

"NEPA process" means all measures necessary for compliance with the requirements of section 2 and Title I of NEPA.

Sec. 1508.22 Notice of intent.

"Notice of intent" means a notice that an environmental impact statement will be prepared and considered. The notice shall briefly:

- (a) Describe the proposed action and possible alternatives.
- (b) Describe the agency's proposed scoping process including whether, when, and where any scoping meeting will be held.
- (c) State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement.

Sec. 1508.23 Proposal.

"Proposal" exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. Preparation of an environmental impact statement on a proposal should be timed (Sec. 1502.5) so that the final statement may be completed in time for the statement to be included in any recommendation or report on the proposal. A proposal may exist in fact as well as by agency declaration that one exists.

Sec. 1508.24 Referring agency.

"Referring agency" means the federal agency which has referred any matter to the Council after a determination that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality.

Sec. 1508.25 Scope.

Scope consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (Secs. 1502.20 and 1508.28). To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:

- (a) Actions (other than unconnected single actions) which may be:
 - 1. Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:
 - (i) Automatically trigger other actions which may require environmental impact statements.
 - (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.
 - (iii) Are interdependent parts of a larger action and depend on the larger action for their justification.
 - 2. Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.

3. Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.

(b) Alternatives, which include:

1. No action alternative.
2. Other reasonable courses of actions.
3. Mitigation measures (not in the proposed action).

(c) Impacts, which may be: (1) Direct; (2) indirect; (3) cumulative.

Sec. 1508.26 Special expertise.

"Special expertise" means statutory responsibility, agency mission, or related program experience.

Sec. 1508.27 Significantly.

"Significantly" as used in NEPA requires considerations of both context and intensity:

(a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

(b) Intensity. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

1. Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.
2. The degree to which the proposed action affects public health or safety.
3. Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
4. The degree to which the effects on the quality of the human environment are likely to be highly controversial.
5. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.
6. The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.
7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively

significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

8. The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.
9. The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.
10. Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

[43 FR 56003, Nov. 29, 1978; 44 FR 874, Jan. 3, 1979]

Sec. 1508.28 Tiering.

"Tiering" refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

- (a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.
- (b) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.

Executive Order 12866 Regulatory Planning and Review

[Federal Register: September 30, 1993 (Volume 58)] [Presidential Documents]
[Page 51735]

Executive Order 12866 of September 30, 1993--Regulatory Planning and Review

The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory approaches that respect the role of State, local, and tribal governments; and regulations that are effective, consistent, sensible, and understandable. We do not have such a regulatory system today.

With this Executive order, the Federal Government begins a program to reform and make more efficient the regulatory process. The objectives of this Executive order are to enhance planning and coordination with respect to both new and existing regulations; to reaffirm the primacy of Federal agencies in the regulatory decision-making process; to restore the integrity and legitimacy of regulatory review and oversight; and to make the process more accessible and open to the public. In pursuing these objectives, the regulatory process shall be conducted so as to meet applicable statutory requirements and with due regard to the discretion that has been entrusted to the Federal agencies.

Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Statement of Regulatory Philosophy and Principles. (a) The Regulatory Philosophy. Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people. In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

(b) The Principles of Regulation. To ensure that the agencies' regulatory programs are consistent with the philosophy set forth above, agencies should adhere to the following principles, to the extent permitted by law and where applicable:

(1) Each agency shall identify the problem that it intends to address (including, where applicable, the failures of private markets or public institutions that warrant new agency action) as well as assess the significance of that problem.

(2) Each agency shall examine whether existing regulations (or other law) have created, or contributed to, the problem that a new regulation is intended to correct and whether those regulations (or other law) should be modified to achieve the intended goal of regulation more effectively.

(3) Each agency shall identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

(4) In setting regulatory priorities, each agency shall consider, to the extent reasonable, the degree and nature of the risks posed by various substances or activities within its jurisdiction.

(5) When an agency determines that a regulation is the best available method of achieving the regulatory objective, it shall design its regulations in the most cost-effective manner to achieve the regulatory objective. In doing so, each agency shall consider incentives for innovation, consistency, predictability, the costs of enforcement and compliance (to the government, regulated entities, and the public), flexibility, distributive impacts, and equity.

(6) Each agency shall assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.

(7) Each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation.

(8) Each agency shall identify and assess alternative forms of regulation and shall, to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt.

(9) Wherever feasible, agencies shall seek views of appropriate State, local, and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities. Each agency shall assess the effects of Federal regulations on State, local, and tribal governments, including specifically the availability of resources to carry out those mandates, and seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving regulatory objectives. In addition, as appropriate, agencies shall seek to harmonize Federal regulatory actions with related State, local, and tribal regulatory and other governmental functions.

(10) Each agency shall avoid regulations that are inconsistent, incompatible, or duplicative with its other regulations or those of other Federal agencies.

(11) Each agency shall tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.

(12) Each agency shall draft its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.

Sec. 2. Organization. An efficient regulatory planning and review process is vital to ensure that the Federal Government's regulatory system best serves the American people.

(a) The Agencies. Because Federal agencies are the repositories of significant substantive expertise and experience, they are responsible for developing regulations and assuring that the regulations are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order.

(b) The Office of Management and Budget. Coordinated review of agency rulemaking is necessary to ensure that regulations are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order, and that decisions made by one agency do not conflict with the policies or actions taken or planned by another agency. The Office of Management and Budget (OMB) shall carry out that review function. Within OMB, the Office of Information and Regulatory Affairs (OIRA) is the repository of expertise concerning regulatory issues, including methodologies and procedures that affect more than one agency, this Executive order, and the President's regulatory policies. To the extent permitted by law, OMB shall provide guidance to agencies and assist the President, the Vice President, and other regulatory policy advisors to the President in regulatory planning and shall be the entity that reviews individual regulations, as provided by this Executive order.

(c) The Vice President. The Vice President is the principal advisor to the President on, and shall coordinate the development and presentation of recommendations concerning, regulatory policy, planning, and review, as set forth in this Executive order. In fulfilling their responsibilities under this Executive order, the President and the Vice President shall be assisted by the regulatory policy advisors within the Executive Office of the President and by such agency officials and personnel as the President and the Vice President may, from time to time, consult.

Sec. 3. Definitions. For purposes of this Executive order:

(a) "Advisors" refers to such regulatory policy advisors to the President as the President and Vice President may from time to time consult, including, among others:

- (1) the Director of OMB;
- (2) the Chair (or another member) of the Council of Economic Advisers;
- (3) the Assistant to the President for Economic Policy;
- (4) the Assistant to the President for Domestic Policy;
- (5) the Assistant to the President for National Security Affairs;
- (6) the Assistant to the President for Science and Technology;
- (7) the Assistant to the President for Intergovernmental Affairs;
- (8) the Assistant to the President and Staff Secretary;
- (9) the Assistant to the President and Chief of Staff to the Vice President;
- (10) the Assistant to the President and Counsel to the President;
- (11) the Deputy Assistant to the President and Director of the White House Office on Environmental Policy; and
- (12) the Administrator of OIRA, who also shall coordinate communications relating to this Executive order among the agencies, OMB, the other Advisors, and the Office of the Vice President.

(b) "Agency," unless otherwise indicated, means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10).

(c) "Director" means the Director of OMB.

(d) "Regulation" or "rule" means an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency. It does not, however, include:

- (1) Regulations or rules issued in accordance with the formal rulemaking provisions of 5 U.S.C. 556, 557;
- (2) Regulations or rules that pertain to a military or foreign affairs function of the United States, other than procurement regulations and regulations involving the import or export of non-defense articles and services;
- (3) Regulations or rules that are limited to agency organization, management, or personnel matters; or
- (4) Any other category of regulations exempted by the Administrator of OIRA.

(e) "Regulatory action" means any substantive action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking.

(f) "Significant regulatory action" means any regulatory action that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Sec. 4. Planning Mechanism. In order to have an effective regulatory program, to provide for coordination of regulations, to maximize consultation and the resolution of potential conflicts at an early stage, to involve the public and its State, local, and tribal officials in regulatory planning, and to ensure that new or revised regulations promote the President's priorities and the principles set forth in this Executive order, these procedures shall be followed, to the extent permitted by law: (a) Agencies' Policy Meeting. Early in each year's planning cycle, the Vice President shall convene a meeting of the Advisors and the heads of agencies to seek a common understanding of priorities and to coordinate regulatory efforts to be accomplished in the upcoming year.

(b) Unified Regulatory Agenda. For purposes of this subsection, the term "agency" or "agencies" shall also include those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10). Each agency shall prepare an agenda of all regulations under development or review, at a time and in a manner specified by the Administrator of OIRA. The description of each regulatory action shall contain, at a minimum, a regulation identifier number, a brief summary of the action, the legal authority for the action, any legal deadline for the action, and the name and telephone number of a knowledgeable agency official. Agencies may incorporate the information required under 5 U.S.C. 602 and 41 U.S.C. 402 into these agendas.

(c) The Regulatory Plan. For purposes of this subsection, the term "agency" or "agencies" shall also include those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10). (1) As part of the Unified

Regulatory Agenda, beginning in 1994, each agency shall prepare a Regulatory Plan (Plan) of the most important significant regulatory actions that the agency reasonably expects to issue in proposed or final form in that fiscal year or thereafter. The Plan shall be approved personally by the agency head and shall contain at a minimum:

(A) A statement of the agency's regulatory objectives and priorities and how they relate to the President's priorities;

(B) A summary of each planned significant regulatory action including, to the extent possible, alternatives to be considered and preliminary estimates of the anticipated costs and benefits;

(C) A summary of the legal basis for each such action, including whether any aspect of the action is required by statute or court order;

(D) A statement of the need for each such action and, if applicable, how the action will reduce risks to public health, safety, or the environment, as well as how the magnitude of the risk addressed by the action relates to other risks within the jurisdiction of the agency;

(E) The agency's schedule for action, including a statement of any applicable statutory or judicial deadlines; and

(F) The name, address, and telephone number of a person the public may contact for additional information about the planned regulatory action.

(2) Each agency shall forward its Plan to OIRA by June 1 st of each year.

(3) Within 10 calendar days after OIRA has received an agency's Plan, OIRA shall circulate it to other affected agencies, the Advisors, and the Vice President.

(4) An agency head who believes that a planned regulatory action of another agency may conflict with its own policy or action taken or planned shall promptly notify, in writing, the Administrator of OIRA, who shall forward that communication to the issuing agency, the Advisors, and the Vice President.

(5) If the Administrator of OIRA believes that a planned regulatory action of an agency may be inconsistent with the President's priorities or the principles set forth in this Executive order or may be in conflict with any policy or action taken or planned by another agency, the Administrator of OIRA shall promptly notify, in writing, the affected agencies, the Advisors, and the Vice President.

(6) The Vice President, with the Advisors' assistance, may consult with the heads of agencies with respect to their Plans and, in appropriate instances, request further consideration or inter-agency coordination.

(7) The Plans developed by the issuing agency shall be published annually in the October publication of the Unified Regulatory Agenda. This publication shall be made available to the Congress; State, local, and tribal governments; and the public. Any views on any aspect of any agency Plan, including whether any planned regulatory action might conflict with any other planned or existing regulation, impose any unintended consequences on the public, or confer any unclaimed benefits on the public, should be directed to the issuing agency, with a copy to OIRA.

(d) Regulatory Working Group. Within 30 days of the date of this Executive order, the Administrator of OIRA shall convene a Regulatory Working Group ("Working Group"), which shall consist of representatives of the heads of each agency that the Administrator determines to have significant domestic regulatory responsibility, the Advisors, and the Vice President. The Administrator of OIRA shall chair the

Working Group and shall periodically advise the Vice President on the activities of the Working Group. The Working Group shall serve as a forum to assist agencies in identifying and analyzing important regulatory issues (including, among others (1) the development of innovative regulatory techniques, (2) the methods, efficacy, and utility of comparative risk assessment in regulatory decision-making, and (3) the development of short forms and other streamlined regulatory approaches for small businesses and other entities). The Working Group shall meet at least quarterly and may meet as a whole or in subgroups of agencies with an interest in particular issues or subject areas. To inform its discussions, the Working Group may commission analytical studies and reports by OIRA, the Administrative Conference of the United States, or any other agency.

(e) Conferences. The Administrator of OIRA shall meet quarterly with representatives of State, local, and tribal governments to identify both existing and proposed regulations that may uniquely or significantly affect those governmental entities. The Administrator of OIRA shall also convene, from time to time, conferences with representatives of businesses, nongovernmental organizations, and the public to discuss regulatory issues of common concern.

Sec. 5. Existing Regulations. In order to reduce the regulatory burden on the American people, their families, their communities, their State, local, and tribal governments, and their industries; to determine whether regulations promulgated by the executive branch of the Federal Government have become unjustified or unnecessary as a result of changed circumstances; to confirm that regulations are both compatible with each other and not duplicative or inappropriately burdensome in the aggregate; to ensure that all regulations are consistent with the President's priorities and the principles set forth in this Executive order, within applicable law; and to otherwise improve the effectiveness of existing regulations: (a) Within 90 days of the date of this Executive order, each agency shall submit to OIRA a program, consistent with its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified or eliminated so as to make the agency's regulatory program more effective in achieving the regulatory objectives, less burdensome, or in greater alignment with the President's priorities and the principles set forth in this Executive order. Any significant regulations selected for review shall be included in the agency's annual Plan. The agency shall also identify any legislative mandates that require the agency to promulgate or continue to impose regulations that the agency believes are unnecessary or outdated by reason of changed circumstances.

(b) The Administrator of OIRA shall work with the Regulatory Working Group and other interested entities to pursue the objectives of this section. State, local, and tribal governments are specifically encouraged to assist in the identification of regulations that impose significant or unique burdens on those governmental entities and that appear to have outlived their justification or be otherwise inconsistent with the public interest.

(c) The Vice President, in consultation with the Advisors, may identify for review by the appropriate agency or agencies other existing regulations of an agency or groups of regulations of more than one agency that affect a particular group, industry, or sector of the economy, or may identify legislative mandates that may be appropriate for reconsideration by the Congress.

Sec. 6. Centralized Review of Regulations. The guidelines set forth below shall apply to all regulatory actions, for both new and existing regulations, by agencies other than those agencies specifically exempted by the Administrator of OIRA:

(a) Agency Responsibilities.

(1) Each agency shall (consistent with its own rules, regulations, or procedures) provide the public with meaningful participation in the regulatory process. In particular, before issuing a notice of proposed rulemaking, each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation (including, specifically, State, local, and tribal officials). In addition,

each agency should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days. Each agency also is directed to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

(2) Within 60 days of the date of this Executive order, each agency head shall designate a Regulatory Policy Officer who shall report to the agency head. The Regulatory Policy Officer shall be involved at each stage of the regulatory process to foster the development of effective, innovative, and least burdensome regulations and to further the principles set forth in this Executive order.

(3) In addition to adhering to its own rules and procedures and to the requirements of the Administrative Procedure Act, the Regulatory Flexibility Act, the Paperwork Reduction Act, and other applicable law, each agency shall develop its regulatory actions in a timely fashion and adhere to the following procedures with respect to a regulatory action:

(A) Each agency shall provide OIRA, at such times and in the manner specified by the Administrator of OIRA, with a list of its planned regulatory actions, indicating those which the agency believes are significant regulatory actions within the meaning of this Executive order. Absent a material change in the development of the planned regulatory action, those not designated as significant will not be subject to review under this section unless, within 10 working days of receipt of the list, the Administrator of OIRA notifies the agency that OIRA has determined that a planned regulation is a significant regulatory action within the meaning of this Executive order. The Administrator of OIRA may waive review of any planned regulatory action designated by the agency as significant, in which case the agency need not further comply with subsection (a)(3)(B) or subsection (a)(3)(C) of this section.

(B) For each matter identified as, or determined by the Administrator of OIRA to be, a significant regulatory action, the issuing agency shall provide to OIRA:

(i) The text of the draft regulatory action, together with a reasonably detailed description of the need for the regulatory action and an explanation of how the regulatory action will meet that need; and

(ii) An assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate and, to the extent permitted by law, promotes the President's priorities and avoids undue interference with State, local, and tribal governments in the exercise of their governmental functions.

(C) For those matters identified as, or determined by the Administrator of OIRA to be, a significant regulatory action within the scope of section 3(f)(1), the agency shall also provide to OIRA the following additional information developed as part of the agency's decision-making process (unless prohibited by law):

(i) An assessment, including the underlying analysis, of benefits anticipated from the regulatory action (such as, but not limited to, the promotion of the efficient functioning of the economy and private markets, the enhancement of health and safety, the protection of the natural environment, and the elimination or reduction of discrimination or bias) together with, to the extent feasible, a quantification of those benefits;

(ii) An assessment, including the underlying analysis, of costs anticipated from the regulatory action (such as, but not limited to, the direct cost both to the government in administering the regulation and to businesses and others in complying with the regulation, and any adverse effects on the efficient functioning of the economy, private markets (including productivity, employment, and competitiveness), health, safety, and the natural environment), together with, to the extent feasible, a quantification of those costs; and

(iii) An assessment, including the underlying analysis, of costs and benefits of potentially effective and

reasonably feasible alternatives to the planned regulation, identified by the agencies or the public (including improving the current regulation and reasonably viable nonregulatory actions), and an explanation why the planned regulatory action is preferable to the identified potential alternatives.

(D) In emergency situations or when an agency is obligated by law to act more quickly than normal review procedures allow, the agency shall notify OIRA as soon as possible and, to the extent practicable, comply with subsections (a)(3)(B) and (C) of this section. For those regulatory actions that are governed by a statutory or court-imposed deadline, the agency shall, to the extent practicable, schedule rulemaking proceedings so as to permit sufficient time for OIRA to conduct its review, as set forth below in subsection (b)(2) through (4) of this section.

(E) After the regulatory action has been published in the Federal Register or otherwise issued to the public, the agency shall:

(i) Make available to the public the information set forth in subsections (a)(3)(B) and (C);

(ii) Identify for the public, in a complete, clear, and simple manner, the substantive changes between the draft submitted to OIRA for review and the action subsequently announced; and

(iii) Identify for the public those changes in the regulatory action that were made at the suggestion or recommendation of OIRA.

(F) All information provided to the public by the agency shall be in plain, understandable language.

(b) OIRA Responsibilities. The Administrator of OIRA shall provide meaningful guidance and oversight so that each agency's regulatory actions are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order and do not conflict with the policies or actions of another agency. OIRA shall, to the extent permitted by law, adhere to the following guidelines:

(1) OIRA may review only actions identified by the agency or by OIRA as significant regulatory actions under subsection (a)(3)(A) of this section.

(2) OIRA shall waive review or notify the agency in writing of the results of its review within the following time periods:

(A) For any notices of inquiry, advance notices of proposed rulemaking, or other preliminary regulatory actions prior to a Notice of Proposed Rulemaking, within 10 working days after the date of submission of the draft action to OIRA;

(B) For all other regulatory actions, within 90 calendar days after the date of submission of the information set forth in subsections (a)(3)(B) and (C) of this section, unless OIRA has previously reviewed this information and, since that review, there has been no material change in the facts and circumstances upon which the regulatory action is based, in which case, OIRA shall complete its review within 45 days; and

(C) The review process may be extended (1) once by no more than 30 calendar days upon the written approval of the Director and (2) at the request of the agency head.

(3) For each regulatory action that the Administrator of OIRA returns to an agency for further consideration of some or all of its provisions, the Administrator of OIRA shall provide the issuing agency a written explanation for such return, setting forth the pertinent provision of this Executive order on which OIRA is relying. If the agency head disagrees with some or all of the bases for the return, the agency head shall so inform the Administrator of

OIRA in writing.

(4) Except as otherwise provided by law or required by a Court, in order to ensure greater openness, accessibility, and accountability in the regulatory review process, OIRA shall be governed by the following disclosure requirements:

(A) Only the Administrator of OIRA (or a particular designee) shall receive oral communications initiated by persons not employed by the executive branch of the Federal Government regarding the substance of a regulatory action under OIRA review;

(B) All substantive communications between OIRA personnel and persons not employed by the executive branch of the Federal Government regarding a regulatory action under review shall be governed by the following guidelines: (i) A representative from the issuing agency shall be invited to any meeting between OIRA personnel and such person(s);

(ii) OIRA shall forward to the issuing agency, within 10 working days of receipt of the communication(s), all written communications, regardless of format, between OIRA personnel and any person who is not employed by the executive branch of the Federal Government, and the dates and names of individuals involved in all substantive oral communications (including meetings to which an agency representative was invited, but did not attend, and telephone conversations between OIRA personnel and any such persons); and

(iii) OIRA shall publicly disclose relevant information about such communication(s), as set forth below in subsection (b)(4)(C) of this section.

(C) OIRA shall maintain a publicly available log that shall contain, at a minimum, the following information pertinent to regulatory actions under review:

(i) The status of all regulatory actions, including if (and if so, when and by whom) Vice Presidential and Presidential consideration was requested;

(ii) A notation of all written communications forwarded to an issuing agency under subsection (b)(4)(B)(ii) of this section; and

(iii) The dates and names of individuals involved in all substantive oral communications, including meetings and telephone conversations, between OIRA personnel and any person not employed by the executive branch of the Federal Government, and the subject matter discussed during such communications.

(D) After the regulatory action has been published in the Federal Register or otherwise issued to the public, or after the agency has announced its decision not to publish or issue the regulatory action, OIRA shall make available to the public all documents exchanged between OIRA and the agency during the review by OIRA under this section.

(5) All information provided to the public by OIRA shall be in plain, understandable language.

Sec. 7. Resolution of Conflicts. To the extent permitted by law, disagreements or conflicts between or among agency heads or between OMB and any agency that cannot be resolved by the Administrator of OIRA shall be resolved by the President, or by the Vice President acting at the request of the President, with the relevant agency head (and, as appropriate, other interested government officials). Vice Presidential and Presidential consideration of such disagreements may be initiated only by the Director, by the head of the issuing agency, or by the head of an agency that has a significant interest in the regulatory action at issue. Such review will not be undertaken at the request of other persons, entities, or their agents.

Resolution of such conflicts shall be informed by recommendations developed by the Vice President, after consultation with the Advisors (and other executive branch officials or personnel whose responsibilities to the President include the subject matter at issue). The development of these recommendations shall be concluded within 60 days after review has been requested.

During the Vice Presidential and Presidential review period, communications with any person not employed by the Federal Government relating to the substance of the regulatory action under review and directed to the Advisors or their staffs or to the staff of the Vice President shall be in writing and shall be forwarded by the recipient to the affected agency(ies) for inclusion in the public docket(s). When the communication is not in writing, such Advisors or staff members shall inform the outside party that the matter is under review and that any comments should be submitted in writing.

At the end of this review process, the President, or the Vice President acting at the request of the President, shall notify the affected agency and the Administrator of OIRA of the President's decision with respect to the matter.

Sec. 8. Publication. Except to the extent required by law, an agency shall not publish in the Federal Register or otherwise issue to the public any regulatory action that is subject to review under section 6 of this Executive order until (1) the Administrator of OIRA notifies the agency that OIRA has waived its review of the action or has completed its review without any requests for further consideration, or (2) the applicable time period in section 6(b)(2) expires without OIRA having notified the agency that it is returning the regulatory action for further consideration under section 6(b)(3), whichever occurs first. If the terms of the preceding sentence have not been satisfied and an agency wants to publish or otherwise issue a regulatory action, the head of that agency may request Presidential consideration through the Vice President, as provided under section 7 of this order. Upon receipt of this request, the Vice President shall notify OIRA and the Advisors. The guidelines and time period set forth in section 7 shall apply to the publication of regulatory actions for which Presidential consideration has been sought.

Sec. 9. Agency Authority. Nothing in this order shall be construed as displacing the agencies' authority or responsibilities, as authorized by law.

Sec. 10. Judicial Review. Nothing in this Executive order shall affect any otherwise available judicial review of agency action. This Executive order is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 11. Revocations. Executive Orders Nos. 12291 and 12498; all amendments to those Executive orders; all guidelines issued under those orders; and any exemptions from those orders heretofore granted for any category of rule are revoked.

WILLIAM CLINTON THE WHITE HOUSE,
September 30, 1993.

Editorial Note: For the President's remarks on signing this Executive order, see issue 39 of the Weekly Compilation of Presidential Documents.

Exec. Order No. 12866, 58 FR 51735, 1993 WL 388305 (Pres.)

104-297

SEC. 402. INFORMATION COLLECTION⁷ 16 U.S.C. 1881a

(a) COUNCIL REQUESTS.--If a Council determines that additional information (other than information that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations) 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 (other than information that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations) 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 subsection regarding a Council request shall be made within a reasonable period of time after receipt of that request.

(b) CONFIDENTIALITY OF INFORMATION.--

(1) Any information submitted to the Secretary by any person in compliance with any requirement under 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 and monitoring;

(B) to State or Marine Fisheries Commission employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person;

(C) when required by court order;

(D) when such information is used to verify catch under an individual fishing quota program;

(E) that observer information collected in fisheries under the authority of the North Pacific Council may be released to the public as specified in a fishery management plan or regulation for weekly summary bycatch information identified by vessel, and for haul-specific bycatch information without vessel identification; or

(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.

(2) 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 (1)(E).

(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.

(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.

H.R.5946

Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (Enrolled as Agreed to or Passed by Both House and Senate)

SEC. 101. CUMULATIVE IMPACTS.

(a) NATIONAL STANDARDS- Section 301(a)(8) (16 U.S.C. 1851(a)(8)) is amended by inserting `by utilizing economic and social data that meet the requirements of paragraph (2),' after `fishing communities'.

(b) CONTENTS OF PLANS- Section 303(a)(9) (16 U.S.C. 1853(a)(9)) is amended by striking `describe the likely effects, if any, of the conservation and management measures on--' and inserting `analyze the likely effects, if any, including the cumulative conservation, economic, and social impacts, of the conservation and management measures on, and possible mitigation measures for--'.

SEC. 102. CARIBBEAN COUNCIL JURISDICTION.

Section 302(a)(1)(D) (16 U.S.C. 1852(a)(1)(D)) is amended by inserting `and of commonwealths, territories, and possessions of the United States in the Caribbean Sea' after `seaward of such States'.

SEC. 103. REGIONAL FISHERY MANAGEMENT COUNCILS.

(a) TRIBAL ALTERNATE ON PACIFIC COUNCIL- Section 302(b)(5) (16 U.S.C. 1852(b)(5)) is amended by adding at the end thereof the following:

`(D) The tribal representative appointed under subparagraph (A) may designate as an alternate, during the period of the representative's term, an individual knowledgeable concerning tribal rights, tribal law, and the fishery resources of the geographical area concerned.'.

(b) SCIENTIFIC AND STATISTICAL COMMITTEES- Section 302(g) (16 U.S.C. 1852(g)) is amended--

(1) by striking so much of subsection (g) as precedes paragraph (2) and inserting the following: `(g) Committees and Advisory Panels-

`(1)(A) Each Council shall establish, maintain, and appoint the members of a scientific and statistical committee to assist it in the development, collection, evaluation, and peer review of such statistical, biological, economic, social, and other scientific information as is relevant to such Council's development and amendment of any fishery management plan.

`(B) Each scientific and statistical committee shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch, preventing overfishing, maximum sustainable yield, and achieving rebuilding targets, and reports on stock status and health, bycatch, habitat status, social and economic impacts of management measures, and sustainability of fishing practices.

`(C) Members appointed by the Councils to the scientific and statistical committees shall be Federal employees, State employees, academicians, or independent experts and shall have strong scientific or technical credentials and experience.

`(D) Each member of a scientific and statistical committee shall be treated as an affected individual for purposes of paragraphs (2), (3)(B), (4), and (5)(A) of subsection (j). The Secretary shall keep disclosures made pursuant to this subparagraph on file.

`(E) The Secretary and each Council may establish a peer review process for that Council for scientific information used to advise the Council about the conservation and management of the fishery. The review process, which may include existing committees or panels, is deemed to satisfy the requirements of the guidelines issued pursuant to section 515 of the Treasury and General Government Appropriations Act for Fiscal year 2001 (Public Law 106-554--Appendix C; 114 Stat. 2763A-153).

`(F) In addition to the provisions of section 302(f)(7), the Secretary shall, subject to the availability of appropriations, pay a stipend to members of the scientific and statistical committees or advisory panels who are not employed by the Federal Government or a State marine fisheries agency.

`(G) A science and statistical committee shall hold its meetings in conjunction with the meeting of the Council, to the extent practicable.'

(2) by striking `other' in paragraph (2); and

(3) by resetting the left margin of paragraphs (2) through (5) 2 ems from the left.

(c) COUNCIL FUNCTIONS- Section 302(h) (16 U.S.C. 1852(h)) is amended--

(1) by striking `authority, and' in paragraph (5) and inserting `authority;';

(2) by redesignating paragraph (6) as paragraph (7); and

(3) by inserting after paragraph (5) the following:

`(6) develop annual catch limits for each of its managed fisheries that may not exceed the fishing level recommendations of its scientific and statistical committee or the peer review process established under subsection (g); and'

(d) SCIENTIFIC RESEARCH PRIORITIES- Section 302(h) (16 U.S.C. 1852(h)), as amended by subsection (c), is further amended--

(1) by striking `(g); and' in paragraph (6) and inserting `(g);';

(2) by redesignating paragraph (7), as redesignated by subsection (c)(2), as paragraph (8);

(2) by inserting after paragraph (6) the following:

`(7) develop, in conjunction with the scientific and statistical committee, multi-year research priorities for fisheries, fisheries interactions, habitats, and other areas of research that are necessary for management purposes, that shall--

`(A) establish priorities for 5-year periods;

`(B) be updated as necessary; and

`(C) be submitted to the Secretary and the regional science centers of the National Marine Fisheries Service for their consideration in developing research priorities and budgets for the region of the Council; and'.

(e) REGULAR AND EMERGENCY MEETINGS- Section 302(i)(2)(C) (16 U.S.C. 1852(i)(2)(C)) is amended by striking `published in local newspapers in the major fishing ports of the region (and in other major fishing ports having a direct interest in the affected fishery) and such notice may be given by such other means as will result in wide publicity.' and inserting `provided by any means that will result in wide publicity in the major fishing ports of the region (and in other major fishing ports having a direct interest in the affected fishery), except that e-mail notification and website postings alone are not sufficient.'.

(f) CLOSED MEETINGS- Section 302(i)(3)(B) (16 U.S.C. 1852(i)(3)(B)) is amended by striking `notify local newspapers in the major fishing ports within its region (and in other major, affected fishing ports,' and inserting `provide notice by any means that will result in wide publicity in the major fishing ports of the region (and in other major fishing ports having a direct interest in the affected fishery), except that e-mail notification and website postings alone are not sufficient,'.

(g) TRAINING- Section 302 (16 U.S.C. 1852) is amended by adding at the end the following: `(k) Council Training Program-

`(1) TRAINING COURSE- Within 6 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, the Secretary, in consultation with the Councils and the National Sea Grant College Program, shall develop a training course for newly appointed Council members. The course may cover a variety of topics relevant to matters before the Councils, including--

`(A) fishery science and basic stock assessment methods;

`(B) fishery management techniques, data needs, and Council procedures;

`(C) social science and fishery economics;

`(D) tribal treaty rights and native customs, access, and other rights related to Western Pacific indigenous communities;

`(E) legal requirements of this Act, including conflict of interest and disclosure provisions of this section and related policies;

`(F) other relevant legal and regulatory requirements, including the National Environmental Policy Act (42 U.S.C. 4321 et seq.);

`(G) public process for development of fishery management plans;

`(H) other topics suggested by the Council; and

`(I) recreational and commercial fishing information, including fish harvesting techniques, gear types, fishing vessel types, and economics for the fisheries within each Council's jurisdiction.

`(2) MEMBER TRAINING- The training course shall be available to both new and existing Council members, staff from the regional offices and regional science centers of the National Marine Fisheries Service, and may be made available to committee or advisory panel members as resources allow.

`(3) REQUIRED TRAINING- Council members appointed after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 shall complete a training course that meets the requirements of this section not later than 1 year after the date on which they were appointed. Any Council member who has completed a training course within 24 months before the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 shall be considered to have met the training requirement of this paragraph.

`(l) COUNCIL COORDINATION COMMITTEE- The Councils may establish a Council coordination committee consisting of the chairs, vice chairs, and executive directors of each of the 8 Councils described in subsection (a)(1), or other Council members or staff, in order to discuss issues of relevance to all Councils, including issues related to the implementation of this Act.'

(h) PROCEDURAL MATTERS- Section 302(i) (16 U.S.C. 1852(i)) is amended--

(1) by striking `to the Councils or to the scientific and statistical committees or advisory panels established under subsection (g).'

' in paragraph (1) and inserting `to the Councils, the Council coordination committee established under subsection (l), or to the scientific and statistical committees or other committees or advisory panels established under subsection (g).'

;

(2) by striking `of a Council, and of the scientific and statistical committee and advisory panels established under subsection (g).'

' in paragraph (2) and inserting `of a Council, of the Council coordination committee established under subsection (l), and of the scientific and statistical committees or other committees or advisory panels established under subsection (g).'

;

and

(3) by inserting `the Council Coordination Committee established under subsection (l).'

' in paragraph (3)(A) after `Council.'

;

and

(4) by inserting `other committees.'

' in paragraph (3)(A) after `committee.'

(i) CONFLICTS OF INTEREST- Section 302(j) (16 U.S.C. 1852(j)) is amended--

(1) by inserting `lobbying, advocacy.'

' after `processing.'

' in paragraph (2);

(2) by striking `jurisdiction.'

' in paragraph (2) and inserting `jurisdiction, or with respect to an individual or organization with a financial interest in such activity.'

;

(3) by striking subparagraph (B) of paragraph (5) and inserting the following: `(B) be kept on file by the Council and made available on the Internet and for public inspection at the Council offices during reasonable hours; and'

;

and

(4) by adding at the end the following:

`(9) On January 1, 2008, and annually thereafter, the Secretary shall submit a report to the

Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Resources on action taken by the Secretary and the Councils to implement the disclosure of financial interest and recusal requirements of this subsection, including identification of any conflict of interest problems with respect to the Councils and scientific and statistical committees and recommendations for addressing any such problems.'

(j) GULF OF MEXICO FISHERIES MANAGEMENT COUNCIL- Section 302(b)(2) (16 U.S.C. 1852(b)(2)) is amended--

(1) by redesignating subparagraph (D) as subparagraph (E); and

(2) by inserting after subparagraph (C) the following:

`(D)(i) The Governor of a State submitting a list of names of individuals for appointment by the Secretary of Commerce to the Gulf of Mexico Fisheries Management Council under subparagraph (C) shall include--

`(I) at least 1 nominee each from the commercial, recreational, and charter fishing sectors; and

`(II) at least 1 other individual who is knowledgeable regarding the conservation and management of fisheries resources in the jurisdiction of the Council.

`(ii) Notwithstanding the requirements of subparagraph (C), if the Secretary determines that the list of names submitted by the Governor does not meet the requirements of clause (i) the Secretary shall--

`(I) publish a notice in the Federal Register asking the residents of that State to submit the names and pertinent biographical data of individuals who would meet the requirement not met for appointment to the Council; and

`(II) add the name of any qualified individual submitted by the public who meets the unmet requirement to the list of names submitted by the Governor.

`(iii) For purposes of clause (i) an individual who owns or operates a fish farm outside of the United States shall not be considered to be a representative of the commercial or recreational fishing sector.

`(iv) The requirements of this subparagraph shall expire at the end of fiscal year 2012.'

SEC. 104. FISHERY MANAGEMENT PLAN REQUIREMENTS.

(a) IN GENERAL- Section 303(a) (16 U.S.C. 1853(a)) is amended--

(1) by striking `and charter fishing' in paragraph (5) and inserting `charter fishing, and fish processing';

(2) by inserting `economic information necessary to meet the requirements of this Act,' in paragraph (5) after `number of hauls,';

(3) by striking `and' after the semicolon in paragraph (9)(A);

(4) by inserting `and' after the semicolon in paragraph (9)(B);

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

(5) by striking `fishery' the first place it appears in paragraph (13) and inserting `fishery, including its economic impact,';

(6) by striking `and' after the semicolon in paragraph (13);

(7) by striking `allocate' in paragraph (14) and inserting `allocate, taking into consideration the economic impact of the harvest restrictions or recovery benefits on the fishery participants in each sector,';

(8) by striking `fishery.' in paragraph (14) and inserting `fishery and,'; and

(9) by adding at the end the following:

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

(b) EFFECTIVE DATES; APPLICATION TO CERTAIN SPECIES- The amendment made by subsection (a)(10)--

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

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

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

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

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

(c) CLARIFICATION OF REBUILDING PROVISION- Section 304(e) (16 U.S.C. 1854(e)) is amended--

(1) by striking `one year of' in paragraph (3) and inserting `2 years after';

(2) by inserting `and implement' after `prepare' in paragraph (3);

(3) by inserting `immediately' after `overfishing' in paragraph (3)(A);

(4) by striking `ending overfishing and' in paragraph (4)(A); and

(5) by striking 'one-year' in paragraph (5) and inserting '2-year'.

(d) EFFECTIVE DATE FOR SUBSECTION (c)- The amendments made by subsection (c) shall take effect 30 months after the date of enactment of this Act.

SEC. 105. FISHERY MANAGEMENT PLAN DISCRETIONARY PROVISIONS.

Section 303(b) (16 U.S.C. 1853(b)) is amended--

(1) by inserting '(A)' after '(2)' in paragraph (2);

(2) by inserting after paragraph (2) the following:

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

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

'(i) is based on the best scientific information available;

'(ii) includes criteria to assess the conservation benefit of the closed area;

'(iii) establishes a timetable for review of the closed area's performance that is consistent with the purposes of the closed area; and

'(iv) is based on an assessment of the benefits and impacts of the closure, including its size, in relation to other management measures (either alone or in combination with such measures), including the benefits and impacts of limiting access to: users of the area, overall fishing activity, fishery science, and fishery and marine conservation;';

(3) by striking 'fishery;' in paragraph (5) and inserting 'fishery and take into account the different circumstances affecting fisheries from different States and ports, including distances to fishing grounds and proximity to time and area closures;';

(4) by striking paragraph (6) and inserting the following:

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

'(A) present participation in the fishery;

'(B) historical fishing practices in, and dependence on, the fishery;

'(C) the economics of the fishery;

`(D) the capability of fishing vessels used in the fishery to engage in other fisheries;

`(E) the cultural and social framework relevant to the fishery and any affected fishing communities;

`(F) the fair and equitable distribution of access privileges in the fishery; and

`(G) any other relevant considerations;'

(5) by striking '(other than economic data)' in paragraph (7);

(6) by striking 'and' after the semicolon in paragraph (11); and

(7) by redesignating paragraph (12) as paragraph (14) and inserting after paragraph (11) the following:

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

SEC. 106. LIMITED ACCESS PRIVILEGE PROGRAMS.

(a) IN GENERAL- Title III (16 U.S.C. 1851 et seq.) is amended--

(1) by striking section 303 (d); and

(2) by inserting after section 303 the following:

`SEC. 303A. LIMITED ACCESS PRIVILEGE PROGRAMS.

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

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

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

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

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

`(4) shall not create, or be construed to create, any right, title, or interest in or to

any fish before the fish is harvested by the holder; and

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

`(c) REQUIREMENTS FOR LIMITED ACCESS PRIVILEGES-

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

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

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

 `(C) promote--

 `(i) fishing safety;

 `(ii) fishery conservation and management; and

 `(iii) social and economic benefits;

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

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

 `(F) specify the goals of the program;

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

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

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

 `(J) provide for the establishment by the Secretary, in consultation with appropriate Federal agencies, for an information collection and review process to provide any additional information needed to determine whether any illegal acts of anti-competition,

anti-trust, price collusion, or price fixing have occurred among regional fishery associations or persons receiving limited access privileges under the program; and

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

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

(A) the fishery has historically processed the fish outside of the United States; and

(B) the United States has a seafood safety equivalency agreement with the country where processing will occur.

(3) Fishing communities-

(A) In general-

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

(I) be located within the management area of the relevant Council;

(II) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;

(III) consist of residents who conduct commercial or recreational fishing, processing, or fishery-dependent support businesses within the Council's management area; and

(IV) develop and submit a community sustainability plan to the Council and the Secretary that demonstrates how the plan will address the social and economic development needs of coastal communities, including those that have not historically had the resources to participate in the fishery, for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

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

(B) PARTICIPATION CRITERIA- In developing participation criteria for eligible communities under this paragraph, a Council shall consider--

(i) traditional fishing or processing practices in, and dependence on, the fishery;

(ii) the cultural and social framework relevant to the fishery;

(iii) economic barriers to access to fishery;

(iv) the existence and severity of projected economic and social impacts

associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;

(v) the expected effectiveness, operational transparency, and equitability of the community sustainability plan; and

(vi) the potential for improving economic conditions in remote coastal communities lacking resources to participate in harvesting or processing activities in the fishery.

(4) Regional fishery associations-

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

(i) be located within the management area of the relevant Council;

(ii) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;

(iii) be a voluntary association with established by-laws and operating procedures;

(iv) consist of participants in the fishery who hold quota share that are designated for use in the specific region or subregion covered by the regional fishery association, including commercial or recreational fishing, processing, fishery-dependent support businesses, or fishing communities;

(v) not be eligible to receive an initial allocation of a limited access privilege but may acquire such privileges after the initial allocation, and may hold the annual fishing privileges of any limited access privileges it holds or the annual fishing privileges that its members contribute; and

(vi) develop and submit a regional fishery association plan to the Council and the Secretary for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

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

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

(i) traditional fishing or processing practices in, and dependence on, the fishery;

(ii) the cultural and social framework relevant to the fishery;

(iii) economic barriers to access to fishery;

(iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters,

captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;

`(v) the administrative and fiduciary soundness of the association; and

`(vi) the expected effectiveness, operational transparency, and equitability of the fishery association plan.

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

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

`(i) current and historical harvests;

`(ii) employment in the harvesting and processing sectors;

`(iii) investments in, and dependence upon, the fishery; and

`(iv) the current and historical participation of fishing communities;

consider the basic cultural and social framework of the fishery, especially through--

`(i) the development of policies to promote the sustained participation of small owner-operated fishing vessels and fishing communities that depend on the fisheries, including regional or port-specific landing or delivery requirements; and

`(ii) procedures to address concerns over excessive geographic or other consolidation in the harvesting or processing sectors of the fishery;

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

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

`(i) establishing a maximum share, expressed as a percentage of the total limited access privileges, that a limited access privilege holder is permitted to hold, acquire, or use; and

`(ii) establishing any other limitations or measures necessary to prevent an inequitable concentration of limited access privileges; and

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

`(6) PROGRAM INITIATION-

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

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

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

`(D) New england and gulf referendum-

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

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

`(iii) The provisions of section 407(c) of this Act shall apply in lieu of this subparagraph for an individual fishing quota program for the Gulf of

Mexico commercial red snapper fishery.

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

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

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

`(7) TRANSFERABILITY- In establishing a limited access privilege program, a Council shall--

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

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

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

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

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

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

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

`(e) COST RECOVERY- In establishing a limited access privilege program, a Council shall--

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

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

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

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

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

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

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

`(g) LIMITED ACCESS PRIVILEGE ASSISTED PURCHASE PROGRAM-

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

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

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

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

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

`(i) Transition Rules-

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

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

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

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

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

(b) FEES- Section 304(d)(2)(A) (16 U.S.C. 1854(d)(2)(A)) is amended by striking 'management and enforcement' and inserting 'management, data collection, and enforcement'.

(c) INVESTMENT IN UNITED STATES SEAFOOD PROCESSING FACILITIES- The Secretary of Commerce shall work with the Small Business Administration and other Federal agencies to develop financial and other mechanisms to encourage United States investment in seafood processing facilities in the United States for fisheries that lack capacity needed to process fish harvested by United States vessels in compliance with the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

(d) CONFORMING AMENDMENT- Section 304(d)(2)(C)(i) (16 U.S.C. 1854(d)(2)(C)(i)) is amended by striking 'section 305(h)(5)(B)' and all that follows and inserting 'section 305(h)(5)(B).'

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

SEC. 107. ENVIRONMENTAL REVIEW PROCESS.

Section 304 (16 U.S.C. 1854) is amended by adding at the end the

following: `(i) Environmental Review Process-

`(1) PROCEDURES- The Secretary shall, in consultation with the Councils and the Council on Environmental Quality, revise and update agency procedures for compliance with the National Environmental Policy Act (42 U.S.C. 4231 et seq.).

The procedures shall--

`(A) conform to the time lines for review and approval of fishery management plans and plan amendments under this section; and

`(B) integrate applicable environmental analytical procedures, including the time frames for public input, with the procedure for the preparation and dissemination of fishery management plans, plan amendments, and other actions taken or approved pursuant to this Act in order to provide for timely, clear and concise analysis that is useful to decision makers and the public, reduce extraneous paperwork, and effectively involve the public.

`(2) USAGE- The updated agency procedures promulgated in accordance with this section used by the Councils or the Secretary shall be the sole environmental impact assessment procedure for fishery management plans, amendments, regulations, or other actions taken or approved pursuant to this Act.

`(3) SCHEDULE FOR PROMULGATION OF FINAL PROCEDURES- The Secretary shall--

`(A) propose revised procedures within 6 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006;

`(B) provide 90 days for public review and comments; and

`(C) promulgate final procedures no later than 12 months after the date of enactment of that Act.

`(4) PUBLIC PARTICIPATION- The Secretary is authorized and directed, in cooperation with the Council on Environmental Quality and the Councils, to involve the affected public in the development of revised procedures, including workshops or other appropriate means of public involvement.'

SEC. 108. EMERGENCY REGULATIONS.

(a) LENGTHENING OF SECOND EMERGENCY PERIOD- Section 305(c)(3)(B) (16 U.S.C. 1855(c)(3)(B)) is amended by striking `180 days,' the second time it appears and inserting `186 days,'.

(b) TECHNICAL AMENDMENT- Section 305(c)(3)(D) (16 U.S.C. 1855(c)(3)(D)) is amended by inserting `or interim measures' after `emergency regulations'.

SEC. 109. WESTERN PACIFIC AND NORTH PACIFIC COMMUNITY DEVELOPMENT.

Section 305 (16 U.S.C. 1855) is amended by adding at the end thereof the following: `(j) Western Pacific and Northern Pacific Regional Marine Education and Training-

(1) IN GENERAL- The Secretary shall establish a pilot program for regionally-based marine education and training programs in the Western Pacific and the Northern Pacific to foster understanding, practical use of knowledge (including native Hawaiian, Alaskan Native, and other Pacific Islander-based knowledge), and technical expertise relevant to stewardship of living marine resources.

Magnuson-Stevens Fishery Conservation and Management Act

Public Law 94-265

As amended through October 11, 1996

AN ACT

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

J.Feder version (12/19/96)

TITLE III -- NATIONAL FISHERY MANAGEMENT PROGRAM

Part 1

Part 2

SEC. 301. NATIONAL STANDARDS FOR FISHERY 16 U.S.C. 1851

CONSERVATION AND MANAGEMENT

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

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

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

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

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

104-297

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

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

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

104-297

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

104-297

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

104-297

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

97-453

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

SEC. 302. REGIONAL FISHERY MANAGEMENT COUNCILS 16 U.S.C. 1852 97-

453, 101-627, 104-297

(a) **ESTABLISHMENT.**--(1) There shall be established, within 120 days after the date of the enactment of this Act, eight Regional Fishery Management Councils, as follows:

(A) **NEW ENGLAND COUNCIL.**--The New England Fishery Management Council shall consist of the States of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except as provided in paragraph (3)). The New England Council shall have 17 voting members, including 11 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

(B) **MID-ATLANTIC COUNCIL.**--The Mid-Atlantic Fishery Management Council shall consist of the States of New York, New Jersey, Delaware, Pennsylvania, Maryland, Virginia, and North Carolina and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except North Carolina, and as provided in paragraph (3)). The Mid-Atlantic Council shall have 21 voting members, including 13 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

(C) **SOUTH ATLANTIC COUNCIL.**--The South Atlantic Fishery Management Council shall consist of the States of North Carolina, South Carolina, Georgia, and Florida and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except as provided in paragraph (3)). The South Atlantic Council shall have 13 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

(D) **CARIBBEAN COUNCIL.**--The Caribbean Fishery Management Council shall consist of the Virgin Islands and the Commonwealth of Puerto Rico and shall have authority over the fisheries in the Caribbean Sea and Atlantic Ocean seaward of such States (except as provided in paragraph (3)). The Caribbean Council shall have 7 voting members, including 4 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

(E) **GULF COUNCIL.**--The Gulf of Mexico Fishery Management Council shall consist of the States of Texas, Louisiana, Mississippi, Alabama, and Florida and shall have authority over the fisheries in the Gulf of Mexico seaward of such States (except as provided in paragraph (3)). The Gulf Council shall have 17 voting members, including 11 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State).

(F) **PACIFIC COUNCIL.**--The Pacific Fishery Management Council shall consist of the States of California, Oregon, Washington, and Idaho and shall have authority over the fisheries in the Pacific Ocean seaward of such States. The Pacific Council shall have 14 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State), and including one appointed from an Indian tribe with Federally recognized fishing rights from California, Oregon, Washington, or Idaho in accordance with subsection (b)(5).

(G) **NORTH PACIFIC COUNCIL.**--The North Pacific Fishery Management Council shall consist of the States of Alaska, Washington, and Oregon and shall have authority over the fisheries in the Arctic Ocean, Bering Sea, and Pacific Ocean seaward of Alaska. The North Pacific Council shall have 11 voting members, including 7 appointed by the Secretary in accordance with subsection (b)(2) (5 of whom shall be appointed from the State of Alaska and 2 of whom shall be appointed from the State of Washington).

(H) **WESTERN PACIFIC COUNCIL.**--The Western Pacific Fishery Management Council shall consist of the States of Hawaii, American Samoa, Guam, and the Northern Mariana Islands and shall have authority over the fisheries in the Pacific Ocean seaward of such States and of the Commonwealths, territories, and possessions of the United States in the Pacific Ocean area. The Western Pacific Council shall have 13 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) (at least one of whom shall be appointed from each of the following States: Hawaii, American Samoa, Guam, and the Northern Mariana Islands).

(2) Each Council shall reflect the expertise and interest of the several constituent States in the ocean area over which such Council is granted authority.

(3) The Secretary shall have authority over any highly migratory species fishery that is within the geographical area of authority of more than one of the following Councils: New England Council, Mid-Atlantic Council, South Atlantic Council, Gulf Council, and Caribbean Council.

97-453, 99-659, 101-627, 102-582, 104-297

(b) VOTING MEMBERS.--

(1) The voting members of each Council shall be:

(A) The principal State official with marine fishery management responsibility and expertise in each constituent State, who is designated as such by the Governor of the State, so long as the official continues to hold such position, or the designee of such official.

(B) The regional director of the National Marine Fisheries Service for the geographic area concerned, or his designee, except that if two such directors are within such geographical area, the Secretary shall designate which of such directors shall be the voting member.

(C) The members required to be appointed by the Secretary in accordance with paragraphs (2) and (5).

(2) (A) The members of each Council required to be appointed by the Secretary must be individuals who, by reason of their occupational or other experience, scientific expertise, or training, are knowledgeable regarding the conservation and management, or the commercial or recreational harvest, of the fishery resources of the geographical area concerned. Within nine months after the date of enactment of the Fishery Conservation Amendments of 1990, the Secretary shall, by regulation, prescribe criteria for determining whether an individual satisfies the requirements of this subparagraph.

(B) The Secretary, in making appointments under this section, shall, to the extent practicable, ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and recreational fisheries under the jurisdiction of the Council. On January 31, 1991, and each year thereafter, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report on the actions taken by the Secretary to ensure that such fair and balanced apportionment is achieved. The report shall--

(i) list the fisheries under the jurisdiction of each Council, outlining for each fishery the type and quantity of fish harvested, fishing and processing methods employed, the number of participants, the duration and range of the fishery, and other distinguishing characteristics;

(ii) assess the membership of each Council in terms of the apportionment of the active participants in each such fishery; and

(iii) state the Secretary's plans and schedule for actions to achieve a fair and balanced apportionment on the Council for the active participants in any such fishery.

(C) The Secretary shall appoint the members of each Council from a list of individuals submitted by the Governor of each applicable constituent State. A Governor may not submit the names of individuals to the Secretary for appointment unless the Governor has determined that each such individual is qualified under the requirements of subparagraph (A) and unless the Governor has, to the extent practicable, first consulted with representatives of the commercial and recreational fishing interests of the State regarding those individuals. Each such list shall include the names and pertinent biographical data of not less than three individuals for each applicable vacancy and shall be accompanied by a statement by the Governor explaining how each such individual meets the requirements of subparagraph (A). The Secretary shall review each list submitted by a Governor to ascertain if the individuals on the list are qualified for the vacancy on the basis of such requirements. If the Secretary determines that any individual is not qualified, the Secretary shall notify the appropriate Governor of that determination. The Governor shall then submit a revised list or resubmit the

original list with an additional explanation of the qualifications of the individual in question. An individual is not eligible for appointment by the Secretary until that individual complies with the applicable financial disclosure requirements under subsection (k).

(D) Whenever the Secretary makes an appointment to a Council, the Secretary shall make a public announcement of such appointment not less than 45 days before the first day on which the individual is to take office as a member of the Council.

(3) Each voting member appointed to a Council by the Secretary in accordance with paragraphs (2) and (5) shall serve for a term of 3 years; except that the Secretary may designate a shorter term if necessary to provide for balanced expiration to terms of office. No member appointed after January 1, 1986, may serve more than three consecutive terms. Any term in which an individual was appointed to replace a member who left office during the term shall not be counted in determining the number of consecutive terms served by that Council member.

(4) Successors to the voting members of any Council shall be appointed in the same manner as the original voting members. Any individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term.

(5) (A) The Secretary shall appoint to the Pacific Council one representative of an Indian tribe with Federally recognized fishing rights from California, Oregon, Washington, or Idaho from a list of not less than 3 individuals submitted by the tribal governments. The Secretary, in consultation with the Secretary of the Interior and tribal governments, shall establish by regulation the procedure for submitting a list under this subparagraph.

(B) Representation shall be rotated among the tribes taking into consideration--

(i) the qualifications of the individuals on the list referred to in subparagraph (A),

(ii) the various rights of the Indian tribes involved and judicial cases that set forth how those rights are to be exercised, and

(iii) the geographic area in which the tribe of the representative is located.

(C) A vacancy occurring prior to the expiration of any term shall be filled in the same manner as set out in subparagraphs (A) and (B), except that the Secretary may use the list from which the vacating representative was chosen.

(6) The Secretary may remove for cause any member of a Council required to be appointed by the Secretary in accordance with paragraphs (2) or (5) if--

(A) the Council concerned first recommends removal by not less than two-thirds of the members who are voting members and submits such removal recommendation to the Secretary in writing together with a statement of the basis for the recommendation; or

(B) the member is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 307(1)(O).

(c) NONVOTING MEMBERS.--

(1) The nonvoting members of each Council shall be:

(A) The regional or area director of the United States Fish and Wildlife Service for the geographical area

concerned, or his designee.

(B) The commander of the Coast Guard district for the geographical area concerned, or his designee; except that, if two Coast Guard districts are within such geographical area, the commander designated for such purpose by the commandant of the Coast Guard.

(C) The Executive Director of the Marine Fisheries Commission for the geographical area concerned, if any, or his designee.

(D) One representative of the Department of State designated for such purpose by the Secretary of State, or his designee.

(2) The Pacific Council shall have one additional nonvoting member who shall be appointed by, and serve at the pleasure of, the Governor of Alaska.

96-561, 101-627, 104-297

(d) COMPENSATION AND EXPENSES.--The voting members of each Council who are required to be appointed by the Secretary and who are not employed by the Federal Government or any State or local government, shall receive compensation at the daily rate for GS-15, step 7 of the General Schedule, when engaged in the actual performance of duties for such Council. The voting members of each Council, any nonvoting member described in subsection (c)(1)(C), and the nonvoting member appointed pursuant to subsection (c)(2) shall be reimbursed for actual expenses incurred in the performance of such duties, and other nonvoting members and Council staff members may be reimbursed for actual expenses.

101-627

(e) TRANSACTION OF BUSINESS.-- (1) A majority of the voting members of any Council shall constitute a quorum, but one or more such members designated by the Council may hold hearings. All decisions of any Council shall be by majority vote of the voting members present and voting.

(2) The voting members of each Council shall select a Chairman for such Council from among the voting members.

(3) Each Council shall meet at appropriate times and places in any of the constituent States of the Council at the call of the Chairman or upon the request of a majority of its voting members.

(4) If any voting member of a Council disagrees with respect to any matter which is transmitted to the Secretary by such Council, such member may submit a statement to the Secretary setting forth the reasons for such disagreement. The regional director of the National Marine Fisheries Service serving on the Council, or the regional director's designee, shall submit such a statement, which shall be made available to the public upon request, if the regional director disagrees with any such matter.

104-297

(5) At the request of any voting member of a Council, the Council shall hold a roll call vote on any matter before the Council. The official minutes and other appropriate records of any Council meeting shall identify all roll call votes held, the name of each voting member present during each roll call vote, and how each member voted on each roll call vote.

97-453

(f) STAFF AND ADMINISTRATION.--

- (1) Each Council may appoint, and assign duties to, an executive director and such other full- and part-time administrative employees as the Secretary determines are necessary to the performance of its functions.
- (2) Upon the request of any Council, and after consultation with the Secretary, the head of any Federal agency is authorized to detail to such Council, on a reimbursable basis, any of the personnel of such agency, to assist such Council in the performance of its functions under this Act.
- (3) The Secretary shall provide to each Council such administrative and technical support services as are necessary for the effective functioning of such Council.
- (4) The Administrator of General Services shall furnish each Council with such offices, equipment, supplies, and services as he is authorized to furnish to any other agency or instrumentality of the United States.
- (5) The Secretary and the Secretary of State shall furnish each Council with relevant information concerning foreign fishing and international fishery agreements.
- (6) Each Council shall determine its organization, and prescribe its practices and procedures for carrying out its functions under this Act, in accordance with such uniform standards as are prescribed by the Secretary. The procedures of a Council, and of its scientific and statistical committee and advisory panels established under subsection (g), must be consistent with the procedural guidelines set forth in subsection [j](2). Each Council shall publish and make available to the public a statement of its organization, practices, and procedures.
- (7) The Secretary shall pay--
 - (A) the compensation and expenses provided for in subsection (d);
 - (B) appropriate compensation to employees appointed under paragraph (1);
 - (C) the amounts required for reimbursement of other Federal agencies under paragraphs (2) and (4);
 - (D) the actual expenses of the members of the committees and panels established under subsection (g); and
 - (E) such other costs as the Secretary determines are necessary to the performance of the functions of the Councils.

101-627

(g) COMMITTEES AND PANELS.--

- (1) Each Council shall establish and maintain, and appoint the members of, a scientific and statistical committee to assist it in the development, collection, and evaluation of such statistical, biological, economic, social, and other scientific information as is relevant to such Council's development and amendment of any fishery management plan.
- (2) Each Council shall establish such other advisory panels as are necessary or appropriate to assist it in

carrying out its functions under this Act.

(3) (A) Each Council shall establish and maintain a fishing industry advisory committee which shall provide information and recommendations on, and assist in the development of, fishery management plans and amendments to such plans.

(B) Appointments to a committee established under subparagraph (A) shall be made by each Council in such a manner as to provide fair representation to commercial fishing interests in the geographical area of authority of the Council.

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(4) The Secretary shall establish advisory panels to assist in the collection and evaluation of information relevant to the development of any fishery management plan or plan amendment for a fishery to which subsection (a)(3) applies. Each advisory panel shall participate in all aspects of the development of the plan or amendment; be balanced in its representation of commercial, recreational, and other interests; and consist of not less than 7 individuals who are knowledgeable about the fishery for which the plan or amendment is developed, selected from among--

(A) members of advisory committees and species working groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species; and

(B) other interested persons.

(5) Decisions and recommendations made by committees and panels established under this subsection shall be considered to be advisory in nature.

95-354, 97-453, 101-627

(h) FUNCTIONS.--Each Council shall, in accordance with the provisions of this Act--

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(1) for each fishery under its authority that requires conservation and management, prepare and submit to the Secretary (A) a fishery management plan, and (B) amendments to each such plan that are necessary from time to time (and promptly whenever changes in conservation and management measures in another fishery substantially affect the fishery for which such plan was developed);

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(2) prepare comments on any application for foreign fishing transmitted to it under section 204(b)(4)(C) or section 204(d), and any fishery management plan or amendment transmitted to it under section 304(c)(4);

(3) conduct public hearings, at appropriate times and in appropriate locations in the geographical area concerned, so as to allow all interested persons an opportunity to be heard in the development of fishery management plans and amendments to such plans, and with respect to the administration and implementation of the provisions of this Act (and for purposes of this paragraph, the term "geographical area concerned" may include an area under the authority of another Council if the fish in the fishery concerned migrate into, or occur in, that area or if the matters being heard affect fishermen of that area; but not unless such other Council is first consulted regarding the conduct of such hearings within its area);

(4) submit to the Secretary such periodic reports as the Council deems appropriate, and any other relevant report which may be requested by the Secretary;

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(5) review on a continuing basis, and revise as appropriate, the assessments and specifications made pursuant to section 303(a)(3) and (4) with respect to the optimum yield from, the capacity and extent to which United States fish processors will process United States harvested fish from, and the total allowable level of foreign fishing in, each fishery (except as provided in section subsection (a)(3)) within its geographical area of authority; and

(6) conduct any other activities which are required by, or provided for in, this Act or which are necessary and appropriate to the foregoing functions.

97-453, 99-659, 101-627

(i) PROCEDURAL MATTERS.--

(1) The Federal Advisory Committee Act (5 U.S.C. App. 2) shall not apply to the Councils or to the scientific and statistical committees or advisory panels established under subsection (g).

104-297

(2) The following guidelines apply with respect to the conduct of business at meetings of a Council, and of the scientific and statistical committee and advisory panels established under subsection (g).

(A) Unless closed in accordance with paragraph (3), each regular meeting and each emergency meeting shall be open to the public.

(B) Emergency meetings shall be held at the call of the chairman or equivalent presiding officer.

(C) Timely public notice of each regular meeting and each emergency meeting, including the time, place, and agenda of the meeting, shall be published in local newspapers in the major fishing ports of the region (and in other major fishing ports having a direct interest in the affected fishery) and such notice may be given by such other means as will result in wide publicity. Timely notice of each regular meeting shall also be published in the Federal Register. The published agenda of the meeting may not be modified to include additional matters for Council action without public notice or within 14 days prior to the meeting date, unless such modification is to address an emergency action under section 305(c), in which case public notice shall be given immediately.

(D) Interested persons shall be permitted to present oral or written statements regarding the matters on the agenda at meetings. All written information submitted to a Council by an interested person shall include a statement of the source and date of such information. Any oral or written statement shall include a brief description of the background and interests of the person in the subject of the oral or written statement.

(E) Detailed minutes of each meeting of the Council, except for any closed session, shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all statements filed. The Chairman shall certify the accuracy of the minutes of each such meeting and submit a copy thereof to the Secretary. The minutes shall be made available to any court of competent jurisdiction.

(F) Subject to the procedures established under paragraph (4), and the guidelines prescribed by the Secretary under section 402(b), relating to confidentiality, the administrative record, including minutes required under subparagraph (E), of each meeting, and records or other documents which were made available to or prepared for or by the Council, committee, or panel incident to the meeting, shall be available for public inspection and copying at a single location in the offices of the Council or the Secretary, as appropriate.

(3) (A) Each Council, scientific and statistical committee, and advisory panel--

(i) shall close any meeting, or portion thereof, that concerns matters or information that bears a national security classification; and

(ii) may close any meeting, or portion thereof, that concerns matters or information that pertains to national security, employment matters, or briefings on litigation in which the Council is interested; and

(B) If any meeting or portion is closed, the Council concerned shall notify local newspapers in the major fishing ports within its region (and in other major, affected fishing ports), including in that notification the time and place of the meeting. This subparagraph does not require notification regarding any brief closure of a portion of a meeting in order to discuss employment or other internal administrative matters. Subparagraphs (D) and (F) of paragraph (2) shall not apply to any meeting or portion thereof that is so closed.

(4) Each Council shall establish appropriate procedures applicable to it and to its committee and advisory panels for ensuring confidentiality of the statistics that may be submitted to it by Federal or State authorities, and may be voluntarily submitted to it by private persons; including, but not limited to, procedures for the restriction of Council employee access and the prevention of conflicts of interest; except that such procedures, in the case of statistics submitted to the Council by a State or by the Secretary under section 402(b), must be consistent with the laws and regulations of that State, or with the procedures of the Secretary, as the case may be, concerning the confidentiality of the statistics.

(5) Each Council shall specify those procedures that are necessary or appropriate to ensure that the committees and advisory panels established under subsection (g) are involved, on a continuing basis, in the development and amendment of fishery management plans.

(6) At any time when a Council determines it appropriate to consider new information from a State or Federal agency or from a Council advisory body, the Council shall give comparable consideration to new information offered at that time by interested members of the public. Interested parties shall have a reasonable opportunity to respond to new data or information before the Council takes final action on conservation and management measures.

99-659, 104-297

(j) DISCLOSURE OF FINANCIAL INTEREST AND RECUSAL.--

104-297

(1) For the purposes of this subsection--

(A) the term "affected individual" means an individual who--

(i) is nominated by the Governor of a State for appointment as a voting member of a Council in accordance

with subsection (b)(2); or

(ii) is a voting member of a Council appointed--

(I) under subsection (b)(2); or

(II) under subsection (b)(5) who is not subject to disclosure and recusal requirements under the laws of an Indian tribal government; and

(B) the term "designated official" means a person with expertise in Federal conflict-of-interest requirements who is designated by the Secretary, in consultation with the Council, to attend Council meetings and make determinations under paragraph (7)(B).

(2) Each affected individual must disclose any financial interest held by--

(A) that individual;

(B) the spouse, minor child, or partner of that individual; and

(C) any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee;

in any harvesting, processing, or marketing activity that is being, or will be, undertaken within any fishery over which the Council concerned has jurisdiction.

104-297

(3) The disclosure required under paragraph (2) shall be made--

(A) in the case of an affected individual referred to in paragraph (1)(A)(i), before appointment by the Secretary; and

(B) in the case of an affected individual referred to in paragraph (1)(A)(ii), within 45 days of taking office.

104-297

(4) An affected individual referred to in paragraph (1)(A)(ii) must update his or her disclosure form at any time any such financial interest is acquired, or substantially changed, by any person referred to in paragraph (2)(A), (B), or (C).

104-297

(5) The financial interest disclosures required by this subsection shall--

(A) be made on such forms, in accordance with such procedures, and at such times, as the Secretary shall by regulation prescribe;

(B) be kept on file, and made available for public inspection at reasonable hours, at the Council offices; and

(C) be kept on file by the Secretary for use in reviewing determinations under paragraph 7(B) and made available for public inspection at reasonable hours.

104-297

(6) The participation by an affected individual referred to in paragraph (1)(A)(ii) in an action by a Council during any time in which that individual is not in compliance with the regulations prescribed under paragraph (5) may not be treated as cause for the invalidation of that action.

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(7) (A) After the effective date of regulations promulgated under subparagraph (F) of this paragraph, an affected individual required to disclose a financial interest under paragraph (2) shall not vote on a Council decision which would have a significant and predictable effect on such financial interest. A Council decision shall be considered to have a significant and predictable effect on a financial interest if there is a close causal link between the Council decision and an expected and substantially disproportionate benefit to the financial interest of the affected individual relative to the financial interests of other participants in the same gear type or sector of the fishery. An affected individual who may not vote may participate in Council deliberations relating to the decision after notifying the Council of the voting recusal and identifying the financial interest that would be affected.

(B) At the request of an affected individual, or upon the initiative of the appropriate designated official, the designated official shall make a determination for the record whether a Council decision would have a significant and predictable effect on a financial interest.

(C) Any Council member may submit a written request to the Secretary to review any determination by the designated official under subparagraph (B) within 10 days of such determination. Such review shall be completed within 30 days of receipt of the request.

(D) Any affected individual who does not vote in a Council decision in accordance with this subsection may state for the record how he or she would have voted on such decision if he or she had voted.

(E) If the Council makes a decision before the Secretary has reviewed a determination under subparagraph

(C), the eventual ruling may not be treated as cause for the invalidation or reconsideration by the Secretary of such decision.

(F) The Secretary, in consultation with the Councils and by not later than one year from the date of enactment of the Sustainable Fisheries Act, shall promulgate regulations which prohibit an affected individual from voting in accordance with subparagraph (A), and which allow for the making of determinations under subparagraphs (B) and (C).

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(8) Section 208 of title 18, United States Code, does not apply to an affected individual referred to in paragraph (1)(A)(ii) during any time in which that individual is in compliance with the regulations prescribed under paragraph (5).

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

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

(a) **REQUIRED PROVISIONS.**--Any fishery management plan which is prepared by any Council, or by the

Secretary, with respect to any fishery, shall--

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

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

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

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

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

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

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

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

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

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

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

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

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

for effective implementation of the plan;

(9) include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and describe the likely effects, if any, of the conservation and management measures on--

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

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

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

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

(A) minimize bycatch; and

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

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

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

(14) to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery.

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

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

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

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

(B) the operator of any such vessel; or

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- (C) any United States fish processor who first receives fish that are subject to the plan;
- (2) designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;
- (3) establish specified limitations which are necessary and appropriate for the conservation and management of the fishery on the--
 - (A) catch of fish (based on area, species, size, number, weight, sex, bycatch, total biomass, or other factors);
 - (B) sale of fish caught during commercial, recreational, or charter fishing, consistent with any applicable Federal and State safety and quality requirements; and
 - (C) transshipment or transportation of fish or fish products under permits issued pursuant to section 204;
- (4) prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of the provisions of this Act;
- (5) incorporate (consistent with the national standards, the other provisions of this Act, and any other applicable law) the relevant fishery conservation and management measures of the coastal States nearest to the fishery;
- (6) establish a limited access system for the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account--
 - (A) present participation in the fishery,
 - (B) historical fishing practices in, and dependence on, the fishery,
 - (C) the economics of the fishery,
 - (D) the capability of fishing vessels used in the fishery to engage in other fisheries,
 - (E) the cultural and social framework relevant to the fishery and any affected fishing communities, and
 - (F) any other relevant considerations;
- (7) require fish processors who first receive fish that are subject to the plan to submit data (other than economic data) which are necessary for the conservation and management of the fishery;
- (8) require that one or more observers be carried on board a vessel of the United States engaged in fishing for species that are subject to the plan, for the purpose of collecting data necessary for the conservation and management of the fishery; except that such a vessel shall not be required to carry an observer on board if the facilities of the vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized;
- (9) assess and specify the effect which the conservation and management measures of the plan will have on the stocks of naturally spawning anadromous fish in the region;

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

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

(12) prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

97-453, 104-297

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

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

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

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(d) INDIVIDUAL FISHING QUOTAS.--

(1) (A) A Council may not submit and the Secretary may not approve or implement before October 1, 2000, any fishery management plan, plan amendment, or regulation under this Act which creates a new individual fishing quota program.

(B) Any fishery management plan, plan amendment, or regulation approved by the Secretary on or after January 4, 1995, which creates any new individual fishing quota program shall be repealed and immediately returned by the Secretary to the appropriate Council and shall not be resubmitted, reapproved, or implemented during the moratorium set forth in subparagraph (A).

(2) (A) No provision of law shall be construed to limit the authority of a Council to submit and the Secretary to approve the termination or limitation, without compensation to holders of any limited access system permits, of a fishery management plan, plan amendment, or regulation that provides for a limited access system, including an individual fishing quota program.

(B) This subsection shall not be construed to prohibit a Council from submitting, or the Secretary from approving and implementing, amendments to the North Pacific halibut and sablefish, South Atlantic wreckfish, or Mid-Atlantic surf clam and ocean (including mahogany) quahog individual fishing quota programs.

(3) An individual fishing quota or other limited access system authorization--

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

(B) may be revoked or limited at any time in accordance with this Act;

(C) shall not confer any right of compensation to the holder of such individual fishing quota or other such limited access system authorization if it is revoked or limited; and

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(D) shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is harvested.

(4) (A) A Council may submit, and the Secretary may approve and implement, a program which reserves up to 25 percent of any fees collected from a fishery under section 304(d)(2) to be used, pursuant to section 1104A(a)(7) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1274(a)(7)), to issue obligations that aid in financing the--

- (i) purchase of individual fishing quotas in that fishery by fishermen who fish from small vessels; and
- (ii) first-time purchase of individual fishing quotas in that fishery by entry level fishermen.

(B) A Council making a submission under subparagraph (A) shall recommend criteria, consistent with the provisions of this Act, that a fisherman must meet to qualify for guarantees under clauses (i) and (ii) of subparagraph (A) and the portion of funds to be allocated for guarantees under each clause.

(5) In submitting and approving any new individual fishing quota program on or after October 1, 2000, the Councils and the Secretary shall consider the report of the National Academy of Sciences required under section 108(f) of the Sustainable Fisheries Act, and any recommendations contained in such report, and shall ensure that any such program--

(A) establishes procedures and requirements for the review and revision of the terms of any such program (including any revisions that may be necessary once a national policy with respect to individual fishing quota programs is implemented), and, if appropriate, for the renewal, reallocation, or reissuance of individual fishing quotas;

(B) provides for the effective enforcement and management of any such program, including adequate observer coverage, and for fees under section 304(d)(2) to recover actual costs directly related to such enforcement and management; and

(C) provides for a fair and equitable initial allocation of individual fishing quotas, prevents any person from acquiring an excessive share of the individual fishing quotas issued, and considers the allocation of a portion of the annual harvest in the fishery for entry-level fishermen, small vessel owners, and crew members who do not hold or qualify for individual fishing quotas.

104-297, sec. 108(b), M-S Act SS 303 note

IMPLEMENTATION.--Not later than 24 months after the date of enactment of this Act [P.L. 104-297], each Regional Fishery Management Council shall submit to the Secretary of Commerce amendments to each fishery management plan under its authority to comply with the amendments made in subsection (a) of this section [i.e., the P.L. 104-297 revisions to SS 303(a)(1), (5), (7), and (9), and the addition of SS 303(a)(10)-(14)].

104-297, sec. 108(i), M-S Act SS 303 note

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

SEC. 304. ACTION BY THE SECRETARY 16 U.S.C. 1854

104-297

(a) REVIEW OF PLANS.--

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

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

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

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

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

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

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

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

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

(B) the nature of such inconsistencies; and

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

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

(4) If the Secretary disapproves or partially approves a plan or amendment, the Council may submit a revised plan or amendment to the Secretary for review under this subsection.

(5) For purposes of this subsection and subsection (b), the term "immediately" means on or before the 5th day after the day on which a Council transmits to the Secretary a fishery management plan, plan amendment, or proposed regulation that the Council characterizes as final.

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(b) REVIEW OF REGULATIONS.--

(1) Upon transmittal by the Council to the Secretary of proposed regulations prepared under section 303(c), the Secretary shall immediately initiate an evaluation of the proposed regulations to determine whether they are consistent with the fishery management plan, plan amendment, this Act and other applicable law. Within 15 days of initiating such evaluation the Secretary shall make a determination and--

(A) if that determination is affirmative, the Secretary shall publish such regulations in the Federal Register, with such technical changes as may be necessary for clarity and an explanation of those changes, for a public comment period of 15 to 60 days; or

(B) if that determination is negative, the Secretary shall notify the Council in writing of the inconsistencies and provide recommendations on revisions that would make the proposed regulations consistent with the fishery management plan, plan amendment, this Act, and other applicable law.

(2) Upon receiving a notification under paragraph (1)(B), the Council may revise the proposed regulations and submit them to the Secretary for reevaluation under paragraph (1).

(3) The Secretary shall promulgate final regulations within 30 days after the end of the comment period under paragraph (1)(A). The Secretary shall consult with the Council before making any revisions to the proposed regulations, and must publish in the Federal Register an explanation of any differences between the proposed and final regulations.

97-453, 99-659, 104-297

(c) PREPARATION AND REVIEW OF SECRETARIAL PLANS.--

(1) The Secretary may prepare a fishery management plan, with respect to any fishery, or any amendment to any such plan, in accordance with the national standards, the other provisions of this Act, and any other applicable law, if--

(A) the appropriate Council fails to develop and submit to the Secretary, after a reasonable period of time, a fishery management plan for such fishery, or any necessary amendment to such a plan, if such fishery requires conservation and management;

(B) the Secretary disapproves or partially disapproves any such plan or amendment, or disapproves a revised plan or amendment, and the Council involved fails to submit a revised or further revised plan or amendment; or

(C) the Secretary is given authority to prepare such plan or amendment under this section.

In preparing any such plan or amendment, the Secretary shall consult with the Secretary of State with respect to foreign fishing and with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea. The Secretary shall also prepare such proposed regulations as he deems necessary or appropriate to carry out each plan or amendment prepared by him under this paragraph.

(2) In preparing any plan or amendment under this subsection, the Secretary shall--

(A) conduct public hearings, at appropriate times and locations in the geographical areas concerned, so as to allow interested persons an opportunity to be heard in the preparation and amendment of the plan and any

regulations implementing the plan; and

(B) consult with the Secretary of State with respect to foreign fishing and with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea.

(3) Notwithstanding paragraph (1) for a fishery under the authority of a Council, the Secretary may not include in any fishery management plan, or any amendment to any such plan, prepared by him, a provision establishing a limited access system, including any individual fishing quota program unless such system is first approved by a majority of the voting members, present and voting, of each appropriate Council.

(4) Whenever the Secretary prepares a fishery management plan or plan amendment under this section, the Secretary shall immediately--

(A) for a plan or amendment for a fishery under the authority of a Council, submit such plan or amendment to the appropriate Council for consideration and comment; and

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

(5) Whenever a plan or amendment is submitted under paragraph (4)(A), the appropriate Council must submit its comments and recommendations, if any, regarding the plan or amendment to the Secretary before the close of the 60-day period referred to in paragraph (4)(B). After the close of such 60-day period, the Secretary, after taking into account any such comments and recommendations, as well as any views, information, or comments submitted under paragraph (4)(B), may adopt such plan or amendment.

(6) The Secretary may propose regulations in the Federal Register to implement any plan or amendment prepared by the Secretary. In the case of a plan or amendment to which paragraph (4)(A) applies, such regulations shall be submitted to the Council with such plan or amendment. The comment period on proposed regulations shall be 60 days, except that the Secretary may shorten the comment period on minor revisions to existing regulations.

(7) The Secretary shall promulgate final regulations within 30 days after the end of the comment period under paragraph (6). The Secretary must publish in the Federal Register an explanation of any substantive differences between the proposed and final rules. All final regulations must be consistent with the fishery management plan, with the national standards and other provisions of this Act, and with any other applicable law.

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(d) ESTABLISHMENT OF FEES.--

(1) The Secretary shall by regulation establish the level of any fees which are authorized to be charged pursuant to section 303(b)(1). The Secretary may enter into a cooperative agreement with the States concerned under which the States administer the permit system and the agreement may provide that all or part of the fees collected under the system shall accrue to the States. The level of fees charged under this subsection shall not exceed the administrative costs incurred in issuing the permits.

(2)(A) Notwithstanding paragraph (1), the Secretary is authorized and shall collect a fee to recover the actual costs directly related to the management and enforcement of any--

(i) individual fishing quota program; and

(ii) community development quota program that allocates a percentage of the total allowable catch of a fishery to such program.

(B) Such fee shall not exceed 3 percent of the ex-vessel value of fish harvested under any such program, and shall be collected at either the time of the landing, filing of a landing report, or sale of such fish during a fishing season or in the last quarter of the calendar year in which the fish is harvested.

(C) (i) Fees collected under this paragraph shall be in addition to any other fees charged under this Act and shall be deposited in the Limited Access System Administration Fund established under section 305(h)(5)(B), except that the portion of any such fees reserved under section 303(d)(4)(A) shall be deposited in the Treasury and available, subject to annual appropriations, to cover the costs of new direct loan obligations and new loan guarantee commitments as required by section 504(b)(1) of the Federal Credit Reform Act (2 U. S.C. 661 c(b)(1)).

(ii) Upon application by a State, the Secretary shall transfer to such State up to 33 percent of any fee collected pursuant to subparagraph (A) under a community development quota program and deposited in the Limited Access System Administration Fund in order to reimburse such State for actual costs directly incurred in the management and enforcement of such program.

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(e) REBUILDING OVERFISHED FISHERIES.--

(1) The Secretary shall report annually to the Congress and the Councils on the status of fisheries within each Council's geographical area of authority and identify those fisheries that are overfished or are approaching a condition of being overfished. For those fisheries managed under a fishery management plan or international agreement, the status shall be determined using the criteria for overfishing specified in such plan or agreement. A fishery shall be classified as approaching a condition of being overfished if, based on trends in fishing effort, fishery resource size, and other appropriate factors, the Secretary estimates that the fishery will become overfished within two years.

(2) If the Secretary determines at any time that a fishery is overfished, the Secretary shall immediately notify the appropriate Council and request that action be taken to end overfishing in the fishery and to implement conservation and management measures to rebuild affected stocks of fish. The Secretary shall publish each notice under this paragraph in the Federal Register.

(3) Within one year of an identification under paragraph (1) or notification under paragraphs (2) or (7), the appropriate Council (or the Secretary, for fisheries under section 302(a)(3)) shall prepare a fishery management plan, plan amendment, or proposed regulations for the fishery to which the identification or notice applies--

(A) to end overfishing in the fishery and to rebuild affected stocks of fish; or

(B) to prevent overfishing from occurring in the fishery whenever such fishery is identified as approaching an overfished condition.

(4) For a fishery that is overfished, any fishery management plan, amendment, or proposed regulations

prepared pursuant to paragraph (3) or paragraph (5) for such fishery shall--

(A) specify a time period for ending overfishing and rebuilding the fishery that shall--

(i) be as short as possible, taking into account the status and biology of any overfished stocks of fish, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the overfished stock of fish within the marine ecosystem; and

(ii) not exceed 10 years, except in cases where the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise;

(B) allocate both overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery; and

(C) for fisheries managed under an international agreement, reflect traditional participation in the fishery, relative to other nations, by fishermen of the United States.

(5) If, within the one-year period beginning on the date of identification or notification that a fishery is overfished, the Council does not submit to the Secretary a fishery management plan, plan amendment, or proposed regulations required by paragraph (3)(A), the Secretary shall prepare a fishery management plan or plan amendment and any accompanying regulations to stop overfishing and rebuild affected stocks of fish within 9 months under subsection (c).

(6) During the development of a fishery management plan, a plan amendment, or proposed regulations required by this subsection, the Council may request the Secretary to implement interim measures to reduce overfishing under section 305(c) until such measures can be replaced by such plan, amendment, or regulations. Such measures, if otherwise in compliance with the provisions of this Act, may be implemented even though they are not sufficient by themselves to stop overfishing of a fishery.

(7) The Secretary shall review any fishery management plan, plan amendment, or regulations required by this subsection at routine intervals that may not exceed two years. If the Secretary finds as a result of the review that such plan, amendment, or regulations have not resulted in adequate progress toward ending overfishing and rebuilding affected fish stocks, the Secretary shall--

(A) in the case of a fishery to which section 302(a)(3) applies, immediately make revisions necessary to achieve adequate progress; or

(B) for all other fisheries, immediately notify the appropriate Council. Such notification shall recommend further conservation and management measures which the Council should consider under paragraph (3) to achieve adequate progress.

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(f) FISHERIES UNDER AUTHORITY OF MORE THAN ONE COUNCIL.--

(1) Except as provided in paragraph (3)[3], if any fishery extends beyond the geographical area of authority of any one Council, the Secretary may--

(A) designate which Council shall prepare the fishery management plan for such fishery and any amendment to such plan; or

(B) may require that the plan and amendment be prepared jointly by the Councils concerned.

No jointly prepared plan or amendment may be submitted to the Secretary unless it is approved by a majority of the voting members, present and voting, of each Council concerned.

(2) The Secretary shall establish the boundaries between the geographical areas of authority of adjacent Councils.

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(g) ATLANTIC HIGHLY MIGRATORY SPECIES.--

(1) PREPARATION AND IMPLEMENTATION OF PLAN OR PLAN AMENDMENT.--The Secretary shall prepare a fishery management plan or plan amendment under subsection (c) with respect to any highly migratory species fishery to which section 302(a)(3) applies. In preparing and implementing any such plan or amendment, the Secretary shall--

(A) consult with and consider the comments and views of affected Councils, commissioners and advisory groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species, and the advisory panel established under section 302(g);

(B) establish an advisory panel under section 302(g) for each fishery management plan to be prepared under this paragraph;

(C) evaluate the likely effects, if any, of conservation and management measures on participants in the affected fisheries and minimize, to the extent practicable, any disadvantage to United States fishermen in relation to foreign competitors;

(D) with respect to a highly migratory species for which the United States is authorized to harvest an allocation, quota, or at a fishing mortality level under a relevant international fishery agreement, provide fishing vessels of the United States with a reasonable opportunity to harvest such allocation, quota, or at such fishing mortality level;

(E) review, on a continuing basis (and promptly whenever a recommendation pertaining to fishing for highly migratory species has been made under a relevant international fishery agreement), and revise as appropriate, the conservation and management measures included in the plan;

(F) diligently pursue, through international entities (such as the International Commission for the Conservation of Atlantic Tunas), comparable international fishery management measures with respect to fishing for highly migratory species; and

(G) ensure that conservation and management measures under this subsection--

(i) promote international conservation of the affected fishery;

(ii) take into consideration traditional fishing patterns of fishing vessels of the United States and the operating requirements of the fisheries;

(iii) are fair and equitable in allocating fishing privileges among United States fishermen and do not have economic allocation as the sole purpose; and

(iv) promote, to the extent practicable, implementation of scientific research programs that include the tagging and release of Atlantic highly migratory species.

(2) CERTAIN FISH EXCLUDED FROM "BYCATCH" DEFINITION.--

Notwithstanding section 3(2), fish harvested in a commercial fishery managed by the Secretary under this subsection or the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971d) that are not regulatory discards and that are tagged and released alive under a scientific tagging and release program established by the Secretary shall not be considered bycatch for purposes of this Act.

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(h) REPEAL OR REVOCATION OF A FISHERY MANAGEMENT PLAN.--The Secretary may repeal or revoke a fishery management plan for a fishery under the authority of a Council only if the Council approves the repeal or revocation by a three-quarters majority of the voting members of the Council.

101-627, sec. 108(k), M-S Act SS 304 note

Interim Management of Highly Migratory Species Fisheries.--Notwithstanding the amendments made by subsections (a) and (g) [of section 108 of Pub. L. 101-627], any fishery management plan or amendment which--

(1) addresses a highly migratory species fishery to which section 304(f)(3) of the Magnuson Fishery Conservation and Management Act (as amended by this Act [101-627]) applies,

(2) was prepared by one or more Regional Fishery Management Councils, and

(3) was in force and effect on January 1, 1990,

shall remain in force and effect until superseded by a fishery management plan prepared by the Secretary, and regulations implementing that plan.

104-297, sec. 109(d), M-S Act SS 304 note

DELAY OF FEES.--Notwithstanding any other provision of law, the Secretary shall not begin the collection of fees under section 304(d)(2) of the Magnuson Fishery Conservation and Management Act, as amended by this Act [104-297], in the surf clam and ocean (including mahogany) quahog fishery or in the wreckfish fishery until after January 1, 2000.

104-297, sec. 109(h), M-S Act SS 304 note

COMPREHENSIVE MANAGEMENT SYSTEM FOR ATLANTIC PELAGIC LONGLINE FISHERY.--(1) The Secretary of Commerce shall--

(A) establish an advisory panel under section 302(g)(4) of the Magnuson Fishery Conservation and Management Act, as amended by this Act, for pelagic longline fishing vessels that participate in fisheries for Atlantic highly migratory species;

(B) conduct surveys and workshops with affected fishery participants to provide information and identify options for future management programs;

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(C) to the extent practicable and necessary for the evaluation of options for a comprehensive management system, recover vessel production records; and

(D) complete by January 1, 1998, a comprehensive study on the feasibility of implementing a comprehensive management system for pelagic longline fishing vessels that participate in fisheries for Atlantic highly migratory species, including, but not limited to, individual fishing quota programs and other limited access systems.

(2) Based on the study under paragraph (1)(D) and consistent with the requirements of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), in cooperation with affected participants in the fishery, the United States Commissioners on the International Commission for the Conservation of Atlantic Tunas, and the advisory panel established under paragraph (1)(A), the Secretary of Commerce may, after October 1, 1998, implement a comprehensive management system pursuant to section 304 of such Act (16 U.S.C. 1854) for pelagic longline fishing vessels that participate in fisheries for Atlantic highly migratory species. Such a system may not implement an individual fishing quota program until after October 1, 2000.

104-297, sec. 109(j), M-S Act 304 note

AMERICAN LOBSTER FISHERY.--Section 304(h) of the Magnuson Fishery Conservation and Management Act, as amended by this Act [Public Law 104-297], shall not apply to the American Lobster Fishery Management Plan.

[J.Feder version 12/19/96]

§ 679.5 Recordkeeping and reporting

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(p) Commercial Operator's Annual Report (COAR)

(1) Requirement. The owner of a mothership or catcher/processor must annually complete and submit to ADF&G the appropriate Forms A through M and COAR certification page for each year in which the mothership or catcher/processor was issued a Federal Fisheries permit. The owner of a mothership must include all fish received and processed during the year, including fish received from an associated buying station. The ADF&G COAR is further described under Alaska Administrative Code (5 AAC 39.130) (see § 679.3(b)(2)).

(2) Time limit and submittal of COAR. The owner of a mothership or catcher/processor must submit to ADF&G the appropriate Forms A through M and COAR certification page by April 1 of the year following the year for which the report is required to the following address:

Alaska Department of Fish & Game
Division of Commercial Fisheries
Attn: COAR
P.O. Box 25526
Juneau, AK 99802-5526

(3) Information required, certification page. The owner of a mothership or catcher/processor must:

(i) Enter the company name and address, including street, city, state, and zip code; also seasonal mailing address, if applicable.

(ii) Enter the vessel name and ADF&G processor code.

(iii) Check YES or NO to indicate whether fishing activity was conducted during the appropriate year.

(iv) If response to paragraph (p)(3)(iii) of this section is YES, complete the applicable forms of the COAR (see Table 18 to this part) and complete and sign the certification page.

(v) If response to paragraph (p)(3)(iii) of this section is NO, complete and sign only the certification page.

(vi) Sign and enter printed or typed name, e-mail address, title, telephone number, and FAX number of owner.

(vii) Enter printed or typed name, e-mail address, and telephone number of alternate contact.

(4) Buying information (exvessel), Forms A(1-3), C(1-2), E, G, I(1-2), and K.

(i) Requirement. The owner of a mothership (if the first purchaser of raw fish) must complete and submit the appropriate COAR buying forms (A(1-3), C(1-2), E, G, I(1-2), and K) for each species purchased from fishermen during the applicable year.

(ii) Buying information required. The owner of the mothership must record the following information on the appropriate COAR buying forms:

(A) Species name and code (see Table 2 to this part).

(B) Area purchased (see Table 16 to this part).

(C) Gear code (see Table 15 to this part).

(D) Delivery code (form G only) (see Table 1 to this part).

(E) Total weight (to the nearest lb) purchased from fishermen.

(F) Total amount paid to fishermen, including all post season adjustments and/or bonuses and any credit received by fishermen for gas expenses, ice, delivery premiums, and other miscellaneous expenses.

(G) Price per pound. If additional adjustments are made after this report has been filed, the owner must check the "\$ not final" box, and submit Form M when these adjustments are paid. Do not include fish purchased from another processor.

(5) Production forms, Forms B(1-6), D, F, H, J(1-2), and K. For purposes of this paragraph, the total wholesale value is the amount that the processor receives for the finished product (free on board pricing mothership or catcher/processor). For products

§ 679.5 Recordkeeping and reporting

finished but not yet sold (still held in inventory), calculate the estimated value using the average price received to date for that product.

(i) Requirement.

(A) Mothership. The owner of a mothership must record and submit the appropriate COAR production forms (B(1-6), D, F, H, J(1-2), and K) for all production that occurred for each species during the applicable year:

(1) That were purchased from fishermen on the grounds and/or dockside, including both processed and unprocessed seafood.

(2) That were then either processed on the mothership or exported out of the State of Alaska.

(B) Catcher/processor. The owner of a catcher/processor must record and submit the appropriate COAR production forms (B(1-6), D, F, H, J(1-2), and K) for each species harvested during the applicable year that were then either processed on the vessel or exported out of the State of Alaska.

(ii) Information required, non-canned production.

(A) Enter area of processing (see Table 16 to this part). List production of Canadian-harvested fish separately.

(B) Processed product. Processed product must be described by entering three codes:

(1) Process prefix code (see Table 17 to this part)

(2) Process suffix code (see Table 17 to this part)

(3) Product code (see Table 1 to this part)

(C) Total net weight. Enter total weight (in pounds) of the finished product.

(D) Total value (\$). Enter the total wholesale value of the finished product.

(E) Enter price per pound of the finished product.

(iii) Information required, canned production.

Complete an entry for each can size produced:

(A) Enter area of processing (see Table 16 to this part).

(B) Process 51 or 52. Enter conventional canned code (51) or smoked, conventional canned code (52).

(C) Total value (\$). Enter the total wholesale value of the finished product.

(D) Enter can size in ounces, to the hundredth of an ounce.

(E) Enter number of cans per case.

(F) Enter number of cases.

(6) Custom production forms, Form L(1-2).

(i) Requirement. The owner of a mothership or catcher/processor must record and submit COAR production form L(1-2) for each species in which custom production was done by the mothership or catcher/processor for another processor and for each species in which custom production was done for the mothership or catcher/processor by another processor.

(ii) Custom-production by mothership or catcher/processor for another processor. If the mothership or catcher/processor custom-processed fish or shellfish for another processor during the applicable year, the owner of the mothership or catcher/processor must list the processor name and ADF&G processor code (if known) to describe that processor, but must not include any of that production in production form L(1-2).

(iii) Custom-production by another processor for mothership or catcher/processor. If a processor custom-processed fish or shellfish for the mothership or catcher/processor during the applicable year, the owner of the mothership or catcher/processor must use a separate page to list each processor and must include the following information.

(A) Custom fresh/frozen miscellaneous production. The owner of a mothership or catcher/processor must list the following information to describe production intended for wholesale/retail market and that are not frozen for canning later:

(1) Species name and code (see Table 2 to this part).

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- (2) Area of processing (see Table 16 to this part).
 - (3) Processed product. Processed product must be entered using three codes:
 - (i) Process prefix code (see Table 17 to this part).
 - (ii) Process suffix code (see Table 17 to this part).
 - (iii) Product code (see Table 1 to this part).
 - (4) Total net weight. Enter total weight in pounds of the finished product.
 - (5) Total wholesale value(\$). Enter the total wholesale value of the finished product.
- (B) Custom canned production. The owner of a mothership or catcher/processor must list the following information to describe each can size produced in custom canned production:
- (1) Species name and code (see Table 2 to this part).
 - (2) Area of processing (see Table 16 to this part).
 - (3) Process 51 or 52. Enter conventional canned code (51) or smoked, conventional canned code (52).
 - (4) Total wholesale value(\$). Enter the total wholesale value of the finished product.
 - (5) Can size in ounces, to the hundredth of an ounce.
 - (6) Number of cans per case.
 - (7) Number of cases.
 - (7) Fish buying retro payments/post-season adjustments, Form M.
 - (i) Requirement. The owner of a mothership must record and submit COAR production Form M to describe additional adjustments and/or bonuses awarded to a fisherman, including credit received by fishermen for gas expenses, ice, delivery premiums, and other miscellaneous expenses.
 - (ii) Information required.
- (A) Enter species name and code (see Table 2 to this part).
- (B) Enter area purchased (see Table 16 to this part).
- (C) Enter gear code (see Table 16 to this part).
- (D) Enter total pounds purchased from fisherman.
- (E) Enter total amount paid to fishermen (base + adjustment).
- * * * * *

ton of all successful bids, (iii) the average price per metric tons for all successful bids, and (iv) the names of the winning bidders.

Dated: December 4, 2006.

Jeffrey Ansbacher,

Director, Export Trading Company Affairs.

[FR Doc. E6-20904 Filed 12-7-06; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Regional Economic Data Collection Program for Gulf Coast Alaska

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

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 February 6, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Chang Seung, (206) 526-4250 or Chang.Seung@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The regional or community economic analysis of proposed fishery management policies is required by the Magnuson-Stevens Fishery Conservation and Management Act (MSA), National Environmental Policy Act (NEPA), and Executive Order 12866, among others. To satisfy these mandates and inform policymakers and the public of the likely regional economic impacts associated with fishery management policies, appropriate economic models and the data to implement these models are needed.

Much of the data required for regional economic analysis associated with Gulf

Coast Alaska fisheries are either unavailable or unreliable. The accurate fishery-level data on employment, labor income, and expenditures in the Gulf Coast Alaska fishery and related industries are not currently available but are needed to estimate the effects of fisheries on the economy of Gulf Coast Alaska. In this survey effort, data on these important regional economic variables will be collected and used to develop models that will provide more reliable estimates and significantly improve policy-makers' ability to assess policy effects on fishery-dependent communities in Gulf Coast Alaska. The survey will be a one-time survey.

Mail surveys will be used to collect data on employment and labor income from a random sample of 530 vessel owners whose boats delivered fish to Gulf Coast Alaska processors. In-person interviews and telephone calls (130) with businesses involved in the fishery and related industries will be used to obtain (a) Vessel expenditure/cost data; (b) regional economic data for non-fishery industries; and (c) regional economic data for the fish processing sector.

II. Method of Collection

Mail surveys, in-person interviews, and telephone surveys will be used as described above.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 660.

Estimated Time per Response: Mail survey: 10 minutes; phone call or local interview with fish processors: 30 minutes; phone calls with local small businesses: 10 minutes.

Estimated Total Annual Burden Hours: 132 hours.

Estimated Total Annual Cost to Public: \$0.

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: December 4, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

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BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Confidential Conflict of Interest Disclosure for Prospective Non-Federal Government Peer Reviewers of Government Science Documents

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of 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 February 6, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via e-mail at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Tom Gleason, (301) 713-2367 x 158, Tom.Gleason@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Office of Management and Budget (OMB) issued government-wide guidance to enhance the practice of peer review of government science documents. OMB's Final Information Quality Bulletin for Peer Review ("Peer Review Bulletin" or PRB) (available at