

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Diana Hynek  
Departmental Paperwork Clearance Officer  
Office of the Chief Information Officer  
14th and Constitution Ave. NW.  
Room 6625  
Washington, DC 20230

06/23/2006

In accordance with the Paperwork Reduction Act, OMB has taken the following action on your request for the extension of approval of an information collection received on 05/03/2006.

TITLE: Designation of Fishery Management Council Members  
and Application for Reinstatement of State  
Authority

AGENCY FORM NUMBER(S): None

ACTION : APPROVED WITHOUT CHANGE  
OMB NO.: 0648-0314  
EXPIRATION DATE: 06/30/2009

BURDEN:	RESPONSES	HOURS	COSTS(\$,000)
Previous	142	4,543	3
New	275	4,607	1
Difference	133	64	-2
Program Change		0	0
Adjustment		64	-2

TERMS OF CLEARANCE: None

NOTE: The agency is required to display the OMB control number and inform respondents of its legal significance (see 5 CFR 1320.5(b)).

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OMB Authorizing Official Title

John F. Morrall III Acting Deputy Administrator, Office of  
Information and Regulatory Affairs

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# PAPERWORK REDUCTION ACT SUBMISSION

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

1. Agency/Subagency originating request	2. OMB control number <span style="float: right;">b. <input type="checkbox"/> None</span> a. _____ - _____
3. Type of information collection ( <i>check one</i> ) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested ( <i>check one</i> ) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated
7. Title	5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No
8. Agency form number(s) ( <i>if applicable</i> )	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
9. Keywords	
10. Abstract	
11. Affected public ( <i>Mark primary with "P" and all others that apply with "x"</i> ) a. ___ Individuals or households d. ___ Farms b. ___ Business or other for-profit e. ___ Federal Government c. ___ Not-for-profit institutions f. ___ State, Local or Tribal Government	12. Obligation to respond ( <i>check one</i> ) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden ( <i>in thousands of dollars</i> ) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection ( <i>Mark primary with "P" and all others that apply with "X"</i> ) a. ___ Application for benefits e. ___ Program planning or management b. ___ Program evaluation f. ___ Research c. ___ General purpose statistics g. ___ Regulatory or compliance d. ___ Audit	16. Frequency of recordkeeping or reporting ( <i>check all that apply</i> ) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission)  Name: _____ Phone: _____

## 19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

**NOTE:** The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
  - (i) Why the information is being collected;
  - (ii) Use of information;
  - (iii) Burden estimate;
  - (iv) Nature of response (voluntary, required for a benefit, mandatory);
  - (v) Nature and extent of confidentiality; and
  - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

**SUPPORTING STATEMENT  
DESIGNATION OF FISHERY MANAGEMENT COUNCIL MEMBERS AND  
APPLICATION FOR REINSTATEMENT OF STATE AUTHORITY  
OMB CONTROL NO.: 0648-0314**

**A. JUSTIFICATION**

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

This submission contains five information collection requirements associated with implementation of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act):

(a) Principal State Officials and Their Designees. Section 302(b)(1)(A) of the Magnuson-Stevens Act requires that each Governor designate the principal state fishery official that will perform certain duties under the Magnuson-Stevens Act. The information submitted with the designation allows the National Marine Fisheries Service (NMFS) to determine whether the requirements of the Magnuson-Stevens Act are being met in terms of the responsibilities and expertise of the individual named, and to ensure that the person named is a full-time State employee.

(b) Governors' Nominees for Council Appointments. Section 302(b)(2)(C) of the Magnuson-Stevens Act requires Governors to nominate people to serve as members of the Councils. Information is needed to determine the qualifications of individuals and to meet other requirements under the Magnuson-Stevens Act.

(c) Treaty Indian Tribal Governments' Nominees for Council Appointments. Section 302(b)(5) of the Magnuson-Stevens Act requires Indian Tribal Governments with Federally-recognized fishing rights in California, Oregon, Washington or Idaho to nominate representatives to serve on the Pacific Fishery Management Council. Information is needed to determine the qualifications of individuals and to meet other requirements under the Magnuson-Stevens Act.

(d) Background Documents Completed by Nominees and Submitted to Governors or Treaty Indian Tribal Government. Nominees must furnish a current resume, or equivalent, describing career history and other such information as required in order to be considered as a candidate by the Governor or Treaty Indian Tribal Government.

(e) Application for Reinstatement of State Authority. Section 306(b)(2) of the Magnuson-Stevens Act allows states to apply for reinstatement of their authority to manage a fishery. The information required to be submitted with the application explains the reason for the state application.

**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.**

(a) Principal State Officials and Their Designees. The information is used by the Secretary of Commerce (Secretary) to appoint state officials as voting members of Councils under Section 302(b)(1)(A) of the Magnuson-Stevens Act. The Secretary seeks, on an annual basis, information about the expertise, employment, and responsibilities of the Governors' designees to meet the requirements of the Magnuson-Stevens Act. The information has been collected and used in the Council appointment process since 1977.

(b) Governors' Nominees for Council Employments. The information is used by the Secretary to annually appoint members to the Councils. One third of the Councils' membership is appointed by the Secretary annually. The information submitted helps the Secretary ensure that the candidates are properly qualified as specified in Section 302(b)(2)(B) and (C) of the Magnuson-Stevens Act, and to ensure that there is a balance in Council representation between sectors with fishery interests (e.g. commercial, environmental, and recreational interests). This information has been collected and used by the Secretary in the Council appointment process since 1977 and in mandated reports to Congress since 1991.

(c) Treaty Indian Tribal Governments' Nominees for Council Appointment. Section 302(b)(5)(B) of the Magnuson-Stevens Act requires Tribal Governments of Indian tribes with Federally-recognized fishing rights in California, Oregon, Washington or Idaho to nominate representatives to serve on the Pacific Fishery Management Council. Criteria set forth for appointment by the Secretary, includes requirements for information on the qualifications of nominees, geographic area in which the tribe of the nominee is located, and the various fishing rights of the Indian tribes involved and judicial cases that set out how those rights are to be exercised. One appointment will be made to the Pacific Fishery Management Council every third year from not less than three nominees proposed by the Indian Tribal Governments. The Indian Tribal Governments may act either as a group or individually in proposing nominees.

(d) Background Documents completed by Nominees and Submitted to Governors or Treaty Indian Government. The current resume, or equivalent, describing career history, and other such information as required are necessary to evaluate who is believed best qualified, knowledgeable, and broadly experienced to address management actions that the Council will consider in the upcoming future. Nominees must meet all requirements and have a favorable adjudication on background checks conducted by the Federal Bureau of Investigation and NOAA's Office of Enforcement (OLE). Yearly information submitted by the Governors on their nominees helps the Secretary ensure that the nominees are properly qualified as specified in Section 302(b)(2)(B) and (C) of the Magnuson-Stevens Act, and can be considered for possible appointment to one of the Regional Fishery Management Councils.

(e) Application for Reinstatement of State Authority. A state may apply, under Section 306(b)(2), to the Secretary for reinstatement of state authority over a fishery. Information is required of the state making application to determine whether the reasons for which the Secretary had assumed responsibility still exist, or whether the Secretary should return responsibility back to the state in question. There is no plan to return state authority over a fishery in the next three years.

NOAA, NMFS, will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. The information collection is designed to yield data that meet all

applicable information quality guidelines. The information will be subjected to quality control measures 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.**

There is no use of automated technology. Use of automated technology has not been deemed to offer the opportunity to substantially reduce collection-of-information burden on the respondents.

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

The NMFS is the sole organization collecting nomination information for the Secretary and administering the appointment process. The NMFS is also the sole organization charged with the regulation of fisheries in the U.S. Exclusive Economic Zone. Thus there is no possible duplication of other collections.

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

The respondents for collections listed in sub-paragraphs 2(a), 2(b), and 2(e) above are state governments, not small entities. The respondents for the collection listed in sub-paragraph 2(c) above are Indian Tribal Governments. The burden is considered not to be significant and has been further reduced from the collection-of-information burden placed on the state governments in the following ways:

(a) Participation in the nomination process by the 27 Indian tribes is at the discretion of the individual Tribal Governments.

(b) The nomination process and collection-of-information only takes place every third year for one Council member's seat on the Pacific Fishery Management Council.

(c) The Tribal Governments have the option of combining to nominate qualified persons in order to further reduce the burden on any one Tribal Government.

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

Congress has mandated the program activities and the frequency of reporting requirements in the Magnuson-Stevens Act.

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

The collection is consistent with the OMB guidelines.

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

A Federal Register Notice (copy attached) solicited comments on this collection. One comment was received opposing any reduction in the level of documentation being undertaken to determine qualifications for Council membership. No reduction in the level of documentation required for Council membership has been planned. Nominees must meet the qualifications specified in Section 302(b)(2)(B) and (C) of the Magnuson-Stevens Act to be considered for possible appointment to one of the Regional Fishery Management Councils. The number of respondents, responses and burden hours vary over a 3-year approval period. The submission is an extension to an existing collection, and reflects the collection being made required under the Paperwork Reduction Act.

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

No payment or gift will be made for responses.

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

None.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.**

No sensitive questions are asked.

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

The estimated burden is 4607 hours.

(a) Principal State Officials and Their Designees:

15 Governors x 1 response (1 nomination/year x 1 hour/response = 15 hours

Estimated cost: 15 hours x \$ 65/hour (average Governor's pay/hour) = \$ 975

(b) Governors' Nominees for Council Appointments:

1 nomination package of 3 nominees x 30 Governors x 80 hours per package = 2400 hours.



Estimated cost:  $2400 \times \$65/\text{hour}$  (average Governor's pay/hour) = \$ 156,000

(c) Indian Tribal Governments' Nominees for Council Appointments:

9 Tribal Governments x 1 response (3 nominations)/year x 80 hours/response = 720 hours

Estimated cost:  $720 \text{ hours} \times \$47/\text{hour}$  (average senior Tribal Government official pay/hour) = \$ 33,840

(d) Background Documents Completed by Nominees and submitted to Governors:

92 Nominees x 16 hours per year = 1472

Estimated cost:  $1472 \times \$ 25.00$  (average nominee's pay/hour) = \$ 36,800

(e) Applications for Reinstatement of State Authority:

0 respondents x 2 hours/response = 0 hours

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

Public costs for this collection include copying and mailing. At an estimated \$ 27.60 for copying costs for 92 nominees' background documents, \$ 92 for mailing 92 responses by nominees, and \$ 580.00 for mailing 58 responses by Principal state officials/designees, Governors, and Treaty Indian Tribal Governments, the total cost is \$ 699.60:

$3 \text{ pages per resume} \times 10 \text{ cents per page for copying} = \$ .30 \times 92 \text{ nominees} = \$ 27.60 = \text{copying}$

$92 \text{ nominees} \times \$ 1.00$  (cost of postage/handling (p/h) by nominees to governors offices) = \$ 92p/h

$58 \text{ responses} \times \$ 10.00$  (cost of postage/handling (p/h) by Principal state officials, designees, Governors, and Treaty Indian Tribal Governments, to NMFS) = \$ 580.00

Total cost = \$ 699.60.

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

The estimates of annualized cost to the Federal government are:

(a) Principal State Officials and Their Designees:

GS-15 (\$ 55/hour) x 40 hours = \$ 2,200

GS-11 (\$ 35/hour) x 40 hours = \$ 1,400

GS-08 (\$ 25/hour) x 20 hours = \$ 500

\$ 4,100

(b) Governors' Nominees for Council Appointment:

GS-15 (\$ 55/hour) x 80 hours = \$ 4,400  
GS-11 (\$ 35/hour) x 1120 hours = \$ 39,200  
GS-08 (\$ 25/hour) x 160 hours = \$ 4,000  
\$ 47,600

(c) Indian Tribal Governments' Nominees for Council Appointment:

G5-15 (\$ 55/hour) x 80 hours = \$ 4,400  
G5-11 (\$ 35/hour) x 320 hours = \$ 11,200  
GS-08 (\$ 25/hour) x 80 hours = \$ 2,000  
\$ 17,600

(d) Applications for Reinstatement of State Authority

0 cost estimated.

Total: Estimated Federal cost: \$ 69,300

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

There is a 64-hour adjustment due to a recent increase in the number of responses and respondents for existing requirements. However, there is a net decrease of \$2,353 in recordkeeping and reporting costs due to the correction of a calculation error in the previous submission.

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

The collection results will not be published.

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

No forms will be involved. The requirements will be contained in the regulations governing appointments to, and procedures for, the Councils.

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

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

This collection does not employ statistical methods.

**SEC. 302. REGIONAL FISHERY MANAGEMENT COUNCILS 16 U.S.C. 1852****97-453, 101-627, 104-297**

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

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

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

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

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

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

**(F) PACIFIC COUNCIL.**--The Pacific Fishery Management Council shall consist of the States of California, Oregon, Washington, and Idaho and shall have authority over the fisheries in the Pacific

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

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

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

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

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

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

**(b) VOTING MEMBERS.**--

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

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

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

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

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

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

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

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

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

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

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

take office as a member of the Council.

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

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

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

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

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

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

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

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

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

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

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

**(c) NONVOTING MEMBERS.--**

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

(A) The regional or area director of the United States Fish and Wildlife Service for the geographical area concerned, or his designee.

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

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

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

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

**96-561, 101-627, 104-297**

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

**101-627**

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

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

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

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

### **104-297**

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

### **97-453**

#### **(f) STAFF AND ADMINISTRATION.--**

(1) Each Council may appoint, and assign duties to, an executive director and such other full- and part-time administrative employees as the Secretary determines are necessary to the performance of its functions.

(2) Upon the request of any Council, and after consultation with the Secretary, the head of any Federal agency is authorized to detail to such Council, on a reimbursable basis, any of the personnel of such agency, to assist such Council in the performance of its functions under this Act.

(3) The Secretary shall provide to each Council such administrative and technical support services as are necessary for the effective functioning of such Council.

(4) The Administrator of General Services shall furnish each Council with such offices, equipment, supplies, and services as he is authorized to furnish to any other agency or instrumentality of the United States.

(5) The Secretary and the Secretary of State shall furnish each Council with relevant information concerning foreign fishing and international fishery agreements.

(6) Each Council shall determine its organization, and prescribe its practices and procedures for carrying out its functions under this Act, in accordance with such uniform standards as are prescribed by the Secretary. The procedures of a Council, and of its scientific and statistical committee and advisory panels established under subsection (g), must be consistent with the procedural guidelines set forth in subsection [j](2). Each Council shall publish and make available to the public a statement of its organization, practices, and procedures.



(7) The Secretary shall pay--

(A) the compensation and expenses provided for in subsection (d);

(B) appropriate compensation to employees appointed under paragraph (1);

(C) the amounts required for reimbursement of other Federal agencies under paragraphs (2) and (4);

(D) the actual expenses of the members of the committees and panels established under subsection (g);  
and

(E) such other costs as the Secretary determines are necessary to the performance of the functions of the Councils.

### **101-627**

#### **(g) COMMITTEES AND PANELS.--**

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

(2) Each Council shall establish such other advisory panels as are necessary or appropriate to assist it in carrying out its functions under this Act.

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

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

### **104-297**

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

## § 600.130

terms and conditions of the cooperative agreement. (See 5 CFR 1310.3 for availability of OMB Circulars.)

### § 600.130 Protection of confidentiality of statistics.

Each Council must establish appropriate procedures for ensuring the confidentiality of the statistics that may be submitted to it by Federal or state authorities and may be voluntarily submitted to it by private persons, including, but not limited to (also see § 600.405):

(a) Procedures for the restriction of Council member, employee, or advisory group access and the prevention of conflicts of interest, except that such procedures must be consistent with procedures of the Secretary.

(b) In the case of statistics submitted to the Council by a state, the confidentiality laws and regulations of that state.

## Subpart C—Council Membership

### § 600.205 Principal state officials and their designees.

(a) Only a full-time state employee of the state agency responsible for marine and/or anadromous fisheries shall be designated by a constituent state Governor as the principal state official for purposes of section 302(b) of the Magnuson-Stevens Act. New or revised designations by state Governors of principal state officials, and new or revised designations by principal state officials of their designees(s), must be delivered in writing to the appropriate NMFS Regional Administrator at least 48 hours before the individual may vote on any issue before the Council. Written designation(s) must indicate the employment status of each principal state official and that of his/her designee(s), how the official or designee is employed by the state fisheries agency, where each individual is employed (business address and telephone number), and whether the official's full salary is paid by the state.

(b) A principal state official may name his/her designee(s) to act on his/her behalf at Council meetings. Individuals designated to serve as designees of a principal state official on a Council, pursuant to section

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302(b)(1)(A) of the Magnuson-Stevens Act, must be full time state employees involved in the development of fisheries management policies for that state.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998]

### § 600.210 Terms of Council members.

(a) Voting members (other than principal state officials, the Regional Administrators, or their designees) are appointed for a term of 3 years and, except as discussed in paragraphs (b) and (c) of this section, may be reappointed. A voting member's Council service of 18 months or more during a term of office will be counted as service for the entire 3-year term.

(b) The anniversary date for measuring terms of membership is August 11. The Secretary may designate a term of appointment shorter than 3 years, if necessary, to provide for balanced expiration of terms of office. Members may not serve more than three consecutive terms.

(c) A member appointed after January 1, 1986, who has completed three consecutive terms will be eligible for appointment to another term one full year after completion of the third consecutive term.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7073, Feb. 12, 1998]

### § 600.215 Council nomination and appointment procedures.

(a) *General.* (1) Each year, the 3-year terms for approximately one-third of the appointed members of the Councils expire. The Secretary of Commerce (Secretary) will appoint or new members or will reappoint seated members to another term to fill the seats being vacated.

(2) There are two categories of seats to which voting members are appointed: "Obligatory" and "At-large."

(i) Obligatory seats are state specific. Each constituent state is entitled to one seat on the Council on which it is a member, except that the State of Alaska is entitled to five seats and the State of Washington is entitled to two seats on the North Pacific Fishery Management Council. When the term

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## § 600.215

of a state's obligatory member is expiring or when that seat becomes vacant before the expiration of its term, the governor of that state must submit the names of at least three qualified individuals to fill that Council seat.

(ii) The Magnuson-Stevens Act also provides for appointment, by the Secretary, of one treaty Indian tribal representative to the Pacific Fishery Management Council (Pacific Council). To fill that seat, the Secretary solicits written nominations from the heads of governments of those Indian Tribes with federally recognized fishing rights from the States of California, Oregon, Washington, or Idaho. The list of nominees must contain a total of at least three individuals who are knowledgeable and experienced regarding the fishery resources under the authority of the Pacific Council. The Secretary will appoint one tribal Indian representative from this list to the Pacific Council for a term of 3 years and rotate the appointment among the tribes.

(iii) At-large seats are regional. When the term of an at-large member is expiring or when that seat becomes vacant before the expiration of a term, the governors of all constituent states of that Council must each submit the names of at least three qualified individuals to fill the seat.

(b) *Responsibilities of State Governors.*  
(1) Council members are selected by the Secretary from lists of nominees submitted by Governors of the constituent states, pursuant to section 302(b)(2)(C) of the Magnuson-Stevens Act. For each applicable vacancy, a Governor must submit the names of at least three nominees who meet the qualification requirements of the Magnuson-Stevens Act. A Governor must provide a statement explaining how each of his/her nominees meet the qualification requirements, and must also provide appropriate documentation to the Secretary that each nomination was made in consultation with commercial and recreational fishing interests of that state and that each nominee is knowledgeable and experienced by reason of his or her occupational or other experience, scientific expertise, or training in one or more of the following ways related to the fishery re-

sources of the geographical area of concern to the Council:

(i) Commercial fishing or the processing or marketing of fish, fish products, or fishing equipment;

(ii) Fishing for pleasure, relaxation, or consumption, or experience in any business supporting fishing;

(iii) Leadership in a state, regional, or national organization whose members participate in a fishery in the Council's area of authority;

(iv) The management and conservation of natural resources, including related interactions with industry, government bodies, academic institutions, and public agencies. This includes experience serving as a member of a Council, Advisory Panel, Scientific and Statistical Committee, or Fishing Industry Advisory Committee;

(v) Representing consumers of fish or fish products through participation in local, state, or national organizations, or performing other activities specifically related to the education or protection of consumers of marine resources; or

(vi) Teaching, journalism, writing, consulting, practicing law, or researching matters related to fisheries, fishery management, and marine resource conservation.

(2) To assist in identifying qualifications, each nominee must furnish to the appropriate governor's office a current resume, or equivalent, describing career history—with particular attention to experience related to the criteria in paragraph (b)(1) of this section. Nominees may provide such information in any format they wish.

(3) A constituent State Governor must determine the state of residency of each of his/her nominees. A Governor may not nominate a non-resident of that state for appointment to a Council seat obligated to that state. A Governor may nominate residents of another constituent state of a Council for appointment to an at large seat on that Council.

(4) If, at any time during a term, a member changes residency to another state that is not a constituent state of that Council, or a member appointed to an obligatory seat changes residency to any other state, the member may no longer vote and must resign from the

Council. For purposes of this paragraph, a state resident is an individual who maintains his/her principal residence within that constituent state and who, if applicable, pays income taxes to that state and/or to another appropriate jurisdiction within that state.

(5) When the terms of both an obligatory member and an at-large member expire concurrently, the Governor of the state holding the expiring obligatory seat may indicate that the nominees who were not selected for appointment to the obligatory seat may be considered for appointment to an at-large seat, provided that the resulting total number of nominees submitted by that governor for the expiring at-large seat is no fewer than three different nominees. When obligatory and at-large seats do not expire concurrently, the Secretary may select from any of the nominees for such obligatory seat and from the nominees for any at-large seat submitted by the Governor of that state, provided that the resulting total number of nominees submitted by that Governor for the expiring seats is no fewer than six. If a total of fewer than six nominees is submitted by the Governor, each of the six will be considered for the expiring obligatory seat, but not for the expiring at-large seat.

(c) *Responsibilities of eligible tribal Indian governments.* The tribal Indian representative on the Pacific Council will be selected by the Secretary from a list of no fewer than three individuals submitted by the tribal Indian governments with federally recognized fishing rights from California, Oregon, Washington, and Idaho, pursuant to section 302(b)(5) of the Magnuson-Stevens Act. To assist in assessing the qualifications of each nominee, each head of an appropriate tribal Indian government must furnish to the Assistant Administrator a current resume, or equivalent, describing the nominee's qualifications, with emphasis on knowledge and experience related to the fishery resources affected by recommendations of the Pacific Council. Prior service on the Pacific Council in a different capacity will not disqualify nominees proposed by tribal Indian governments.

(d) *Nomination deadlines.* Nomination letters and completed kits must be for-

warded by express mail under a single mailing to the address specified by the Assistant Administrator by March 15. For appointments outside the normal cycle, a different deadline for receipt of nominations will be announced.

(1) *Obligatory seats.* (i) The governor of the state for which the term of an obligatory seat is expiring must submit the names of at least three qualified individuals to fill that seat by the March 15 deadline. The Secretary will appoint to the Pacific Council a representative of an Indian tribe from a list of no fewer than three individuals submitted by the tribal Indian governments.

(ii) If the nominator fails to provide a nomination letter and at least three complete nomination kits by March 15, the obligatory seat will remain vacant until all required information has been received and processed and the Secretary has made the appointment.

(2) *At-large seats.* (i) If a Governor chooses to submit nominations for an at-large seat, he/she must submit lists that contain at least three different qualified nominees for each vacant seat. A nomination letter and at least three complete nomination kits must be forwarded by express mail under a single mailing to the address specified by the Assistant Administrator by March 15.

(ii) Nomination packages that are incomplete after March 15 will be returned to the nominating Governor and will be processed no further. At-large members will be appointed from among the nominations submitted by the governors who complied with the nomination requirements and the March 15 deadline.

(e) *Responsibilities of the Secretary.* (1) The Secretary must, to the extent practicable, ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and recreational fisheries in the Council's area of authority. Further, the Secretary must take action to ensure, to the extent practicable, that those persons dependent for their livelihood upon the fisheries in the Council's area of authority are fairly represented as voting members on the Councils.

## Fishery Conservation and Management

## § 600.225

(2) The Secretary will review each list submitted by a governor or the tribal Indian governments to ascertain whether the individuals on the list are qualified for the vacancy. If the Secretary determines that a nominee is not qualified, the Secretary will notify the appropriate Governor or tribal Indian government of that determination. The Governor or tribal Indian government shall then submit a revised list of nominees or resubmit the original list with an additional explanation of the qualifications of the nominee in question. The Secretary reserves the right to determine whether nominees are qualified.

(3) The Secretary will select the appointees from lists of qualified nominees provided by the Governors of the constituent Council states or of the tribal Indian governments that are eligible to nominate candidates for that vacancy.

(i) For Governor-nominated seats, the Secretary will select an appointee for an obligatory seat from the list of qualified nominees submitted by the governor of the state. In filling expiring at-large seats, the Secretary will select an appointee(s) for an at-large seat(s) from the list of all qualified candidates submitted. The Secretary will consider only complete slates of nominees submitted by the governors of the Council's constituent states. When an appointed member vacates his/her seat prior to the expiration of his/her term, the Secretary will fill the vacancy for the remainder of the term by selecting from complete nomination letters and kits that are timely and contain the required number of candidates.

(ii) For the tribal Indian seat, the Secretary will solicit nominations of individuals for the list referred to in paragraph (c) of this section only from those Indian tribes with federally recognized fishing rights from California, Oregon, Washington, or Idaho. The Secretary will consult with the Bureau of Indian Affairs, Department of the Interior, to determine which Indian tribes may submit nominations. Any vacancy occurring prior to the expiration of any term shall be filled in the same manner as described in paragraphs (d)(1) and (2) of this section, except that the Sec-

retary may use the list referred to in paragraph (b)(1) of this section from which the vacating member was chosen. The Secretary shall rotate the appointment among the tribes, taking into consideration:

(A) The qualifications of the individuals on the list referred to in paragraph (c) of this section.

(B) The various rights of the Indian tribes involved, and judicial cases that set out the manner in which these rights are to be exercised.

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

(D) The limitation that no tribal Indian representative shall serve more than three consecutive terms in the Indian tribal seat.

[64 FR 4600, Jan. 29, 1999]

### § 600.220 Oath of office.

Each member appointed to a Council must take an oath of office.

### § 600.225 Rules of conduct.

(a) Council members, as Federal office holders, and Council employees are subject to most Federal criminal statutes covering bribery, conflict-of-interest, disclosure of confidential information, and lobbying with appropriated funds.

(b) The Councils are responsible for maintaining high standards of ethical conduct among themselves, their staffs, and their advisory groups. In addition to abiding by the applicable Federal conflict of interest statutes, both members and employees of the Councils must comply with the following standards of conduct:

(1) No employee of a Council may use his or her official authority or influence derived from his or her position with the Council for the purpose of interfering with or affecting the result of an election to or a nomination for any national, state, county, or municipal elective office.

(2) No employee of a Council may be deprived of employment, position, work, compensation, or benefit provided for or made possible by the Magnuson-Stevens Act on account of any political activity or lack of such activity in support of or in opposition to any candidate or any political party in

## § 600.625

and 600.620) to expedite the proceedings, upon application and appropriate showing of need or emergency circumstances by a party.

(2) *Intervention*. Intervention by persons not parties is not allowed.

### § 600.625 Secretary's decision.

(a) The Secretary will, on the basis of the hearing, record the administrative law judge's recommended decision:

(1) Accept or reject any of the findings or conclusions of the administrative law judge and decide whether the factual findings exist for Federal preemption of a state's authority within its boundaries (other than in its internal waters) with respect to the fishery in question;

(2) Reserve decision on the merits or withdraw the notice of proposed preemption; or

(3) Remand the case to the administrative law judge for further proceedings as may be appropriate, along with a statement of reasons for the remand.

(b) *Notification*. (1) If the factual findings for Federal preemption are determined to exist, the Secretary will notify in writing the Attorney General of that state and the appropriate Council(s) of the preemption of that state's authority. The Secretary will also direct the Administrator to promulgate appropriate regulations proposed under § 600.615(d) and otherwise to begin regulating the fishery within the state's boundaries (other than in its internal waters).

(2) If the factual findings for Federal preemption are determined not to exist, the Secretary will notify, in writing, the Attorney General of the state and the appropriate Council(s) of that determination. The Secretary will also direct the Administrator to issue a notice withdrawing any regulations proposed under § 600.615(d).

### § 600.630 Application for reinstatement of state authority.

(a) *Application or notice*. (1) At any time after the promulgation of regulations under § 600.625(b)(1) to regulate a fishery within a state's boundaries, the affected state may apply to the Secretary for reinstatement of state authority. The Secretary may also serve

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upon such state a notice of intent to terminate such Federal regulation. A state's application must include a clear and concise statement of:

(i) The action taken by the State to correct the action or omission found to have substantially and adversely affected the carrying out of the FMP; or

(ii) Any changed circumstances that affect the relationship of the state's action or omission to take action to the carrying out of the FMP (including any amendment to such plan); and

(iii) Any laws, regulations, or other materials that the state believes support the application.

(2) Any such application received by the Secretary or notice issued to the State will be published in the FEDERAL REGISTER.

(b) *Informal response*. The Secretary has sole discretion to accept or reject the application or response. If the Secretary accepts the application or rejects any responses and finds that the reasons for regulation of the fishery within the boundaries of the state no longer prevail, the Secretary will promptly terminate such regulation and publish in the FEDERAL REGISTER any regulatory amendments necessary to accomplish that end.

(c) *Hearing*. The Secretary has sole discretion to direct the Administrator to schedule hearings for the receipt of evidence by an administrative law judge. Hearings before the administrative law judge to receive such evidence will be conducted in accordance with § 600.620. Upon conclusion of such hearings, the administrative law judge will certify the record and a recommended decision to the Secretary. If the Secretary, upon consideration of the state's application or any response to the notice published under § 600.630(a)(2), the hearing record, the recommended decision, and any other relevant materials finds that the reasons for regulation of the fishery within the boundaries of the state no longer prevail, the Secretary will promptly terminate such regulation and publish in the FEDERAL REGISTER any regulatory amendments necessary to accomplish that end.

# Magnuson-Stevens Fishery Conservation and Management Act

## Public Law 94-265

As amended through October 11, 1996

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

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

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

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

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

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

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

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

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

(4) assess and specify--

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

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

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

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

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

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

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

(9) include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and describe the likely effects, if any, of the conservation and management measures on--

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

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

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

(11) establish a standardized reporting methodology to assess the amount and type of



bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority--

(A) minimize bycatch; and

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

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

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

(14) to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery.

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

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

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

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

(B) the operator of any such vessel; or

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

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

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

(A) catch of fish (based on area, species, size, number, weight, sex, bycatch, total biomass, or other factors);

(B) sale of fish caught during commercial, recreational, or charter fishing, consistent with any applicable Federal and State safety and quality requirements; and

(C) transshipment or transportation of fish or fish products under permits issued pursuant to section 204;

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

(5) incorporate (consistent with the national standards, the other provisions of this Act, and any other applicable law) the relevant fishery conservation and management measures of the coastal States nearest to the fishery;

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

(A) present participation in the fishery,

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

(C) the economics of the fishery,

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

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

(F) any other relevant considerations;

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

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

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

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

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

(12) prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

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**(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.

Dated: December 30, 2005.

**Gwellnar Banks,**

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

[FR Doc. E5-8323 Filed 1-5-06; 8:45 am]

BILLING CODE 3510-13-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**Proposed Information Collection; Comment Request; Capital Construction Fund—Deposit/Withdrawal Report**

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

**ACTION:** Notice.

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

**DATES:** Written comments must be submitted on or before March 7, 2006.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

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

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The respondents will be commercial fishing industry individuals, partnerships, and corporations, which entered into Capital Construction Fund agreements with the Secretary of Commerce allowing deferral of Federal taxation on fishing vessel income, deposited into the fund for use in the acquisition, construction, or reconstruction of fishing vessels. Deferred taxes are recaptured by reducing an agreement vessel's basis for depreciation by the amount withdrawn from the fund for its acquisition, construction, or reconstruction. The deposit/withdrawal information collected from agreement holders are required pursuant to 50 CFR Part 259.35 and Public Law 99-514 (The Tax Reform Act, 1986). The information

collected is required to ensure that agreement holders are complying with fund deposit/withdrawal requirements established in program regulations and properly accounting for fund activity on their Federal income tax returns. The information collected must also be reported annually to the Secretary of Treasury in accordance with the Tax Reform Act, 1986.

**II. Method of Collection**

The information will be collected by mail.

**III. Data**

*OMB Number:* 0648-0041.

*Form Number:* NOAA Form 38-42.

*Type of Review:* Regular submission.

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

*Estimated Number of Respondents:* 3,600.

*Estimated Time Per Response:* 20 minutes.

*Estimated Total Annual Burden Hours:* 1,200.

*Estimated Total Annual Cost to Public:* \$2,500.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

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

Dated: December 30, 2005.

**Gwellnar Banks,**

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

[FR Doc. E5-8319 Filed 1-5-06; 8:45 am]

BILLING CODE 3510-22-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**Proposed Information Collection; Comment Request; Designation of Fishery Management Council Members and Application for Reinstatement of State Authority**

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

**ACTION:** Notice.

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

**DATES:** Written comments must be submitted on or before March 7, 2006.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Linda Moon, 301-713-2337 or [Linda.Moon@noaa.gov](mailto:Linda.Moon@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended in 1996, provides for the nomination for members of Fishery Management Councils by state governors and Indian treaty tribes, for the designation of a principal state fishery official who will perform duties under the Magnuson-Stevens Act, and for a request by a state for reinstatement of state authority over a managed fishery. Nominees for council membership must provide the governor or tribe with background documentation, which is then submitted to NOAA with the nomination. The information submitted with these actions will be used to ensure that the requirements of the Magnuson-Stevens Act are being met.

**II. Method of Collection**

State governors and Indian treaty tribes submit written nominations to the Secretary of Commerce, together with recommendations and statements of candidates' qualifications. Designations

of state officials and requests for reinstatement of state authority are also made in writing in response to regulations. No forms are used.

### III. Data

*OMB Number:* 0648-0314.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* State, Local or Tribal government.

*Estimated Number of Respondents:* 275.

*Estimated Time Per Response:* 1 hour to designate a principal state fishery official(s); 80 hours for a nomination for a Council appointment; 16 hours for background documentation for nominees; and 1 hour for a request to reinstate state authority.

*Estimated Total Annual Burden Hours:* 4,607 hours.

*Estimated Total Annual Cost to Public:* \$700.

### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

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

Dated: December 30, 2005.

**Gwellnar Banks,**

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

[FR Doc. E5-8320 Filed 1-5-06; 8:45 am]

BILLING CODE 3510-22-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Proposed Information Collection; Comment Request; Survey Form for Feedback for Annual Tsunami Warning Communications Test

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

**ACTION:** Notice.

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

**DATES:** Written comments must be submitted on or before March 7, 2006.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Jeff Lorens, 801-524-4000 or [Jeffrey.Lorens@noaa.gov](mailto:Jeffrey.Lorens@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

#### I. Abstract

The NOAA/National Weather Service Western Region and West Coast/Alaska Tsunami Warning Center conduct test to assess the effectiveness of their Tsunami Warning communications system. This survey is required to gather specific feedback immediately following testing, which is conducted annually in September. Post-test feedback will be requested from emergency managers, the media, law enforcement officials, local government agencies/officials, and the general public. This will be a web-based survey. The responses will be solicited for a limited period immediately following completion of this test, not to exceed two weeks. This web-based survey will allow for a rapid and efficient collection of information regarding the effectiveness of the Tsunami Warning System, particularly with respect to communications systems and related processes.

#### II. Method of Collection

Web-based survey.

#### III. Data

*OMB Number:* None.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Federal Government; State, Local, or Tribal Government; and individuals or households.

*Estimated Number of Respondents:* 600.

*Estimated Time Per Response:* 5 minutes.

*Estimated Total Annual Burden Hours:* 50.

*Estimated Total Annual Cost to Public:* \$0.

### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

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

Dated: December 30, 2005.

**Gwellnar Banks,**

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

[FR Doc. E5-8322 Filed 1-5-06; 8:45 am]

BILLING CODE 3510-KE-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Proposed Information Collection; Comment Request; Northeast Multispecies Days-At-Sea Leasing Program

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

**ACTION:** Notice.

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

**DATES:** Written comments must be submitted on or before March 7, 2006.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or