

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 08/24/2009

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

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 08/24/2009

ACTION REQUESTED: Revision of a currently approved collection  
TYPE OF REVIEW REQUESTED: Regular  
ICR REFERENCE NUMBER: 200908-0648-005  
AGENCY ICR TRACKING NUMBER:  
TITLE: Tilefish Amendment 1 to the Fishery Management Plan - Permit Data Collection  
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change  
OMB CONTROL NUMBER: 0648-0590  
The agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

EXPIRATION DATE: 08/31/2012 DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	0	0	0
New	611	77	82
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	611	77	82
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
IFQ Allocation Permit	NA	Application for Tilefish IFQ Allocation Permit	
Appeals re initial allocation			50 CFR 648.291
IFQ Allocation Acquisition (Ownership Cap)	NA, NA	Tilefish IFQ allocation interest declaration form, Tilefish IFQ allocation interest declaration form (ownership cap)	
IFQ Permanent & Temporary Transferability	NA	Tilefish IFQ Transfer Form	
Fees/Cost recovery			50 CFR 648.291
IFQ additional reporting			50 CFR 648.291

# PAPERWORK REDUCTION ACT SUBMISSION

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

1. Agency/Subagency originating request	2. OMB control number <span style="float: right;">b. <input type="checkbox"/> None</span> a. _____ - _____
3. Type of information collection ( <i>check one</i> ) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested ( <i>check one</i> ) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated
	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
	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
7. Title	
8. Agency form number(s) ( <i>if applicable</i> )	
9. Keywords	
10. Abstract	
11. Affected public ( <i>Mark primary with "P" and all others that apply with "x"</i> ) a. <input type="checkbox"/> Individuals or households d. <input type="checkbox"/> Farms b. <input type="checkbox"/> Business or other for-profit e. <input type="checkbox"/> Federal Government c. <input type="checkbox"/> Not-for-profit institutions f. <input type="checkbox"/> 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. <input type="checkbox"/> Application for benefits e. <input type="checkbox"/> Program planning or management b. <input type="checkbox"/> Program evaluation f. <input type="checkbox"/> Research c. <input type="checkbox"/> General purpose statistics g. <input type="checkbox"/> Regulatory or compliance d. <input type="checkbox"/> 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  
TILEFISH AMENDMENT 1 TO THE FISHERY MANAGEMENT PLAN PERMIT  
DATA COLLECTION  
OMB CONTROL NO.: 0648-xxxx**

**INTRODUCTION**

This submission requests Office of Management and Budget (OMB) clearance of information collection provisions for the management measures proposed under Amendment 1 to the Tilefish Fishery Management Plan (Amendment 1).

**New Collections That Would Increase the Annual Budget**

The Mid-Atlantic Fishery Management Council (Council) has adopted management measures under Amendment 1 that, if approved by the National Marine Fisheries Service (NMFS), would institute an Individual Fishing Quota (IFQ) system in the Fishery Management Plan (FMP). The following management measures include provisions that would require new information collection requirements: (1) IFQ Allocation Permit; (2) IFQ Permanent Transferability; (3) IFQ Temporary Leasing; (4) Cap on the Acquisition of IFQ Allocation; (5) IFQ Cost recovery; (6) IFQ Reporting Requirements; and (7) Charter/Party (CP) Permitting Requirements. This data collection submission requests approval of new information collection requirements to implement the above provisions for Amendment 1.

All of these new reporting requirements and new collections of information will be merged into the existing Northeast Region Logbook Family of Forms (OMB Control No. 0648-0202) at a later time.

**A. JUSTIFICATION**

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

Under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the Secretary of Commerce (Secretary) has responsibility for the conservation and management of marine fishery resources off the coast of the United States (U.S.). The majority of this responsibility has been delegated to the Regional Fishery Management Councils and National Marine Fisheries Service (NMFS). The Council develops management plans for fishery resources in the Mid-Atlantic. The Tilefish FMP manages golden tilefish caught and landed within the Tilefish Management Unit.

The original tilefish FMP was implemented in 2001 by the NMFS. This FMP was developed by the Council in response to declining tilefish biomass. However, the 2005 Stock Assessment indicated that the stock had rebounded and is no longer overfished, or undergoing overfishing. The tilefish FMP is currently managed by monitoring a quota for each of three limited access permit categories. In April 2008, the Council adopted a suite of management measures in Amendment 1 to the FMP that would create a limited access privilege program (LAPP) within the fishery. This LAPP is intended to reduce overcapacity in the fishery, and end the current derby fishery that exists in two of the three permit categories. There are several requirements of LAPP, as stipulated in the MSA. These include a requirement to recover the management costs

incremental to the institution of the LAPP, and to define the maximum individual shareholding in the fishery. In addition, since the inception of the original FMP in 2001, the recreational tilefish fishery has not reported catch, although it was believed to be minimal. However, in recent years, anecdotal evidence suggests that there is a larger recreational component of the fishery. Since recreational landings data is unknown, the Council chose to adopt measures to institute a new CP permit with new reporting requirements.

The following is justification for each of the new reporting requirements that would be established by Amendment 1.

### **IFQ Allocation Permit**

Amendment 1 would implement an IFQ program in the tilefish FMP. This would require the issuance of IFQ Allocation permits to all entities that own IFQ. The Council intended to allow any U.S. citizen, or corporation that is permitted to own a coast guard documented vessel, to be eligible to own tilefish IFQ. However, Amendment 1 would allocate the initial tilefish IFQ Allocation permit in a manner that rewards recent fishery participation. The Council has estimated that 13 individuals will receive tilefish IFQ Allocation permits when the IFQ program is implemented. Under Amendment 1, an individual would be eligible to be issued a tilefish IFQ Allocation permit if s/he owned a vessel that was issued a valid tilefish limited access permit for the 2005 permit year, or if s/he currently holds a valid Confirmation of Permit History (CPH) for the fishing history associated with that vessel. In addition to this permit requirement, vessel owners that held a tilefish Category A or B permit would be eligible to receive an IFQ allocation based on their average landings for the 2001 through 2005 period. These landings would be used to assign the Category A (i.e., 66% of the adjusted Total Allowable Landings (TAL)), and Category B (i.e., 15% of the adjusted TAL) quota allocations to each vessel under the IFQ system. The Category C (i.e., 19% of the adjusted TAL) quota allocations would be divided equally based on average landings from 2001 through 2005 period. In addition, the owner of a vessel issued a valid limited access permit during the 2005 permit year must have average landings, from the 2001-2005 period, that constitute at least 0.5 percent of the quota for the Category for which it was permitted. After the initial IFQ permit issuance, permanent IFQ transfers may occur at any point thereafter, which may change the number of IFQ Allocation permits that are issued annually. These permits are necessary to ensure that IFQ allocation owners are provided a statement of their annual catch quota, and are necessary for enforcement purposes to ensure vessels are not exceeding an individual quota allocation.

### **IFQ Permanent & Temporary Transferability**

To achieve its objectives, it is essential that an Individual Fishing Quota (IFQ) program allow the free transfer of quota shares. These objectives include reduction in overcapacity, and provision for economic efficiency in the fishery. Amendment 1 allows for IFQ to be permanently transferred to any entity eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a), SHIPPING, Subtitle II--Vessels and Seamen, Part H--Identification of Vessels, CHAPTER 121--DOCUMENTATION OF VESSELS. In order to process an IFQ transfer (temporary, or permanent), NMFS would require that an IFQ Allocation permit holder submit an IFQ transfer form. This IFQ transfer form would need to include the following information: the type of transfer (either temporary or permanent), the signature of both parties involved, the cost associated with the transfer, the amount of quota to be transferred, and a declaration of the interest held in tilefish IFQ allocation, with IFQ Allocation permit numbers, for the entity

receiving the IFQ. An IFQ Transfer Application Form would be made available to IFQ Allocation permit holders annually, along with notification of their annual individual quota. In addition, IFQ Allocation permit holders will be notified that the form is available online through the Northeast Regional Office web site, at [www.nero.nmfs.gov](http://www.nero.nmfs.gov).

### **IFQ Share Accumulation**

Section 303A(c)(5)(D) of the 2006 reauthorized Magnuson-Stevens Act states that IFQ privilege programs should ensure that limited access privilege holders do not acquire an excessive share of the total limited access privileges in the program by: 1) 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; 2) establishing any other limitations or measures necessary to prevent an inequitable concentration of limited access privileges; and 3) authorizing 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. Amendment 1 would institute a restriction on the acquisition of IFQ allocation to 49 percent. No person, corporation, partnership or other entity eligible to own a U.S. documented vessel (entity), may hold (permanently or temporarily) more than 49 percent of the total tilefish IFQ allocation. This would prevent the accumulation of an excessive shareholding in the fishery, while still allowing for additional consolidation in the fishery to reduce overcapacity.

To ensure that an entity does not acquire more than 49 percent of the overall tilefish IFQ TAL, NMFS must collect IFQ allocation interest data. IFQ Allocation permit holders would need to disclose their interest in IFQ allocations annually, prior to receiving their annual permit. To facilitate the collection of this information, NMFS will require that an IFQ Allocation Interest Declaration form be submitted prior to issuing IFQ Allocation permits. NMFS will collect this information annually to ensure that no entity holds more than 49 percent of the tilefish IFQ allocation prior to issuing the IFQ Allocation permits. This form would need to include the signature of the owner, the complete address and phone number of the owner, an attestation that the owner is a U.S. Citizen, and the Individual Transferable Quota (ITQ) Allocation permit numbers that he/she has interest in. The ITQ allocations of which an individual declares an interest in must be identified by both full name (individual or corporation) and by NMFS IFQ Allocation permit number. An IFQ Allocation permit holder may not transfer IFQ (permanently or temporarily) if it will result in an entity holding more than 49 percent of the total tilefish IFQ TAL.

### **Fees and Cost Recovery**

NMFS is required under the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) to collect fees to recover the costs directly related to management, data collection and analysis, and enforcement of IFQ programs. Under section 304(d)(2)(A) of the Act, the Secretary is authorized to collect a fee to recover these costs. The fee shall not exceed 3 percent of the ex-vessel value of fish harvested. The IFQ fees collected would be deposited in the Limited Access System Administrative Fund (LASAF) established in the U.S. Treasury. A separate marked account would be created within the LASAF to ensure that the fees collected are only recovered to pay for the incremental costs directly related to management, data collection and analysis, and enforcement costs of the NMFS Northeast Region Tilefish IFQ Program. Amendment 1 would require that the IFQ permit holder pay a cost recovery fee for every pound

of tilefish that he or she lands. As soon as possible after the end of the calendar year, NMFS will mail a bill for the IFQ fee from the previous calendar year to each IFQ permit holder. Bills may also be made available electronically via the internet. Payment of the IFQ fee must be made within 45 days of the date on the NMFS bill.

Payments of the IFQ fee must be made electronically via the Federal web portal, [www.pay.gov](http://www.pay.gov), or other internet sites as designated by the Regional Administrator. The reason for the electronic fee collection system is to minimize paper transactions, as at the present time the NMFS Northeast Regional Office is not equipped to process paper collections. Instructions for electronic payment will be made available on both the payment website and the paper bill. Payment options will include payment via a plastic card (e.g. Visa, MasterCard, Discover, etc.), or direct ACH (automated clearing house) withdrawal from a designated checking account. Payment by check could be authorized by the RA for any reason including in the case of an emergency (i.e., the geographical area or an individual(s) is affected by catastrophic conditions).

### **IFQ Reporting Requirements**

Changes will be required to be made to the current data base system to support IFQ reporting requirements. This would include how to identify landings under an IFQ system. Under alternative 8B, a trip identifier (Vessel Trip Report (VTR) Serial Number) would be used to match all reported Interactive Voice Response (IVR) landings to their corresponding dealer reports. This would allow for all IVR data to more accurately match dealer (weigh-out) data on a trip-by-trip basis. In addition, the dealer number would also need to be recorded into the IVR to have vessels report pounds by dealer on the IVR. This would ensure that amounts of tilefish landed and ex-vessel prices are properly recorded for quota monitoring purposes and the calculation of IFQ fees, respectively.

### **Recreational Permits and Reporting Requirements**

The current tilefish FMP does not contain management measures that require the recreational fishery to report landings. The FMP regulations allow for tilefish to be harvested by the recreational sector with no restrictions. When the FMP was first developed, the recreational participation in this fishery was thought to be minimal. However, recent anecdotal evidence suggests that there has been an increase in recreational tilefish landings. Currently, the recreational component of the fishery is not captured through Federal reporting requirements. The issuance of a permit is an essential ingredient in the management of fishery resources. The purposes and uses of the CP permits are: 1) registration of fishermen and fishing vessels; 2) listing of the characteristics of fishing vessels; 3) provision of a mailing list for the dissemination of important information to the industry; and 4) provision of a means for the collection of reporting of recreational landings data. The Council adopted management measures, in Amendment 1, that would establish a CP Permit in the fishery. Any owner of a party or charter vessel carrying recreational fishermen for-hire to fish for tilefish within the U.S. exclusive economic zone (EEZ) will need to obtain a CP vessel permit from NMFS. This would require that CP vessels report tilefish landings using vessel trip reports. The collection of this information would provide valuable information to determine the number of vessels and level of activity in the recreational fishery. An applicant must apply for a Federal vessel permit in writing to the Regional Administrator. The application must be signed by the applicant and submitted to the Regional Administrator at least 30 days before the date upon which the applicant desires to have the permit made effective. Applications must contain the name,

principal place of business, mailing address and telephone number of the applicant.

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

The information requested would be used by several offices of NMFS and the United States Coast Guard (USCG) for the monitoring, implementation, and enforcement of the provisions outlined in the Tilefish FMP, as revised by Amendment 1.

The information gathered is required for the institution of a LAPP, as stipulated in the MSA, and for the issuance of a Federal CP permit. This information, as stated above, would enable NMFS to manage the new IFQ program and to better assess the role of the recreational component of the fishery. All of the information described in response to Question 1 will be collected annually, with the exception of the IFQ Allocation Transfer form, which will be collected every time an IFQ allocation transfer occurs, and the new IVR collection that will be required within 48 hours of every tilefish landing. Since Amendment 1 is instituting an IFQ program, with transferability of quota, it is not known at the outset how many IFQ allocation transfers will occur in a given year. However, it is believed that there will not be a large number of allocation transfers every year due to the specialization of the tilefish fleet, and the small number of active vessels that are capable of fishing for tilefish.

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

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

The collection of cost recovery fees, as required by the MSA for the institution of a LAPP, will be accomplished using [www.pay.gov](http://www.pay.gov), the electronic Federal payment system managed by the Department of the Treasury. The two additional landings responses are submitted through the IVR.

All other collections of information required by Amendment 1 will require the submission of paper forms which will also be available for download electronically on the Northeast Region Office (NERO) website, [www.nero.noaa.gov](http://www.nero.noaa.gov): The tilefish CP permit application; the Tilefish ITQ Allocation Transfer Form and the IFQ Allocation Interest Declaration form. Although these forms may be downloaded and completed electronically, they will need to be mailed in with an original signature(s).

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

NMFS is aware of all related fishery management activities, and these requirements do not duplicate any in existence.

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

The proposed collection of information would not have a significant impact on small entities. Only the minimum data to meet the requirements of the above data needs are requested from all participants. Furthermore, detailed instructions are included with all required applications and forms to help facilitate proper completion. Since most of the respondents are small businesses, separate requirements based on the size of the business have not been developed.

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

Amendment 1 to the Tilefish FMP would institute a LAPP in the fishery. If the information is not collected as described in Response #1, NMFS would be out of compliance with the LAPP requirements under the MSA. In addition, NMFS would not be able to collect recreational landings data not currently captured by NMFS and needed to ensure that the recreational fishery is properly factored into tilefish stock assessments.

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

IFQ allocation owners may transfer quota more frequently than quarterly, but transferring quota is a voluntary action, and is to the benefit of the fishing industry. The additional IVR system collection will be required within 48 hours of every landing and is authorized under the Act (Section 303A(c)(1)(H)) for the management of a LAPP.

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

The information collections contained in this submission are part of a proposed rule, RIN 0648-AS25, scheduled to publish in the Federal Register in May 2009.

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

Neither payments nor gifts are given to the respondents.

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

All data would be handled in accordance with NOAA Administrative Order 216-100, Confidentiality of Fisheries Statistics, and would not be released for public use except in aggregate statistical form (and without identifying the source of data, i.e., vessel name, owner, etc.). In addition, any information submitted according to the provisions outlined in Amendment 1, or any other management action implemented by NMFS, would be considered confidential and would not be disclosed except as provided in Section 402(b) of the Magnuson-Stevens Act. Assurance of confidentiality is given on all forms.

**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.**

There are no questions of a sensitive nature.

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

A full summary of the public burden associated with this collection of information can be found in Table 1.

There are approximately 32 individual respondents estimated under this submission. These respondents represent those entities that meet the initial eligibility required to be issued a tilefish IFQ Allocation permit, and/or a Tilefish CP permit. This number includes all entities that would be affected by this information collection, although different provisions affect different numbers of entities. Due to duplication of participants affected by the various provisions, affected entities were only counted once. The new burdens included in this information collection request are described in further detail below and summarized in Table 1 at the end of the text.

**IFQ Allocation Permit**

It is estimated that there would be 32 applicants for an IFQ Allocation permit. Each allocation application will take approximately 30 minutes to process. Consequently, the total time burden for the initial applications will be 16 hours (32 x 30 minutes / 60 minutes = 16). According to Council analysis performed for Amendment 1, only 13 IFQ applicants are expected to qualify and consequently renew their application each year. IFQ Allocation permit renewal is estimated to take 15 minutes per application on average, for a total burden of 3 hours and 15 minutes per year (13 x 15 minutes/60 minutes = 3.25). **The 3 year average response number would be 19 (32 + 13 + 13)/3, with an average response time of 23.4 (23) minutes, and the 3-year average total public time burden for IFQ permit applications and permits renewals would be 7 hours and 15 minutes (7 hours).**

**Appeals**

Up to 32 applicants could potentially appeal their IFQ Allocation permit application decision over the course of the three month application period. The appeals process is estimated to take 2 hours per appeal to complete, on average, for a total burden of 64 hours. **The average responses**

**for this one-time appeal, averaged over three years, would be 11, and the annualized burden would be 22 hours.**

### **IFQ Allocation Acquisition – IFQ Ownership Cap Forms**

To administer the 49 percent limit on IFQ Allocation holdings, IFQ Allocation permit holders would be required to submit IFQ Allocation Interest Declaration (IFQ Ownership Cap) form prior to each IFQ permit year. Since it is estimated there would be approximately 13 IFQ Allocation permits, there would be 13 forms each in the second and third years, averaged over three years to 9 responses ( $13 + 13 = 26/3$ ). It is estimated it would take 5 minutes to complete each ownership form; therefore, the annual reporting burden would be 1 hour ( $13 \times 5 \text{ minutes}/60 \text{ minutes}$ ), totaling 2 hours for the three-year period, would be **averaged over the first three years to 40 minutes (2/3 hours) or 1 hour.**

### **IFQ Permanent & Temporary Transferability**

Using the Northeast Region's Atlantic Surfclam & Ocean Quahog (SC/OQ) ITQ Transfer Program (OMB Control No. 0648-0240) as a proxy for the response rate for the tilefish IFQ quota transfer program, it is anticipated that there would be approximately 65 quota transfers annually in the tilefish IFQ program. It is reasonable that it will take the same amount of time to complete a tilefish IFQ transfer form as it does to complete a SC/OQ transfer form. Therefore, using SC/OQ as a proxy, it is estimated that each transfer form takes approximately 5 minutes to complete. The Council has indicated that the initial tilefish IFQ allocation will be distributed to 13 entities. If these 13 IFQ allocation owners complete 5 transfers (65 responses), at 5 minutes per form, the annual burden will be approximately **5 hours and 24 minutes (5 hours)** ( $13 \times 5 = 65 \times 5 \text{ minutes}/60 \text{ minutes}$ ).

### **Fees and Cost Recovery**

As we are initiating cost recovery for this program, there are no current data for use in estimating the burden associated with submitting a cost recovery payment. Using the burden per response used by the Alaska Region's Alaska Individual Fishing Quota Cost Recovery Program Requirements (OMB Control No. 0648-0398) as a proxy for the tilefish IFQ program, it is estimated that it would take 2 hours per response. Each IFQ permit holder would be required to submit a cost recovery payment once annually. Therefore, 13 payments would take **26 hours.**

### **Recreational Permits and Reporting Requirements**

According to NMFS VTR data, 32 vessels have landed tilefish from 1996 through 2005. It is expected that all of these vessels will apply for a CP vessel permit in order to maintain flexibility in their operations. Since these vessels are likely to already hold permits for other CP fisheries, and the CP permit will remain open access, it is not likely that additional burden (public costs or government costs) will be incurred.

### **IFQ Reporting Requirements**

This collection requires tilefish vessels to input both their pre-printed VTR serial number and their dealer number into the IVR system within 48 hours of landing. Using the burden per response used by the current Northeast Family of Forms (OMB Control No. 0648-0202) as a

proxy for the tilefish IFQ program, it is estimated that it would take 2 minutes for each IVR response. Each IFQ permit holder would be required to input both the pre-printed VTR serial number and dealer number to the IVR system within 48 hours of each landing. Using data from the Northeast Regional Office, vessels within the Tier 1 category have landed an average of 19 times a year, over the past three years. The Tier 1 category is used to calculate this average since this tier most resembles the future IFQ system, as vessels have a cooperative system in place to spread out landings equally throughout the year. It is expected that after implementation of Amendment 1, all vessels will behave similarly to the current Tier 1 fishery. Therefore, if there are 13 initial allocations, it is likely that 13 vessels will land tilefish, and report to the IVR system 19 times a year. Each call reporting to the IVR system will now include 2 additional responses ( $19 \times 2 = 38$  individual annual responses  $\times 13 = 494$  total annual responses) to what is currently accounted for in the IVR portion of the current submission of OMB Control No. 0648-0202, each requiring 2 minutes of response time. **This additional burden would be approximately 16 hours and 28 minutes (16 hours)** ( $494 \times 2$  minutes = 988 minutes/60 minutes).

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

A full summary of the cost to the public associated with this collection of information can be found in Table 1.

TABLE 1

Reporting Requirement	# Items	Responses per item	Total responses	Burden hours	Recordkeeping/reporting costs
Permit Application (IFQ) (3-year average)	19	1	19	7	\$8
Appeals (IFQ) (3-year average)	11	1	11	22	\$22
IFQ Ownership Cap Forms (2 years of responses, averaged over 3 years)	9	1	9	1	\$5
IFQ Allocation Transfer Applications (temporary and permanent)	13	5	65	5	\$34
Cost Recovery	13	1	13	26	\$13
CP Permit Application	32	1	32	-	-
IFQ Additional Reporting	247	2	494	16	0
<b>TOTAL</b>	-	-	<b>611</b>	<b>77</b>	<b>\$82</b>

**IFQ Allocation Permit**

It is estimated that it would cost \$0.42 in postage fees to submit an initial permit application. Therefore, it would cost on average over a three year period an estimated **\$4.48** per year in postage fees (an average of 20 applications/renewals per year  $\times$  \$0.42 = \$13.44 / 3years = \$8.40).

## **Appeals**

It is estimated that it would cost approximately \$1 in mail fees and \$1 in copy fees (10 pages at \$0.10 per page) to submit materials supporting an appeal. Since it is anticipated that there will be approximately 32 appeals during the 90 day application period, annualized to 11 appeals, the cost burden resulting from the appeals process would be approximately **\$22** ( $2 \times 11$ ).

## **IFQ Share Accumulation (Ownership Cap Form)**

It is estimated that it would cost \$0.42 in mailing fees and \$0.10 in copy fees to submit an ownership cap form. Since it is estimated that there will be 13 IFQ Allocation Interest Declaration forms submitted annually in the second and third years, annualized to 9 responses. The total additional expense resulting from this requirement would be \$13.50 ( $2 \times \$6.75$  ( $13 \times \$0.52$ )), averaged over three years to **\$4.50** (**\$5**).

## **IFQ Permanent & Temporary Transferability=**

It is estimated that IFQ transfer submission would cost \$0.42 postage and \$0.10 copy fees per transfer application (\$0.52 total). Since NMFS anticipates approximately 65 transfers per year, the resultant cost burden would be **\$34** per year ( $65 \times \$0.52$ ).

## **Fees and Cost Recovery**

It is estimated that it would cost \$0.42 in mailing fees and \$0.10 in copy fees to mail a cost recovery annual bill. Since it is estimated that there will be 13 permanent IFQ Allocation permit holders that would each receive a six page bill and report, annually, the additional expense resulting from this requirement would be **\$13.26** (**\$13**) ( $13 \times (0.42 + (\$0.10 \times 6 = \$0.60)) = \$1.02$ ).

## **Recreational Permits and Reporting Requirements**

According to NMFS VTR data, 32 vessels have landed tilefish from 1996 through 2005. It is expected that all of these vessels will apply for a CP vessel permit in order to maintain flexibility in their operations. Since these vessels are likely to already hold permits for other CP fisheries, and the CP permit will remain open access, it is not likely that additional burden (public costs or government costs) will be incurred.

## **IFQ Reporting Requirements**

As these reports are made through the IVR system, there is no cost incurred.

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

A full summary of the cost to the public associated with this collection of information can be found in Table 2.

TABLE 2

GOVERNMENT COST							
requirement	# entities	items entity	per	total items	Cost item	per	total cost
Permit Application (IFQ) (3-year average)	19.33	1		19.33	\$33		\$638
Appeals (3-year average)	11	1		11	\$25		\$266.67
Ownership Cap Forms	9	1		9	\$4.17		\$37.32
IFQ Allocation Transfer Applications (temporary and permanent)	65	1		65	\$13		\$812.50
Cost Recovery Programming Cost (3-year average)	13	1		13	\$2		\$8.34
<b>TOTAL</b>							<b>\$1,762.83</b>

### IFQ Permit Allocation

The estimated average cost to the Federal Government to issue a Federal fishery permit (including the time to process all applications) is \$33 per permit (1 hour and 20 minutes, at an hourly rate of \$25), including labor, printing, distribution, computer time, and handling. In the 1<sup>st</sup> year there would be 32 IFQ initial applications. The following 2 years, there would be 13 IFQ renewal applications over the two years. Therefore it would cost on average over a three year period an estimated **\$638** per year ( $32+13+13 = 58 \times \$33 = \$1,914/3$ ) to process all Tilefish IFQ Permits.

The annual estimated cost to the Federal Government is estimated to be \$25 for processing appeals. It is estimated that there would be 32 appeals the first year, annualized over 3 years, which would increase the annual government burden by **\$266.67** ( $(32 \times \$25)/3$  years).

### IFQ Share Accumulation

It is estimates that it would take 10 minutes to process each IFQ Allocation Ownership Interest Declaration form. Since there would be approximately 13 forms per year, at an hourly rate of \$25, the annual government burden would be **\$54** ( $13 \times 10 \text{ minutes}/60 \text{ minutes} \times \$25$ ).

### IFQ Permanent & Temporary Transferability

It is estimated that it would take 30 minutes to process each transfer request. Since it is estimated that NMFS would process approximately 65 transfers per year, the annual government cost would be **\$812.50** ( $65 \times 30 \text{ minutes}/60 \text{ minutes} \times \$25$ ).

### Fees and Cost Recovery

Cost recovery payments would be collected through [www.pay.gov](http://www.pay.gov), an established government payment collection program. It is anticipated it would take one hour to program [www.pay.gov](http://www.pay.gov) to accept payment from IFQ permit holders. Once the program has been programmed to accept payment from [www.pay.gov](http://www.pay.gov), there would be no additional cost to the government since the tilefish cost recovery program would be completely automated. At an hourly rate of \$25, the annual government burden would be \$25 for the first year only, or an annualized burden of **\$8.34** (\$8).

## **Recreational Permits and Reporting Requirements**

According to NMFS VTR data, 32 vessels have landed tilefish from 1996 through 2005. It is expected that all of these vessels will apply for a CP vessel permit in order to maintain flexibility in their operations. Since these vessels are likely to already hold permits for other CP fisheries, and the CP permit will remain open access, it is not likely that additional burden (public costs or government costs) will be incurred.

## **IFQ Reporting Requirements**

This submission will not incur additional annualized costs beyond what is already accounted for in the IVR portion of the current submission of OMB Control No. 0648-0202.

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

This is a new program.

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

Results from this collection may be used in scientific, management, technical or general informational publications such as Fisheries of the United States which follows prescribed statistical tabulations and summary table formats. Data are available to the general public on request in summary form only; data are available to NMFS employees in detailed form on a need-to-know basis only.

### **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.**

NA.

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

NA.

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

No statistical methods are employed in the information collection procedures.

U.S. Department of Commerce  
NOAA/National Marine Fisheries Service  
Northeast Permit Operations  
One Blackburn Drive  
Gloucester, MA 01930-2298  
Tel: (978) 281-9370

**Application for  
Federal Tilefish Individual Fishing  
Quota Allocation Permits  
November 1, 2009**

**IFQ Permit Application #: T-XXX**

**Please see attachment for application instructions**

**Section 1 - Owner and Vessel(s) Information**

Owner Name:  Street Address:  City:  State:  Zip Code:  Phone #:	List all Federal Vessel Permit Numbers and Names that you own that are authorized to fish under this IFQ Allocation Permit:  1) Permit Number/Name: 2) Permit Number/Name: 3) Permit Number/Name: 4) Permit Number/Name: 5) Permit Number/Name: 6) Permit Number/Name: (if additional space is required, please use the back of this form)
--	--

**Section 2 - Fishery Information & IFQ Share Allocation**

Gear Codes:	120-Purse Seine	210-Beach Seine	220-Boat Seine	310-Bottom Trawl	320-Midwater Trawl
330-Other Trawl	410-Dredge	700-Gill/Entangling nets	800-Pots & Traps	911-Hand Lines	912-Rod & Reel
913-Tub Trawl	1010-Harpoons	920-Longlines or Setlines	1200-Other Gears	1400-Diving Gear	

**Gear Codes:** please write in the gear codes from the list above that you intend to fish for tilefish with.


**IFQ Allocation:**

**Percentage of Tilefish Overall IFQ TAL: XX%**

**FY 2010 Quota in Pounds: XX,XXX lb\***

**IFQ Temporary Allocation  
(Leased Allocation) in Pounds:**

\* SUBJECT TO CHANGE: Quota may be adjusted based on FY 2008 overages, and/or research set asides. Please refer to your IFQ permit, when received, for your actual FY 2010 quota. In addition, for the first IFQ permit year, the overall tilefish IFQ TAL is reduced by 15% to accommodate potential appeals.

**Section 3 - Owner's Signature**

_____ Issue with Requested Changes Above	I, the undersigned, am the owner or legally authorized agent of the owner of the vessel(s) named in Section 1 above. I affirm, subject to the penalties provided in 18 USC 1001, that all information that I have given in obtaining this permit is true and correct.  Signature: _____ Print Name: _____ Date: _____
--	---

**To avoid delay in processing, please include all information requested.**

Any information submitted by any person to obtain a permit is not confidential, and may be disclosed upon request.

## Instructions - Northeast Federal Fisheries Initial Application for a Tilefish IFQ Allocation Permit

This is your Initial Permit Application for **Federal Tilefish IFQ Allocation** permit that are required by November 1, 2009 to continue to fish for tilefish in excess of the incidental trip limit. You are receiving this application because NMFS has determined that you owned a vessel that meets the qualification criteria as described in the cover letter, and the final regulations implementing Amendment 1 to the Tilefish FMP.

*[OR, if NMFS has determined that a current limited access vessel owner does not meet the qualification criteria, then we would send a blank application with the following language...]*

You are receiving this application for a Tilefish IFQ allocation even though NMFS has determined that you do not qualify for an initial IFQ allocation. However, if you believe that you qualify; please submit this application, and all of the requested information, along with a statement of your landings history for the 2001 through 2005 fishing years. The landing history submitted must contain a vessel number, and clear evidence that you owned the vessel during the qualification period. NMFS will then review your application, and determine whether you qualify for an IFQ allocation. IF NMFS reviews your application, and determines that you do not qualify, you may appeal the decision, as described in the cover letter.

### **In addition, all applicants must submit:**

1. An IFQ Interest Declaration Form.
2. If your vessel is owned by a corporation, Partnership, or LLC: A) a list, signed and dated, of the names and addresses of all corporate officers and shareholders owning twenty-five (25) percent or more of the corporation; or B) a current copy of the Partnership Agreement and a list of the names and addresses of all partners.

---

**SECTION 1: VESSEL/OWNER INFORMATION:** Enter information **only** for items that have changed or are incorrect, or if you need to submit additional information.

---

### **SECTION 2: FISHERY INFORMATION**

- Category: You must also submit documentation that the IFQ permit applicant owned a vessel that meets the eligibility criteria for an initial IFQ allocation as outlined in the attached letter. Documentation will be reviewed against these criteria.
- CPH: A person who does not currently own a fishing vessel, but who has owned a qualifying vessel that is currently placed in CPH, should apply for an IFQ permit.
- Gear Code: You must select at least one gear code or multiple gear codes from those listed on the front of this form.
- 

### **SECTION 3: OWNER'S SIGNATURE AND INSTRUCTIONS**

**Please sign the form. Unsigned or incomplete applications will be returned.** Your signature is an affirmation under penalty of perjury, that all the information provided in obtaining this permit is true [18 USC 1001].

**PAPERWORK REDUCTION ACT STATEMENT:** Public reporting burden for this collection of information is estimated to average 30 minutes per Individual Fishing Quota application and 15 minutes per Northern Gulf of Maine and Incidental Catch applications, 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 the Assistant Regional Administrator, Sustainable Fisheries Division, NOAA National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930.

All data will be kept confidential. 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.

# Request to Transfer Tilefish IFQ Allocation



**United States Department of Commerce**  
 National Oceanic and Atmospheric Administration  
 National Marine Fisheries Service  
 Northeast Region  
 One Blackburn Drive  
 Gloucester, MA 01930

This form must be used to request a temporary lease or permanent transfer of Tilefish IFQ between two persons or entities that are permanent U.S. citizens or permanent resident aliens, or corporations eligible to own a U.S. Coast Guard documented vessel, as long as they meet the requirements under the MSA. Those entities who have an ownership interest in a Tilefish IFQ Allocation Permit are defined as and include, but are not limited to, individuals, corporations, partnerships, LLCs, persons who are shareholders in a corporation, persons who have formed a partnership (general or limited), and any other entities that have ownership interest in a Tilefish IFQ Allocation Permit. An eligible entity may not obtain more than 49% of the overall tilefish IFQ. Written approval or disapproval of the request will be provided within 30 days of receipt of this form. See attached regulations and restrictions regarding the Tilefish IFQ Leasing and Transfer Program.

## Section 1

**Check which type of transfer you are requesting:**

<input type="checkbox"/> Permanent IFQ Allocation Transfer	<input type="checkbox"/> Temporary IFQ Allocation Transfer
--	--

## Section 2

Transferor (Seller)	
Name, Address, Phone #:	IFQ Allocation Permit Number:
<b>Quota to be Transferred in Pounds:</b>	<b>Price Paid for the Transfer: \$</b>

## Section 3

Transferee (Buyer)	
Name, Address, Phone #:	*IFQ Allocation Permit Number:
List of IFQ Allocation Permit numbers in which an interest is held. If more space is needed, please use the bottom of the second page of this form:	<b>* If an IFQ Allocation Permit number has not been issued, Section 4 of this form must be completed. NMFS will issue an IFQ Allocation permit number upon receipt of the completed application.</b>
1.	2.
3.	4.
5.	6.
7.	8.

**Section 4**

Name:	
Vessel (if applicable):	
Street:	
City/ State/ Zip:	
Telephone:	
<input type="checkbox"/>	U.S. citizen requirement. By checking this box you are indicating that you are eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) and are able to provide documentation attesting to such eligibility if requested by NMFS.

**Section 5**

Signature of Transferor or Authorized Agent:	Signature of Transferee or Authorized Agent:
Date:	Date:

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the information. Send comments regarding this burden estimate to: NMFS, One Blackburn Drive, Gloucester, MA 01930. 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.



**National Marine Fisheries Service / Northeast Regional Office**  
**Tilefish IFQ Allocation Interest Declaration**  
**Form**



All persons and entities who have an interest in the Tilefish IFQ Allocation Permit that is the subject of this application must list all the other Tilefish IFQ Allocation Permits in which they have an interest. Individuals who have an interest in a Tilefish IFQ Allocation Permit are defined as and include, but are not limited to, individuals, persons who are shareholders or officers in a corporation, persons who have formed a partnership (general or limited), immediate family members of those who hold an interest, and any other entities that have an interest in a Tilefish IFQ Allocation Permit. If a corporation, partnership, or LLC is listed in Column A, shareholders/officers must be identified.

**Section A – Individual Applying for a Tilefish IFQ Allocation Permit**

Name, Address, and Phone # of Entity: \_\_\_\_\_  
 \_\_\_\_\_

**Section B – Owners of Tilefish IFQ Allocation in Section A and any other Tilefish IFQ Allocation owned.**

<b>Column A – Entire name of the owner(s) of the IFQ Allocation in Section A. Include both corporation names and names of Shareholders/Officers.</b>	<b>Other Tilefish IFQ Allocations owned</b> Provide the name, and Tilefish IFQ Allocation permit application number for the other Tilefish IFQ Allocations in which the owner(s) of the tilefish IFQ Allocation in <i>Column A</i> has an interest.		
<b>Owner(s) Name</b>	<b>Tilefish IFQ Allocation Permit Application #</b>	<b>Tilefish IFQ Allocation Permit Application #</b>	<b>Tilefish IFQ Allocation Permit Application #</b>

I, the undersigned, am the owner or legally authorized agent of the owner of the IFQ Allocation named in Section A above. I affirm, subject to the penalties provided in 18 USC 1001, that all information that I have given in obtaining this permit is true and correct.

Name of Applicant (print clearly): \_\_\_\_\_

Signature of Applicant: \_\_\_\_\_ Date: \_\_\_\_\_

OMB Control No. 0648-xxxx  
 Expiration Date: mm/dd/2009

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

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

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

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

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

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

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

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

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

(4) assess and specify—

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

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

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

**109-479**

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

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

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

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

**109-479**

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

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

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

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

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

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

(A) minimize bycatch; and

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

**16 U.S.C. 1853**  
**MSA § 303**

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

**109-479**

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

**109-479**

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

**109-479**

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

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

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

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

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

(B) the operator of any such vessel; or

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

**109-479**

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

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

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

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

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

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

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

**109-479**

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

**109-479**

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

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

**16 U.S.C. 1853**  
**MSA § 303**

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

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

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

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

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

**109-479**

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

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

**97-453, 104-297**

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

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

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

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

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

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

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

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

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

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

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

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

**109-479**

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

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

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

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

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

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

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

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

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

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

(c) REQUIREMENTS FOR LIMITED ACCESS PRIVILEGES.—

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

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

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

(C) promote—

(i) fishing safety;

(ii) fishery conservation and management; and

(iii) social and economic benefits;

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

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

(F) specify the goals of the program;

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

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

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

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

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

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

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

(3) FISHING COMMUNITIES.—

(A) IN GENERAL.—

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

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

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

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

(4) REGIONAL FISHERY ASSOCIATIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**16 U.S.C. 1853a**  
**MSA § 303A**

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

**(6) PROGRAM INITIATION.—**

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

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

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

**(D) NEW ENGLAND AND GULF REFERENDUM.—**

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

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

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

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

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

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

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

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

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

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

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

**16 U.S.C. 1853a**  
**MSA § 303A**

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

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

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

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

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

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

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

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

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

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

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

(g) LIMITED ACCESS PRIVILEGE ASSISTED PURCHASE PROGRAM.—

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

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

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

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

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

(i) TRANSITION RULES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

### **104-297**

(a) REVIEW OF PLANS.—

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

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

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

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

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

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

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

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

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

(B) the nature of such inconsistencies; and

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

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

104-297

**SEC. 402. INFORMATION COLLECTION**

16 U.S.C. 1881a

109-479

(a) COLLECTION PROGRAMS.—

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

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

109-479

(b) CONFIDENTIALITY OF INFORMATION.—

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

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

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

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

(D) when required by court order;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) **RESOURCE ASSESSMENTS.**—

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

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

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

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

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

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

**104-297**

**SEC. 403. OBSERVERS**

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

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

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

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

**United States Code**  
**TITLE 46 - SHIPPING**  
**SUBTITLE II - VESSELS AND SEAMEN**  
**PART H - IDENTIFICATION OF VESSELS**  
**CHAPTER 121 - DOCUMENTATION OF VESSELS**

*U.S. Code as of: 01/19/04*

**Section 12102. Vessels eligible for documentation**

(a) A vessel of at least 5 net tons that is not registered under the laws of a foreign country is eligible for documentation if the vessel is owned by -

- (1) an individual who is a citizen of the United States;
- (2) an association, trust, joint venture, or other entity -
  - (A) all of whose members are citizens of the United States;
  - and
  - (B) that is capable of holding title to a vessel under the laws of the United States or of a State;
- (3) a partnership whose general partners are citizens of the United States, and the controlling interest in the partnership is owned by citizens of the United States;
- (4) a corporation established under the laws of the United States or of a State, whose chief executive officer, by whatever title, and chairman of its board of directors are citizens of the United States and no more of its directors are non-citizens than a minority of the number necessary to constitute a quorum;
- (5) the United States Government; or
- (6) the government of a State.

(b) A vessel is eligible for documentation only if it has been measured under part J of this subtitle. However, the Secretary of Transportation may issue a temporary certificate of documentation for a vessel before it is measured.

(c)(1) A vessel owned by a corporation, partnership, association, trust, joint venture, limited liability company, limited liability partnership, or any other entity is not eligible for a fishery endorsement under section 12108 of this title unless at least 75 per centum of the interest in such entity, at each tier of ownership of such entity and in the aggregate, is owned and controlled by citizens of the United States.

(2) The Secretary shall apply section 2(c) of the Shipping Act, 1916 (46 App. U.S.C. 802(c)) in determining under this subsection whether at least 75 per centum of the interest in a corporation, partnership, association, trust, joint venture, limited liability company, limited liability partnership, or any other entity is owned and controlled by citizens of the United States. For the purposes of this subsection and of applying the restrictions on controlling interest in section 2(c) of such Act, the terms "control" or "controlled" -

(A) shall include -

- (i) the right to direct the business of the entity which owns the vessel;
- (ii) the right to limit the actions of or replace the chief executive officer, a majority of the board of directors, any general partner, or any person serving in a management capacity of the entity which owns the vessel; or
- (iii) the right to direct the transfer, operation or manning of a vessel with a fishery endorsement; and

(B) shall not include the right to simply participate in the activities under subparagraph (A), or the exercise of rights under loan or mortgage covenants by a mortgagee eligible to be a preferred mortgagee under section 31322(a) of this title, provided that a mortgagee not eligible to own a vessel with a fishery endorsement may only operate such a vessel to the extent necessary for the immediate safety of the vessel or for repairs, drydocking or berthing changes.

(3) A fishery endorsement for a vessel that is chartered or leased to an individual who is not a citizen of the United States or to an entity that is not eligible to own a vessel with a fishery endorsement and used as a fishing vessel shall be invalid immediately upon such use.

(4) The requirements of this subsection shall not apply to a vessel when it is engaged in fisheries in the exclusive economic zone under the authority of the Western Pacific Fishery Management Council established under section

302(a)(1)(H) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)(H)) or to a purse seine vessel when it is engaged in tuna fishing in the Pacific Ocean outside the exclusive economic zone of the United States or pursuant to the South Pacific Regional Fisheries Treaty, provided that the owner of the vessel continues to comply with the eligibility requirements for a fishery endorsement under the federal (!1) law that was in effect on October 1, 1998. A fishery endorsement issued by the Secretary pursuant to this paragraph shall be valid for engaging only in fisheries in the exclusive economic zone under the authority of such Council, in such tuna fishing in the Pacific Ocean, or pursuant to such Treaty.

(5) A vessel greater than 165 feet in registered length, of more than 750 gross registered tons (as measured under chapter 145 of title 46) or 1,900 gross registered tons as (!2) measured under chapter 143 of that title), or that has an engine or engines capable of producing a total of more than 3,000 shaft horsepower is not eligible for a fishery endorsement under section 12108 of this title unless -

(A)(i) a certificate of documentation was issued for the vessel and endorsed with a fishery endorsement that was effective on September 25, 1997;

(ii) the vessel is not placed under foreign registry after the date of the enactment of the American Fisheries Act; and

(iii) in the event of the invalidation of the fishery endorsement after the date of the enactment of the American Fisheries Act, application is made for a new fishery endorsement within fifteen (15) business days of such invalidation; or

(B) the owner of such vessel demonstrates to the Secretary that the regional fishery management council of jurisdiction established under section 302(a)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)) has recommended after the date of the enactment of the American Fisheries Act, and the Secretary of Commerce has approved, conservation and management measures in accordance with such Act to allow such vessel to be used in fisheries under such council's authority.

(d)(1) For the issuance of a certificate of documentation with only a registry endorsement, subsection (a)(2)(A) of this section does not apply to a beneficiary of a trust that is qualified under paragraph (2) of this subsection if the vessel is subject to a charter to a citizen of the United States.

(2)(A) Subject to subparagraph (B) of this paragraph, a trust is qualified under this paragraph with respect to a vessel only if -

(i) each of the trustees is a citizen of the United States; and

(ii) the application for documentation of the vessel includes the affidavit of each trustee stating that the trustee is not aware of any reason involving a beneficiary of the trust that is not a citizen of the United States, or involving any other person that is not a citizen of the United States, as a result of which the beneficiary or other person would hold more than 25 percent of the aggregate power to influence or limit the exercise of the authority of the trustee with respect to matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States.

(B) If any person that is not a citizen of the United States has authority to direct or participate in directing a trustee for a trust in matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States or in removing a trustee for a trust without cause, either directly or indirectly through the control of another person, the trust is not qualified under this paragraph unless the trust instrument provides that persons who are not citizens of the United States may not hold more than 25 percent of the aggregate authority to so direct or remove a trustee.

(3) Paragraph (2) of this subsection shall not be considered to prohibit a person who is not a citizen of the United States from holding more than 25 percent of the beneficial interest in a trust.

(4) If a person chartering a vessel from a trust that is qualified under paragraph (2) of this subsection is a citizen of the United States under section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802), then the vessel is deemed to be owned by a citizen of the United States for purposes of that section and related laws, except for subtitle B of title VI of the Merchant Marine Act, 1936.