

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 04/20/2007

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

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 02/13/2007

ACTION REQUESTED: Revision of a currently approved collection
TYPE OF REVIEW REQUESTED: Regular
ICR REFERENCE NUMBER: 200702-0648-001
TITLE: Southeast Region Office Socioeconomic Survey of Gulf Shrimp Fishermen
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change
OMB CONTROL NUMBER: 0648-0476

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: 04/30/2010

DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	500	558	0
New	600	450	0
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	100	-108	0
Change due to Agency Adjustment	0	0	0
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE:

OMB Authorizing Official: John F. Morrall III
Acting Deputy Administrator,
Office Of Information And Regulatory Affairs

List of ICs

IC Title	Form No.	Form Name	CFR Citation
Southeast Region Office Socioeconomic Survey of Gulf Shrimp Fishermen	NA	2006 Annual Economic Survey of Federal Gulf Shrimp Permit Holders	

PAPERWORK REDUCTION ACT SUBMISSION

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

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

19. Certification for Paperwork Reduction Act Submissions

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

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

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

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

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

Signature of Senior Official or designee

Date

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

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

**SUPPORTING STATEMENT
SOUTHEAST REGION OFFICE SOCIOECONOMIC SURVEY OF GULF SHRIMP
FISHERMEN
OMB CONTROL NO.: 0648-0476**

INTRODUCTION

Economic data will be collected from shrimp vessel owners who operate in federal waters of the Gulf of Mexico. These fishermen are required to have a federal permit for the commercial catch of penaeid shrimp. A collection of economic information from fishermen affected by the management of federal commercial fisheries on the Gulf coast is needed to ensure that national goals, objectives and requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MFCMA) and other laws are met. This information is vital in assessing the economic and social effects of management decisions and regulations on individual fishing enterprises, fishing communities and the nation as a whole.

Together with the renewal, we are requesting the approval of considerable changes to this data collection. All changes aim to reduce and simplify the information collected and to substantially lower the burden to each respondent and the public as a whole. Two major developments make these changes necessary:

- Amendment 13 to the Fishery Management Plan for the Shrimp Fishery in the Gulf of Mexico---introducing a moratorium on permits, improving information collection and approved February 13, 2006---has had a major impact on the management of this fishery. Beyond a redefinition of the surveyed population, the collection of data has changed dramatically. Submitting a ‘vessel and gear characterization form’ (OMB Control No.: 0648-0542) is now an annual requirement linked directly to the (new) moratorium permit application or renewal process (OMB Control No.: 0648-0358). Similarly, reporting last year’s landings is now required annually by mail (OMB Control No.: 0648-0205). Hence questions linked to either of these topics can now be dropped from this survey.
- The in-person interview-based implementation of this data collection effort encountered difficulties. Gaining acceptance among reluctant shrimp fishermen proved problematic even in light of major outreach efforts (documented in prior supporting statements). Outside of Texas the survey had a very low response rate due in part to an imperfect sampling frame and further due to contact avoidance and outright refusal by the “respondents”. The contractor has summarized the findings and recommended some changes. The central conclusion is that a fundamentally new approach is needed if this type of data is to be collected at all.

Due to these two developments we have decided to substantially change the scope and method of the data collection. Foremost, we aim to collect only the absolute minimum information necessary for basic economic analyses of this fishery; thereby reducing a 20+ page survey to just two pages. In concert, we will make the submission of this information a requirement for permit renewal for the fishermen who are sampled. Further, to simplify contacting fishermen, increase convenience and in line with the general data collection developments in this fishery, we will switch to a self-administered, mail-based survey. Timing and other attempts to raise the response

rate are addressed in detail in Part B, Question 3. After the survey has been conducted in 2007, we intend to conduct a critical evaluation of the survey implementation and outcome and decide if further changes are necessary.

A. JUSTIFICATION

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

A collection of economic information from fishermen and fishing businesses affected by the management of federal commercial fisheries on the Gulf coast is needed to ensure that national goals, objectives and requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MFCMA), *National Environmental Policy Act (NEPA), Regulatory Flexibility Act (RFA) and Executive Order 12866 (EO 12866) are met. This information is vital in assessing the economic and social effects of fishery management decisions and regulations on individual fishing enterprises, fishing communities and the nation as a whole.

Economic information on commercial fishing enterprises is vital to the Optimum Yield (OY) management of marine fishery resources as mandated under the MFCMA (16 U.S.C. 1802 MS Act § 3). The term “Optimum” is defined under section 104-297 (28) of the Act, as: (A) will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems; (B) is prescribed as such on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant economic, social, or ecological factors; and (C) in the case of an over-fished fishery, provides for the rebuilding to a level consistent with producing the maximum sustainable yield in such a fishery.

The central goal of this project is to collect up-to-date cost data for the Gulf of Mexico commercial shrimp fishery in federal waters. National Standard Guidelines for social and economic information needs are mandated in 50 CFR 600. In the past, legal decisions have gone against Department of Commerce (DOC), National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS) based on the lack of social and economic information or the inadequate analysis of existing data. Thus, it is imperative that these data be collected to accurately assess the economic and social impacts on individual shrimp fishing entities as imposed by shrimp fishery management plans and regulations. Most important, the fishing industry has been calling for greater inclusion of social and economic data in the formation of fishery management plans.

The devastating impact of the 2005 hurricane season on the Gulf coast has led to substantial upheaval in the commercial shrimp fishery. A moratorium on new federal permits, and the now binding control date qualification requirement for maintaining a permit, is leading to further economic changes. As a result, historical data and models can no longer be used for valid analysis, and up-to-date economic information is urgently needed.

The data collection effort will be an ongoing annual survey effort. Regular surveying is necessary to capture critical cost data that fluctuate from year to year. Fluctuations are generally due to annual fluctuations in shrimp abundance caused by environmental factors, input and output price variability and adaptations to these. This study will be conducted by the Social Science Research Group of the Southeast Fisheries Science Center in collaboration with the

Social Science Branch of the Southeast Regional Office of the NMFS. A contractor will be hired for the mail handling and data entry and verification elements of the survey.

In the past, NMFS has collected catch and limited effort data only on a continuous basis in this industry (through port agents and dealer reports). With the move to more active management implied by the ongoing introduction of the moratorium permits, more and more timely data collections have become necessary and have been introduced. Submitting a 'vessel and gear characterization form' is now an annual requirement linked directly to the moratorium permit application and renewal process (OMB Control No.:0648-0358). Similarly, reporting last year's landings (in pounds and dollars by species) is will be required annually during the first quarter of each year, starting in 2007 (OMB Control No.:0648-0205). None of these efforts collect production costs as proposed for this survey. Without information on the cost side of production, full economic and social analyses are impossible. As experience is gained, consolidation of some of these independent efforts might make sense (see Question 4).

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.

Combined with data from existing collections, the information is used by NMFS economists and social scientists to create, develop and update economic and social models and descriptive reports of this important fishery. The results support the management of the shrimp fishery by the Gulf of Mexico Fisheries Management Council and NOAA. Foremost, the data are used to evaluate the economic health of the sector and the potential economic impact of proposed regulations. The data is also used by the academic community studying Gulf fisheries.

Statistical models that predict or forecast various characteristics, such as fleet size, fishing activity or effort, cost versus benefits of fishing, market activity, and efficiencies of proposed fishing regulations will be just a few of the benefits and uses of these data. Gross revenues and costs can vary across time and geographic areas as a result of changes in a number of different factors, including fishery management regulations (e.g. gear modifications, time/area closures, etc.), fluctuations in abundance (due to changes in various environmental factors), market conditions (such as fuel or seafood prices) and behavioral responses by fishermen.

The effects of switching from an in-person, interview format to a self-administered mail survey will be evaluated in order to optimize future data collections. After the first year, we will conduct an in-depth assessment of the survey instrument and methodology used.

It is anticipated that the information (summary statistics) supported by the information collected by this survey will be disseminated to the public (such as through an annual economic report) or used to support other publicly disseminated information. Data may be reported for various groups of fishermen (by vessel size, port, etc.) which will allow vessel owners to compare and evaluate their operations relative to others in the same group in terms of ability to generate revenues, cost efficiency, and profitability. As will be explained in greater detail in the following paragraphs, the information gathered has utility.

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. All data that are submitted are treated as confidential in accordance with NOAA Administrative Order 216-100 and the Magnuson-Stevens Act (P.L. 109-479, Title II, Section 302(b)), Confidentiality of Information). See response # 10 of this supporting statement for more information on confidentiality and privacy. This information collection is designed to yield data that meet all applicable information quality guidelines. Prior to dissemination, the information will be subjected to quality control measures and a pre-dissemination review pursuant to Section 515 of Public Law 106-554.

The following is a detailed description of justifications for the collection of these data. In general, the survey instrument asks questions pertaining to the annual total of variable costs, fixed costs, and other financial and production factors. This data is necessary to generate cost, profit, input demand, and production functions. Such functions and the results generated from their estimation are typically used in financial analyses (used to determine a business' cost efficiency and profitability), economic impact analyses (used to determine the economic value of a particular activity to a particular locale, community, or region), bio-economic models (used to predict how the biological and economic components of a fishery will respond to exogenous shocks, such as policy changes), cost-benefit analyses (used, in part, to determine the net economic benefits of a particular action), and behavioral models (such as those that explain or predict exit or entry decisions and decisions regarding spatial or temporal allocation of effort). These data can also be used to determine the relative efficiency of the various participating vessels in a fishery and thus whether the aggregate harvesting costs are in fact being minimized. Such models and analyses are critical to guiding fisheries management decisions whose general purpose is to maximize net national benefits and optimally distribute those benefits.

The survey is broken into three parts. It starts on page 1 with a pre-filled header section that serves to identify the respondent. The second section, also on page 1, collects information on annual financial expenditures ("cash costs"). These should correspond to receipts and invoices and the associated payments and should be readily available from regular business accounting ("the books"). Page 1 is set up to add up to total 2006 financial expenditures. This should reduce the cognitive load and enhance internal consistency.

Expenditures do not fully reflect the economic concepts of costs (and hence profit); therefore, in order to facilitate economic analysis, further information is necessary, and this is collected on page 2. For example, loan principal payments are real financial transfers but do not constitute a cost in the economic sense. Depreciation charges are an example of the reverse, where real economic costs produce no corresponding financial transaction. Please see the attached survey instrument and its instructions for an in depth explanation of the intent of each question.

Header: Vessel information

This pre-filled section lists and verifies the identity of the respondent, including owner name, permit number, vessel name and vessel registration number. Respondents are requested to make any changes if there is an error. This information will allow NMFS to link this vessel's responses with other pertinent data, such as permit, revenue, vessel and gear, and catch information, located in other datasets.

Total 2006 Expenses (Page 1)

The first 11 questions elicit total annual expenditures associated with the vessel. They are

arranged into three blocks corresponding to variable costs (questions 1 to 6), fixed costs (questions 7 to 10) and a check for completeness (question 11). These questions can generally be used to construct input demand function, cost functions and production functions, all of which are needed to conduct the types of analyses mentioned previously. Distinguishing between variable and fixed costs is necessary for conducting analyses with different time horizons.

Questions 1 to 6 - Annual Variable Costs

These questions ask for total annual expenditures for labor inputs (crew and captain) and non-labor inputs (fuel, ice and other trip expenditures). The categories are chosen as they each reflect a substantial part of the costs in this industry. Since these expenditures vary directly with the annual number of trips taken, they are generally related to or a function of the annual level of fishing effort, and hence variable costs in the economic sense.

Question 1 and 2 are meant to obtain total annual payments to the crew and captain, respectively. Labor is a major input to the production function and hence economic models. Further, these payments represent the flow of annual income to the crew members and captains associated with the vessel. From the captain and crew's perspective, their share of the vessel revenues determines the incomes of their respective households. Changes in annual income received can affect the captain's and crew members' decisions to continue working in this particular fishery, and/or in fishing as a vocation. These data will allow analysts to determine how various factors, such as changes in regulations, may affect the incomes of crew.

Questions 3 and 4 collect annual fuel expenditures, the quantity of fuel used, and (an estimate of) the average price of fuel in 2006. Next to labor and the vessel itself, fuel is a major input for a trawl fishery; for some vessels even the largest one. Given the importance of fuel to this fishery and the substantial fluctuations of its price, we are also requesting information on the annual quantity used. This will allow for policy simulations that explicitly take account of the price of fuel (since variation in total annual costs can be due to a change in quantity purchased or due to a change in the price per unit). Since these vessels operate out of multiple states in the Gulf region, the average 2006 fuel price for each vessel will serve as a test of the two other numbers. It is also hoped that the respondents will 'do the math' themselves and so enhance the quality of the data.

Question 5 asks about total expenditures on ice. For vessels without refrigeration equipment, ice can be a substantial variable cost in the warm-water shrimp trawler fishery and is dependent upon the level of fishing activity. Ice is a special input in the production process since it needs to be regularly purchased from on-shore facilities. Developments in this fishery make it likely that data concerning ice use will be requested by managers.

Question 6 intends to capture any other trip related costs not covered by previous questions and is needed to account for all variable costs.

Questions 7 to 10 - Annual Fixed Costs

These questions ask for total annual expenditures related to physical capital (vessel, gear and equipment) and overhead (including all other expenditures). These costs are paid regardless of whether the vessel is used or not, or has generated revenue, and are borne entirely by the owner. Since these costs do not vary according to the level of fishing activity they are referred to as fixed costs by economists. If sufficiently high, fixed costs can affect the probability of entry and exit into and out of a fishery.

Questions 7 and 8 collect information pertaining to costs related to vessel, gear and equipment maintenance, repair, replacement and new purchases. These expenses all pertain to physical capital employed in fishing and are separated from the more business related expenses, loosely called overhead. While question 7 collects the total annual expenditures, with the help of question 8, we will try, at the population level, to roughly break them into average regular maintenance expenditures (yearly), average extraordinary expenditures, and average new investments which expand the functionality of the physical capital. We are not asking for dollar amounts in question 8, merely expense type, in order to keep the survey simple and short, and because the retrieving exact amounts would be extremely difficult.

Questions 9 (see below) and 10 are intended to collect business and indirect costs pertaining to the vessel and any remaining costs not listed elsewhere. Typical examples are annual costs associated with docking or mooring arrangements, utilities while at the dock, insurance and loan payments, fees, professional services, office expenditures, etc. This question is needed to account for all fixed costs.

Question 9 and the structure of Question 2 try to elicit expenditures, common in this industry, that actually represent payments to the owner of the vessel. Such payments are more akin to income or profit than costs. For economic analysis we must have the ability to identify these. Economic profit is the income flowing to the vessel owner(s) and represents the income related to the owner's overall management, equity investment and possibly his skills as a captain. Whether or not the owner's share of the net revenues is sufficient to cover costs and provide a reasonable rate of return on his capital investment and management skills will affect his decisions to remain in the fishery, switch to another fishery, or exit from fishing altogether.

Question 11 - Total Expenditure Verification

This question adds no additional information. Instead its purpose is to enhance the quality of the data collection by inducing the respondent to be comprehensive and avoid duplication while s/he is accounting for all expenses in questions 1 through 10. If the sum of questions 1 through 10 does not add up to the known or estimated total expenditures for the year 2006, a conscientious respondent will find and correct the inaccuracies. It will also help very much with identifying data entry errors.

Other Important Economic Information

Question 12 - Insurance

This question collects information on the type of vessel insurance and the total amount insured for. The lack of hull and other related vessel insurance is indicative of the industry's economic health. Further, the level of insurance coverage is a measure of how exposed this industry is toward risk, such as losses due to hurricanes. There is much policy interest in insurance related questions.

Questions 13-16 - Capital, Net-Equity and Depreciation

Questions 13 to 16 try to discern the total amount of financial capital invested in the vessel, the current value of that capital, the owner's net equity in the vessel and the annual amount the capital is depreciating by. This information is required to both estimate economic profit and then to calculate various rates of return on the owner's investment. The expected rate of return is a

critical factor in the owner's decision to invest further in the vessel, and whether to remain in the fishing industry. Changes in the levels of net equity should be indicative of the industry's economic health (requires at least two years of observation).

Question 13 asks for the market and replacement value of the vessel, either from insurance records or as estimates. These are proxies for the financial capital that has been invested in the vessel and the current value of that capital. Further, the questions asks for the purchase price since recently many used vessels are changing hands at very low prices (due in part to hurricane impact). Since historically the vessel purchase price has been the greatest barrier to entry, we need to quantify this development.

Question 14 gathers information about outstanding loans and the interest and principal payments on these. With the help of this information we can calculate the owner's net equity tied up in the vessel. In terms of cash flow and investment decisions, loan payments can be critical to annual financial performance of the vessel operation and can be used as an indicator of the health of the industry. The amount of principal repaid during the year is required in order to correctly identify economic profits (by reducing total expenditures by this amount). Interest payments will help identify the relevant cost of capital in this industry. Many economic analyses, beyond the ones directly related to this survey, require the applicable cost of capital.

Question 15 and 16 serve to help estimate the appropriate economic depreciation that should be added as a further cost to total expenditures for the vessel when calculating profits. Calculating economic depreciation is difficult, and we will attempt, at the population level, to econometrically estimate¹ it with the help of vessel market prices and information about each vessel's age and characteristics. Both questions 15 and 16 will allow for independent checks on our results. Relating market value of the vessel by its remaining lifetime leads to a measure of depreciation. Depreciation, as claimed for tax purposes, is a further rough proxy for economic depreciation (especially if adjusted for the age of vessel) and is important in its own right for cash-flow analyses. The remaining lifetime together with the age of a vessel in conjunction with

¹ Econometrics is a combination of mathematical economics and statistics. The two main purposes of econometrics are to give empirical content to economic theory and to subject economic theory to potentially falsifying tests. For example, economic theory may predict that a given demand curve should slope down. Econometric estimates can either verify or falsify that prediction, and shed light on the magnitude of the effect.

Econometric analysis is divided into time-series analysis and cross-sectional analysis. Time-series analysis examines variables over time, such as the effects of population growth on a nation's Gross Domestic Product (GDP). Cross-sectional analysis examines the relationship between different variables at a point in time; for instance, the relationship between individuals' income and food expenditures. When time-series analysis and cross-sectional analysis are conducted simultaneously on the same sample, it is called panel analysis. If the sample is different each time, it is called repeated cross section data. Multi-dimensional panel data analysis is conducted on data sets that have more than two dimensions. For example, some forecast data sets provide forecasts for multiple target periods, conducted by multiple forecasters, and made at multiple horizons. The three dimensions provide more information than can be gleaned from two dimensional panel data sets.

question 8 can also help with our understanding of the timing of investments.

Question 17 - Revenues Beyond Shrimp

Other data collection efforts allow us to calculate the total revenue this vessel generates from shrimp. In the case where a vessel also engages in other commercial fisheries, portions of the reported costs will apply to these activities rather than to the catching of shrimp. This question allows us to identify the portion of costs actually incurred catching shrimp (“pro-rated” costs based on revenue share). The question will also serve as an indicator for how specialized this industry is.

Question 18 – Anti-Dumping “Revenues”

In 2006 the Gulf shrimp fishery has seen increasing imports of shrimp flooding the market and lowering the price. This has been ruled a case of dumping and import duties have been imposed. As a result, shrimp fishing vessels have received payments ‘in compensation’ from the government. Government payments received due to imports and low shrimp prices (tariff money; trade assistance adjustment payments, etc.) are treated as taxable revenue and are very relevant to the economic success or failure of each operation. Further, some fishermen qualify for disaster relief funds related to hurricane damage.

At the bottom of the last page of the survey (page 2) two further voluntary questions are asked. The first inquires about the language a respondent prefers, for possible future communications. The second ask the respondent for any comments on the survey effort.

The data generated by the previous round of this survey has been put to limited use, since both regional surveys met with a low to very low response rate. This raises question about the quality of the data, particularly with respect to their use generating statistical results that should apply to the population. More information on this, and how we intend to avoid a similar outcome in the future, is provided in Part B of this supporting statement.

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 data collection will be conducted as a self-administered mail survey. Given NMFS’ experiences of with surveys of this population, a very low impact (burden) approach is necessary to get fishermen’s cooperation. A mail survey will be less intrusive, more convenient, and less time-intense than one based on in-person interviews.

All respondents will be contacted by mail. They will be asked to return the completed survey instrument to us in an enclosed, pre-paid envelope. If no response is received, up to two further letters will be sent (including additional survey instruments). Finally, remaining non-responders will be contacted by phone and urged to return the survey. Information will not be collected during the phone call (a further survey instrument will be sent – by mail or email – if requested). In other fisheries, the southeast region is currently developing (designing and programming) a web-based option for the submission of survey data. Currently, it is still experimental, but we intend to adapt it to this survey when the process is operational and has proven itself.

There will be no other means, electronic or otherwise, to submit data or information for the purposes of this study. The survey responses will be entered into an electronic database by us or a contractor. The *analytical results* of studies based on this data will be disseminated in internal, management related and peer-reviewed publications. Some of these will be available over the internet.

4. Describe efforts to identify duplication.

There is no duplication of economic information gathering on the Gulf of Mexico federal shrimp fishery. Experts on the Gulf shrimp fishery at NMFS, Universities and the Gulf Council were contacted and made aware of this effort. There are no data collection efforts similar to this one conducted by any other entities. The possibility of an overlap with a planned survey by the State of Louisiana was explored and rejected due to its different population of interest (small scale in-shore fishers), method of collection (group interviews) and focus of research questions (hurricane related impacts).

Other regular data collection efforts in the Gulf shrimp fishery include dealer reports collected by NMFS port agents (revenue and effort data) and the data collected as part of the moratorium permitting (vessel and gear characteristics and annual catch and effort data). These collection efforts are clearly delineated separately from this cost survey. They focus on catch, effort and vessel characteristics instead of production costs. For this revision, many questions have been dropped as they are now part of these other efforts. Since the annual catch-revenue questionnaire is to be sent by mail during the first part of each year, we are exploring (for 2008 and onwards) adding our cost survey to that mail-out while maintaining separate Office of Management and Budget (OMB) numbers for administrative and logistical reasons.

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

Only the minimum data to meet the current and future needs of NMFS management and permitting programs are collected. The information requested should be available to the respondent in the course of normal business operations. Keeping additional records is not needed and hence the burden is low. To simplify the process further, the survey collects aggregate annual data and will be timed to follow tax season. The results of this study are expected to improve the economic conditions of small fishing entities by affording fishery management agencies the information needed to consider economic factors in management plans and regulations.

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

Previous attempts to collect costs data have been plagued by their small geographic scope, their limited duration and refusal by the industry to be surveyed. Current and statistically valid economic data is needed for the Gulf shrimp fishery as a whole in order to accurately assess the positive and negative impacts of federal rules and regulations. Such assessments are mandated under Executive Order 12866, the Regulatory Flexibility Act, Magnuson-Stevens/Sustainable Fisheries Acts (and the National Standards attached thereto), and the Endangered Species Act, among others. Additionally, legal decisions against the federal government have been handed

down based on the absence of social and economic data (i.e. summer flounder litigation: North Carolina Fisheries Association, et al. versus Daley - Civil Nos. 2: 97cv339; 2: 98cv606).

If current and accurate socioeconomic data are not available, then the social and economic assessments of management alternatives will be impossible or inaccurate, thereby potentially leading the Council and NMFS to make poor management decisions. Thus, continuous cost data collection is needed to satisfy these various mandates and help ensure that good management decisions are made. Further, the industry has criticized the accuracy of previous social and economic analyses related to particular Council and NMFS actions.

The purpose of collecting this data *annually* is to identify and track changes and trends through time. This fishery has recently been experiencing substantial upheaval (hurricane impacts, dumping of product on the U.S. market by foreign competition and the introduction of the moratorium on permits). Further reasons to collect this data annually include the paucity of existing economic data in the shrimp fishery (especially about costs); the fact that there can be wide fluctuations in all costs, not just variable, from year to year; and that future, proposed management strategies are substantially different from the current management structure. In the absence of annual data, the Council and NMFS cannot satisfy the various mandates described above and in section 1; cannot fully assess the social and economic impacts of potential management changes; and generally cannot ensure that good management decisions are made.

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

The collection is consistent with 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 was published on November 8, 2006, and the public comment period closed on January 8, 2007. A single public comment was received in response to this notice. The comment rejected the survey in principle, due to pollution from the Mississippi watershed affecting the Gulf, and due to immigration (particularly of Vietnamese origin) in the region. No action was taken in response.

Efforts have been made to contact persons knowledgeable about the shrimp fishery. Experts both inside and outside the agency have been consulted, including federal and state fishery managers, scientists, and port agents (government); and academics, shrimp associations and fishermen (external). We collected their views on the availability of the requested data, frequency of collection, the clarity of the instrument and instructions, disclosure, making it a requirement, survey methodology, and on the data elements to be recorded, disclosed, or reported. NMFS has established that the data to be obtained through this survey is not currently available, and this is discussed in response to section 4 above.

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

No monetary payments or other remuneration will be made to respondents.

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

The cover letter sent with the survey will explicitly state that all data that are submitted are treated as confidential in accordance with NOAA Administrative Order 216-100 and the Magnuson-Stevens Act (P.L. 109-479, Title II § 203(b), Confidentiality of Information).

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 questions will be asked of survey participants about sexual behavior and attitudes, religious beliefs, or similar sensitive activities. Questions pertaining to a respondent's business costs and expenses will be used, together with revenue data collected elsewhere, to establish their profitability. Business income (not *directly* collected) is sometimes considered private. This information is necessary for the development of economic assessment models and analyses described extensively in Questions 1 and 2. In-depth justifications for individual survey questions are also provided in Question 2. The data will be used and reported only at the aggregate or representative (average) levels. The respondents will be informed of this in the cover letter.

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

To generate statistically significant results, we anticipate requiring 400-600 completed surveys, collected once a year. In the first year, due to the urgency with which the data is needed and to gather experience we will aim for 600 completed surveys. In later years we will reduce the number based on statistical analysis of the previous year's data and experience with the response rate.

The public reporting burden for this collection of information is estimated to average 45 minutes per response including the time for reading the instructions, gathering the data from business records, and completing and mailing the survey instrument. Thus, there will be an estimated total annual burden of 450 hours in the first year and 450 hours or less in subsequent years. This is a reduction of 108 hours from the current OMB inventory of 558 hours. The reduction is due to a substantial shortening of the survey instrument. At an hourly wage rate of \$32 dollars, the annualized labor cost to the public would be \$14,400 dollars.

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).

There will be no financial cost to the public to participate in this study. Information to be

gathered in this study should be readily available in the vessel's financial statements and records, recalled from the respondents' memory, or found on federal tax returns.

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

This study will be conducted by the Social Science Research Group of the Southeast Fisheries Science Center in collaboration with the Social Science Branch of the Southeast Regional Office of the NMFS. This includes development of the sampling design, refinement and testing of the survey instrument, acquiring PRA clearance, outreach, conducting the survey across five states, administration and supervision of contractor, database development, preparation of reports and associated travel.

Federal Costs	2006/7	2008	2009	Average
Fed Staff Time	\$ 30,000	\$ 10,000	\$ 10,000	\$ 16,667
Travel Costs	\$ 14,000	\$ 2,000	\$ 2,000	\$ 6,000
Overhead	\$ 8,000	\$ 3,000	\$ 3,000	\$ 4,667
Contractor and Materials	\$ 16,000	\$ 15,000	\$ 15,000	\$ 15,333
Total	\$ 68,000	\$ 30,000	\$ 30,000	\$ 42,667

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

The change of method (from a voluntary, in-person interview survey to a required, mail survey) and the considerable reduction in the length of the survey instrument (from 20+ to 2 pages) required a fundamental recalculation of the hour burden. The proposed changes reduce the burden from 558 to 450 hours while increasing the sample size. The sample size has been increased to ensure statistical significance of the results in the first year (and might be lowered in later years) due to the urgency with which the data is needed.

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

These data will be published in summarized format and generalized tables in an annual NMFS economic report. A final project report will provide documentation about the survey methodologies, survey instrument, statistical and random sampling design, an assessment of the validity of the collected data and basic descriptive statistics. The *analytical results* of studies based on this data will be disseminated in internal, management related and peer-reviewed publications. Some of these will be available over the internet.

The Gulf of Mexico Fisheries Management Council's scientific and statistical committee would like to have basic draft results as soon as possible, preferable for their August 2007 meeting.

Data on costs and cost structures are elements of various fishery models and each of these would be updated to increase its accuracy (especially given the many changes in the industry).

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

Not applicable. The OMB number and expiration date will be displayed.

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

There are no exceptions to the certification statement identified in Item 19 of the OMB 83-I.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

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

The population of interest is all the vessels fishing for penaeid shrimp in the federal waters of the Gulf of Mexico, i.e. off the States of Texas, Louisiana, Mississippi, Alabama and Florida, during one calendar year. In contrast to prior efforts, there will be an excellent sampling frame available for this and future survey efforts, because starting in 2003 these vessels were required to have a federal permit. This sampling frame was not available earlier, which explains some of the difficulties the prior surveys encountered with successfully contacting respondents.

For the 2007 survey effort, the sampling frame will consist of all fishermen holding a federal shrimp permit anytime during 2006. Their contact information will be updated with the help of the new, ongoing moratorium permit application database. The population is separated into two subgroups, active and inactive vessels in the Gulf shrimp fishery. The groups will be identified with the help of the dealer database, which is a mandatory reporting requirement and hence should cover all shrimp transactions. This information will be available by April, 2007.

Starting March 27, 2007 any shrimp vessel fishing in the federal waters of the Gulf of Mexico will need to have a moratorium permit, and October 26, 2007 is the final day to apply for a moratorium permit. The survey efforts in 2008 and 2009 will rely entirely on this new database as the sampling frame and this should be a further improvement.

In total, we will sample 825 vessels in order to arrive at 600 completed surveys based on an expected overall response rate of 73%. Within the active group of vessels, we are aiming for 500 completed surveys, as most analyses will focus on this group. Based on other required surveys and reporting efforts in the region, we might expect a response rate somewhere between 70-90%. Assuming an 80% response rate will require contacting 625 vessels. Inactive vessels are clearly less important than the active ones for the majority of analyses. Yet little is known about these

vessels in this fishery, so in order to explore this group and understand possible biases, we aim to collect 100 completed surveys from this group. Given that these vessels are *not fishing for Gulf shrimp*, we expect a larger segment of them to be permanently out of the industry and hence difficult to reach or not motivated to participate in our survey. Under these conditions we believe assuming a 50% response rate is more appropriate; requiring us to sample 200 vessels. In total, we will sample 825 vessels in order to arrive at 600 completed surveys, leading to an expected overall response rate of 73%.

Due to the management and political importance attributed to delineation by state, we will stratify each of the above groups of vessels by state. Within each stratum we will randomly sample vessels in proportion to each stratum's weight in the population. At this time the final sampling frame with stratification is not yet available. The final sampling frame will use all the information available just prior to the survey implementation. The previous, complex sampling design proved problematic in light of the low response rate. By sticking to a simple, straight forward design, we hope to avoid potential problems. A much better sampling frame and up-to-date contact information will also help.

Currently, the closest estimate of the final sampling frame consists of 2,666 vessels. Table 1 (attached below) breaks down this preliminary sampling frame into the strata, offers some descriptive data for the vessels in each, and generates the tentative number of respondents sampled and surveys completed in each. Of the 2,666 vessels, 1,806 were active in the Gulf shrimp fishery during 2005. Over two thirds of the active vessels hail from Texas and Louisiana. There is significant variation within the industry across various variables, but none seems to further divide the population into discrete groups (offering no advantage of further stratification). These numbers are unlikely to change much in 2006. For the 2008 and 2009 efforts, the actual number of permit holders and active participants in the fishery can change due to new entrants (until 10/07 if they qualify), owners and vessels leaving the fishery, or changes in vessel ownership and fisheries in which that vessel engages.

As mentioned in the introduction, the prior collections have met with little success. Due to a variety of factors, it was difficult to contact the fishermen. Further, fishermen outside of Texas did not cooperate with the effort. This forced us to fundamentally re-evaluate our approach and has led to the substantial changes requested in this document. The response rates for the voluntary, in-person interview data collections in Texas and the rest of the Gulf are reported in Table 2 (attached below).

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

Separately for active and inactive vessels, we will assign each vessel a random number generated by an advanced statistical program (Statistical Analysis System (SAS) or equivalent). We will then stratify the population by state and sort by the random numbers. In each stratum, a number of vessels at the top of the list will be proportionally sampled (see also table 1). Overall, the approach is equivalent to simple random sampling (proportional) within each strata and should require only simple adjustments to the inclusion probabilities used for the estimation of

population means and other aggregate statistics (if non-response is significant or skew across the strata). In the few cases where active and inactive boats might be collectively analyzed, the estimates will need to take account of the different inclusion probabilities of these two subpopulations.

The owner of each vessel selected will be contacted by mail. The letter will contain a cover letter, instructions, the two page survey instrument and a return envelope. They will be asked to return the completed survey instrument to us in the enclosed, pre-paid envelope. If no response is received within 30 or 60 days, up to two further letters will be sent (including additional survey instruments). Finally, we will attempt to contact the remaining non-responders by phone shortly after the third mailing and urge them to return the survey. Information will not be collected during the phone call, and a further survey instrument will be sent – by mail or email – if requested.

After data entry, verification and cleaning, descriptive statistical analysis will be conducted on the relevant variables collected (costs and profits). Results will be reported by State and by other relevant post-stratifications (such as size of operation). The accuracy for the population level totals and means of the important variables should exceed the standard $\pm 5\%$ confidence interval at a 95% significance level. This level of accuracy would be the best ever collected on these variables in the shrimp fishery. Given the overall uncertainty inherent to policy assessments of economic conditions in fisheries and given the quality and accuracy of other data used, the standard accuracy should suffice. The accuracy of the results for larger subpopulations (>100 observations) will likely be significant as well.

Since the method being employed is new in this fishery; statistically meaningful data is urgently needed by the Council; and developments in this fishery have recently been occurring fast and are leading to large economic impacts, this data collection will be repeated annually for the first two or three years. The use of periodic instead of annual collection will be considered in the future. The burden on the public will depend on how frequently significant changes occur in this industry. Optimally, an annual survey with an adaptive sampling design could minimize this burden and yet retain the flexibility to generate timely and accurate data. Such advantages would need to be weighed against the administrative complexity and the required resources.

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

The central approach to maximizing the response rate is to make answering a very concise and simple survey a requirement for future permit renewal. The first cover letter will politely emphasize this point. The second and third reminder letters will be more explicit. Finally, the telephone call will also explain the consequences of not complying. The call has the further advantage of being a different mode of contact and should discover nonresponse due to an incorrect address. Given the potential loss of permit, we expect compliance from all fishermen wanting to continue to fish for shrimp in federal waters. The behavior by those who have left the fishery by the time of the survey, or are planning to leave it before their current permit expires, will not be influenced by the implicit threat. This is why we assume a lower response rate for

inactive vessels. Since the data will be used primarily for assessments and predictions about future developments, under-reporting by individuals leaving the fishery is less problematic.

An excellent sampling frame, with recently updated contact information (through the ongoing moratorium permit registration), will help to reduce the non-contact component of non-response. Also, the study population has shifted somewhat; from offshore Gulf shrimp vessels to vessels fishing in federal waters. Vessels fishing federal waters are a subset of all offshore shrimp fishing vessels and operate further from shore. This leads to an increase in the average size of surveyed operations, which should result in a higher ratio of “professional” fishermen who might be more likely to return a survey. At the conclusion of the survey, we will contact port agents (local federal employees who collect data and report from a limited area) and ask them for any information on non-responding vessels/individuals. Should non-response be a significant factor, we might even ask port agents to inquire themselves, and/or we will debrief a few (<10) individuals about reasons for not responding in order to establish potential non-response biases.

Beyond the above, we will take every action available to us to facilitate completing and returning the survey by the fishermen. General survey design techniques (Dillman method) and experience from the previous surveys will guide us. Noteworthy actions include:

- Timing of the survey during the slow shrimp fishing season (winter and spring) and following tax time, when business records are being consulted and financial concerns are “top of mind.”
- Conducting outreach in advance of the survey, including on NMFS and Council websites and through meetings, radio, shrimp association newsletters and the grapevine.
- Creating and disseminating together with the survey effort-specific outreach material (see Figure 1 for an example of the outreach material).
- Using plain language and translating the survey into “language” spoken by Gulf shrimp fishermen.

The statistical design and size of this sample survey will allow for valid generalizations of the results to the population and larger subpopulation levels. The anticipated accuracy of the results is discussed in more detail in the last question (part B, question 3).

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

We have drawn extensively on the experience generated by the very similar annual cost data collection effort in the Gulf finfish fishery (OMB Control No.: 0648-0016). Beyond consulting with Gulf shrimp fishery experts about the survey instrument and design (see questions 4 and 8), we have sent the survey instrument for review to port agents throughout the Gulf. The port agents’ proximity and familiarity with the Gulf fishery, especially their extensive contact with fishermen, makes their recommendations very valuable. They have advised us on the feasibility of collecting this data, the expected response, and the language on the survey instrument and raised useful questions.

5. Provide the name and telephone number of individuals consulted on the statistical aspects of the design, and the name of the agency unit, contractor(s), grantee(s), or other

person(s) who will actually collect and/or analyze the information for the agency.

Individual consulted on the statistical aspects of the design:

James R. Waters, Ph.D.
National Marine Fisheries Service
Southeast Fisheries Science Center
Beaufort Laboratory
(252) 728-8710

Persons who will actually collect and analyze the information:

Christopher Liese, Ph.D.
National Marine Fisheries Service
Southeast Fisheries Science Center
Social Science Research Group
(305) 365-4109

Michael D. Travis, Ph.D.
National Marine Fisheries Service
Southeast Regional Office
Social Science Branch
(727) 551-5722

Table 1: Sampling Frame, Sampling Strata, Population Characterization, Response Rate and Sample Size

Active (68%)	State	Population	Population	Vessel Size	Vessel Refridg.	Vessel Construct.	Catch	Catch	Catch	Price	E(Completed Surveys)	E(Response Rate)	# to be Sampled
		Total	% of Active	Large*	Use Ice	Steel Hull	Total	Small Vessel	Large Vessel	Mean of Mean			
	TX	705	39%	96%	26%	94%	51,415	8,062	53,209	3.32	195	0.8	244
	LA	546	30%	57%	74%	74%	58,289	33,077	77,627	2.19	151	0.8	189
	MS	166	9%	80%	49%	87%	53,624	10,419	64,752	2.58	46	0.8	58
	AL	141	8%	63%	48%	65%	44,177	13,143	62,310	2.92	39	0.8	49
	FL	223	12%	89%	33%	33%	41,659	8,454	45,851	3.12	62	0.8	78
	Other	25	1%	100%	12%	80%	36,618	-	36,618	2.88	7	0.8	9
	Total	1,806	100%	79%	45%	77%	51,722	24,771	58,808	2.85	500		627

InActive (32%)	State	Population	Population	Vessel Size	Vessel Refridg.	Vessel Construct.	E(Completed Surveys)	E(Response Rate)	# to be Sampled
		Total	% of InActive	Large*	Use Ice	Steel Hull			
	TX	275	32%	75%	59%	68%	32	0.5	64
	LA	128	15%	62%	68%	74%	15	0.5	30
	MS	60	7%	47%	72%	58%	7	0.5	14
	AL	82	10%	50%	61%	49%	10	0.5	20
	FL	263	31%	39%	53%	18%	31	0.5	62
	Other	52	6%	90%	35%	65%	6	0.5	12
	Total	860	100%	59%	58%	51%	100		202

Note:
* Large = greater 60 foot
E() indicates expectation of.

Table 2: Past Response Rates

	Population	Sampled	Unreachable	Ineligible	Refused	Completed	Response Rate (raw)	Reachable	Refusal Rate
Texas	1,109	359	162	69	38	90	25.1%	54.9%	29.7%
Rest of Gulf	3,257	2,001	1,344	78	522	57	2.8%	32.8%	90.2%

Figure 1: Information material (draft)

**Your information is treated as
confidential.**

Your information will not be released.

**We are interested only in
industry-wide economic indicators.**

**Your information will be
combined with the information from
other fishermen.**

**With statistical methods
we will estimate industry averages and
industry totals.**

**The results of this research will be
made available to you.**

Why we need to Know

Fishery Managers need up-to-date information about the economic health of the Gulf shrimp fishery in order to make sound decisions, such as producing Fishery Management Plan Amendments that take account of the economic situation and contribution of this important industry.

Most importantly, we, the scientists collecting and analyzing this data, need to know the total profit (or loss) generated by the industry. This information enables us to calculate the value of the shrimp fishery to fishermen and to the nation. Other things we report to the Council, decision makers, fishermen and the public include:

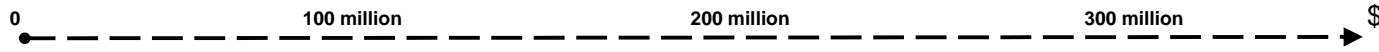
- Income shares of owners and crew *in the industry*
- Overall capital invested and total debt *in the industry*
- Financial risk *the industry* is exposed to
- The impact of fluctuating fuel and ice prices *on the industry*

There is no simple way to explain why we are asking the particular questions in the survey, since some business and accounting skills are needed. Our best attempt is inside this brochure. It looks more complicated than it is!

Annual Report of the Gulf Shrimp Fishery

Industry Income Statement:

Why we want to Know:



Total Shrimp Revenue (known)											
Fixed Costs			Variable Costs				Profit				
Depreciation	Annual Costs		Labor Costs		Trip Costs		Return to Owners' Time	Return to Owners' Net Equity		"Pure" Profit	
Depreciation	Overhead	Vessel & Gear Costs	Crew	Captain	Fuel	Ice	Other	Owners' captain's pay and salaries		Loan Principal Repaid	Investment in Vessel
(Q12a, Q14, Q15)			Q1	Q2	Q3	Q5	Q6	Q2 + Q9			

- ⇒ Economic understanding of the industry
- ⇒ To create models that predict the impact of proposed regulations
- ⇒ How is the industry affected by input **price changes**? What is the **crew's share** of the industry?

Q13c			(Q8)
Q10		Q7	

Q# is Survey Question collecting this information
 * () calculated indirectly from survey data

Most Important Result:

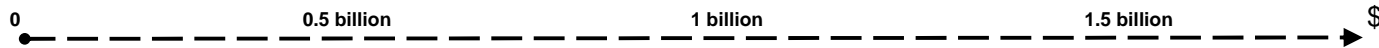
Annual Income in Fishery (labor's share)

+

Annual Income in Fishery (owner's share)

⇒ Overall Income can be used to calculate the **VALUE of the shrimp fishery** to fishermen and the nation. Very important for Resource Management.

Industry Balance Sheet



Total Capital Invested in Vessels (at Purchase Price) (Q12b)			
Capital Stock (in Vessels at Market Value) Q12a		Net of Cumulative Depreciation (-) and Re-Investment (+)	
Loans Q13a	Net Equity of Owners		
Insured Q11	Uninsured		

- ⇒ How much **capital** is invested in the industry?
- ⇒ How in **debt** is the industry?
- ⇒ How much **risk** is the industry exposed to?

2006 Annual Economic Survey of Federal Gulf Shrimp Permit Holders

Permit owner name: (pre-filled) Permit #: (pre-filled)
 Vessel name: (pre-filled) Vessel ID: (pre-filled)

Please see instructions for a detailed explanation of each question!

Total 2006 Expenses: On this page we would like you to enter the total *financial expenses* (actual dollar payments) you incurred during 2006 for the operation and keeping of this vessel ((ID-pre-filled)). For each question enter the *sum of all 2006 expenses*.

1. Total amount paid to crew excluding captain (sum of shares):* \$ __, ____, ____.00
2. Is the owner also the captain of this vessel?
- Yes** → **If Yes:**
 Is the owner paid a captain's share? *Yes* *No*
If Yes, total amount of captain's shares:* \$ __, ____, ____.00
- No** → **If No:**
 Total amount paid to captain(s) (sum of shares):* \$ __, ____, ____.00
3. Total amount paid for fuel (including amounts paid by crew & captain): \$ __, ____, ____.00
4. a) Average price of fuel in 2006: \$ __. __ per gallon
 b) Total amount of fuel purchased: ____, ____, ____.00 gallons
5. Total amount paid for *purchased* ice (including amounts paid by crew & captain): \$ __, ____, ____.00
6. Total amount paid for all *other trip related* supplies or expenses
 (excluding expenses reported above; including amounts paid *by* crew & captain): \$ __, ____, ____.00
7. Total amount paid for any vessel, engine, gear or other equipment (including electronics) maintenance, repair, replacement, upgrade or new purchase: \$ __, ____, ____.00
8. Does this (7.) include any *major*, infrequent or irregular expenses (check all that apply):
 None Haul-out/dry dock New purchase or upgrade
 Repair/replacement due to Hurricane Other repair/replacement Other
9. If the owner is paid a salary, total amount of this salary: \$ __, ____, ____.00
10. Overhead applicable to this vessel (*including* loan payments and vessel insurance; *excluding* depreciation, income taxes and any salary included under 9.): \$ __, ____, ____.00
-
11. **Total 2006 Expenses** (the above entries should sum to this value): \$ ____, ____, ____.00

* If your share system is calculated based on a gross basis, please enter only the *net* amount paid to crew or captain after contributions to trip costs have been subtracted (i.e. *excluding* payments for groceries, ice or fuel). For fuel (3.), ice (5.) and other trip expenses (6.) please *include* the amounts paid from the crew's and captain's share. In this way, we can avoid double counting these expenses.

Other Important Economic Information:

12. Type of vessel insurance (check all that apply): None Hull P&I Other

Total amount vessel is insured for: \$____, ____, _____.00

13. Appraised value of vessel (if insured) or best estimate of this value (if not insured):

a) Market value of vessel (anytime in 2006): \$____, ____, _____.00

b) Replacement value of vessel: \$____, ____, _____.00

c) Original purchase price of vessel: \$____, ____, _____.00

14. Did you have any loan(s) on your vessel at any time during 2006: Yes No

If Yes: a) Total principal remaining to be repaid (*end of* 2006): \$____, ____, _____.00

b) Interest paid in 2006 (excluding principal payments): \$____, ____, _____.00

c) Principal repaid in 2006: \$____, ____, _____.00

15. Depreciation of vessel and gear as claimed for tax purposes (2006): \$____, ____, _____.00

16. Estimated remaining lifetime of vessel (without major re-investment): ____ years

17. Total gross revenue generated by this vessel in commercial fisheries *other than shrimp* in 2006: \$____, ____, _____.00

18. Government payments received due to imports and low shrimp prices (tariff money; trade assistance adjustment payments, etc.) and disaster relief (hurricanes): \$____, ____, _____.00

I certify that the information contained on this form is accurate and complete to the best of my knowledge:

Signature of person completing report

Date

Printed name of person signing report

(_____)_____
Phone Number

Please return completed form in the enclosed prepaid envelope!

[To: NMFS; SEFSC; P.O. Box 491500; Key Biscayne, FL 33149-9916]

Thank You!

Other Questions (voluntary)

1. Would you like to receive future economic surveys in a language other than English?

No (default) Spanish Vietnamese

2. Please use the reverse side or a separate piece of paper for any comments. We appreciate any comments concerning this survey effort and any ideas on how to improve or simplify it.

Instructions

Page 1 – Total 2006 Expenses

On **Page 1** we would like you to enter the total financial expenses you incurred during 2006 for the operation and keeping **of this vessel**. This should correspond to actual dollar payments made. For each question enter the sum of all 2006 expenses in that category.

- Please be comprehensive: **Account for the all expenses** incurred by this boat in 2006 on **Page 1**.
- Please **avoid double counting**: Any expense should appear only a single time on **Page 1**.
- If an expense benefits this vessel as well as other vessel(s) and/or business operations (such as processing), **only list the share of the expense** that can be assigned to this vessel.
- Feel free to round numbers to the nearest \$100, such as entering \$ 3,600.00 rather than \$ 3,643.00.

Question 1: Enter the sum of all crew shares paid during 2006. This should reflect the amount the crew actually received, including any bonuses, but excluding any contributions they made to cover operating costs. Do not include any payments to the captain, which are separated out in Question 2.

Question 2: Enter the sum of all captains' shares paid during 2006. This should reflect the amount the captain(s) actually received, including any bonuses, but excluding any contributions s/he made to cover operating costs. If you hire a captain(s), please check the left, bold **No** box and enter the total amount paid on the lower line.

If you (the owner) are also the captain AND you separately account for your income *as captain* (as opposed to *as owner*, i.e. business profit), please check the **Yes** box AND the *Yes* box in the sub-question. Then enter the total amount you paid yourself on the top line. If you do not separately account for your services as captain, please check the **Yes** box and the *No* box in the sub-question. Then leave both lines empty. If you pay yourself a salary not directly related to your work as captain, please enter this in Question 9 instead of here.

Question 3: Enter the total amount spent on fuel in 2006. The total amount should reflect the actual amount paid for the fuel used by this vessel; including those portions "paid" out of the crew's or captain's shares.

Question 4: a) Please estimate the average price per gallon you paid for fuel in 2006 (in dollars and cents per gallon, as best you can). b) Enter the total number of gallons of fuel you purchased in 2006 in order to operate this vessel and all its equipment (such as generators and freezers). If this number is not available, then divide the amount entered in Question 3 by the estimated price per gallon entered in a) and enter this amount in the space provided.

Question 5: Enter the total amount you spent in 2006 purchasing ice used by this vessel. Do not enter expenditures incurred for freezing or the making of ice on the vessel (add to Question 6 instead). The total amount should reflect the actual amount paid for ice used; including those portions "paid" out of the crew's or captain's shares.

Question 6: Enter the sum of all remaining expenses incurred on a 'per fishing trip' basis in 2006. This should exclude all amounts already listed in the above questions, i.e. amounts paid to crew, captain, fuel or ice. Please sum all your expenses for: Groceries, oil and lubricants, freezing and

packaging supplies, gloves, packing, processing, storage, cleaning supplies or services, and any other trip related expense.

Question 7: Enter the total 2006 expenses, not already listed above, related to the vessel (hull and all) and associated equipment, such as fishing gear (nets, trawl doors, etc), engine(s), freezers and electronics. Include all expenses for maintenance, repair, replacement, upgrades and new purchases. Also include haul-outs, rebuilds, retrofits, etc.

Question 8: If the total you entered in Question 7 includes infrequent or unusual expenses or if it includes expenses for upgrades and new purchases (beyond regular replacements), please check all the boxes that apply. Yet check a box only if the expenses amount to more than \$1,000 in that category. Infrequent expenses would be those that occur less than annually, include haul-outs, repairs during haul-outs, and other major repairs or replacement. Unusual expenses would result from unexpected events such as hurricanes, accidents or theft. Upgrades or new purchases are investments into the vessel that extend its functionality, such as increases in engine power, new electronic systems, increases or improvements to fishing gear, etc.

Question 9: If you (the owner) pay yourself a salary and account for this independent of your income *as owner*, i.e. separately from general business profits, then enter the total amount of this salary in 2006. **Note:** Please enter only the amount of salary that is derived from this vessel. Do not enter the salary for other vessels or business operations. For example: If you own 4 vessels and paid yourself a salary of \$100,000 in 2006, you would only enter \$25,000 for this question (or whatever the appropriate share of this vessel is in your overall operation).

Question 10: Enter the total amount of overhead applicable to this vessel. Typical overhead expenses include: Dockage/mooring, rent, utilities, insurance, loan payments, commercial fishing licenses and permits, property taxes and other fees, (share of) car or truck expenses, (share of) office expenses, (share of) accountant, lawyer, other professional services fees, and any other annual expenditure paid by the vessel (not included in Questions 1 through 9).

Very Important on Question 10.:

- **Include:** **Loan Payments** (interest and principal) and **Insurance** premiums for the vessel!
- **Exclude:** **Depreciation, Income Tax** and any **Salary** included under Question 9!
- If an overhead expense benefits this vessel AND other vessel(s) and/or business operations (such as processing), then only list the **share of the expense** that can be assigned to this vessel.

End of Page 1: Please make sure you have accounted for all expenses associated with the operation and keeping of this vessel in 2006. ***If there are expenses not yet accounted for, please add them to the category they fit best:***

- If they are trip-related, add them to Question 6.
- If they relate to the vessel, gear and equipment and if they occur annually or less frequent, add them to Question 7.
- If they fit in neither of the above categories, add them to Question 10 (overhead or business related costs).

Question 11: Enter the total financial expenses you incurred during 2006 for the operation and keeping of this vessel. This number should equal the sum of all \$ expenses entered on Page 1.

Instructions

Page 2 – Other Important Economic Information

Question 12: First check the boxes for how your vessel was insured in 2006. Check all that apply or 'None' if your vessel was not insured. If the vessel was insured, then enter the total amount the vessel was insured for, i.e. the maximum dollar amount the insurance would have paid in case of a total loss of the vessel.

Question 13: Enter the market (a) and replacement (b) values of your vessel in 2006. Please enter the most accurate number you have. If the vessel is insured, please consult your insurance records for these values. Otherwise, please give us your best estimate. For market value, please enter the approximate amount you would expect to receive if you had sold your vessel during 2006 (without any fishing permits). For replacement value, please enter the amount required to purchase a new vessel comparable to yours. c) Enter your purchase price of the vessel.

Question 14: Check Yes if you had any outstanding loans on your vessel **at any time during 2006**. If yes, enter: a) the amount of principal still needing to be paid back **at the end of 2006**; b) the total sum of interest paid in 2006; and c) the total amount of principal repaid in 2006.

Question 15: Enter the amount of depreciation you claimed for your vessel on your 2006 tax return.

Question 16: Please enter a rough estimate of the remaining lifetime of your vessel (in years). Assume you will make no further large re-investments into your vessel, such as major hull work, a new engine(s), or other major renovations. Define large as an investment that will increase the market value of your vessel by at least 50%.

Question 17: Enter the total sum of all revenue generated by this vessel in 2006 in commercial fisheries other than shrimp. This can include revenue generated in the Gulf of Mexico as well as the rest of the Atlantic Ocean and elsewhere; from State, Federal or international waters; offshore or inshore; etc. It should not include any revenue generated by the sale of shrimp (caught anywhere).

Question 18: Enter the sum of all payments received by this vessel from federal, state, and local governments as a result of low shrimp prices and the dumping of imports (for example, tariff monies received from U.S. Customs, trade assistance adjustment payments received from the U.S. Department of Agriculture, etc.) and disaster relief (monies received for hurricane recovery).

If you have any questions, please call Christopher Liese at (305) 365-4109.

PAPERWORK REDUCTION ACT STATEMENT:

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing the instructions, searching the 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 Christopher Liese, National Marine Fisheries Service, Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, Florida 33149. Information submitted will be treated as confidential in accordance with NOAA Administrative Order 216-100. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection displays a currently valid OMB Control Number. This reporting is required for permit renewal. NMFS requires this information for the conservation and management of marine fishery resources. These data will be used to evaluate the economic effects of proposed regulations in the fishery.

Regulatory Flexibility Act

The following text of the Regulatory Flexibility Act of 1980, as amended, is taken from Title 5 of the United States Code, sections 601 – 612

(The Regulatory Flexibility Act was originally passed in 1980 (P. L. 96-354). The Act was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (P.L. 104-121).) (PDF File)

§ 601. Definitions

For purposes of this chapter--

(1) the term "agency" means an agency as defined in section 551(1) of this title;

(2) the term "rule" means any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title, or any other law, including any rule of general applicability governing Federal grants to State and local governments for which the agency provides an opportunity for notice and public comment, except that the term "rule" does not include a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefore or to valuations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, or allowances;

(3) the term "small business" has the same meaning as the term "small business concern" under section 3 of the Small Business Act, unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;

(4) the term "small organization" means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;

(5) the term "small governmental jurisdiction" means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the Federal Register;

(6) the term "small entity" shall have the same meaning as the terms "small business", "small organization" and "small governmental jurisdiction" defined in paragraphs (3), (4) and (5) of this section; and

(7) the term "collection of information"--

(A) means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either-

-

(i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, 10 or more persons, other than agencies, instrumentalities, or employees of the United States; or

(ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes; and

(B) shall not include a collection of information described under section 3518(c)(1) of title 44, United States Code.

(8) Recordkeeping requirement.--The term "recordkeeping requirement" means a requirement imposed by an agency on persons to maintain specified records.

§ 602. Regulatory agenda

(a) During the months of October and April of each year, each agency shall publish in the Federal Register a regulatory flexibility agenda which shall contain--

(1) a brief description of the subject area of any rule which the agency expects to propose or promulgate which is likely to have a significant economic impact on a substantial number of small entities;

(2) a summary of the nature of any such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking, and

(3) the name and telephone number of an agency official knowledgeable concerning the items listed in paragraph (1).

(b) Each regulatory flexibility agenda shall be transmitted to the Chief Counsel for Advocacy of the Small Business Administration for comment, if any.

(c) Each agency shall endeavor to provide notice of each regulatory flexibility agenda to small entities or their representatives through direct notification or publication of the agenda in publications likely to be obtained by such small entities and shall invite comments upon each subject area on the agenda.

(d) Nothing in this section precludes an agency from considering or acting on any matter not included in a regulatory flexibility agenda, or requires an agency to consider or act on any matter listed in such agenda.

§ 603. Initial regulatory flexibility analysis

(a) Whenever an agency is required by section 553 of this title, or any other law, to publish general notice of proposed rulemaking for any proposed rule, or publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States, the agency shall prepare and make available for public comment an initial regulatory flexibility analysis. Such analysis shall describe the impact of the proposed rule on small entities. The initial regulatory flexibility analysis or a summary shall be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule. The agency shall transmit a copy of the initial regulatory flexibility analysis to the Chief Counsel for Advocacy of the Small Business Administration. In the case of an interpretative rule involving the internal revenue laws of the United States, this chapter applies to interpretative rules published in the Federal Register for codification in the Code of Federal Regulations, but only to the extent that such interpretative rules impose on small entities a collection of information requirement.

(b) Each initial regulatory flexibility analysis required under this section shall contain--

(1) a description of the reasons why action by the agency is being considered;

(2) a succinct statement of the objectives of, and legal basis for, the proposed rule;

(3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

(4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate,

overlap or conflict with the proposed rule.

(c) Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as--

- (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
- (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
- (3) the use of performance rather than design standards; and
- (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

§ 604. Final regulatory flexibility analysis

(a) When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, or promulgates a final interpretative rule involving the internal revenue laws of the United States as described in section 603(a), the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain--

- (1) a succinct statement of the need for, and objectives of, the rule;
- (2) a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
- (3) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;
- (4) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and
- (5) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

(b) The agency shall make copies of the final regulatory flexibility analysis available to members of the public and shall publish in the Federal Register such analysis or a summary thereof.

§ 605. Avoidance of duplicative or unnecessary analyses

(a) Any Federal agency may perform the analyses required by sections 602, 603, and 604 of this title in conjunction with or as a part of any other agenda or analysis required by any other law if such other analysis satisfies the provisions of such sections.

(b) Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the Federal Register at the time of publication of general notice of proposed rulemaking for the rule or at the time of publication of the final rule, along with a statement providing the factual basis for such certification. The agency shall provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.

(c) In order to avoid duplicative action, an agency may consider a series of closely related rules as one rule for the purposes of sections 602, 603, 604 and 610 of this title.

§ 606. Effect on other law

The requirements of sections 603 and 604 of this title do not alter in any manner standards otherwise applicable by law to agency action.

§ 607. Preparation of analyses

In complying with the provisions of sections 603 and 604 of this title, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or alternatives to the proposed rule, or more general descriptive statements if quantification is not practicable or reliable.

§ 608. Procedure for waiver or delay of completion

(a) An agency head may waive or delay the completion of some or all of the requirements of section 603 of this title by publishing in the Federal Register, not later than the date of publication of the final rule, a written finding, with reasons therefore, that the final rule is being promulgated in response to an emergency that makes compliance or timely compliance with the provisions of section 603 of this title impracticable.

(b) Except as provided in section 605(b), an agency head may not waive the requirements of section 604 of this title. An agency head may delay the completion of the requirements of section 604 of this title for a period of not more than one hundred and eighty days after the date of publication in the Federal Register of a final rule by publishing in the Federal Register, not later than such date of publication, a written finding, with reasons therefore, that the final rule is being promulgated in response to an emergency that makes timely compliance with the provisions of section 604 of this title impracticable. If the agency has not prepared a final regulatory analysis pursuant to section 604 of this title within one hundred and eighty days from the date of publication of the final rule, such rule shall lapse and have no effect. Such rule shall not be repromulgated until a final regulatory flexibility analysis has been completed by the agency.

§ 609. Procedures for gathering comments

(a) When any rule is promulgated which will have a significant economic impact on a substantial number of small entities, the head of the agency promulgating the rule or the official of the agency with statutory responsibility for the promulgation of the rule shall assure that small entities have been given an opportunity to participate in the rulemaking for the rule through the reasonable use of techniques such as--

(1) the inclusion in an advanced notice of proposed rulemaking, if issued, of a statement that the proposed rule may have a significant economic effect on a substantial number of small entities;

(2) the publication of general notice of proposed rulemaking in publications likely to be obtained by small entities;

(3) the direct notification of interested small entities;

(4) the conduct of open conferences or public hearings concerning the rule for small entities including soliciting and receiving comments over computer networks; and

(5) the adoption or modification of agency procedural rules to reduce the cost or complexity of participation in the rulemaking by small entities.

(b) Prior to publication of an initial regulatory flexibility analysis which a covered agency is required to conduct by this chapter--

(1) a covered agency shall notify the Chief Counsel for Advocacy of the Small Business Administration and provide the Chief Counsel with information on the potential impacts of the proposed rule on small entities and the type of small entities that might be affected;

(2) not later than 15 days after the date of receipt of the materials described in paragraph (1), the Chief Counsel shall identify individuals representative of affected small entities for the purpose of obtaining advice and recommendations from those individuals about the potential impacts of the proposed rule;

(3) the agency shall convene a review panel for such rule consisting wholly of full time Federal employees of the office within the agency responsible for carrying out the proposed rule, the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel;

(4) the panel shall review any material the agency has prepared in connection with this chapter, including any draft proposed rule, collect advice and recommendations of each individual small entity representative identified by the agency after consultation with the Chief Counsel, on issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c);

(5) not later than 60 days after the date a covered agency convenes a review panel pursuant to paragraph (3), the review panel shall report on the comments of the small entity representatives and its findings as to issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c), provided that such report shall be made public as part of the rulemaking record; and

(6) where appropriate, the agency shall modify the proposed rule, the initial regulatory flexibility analysis or the decision on whether an initial regulatory flexibility analysis is required.

(c) An agency may in its discretion apply subsection (b) to rules that the agency intends to certify under subsection 605(b), but the agency believes may have a greater than de minimis impact on a substantial number of small entities.

(d) For purposes of this section, the term "covered agency" means the Environmental Protection Agency and the Occupational Safety and Health Administration of the Department of Labor.

(e) The Chief Counsel for Advocacy, in consultation with the individuals identified in subsection (b)(2), and with the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, may waive the requirements of subsections (b)(3), (b)(4), and (b)(5) by including in the rulemaking record a written finding, with reasons therefore, that those requirements would not advance the effective participation of small entities in the rulemaking process. For purposes of this subsection, the factors to be considered in making such a finding are as follows:

(1) In developing a proposed rule, the extent to which the covered agency consulted with individuals representative of affected small entities with respect to the potential impacts of the rule and took such concerns into consideration.

(2) Special circumstances requiring prompt issuance of the rule.

(3) Whether the requirements of subsection (b) would provide the individuals identified in subsection (b)(2) with a competitive advantage relative to other small entities.

§ 610. Periodic review of rules

(a) Within one hundred and eighty days after the effective date of this chapter, each agency shall publish in the Federal Register a plan for the periodic review of the rules issued by the agency which have or will have a significant economic impact upon a substantial number of small entities. Such plan may be amended by the agency at any time by publishing the revision in the Federal Register. The purpose of the review shall be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities. The plan shall provide for the review of all such agency rules existing on the effective date of this chapter within ten years of that date and for the review of such rules adopted after the effective date of this chapter within ten years of the publication of such rules as the final rule. If the head of the agency determines that completion of the review of existing rules is not feasible by the established date, he shall so certify in a statement published in the Federal Register and may extend the completion date by one year at a time for a total of not more than five years.

(b) In reviewing rules to minimize any significant economic impact of the rule on a substantial number of small entities in a manner consistent with the stated objectives of applicable statutes, the agency shall consider the following factors--

- (1) the continued need for the rule;
- (2) the nature of complaints or comments received concerning the rule from the public;
- (3) the complexity of the rule;
- (4) the extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and
- (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

(c) Each year, each agency shall publish in the Federal Register a list of the rules which have a significant economic impact on a substantial number of small entities, which are to be reviewed pursuant to this section during the succeeding twelve months. The list shall include a brief description of each rule and the need for and

legal basis of such rule and shall invite public comment upon the rule.

§ 611. Judicial review

(a)(1) For any rule subject to this chapter, a small entity that is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of sections 601, 604, 605(b), 608 (b), and 610 in accordance with chapter 7. Agency compliance with sections 607 and 609(a) shall be judicially reviewable in connection with judicial review of section 604.

(2) Each court having jurisdiction to review such rule for compliance with section 553, or under any other provision of law, shall have jurisdiction to review any claims of noncompliance with sections 601, 604, 605(b), 608(b), and 610 in accordance with chapter 7. Agency compliance with sections 607 and 609(a) shall be judicially reviewable in connection with judicial review of section 604.

(3)(A) A small entity may seek such review during the period beginning on the date of final agency action and ending one year later, except that where a provision of law requires that an action challenging a final agency action be commenced before the expiration of one year, such lesser period shall apply to an action for judicial review under this section.

(B) In the case where an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b) of this chapter, an action for judicial review under this section shall be filed not later than--

- (i) one year after the date the analysis is made available to the public, or
- (ii) where a provision of law requires that an action challenging a final agency regulation be commenced before the expiration of the 1-year period, the number of days specified in such provision of law that is after the date the analysis is made available to the public.

(4) In granting any relief in an action under this section, the court shall order the agency to take corrective action consistent with this chapter and chapter 7, including, but not limited to--

- (A) remanding the rule to the agency, and
- (B) deferring the enforcement of the rule against small entities unless the court finds that continued enforcement of the rule is in the public interest.

(5) Nothing in this subsection shall be construed to limit the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law or to grant any other relief in addition to the requirements of this section.

(b) In an action for the judicial review of a rule, the regulatory flexibility analysis for such rule, including an analysis prepared or corrected pursuant to paragraph (a)(4), shall constitute part of the entire record of agency action in connection with such review.

(c) Compliance or noncompliance by an agency with the provisions of this chapter shall be subject to judicial review only in accordance with this section.

(d) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise permitted by law.

§ 612. Reports and intervention rights

(a) The Chief Counsel for Advocacy of the Small Business Administration shall monitor agency compliance with this chapter and shall report at least annually thereon to the President and to the Committees on the Judiciary and Small Business of the Senate and House of Representatives.

(b) The Chief Counsel for Advocacy of the Small Business Administration is authorized to appear as amicus curiae in any action brought in a court of the United States to review a rule. In any such action, the Chief Counsel is authorized to present his or her views with respect to compliance with this chapter, the adequacy of the rulemaking record with respect to small entities and the effect of the rule on small entities.

(c) A court of the United States shall grant the application of the Chief Counsel for Advocacy of the Small Business Administration to appear in any such action for the purposes described in subsection (b).

(The Regulatory Flexibility Act was originally passed in 1980 (P. L. 96-354). The Act was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (P.L. 104-121)

Presidential Documents

Title 3—

Executive Order 12866 of September 30, 1993

The President

Regulatory Planning and Review

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

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

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

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

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

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

(2) Each agency shall examine whether existing regulations (or other law) have created, or contributed to, the problem that a new regulation

is intended to correct and whether those regulations (or other law) should be modified to achieve the intended goal of regulation more effectively.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 3. Definitions. For purposes of this Executive order: (a) "Advisors" refers to such regulatory policy advisors to the President as the President and Vice President may from time to time consult, including, among others: (1) the Director of OMB; (2) the Chair (or another member) of the Council of Economic Advisers; (3) the Assistant to the President for Economic Policy; (4) the Assistant to the President for Domestic Policy; (5) the Assistant to the President for National Security Affairs; (6) the Assistant to the President for Science and Technology; (7) the Assistant to the President for Intergovernmental Affairs; (8) the Assistant to the President and Staff Secretary; (9) the Assistant to the President and Chief of Staff to the Vice President; (10) the Assistant to the President and Counsel to the President; (11) the Deputy Assistant to the President and Director of the White House Office on Environmental Policy; and (12) the Administrator of OIRA, who also shall coordinate communications relating to this Executive order among the agencies, OMB, the other Advisors, and the Office of the Vice President.

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

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

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

(1) Regulations or rules issued in accordance with the formal rulemaking provisions of 5 U.S.C. 556, 557;

(2) Regulations or rules that pertain to a military or foreign affairs function of the United States, other than procurement regulations and regulations involving the import or export of non-defense articles and services;

(3) Regulations or rules that are limited to agency organization, management, or personnel matters; or

(4) Any other category of regulations exempted by the Administrator of OIRA.

(e) "Regulatory action" means any substantive action by an agency (normally published in the **Federal Register**) that promulgates or is expected

to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking.

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

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

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

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

(c) *The Regulatory Plan.* For purposes of this subsection, the term "agency" or "agencies" shall also include those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10). (1) As part of the Unified Regulatory Agenda, beginning in 1994, each agency shall prepare a Regulatory Plan (Plan) of the most important significant regulatory actions that the agency reasonably expects to issue in proposed or final form in that fiscal year or thereafter. The Plan shall be approved personally by the agency head and shall contain at a minimum:

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

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

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

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

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

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

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

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

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

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

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

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

(d) *Regulatory Working Group.* Within 30 days of the date of this Executive order, the Administrator of OIRA shall convene a Regulatory Working Group ("Working Group"), which shall consist of representatives of the heads of each agency that the Administrator determines to have significant domestic regulatory responsibility, the Advisors, and the Vice President. The Administrator of OIRA shall chair the Working Group and shall periodically advise the Vice President on the activities of the Working Group. The Working Group shall serve as a forum to assist agencies in identifying and analyzing important regulatory issues (including, among others (1) the development of innovative regulatory techniques, (2) the methods, efficacy, and utility of comparative risk assessment in regulatory decision-making, and (3) the development of short forms and other streamlined regulatory approaches for small businesses and other entities). The Working Group shall meet at least quarterly and may meet as a whole or in subgroups of agencies with an interest in particular issues or subject areas. To inform its discussions, the Working Group may commission analytical studies and reports by OIRA, the Administrative Conference of the United States, or any other agency.

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

Sec. 5. Existing Regulations. In order to reduce the regulatory burden on the American people, their families, their communities, their State, local, and tribal governments, and their industries; to determine whether regula-

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

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

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

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

(a) *Agency Responsibilities.* (1) Each agency shall (consistent with its own rules, regulations, or procedures) provide the public with meaningful participation in the regulatory process. In particular, before issuing a notice of proposed rulemaking, each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation (including, specifically, State, local, and tribal officials). In addition, each agency should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days. Each agency also is directed to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

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

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

(A) Each agency shall provide OIRA, at such times and in the manner specified by the Administrator of OIRA, with a list of its planned regulatory actions, indicating those which the agency believes are significant regulatory

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

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

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

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

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

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

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

(iii) An assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, identified by the agencies or the public (including improving the current regulation and reasonably viable nonregulatory actions), and an explanation why the planned regulatory action is preferable to the identified potential alternatives.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

not attend, and telephone conversations between OIRA personnel and any such persons); and

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

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

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

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

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

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

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

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

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

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

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

Sec. 8. Publication. Except to the extent required by law, an agency shall not publish in the **Federal Register** or otherwise issue to the public any regulatory action that is subject to review under section 6 of this Executive order until (1) the Administrator of OIRA notifies the agency that OIRA has waived its review of the action or has completed its review without

any requests for further consideration, or (2) the applicable time period in section 6(b)(2) expires without OIRA having notified the agency that it is returning the regulatory action for further consideration under section 6(b)(3), whichever occurs first. If the terms of the preceding sentence have not been satisfied and an agency wants to publish or otherwise issue a regulatory action, the head of that agency may request Presidential consideration through the Vice President, as provided under section 7 of this order. Upon receipt of this request, the Vice President shall notify OIRA and the Advisors. The guidelines and time period set forth in section 7 shall apply to the publication of regulatory actions for which Presidential consideration has been sought.

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

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

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

William Clinton

THE WHITE HOUSE,
September 30, 1993.

[FR Doc. 93-24523
Filed 10-1-93; 12:12 pm]
Billing code 3195-01-M

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

The National Environmental Policy Act of 1969, as amended

(Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, § 4(b), Sept. 13, 1982)

An Act to establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Environmental Policy Act of 1969."

Purpose

Sec. 2 [42 USC § 4321].

The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

TITLE I

CONGRESSIONAL DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

Sec. 101 [42 USC § 4331].

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may --

1. fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
2. assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
3. attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
4. preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;

5. achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
6. enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Sec. 102 [42 USC § 4332].

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall --

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on --

- (i) the environmental impact of the proposed action,
- (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
- (iii) alternatives to the proposed action,
- (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of longterm productivity, and
- (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

- (i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

- (ii) the responsible Federal official furnishes guidance and participates in such preparation,
- (iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and
- (iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by title II of this Act.

Sec. 103 [42 USC § 4333].

All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

Sec. 104 [42 USC § 4334].

Nothing in section 102 [42 USC § 4332] or 103 [42 USC § 4333] shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

Sec. 105 [42 USC § 4335].

The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

TITLE II

COUNCIL ON ENVIRONMENTAL QUALITY

Sec. 201 [42 USC § 4341].

The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

Sec. 202 [42 USC § 4342].

There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

Sec. 203 [42 USC § 4343].

(a) The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

(b) Notwithstanding section 1342 of Title 31, the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.

Sec. 204 [42 USC § 4344].

It shall be the duty and function of the Council --

1. to assist and advise the President in the preparation of the Environmental Quality Report required by section 201 [42 USC § 4341] of this title;
2. to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;
3. to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

4. to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;
5. to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;
6. to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;
7. to report at least once each year to the President on the state and condition of the environment; and
8. to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

Sec. 205 [42 USC § 4345].

In exercising its powers, functions, and duties under this Act, the Council shall --

1. consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order No. 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and
2. utilize, to the fullest extent possible, the services, facilities and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

Sec. 206 [42 USC § 4346].

Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates [5 USC § 5313]. The other members of the Council shall be compensated at the rate provided for Level IV of the Executive Schedule Pay Rates [5 USC § 5315].

Sec. 207 [42 USC § 4346a].

The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.

Sec. 208 [42 USC § 4346b].

The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the support of international exchange programs in the United States and in foreign countries.

Sec. 209 [42 USC § 4347].

There are authorized to be appropriated to carry out the provisions of this chapter not to exceed \$300,000 for fiscal year 1970, \$700,000 for fiscal year 1971, and \$1,000,000 for each fiscal year thereafter.

The Environmental Quality Improvement Act, as amended (Pub. L. No. 91- 224, Title II, April 3, 1970; Pub. L. No. 97-258, September 13, 1982; and Pub. L. No. 98-581, October 30, 1984.

42 USC § 4372.

(a) There is established in the Executive Office of the President an office to be known as the Office of Environmental Quality (hereafter in this chapter referred to as the "Office"). The Chairman of the Council on Environmental Quality established by Public Law 91-190 shall be the Director of the Office. There shall be in the Office a Deputy Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) The compensation of the Deputy Director shall be fixed by the President at a rate not in excess of the annual rate of compensation payable to the Deputy Director of the Office of Management and Budget.

(c) The Director is authorized to employ such officers and employees (including experts and consultants) as may be necessary to enable the Office to carry out its functions ;under this chapter and Public Law 91-190, except that he may employ no more than ten specialists and other experts without regard to the provisions of Title 5, governing appointments in the competitive service, and pay such specialists and experts without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but no such specialist or expert shall be paid at a rate in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of Title 5.

(d) In carrying out his functions the Director shall assist and advise the President on policies and programs of the Federal Government affecting environmental quality by --

1. providing the professional and administrative staff and support for the Council on Environmental Quality established by Public Law 91- 190;
2. assisting the Federal agencies and departments in appraising the effectiveness of existing and proposed facilities, programs, policies, and activities of the Federal Government, and those specific major projects designated by the President which do not require individual project authorization by Congress, which affect environmental quality;
3. reviewing the adequacy of existing systems for monitoring and predicting environmental changes in order to achieve effective coverage and efficient use of research facilities and other resources;
4. promoting the advancement of scientific knowledge of the effects of actions and technology on the environment and encouraging the development of the means to prevent or reduce adverse effects that endanger the health and wellbeing of man;
5. assisting in coordinating among the Federal departments and agencies those programs and activities which affect, protect, and improve environmental quality;
6. assisting the Federal departments and agencies in the development and interrelationship of environmental quality criteria and standards established throughout the Federal Government;
7. collecting, collating, analyzing, and interpreting data and information on environmental quality, ecological research, and evaluation.

(e) The Director is authorized to contract with public or private agencies, institutions, and organizations and with individuals without regard to section 3324(a) and (b) of Title 31 and section 5 of Title 41 in carrying out his functions.

42 USC § 4373. Each Environmental Quality Report required by Public Law 91-190 shall, upon transmittal to Congress, be referred to each standing committee having jurisdiction over any part of the subject matter of the Report.

42 USC § 4374. There are hereby authorized to be appropriated for the operations of the Office of Environmental Quality and the Council on Environmental Quality not to exceed the following sums for the following fiscal years which sums are in addition to those contained in Public Law 91-190:

- (a) \$2,126,000 for the fiscal year ending September 30, 1979.
- (b) \$3,000,000 for the fiscal years ending September 30, 1980, and September 30, 1981.
- (c) \$44,000 for the fiscal years ending September 30, 1982, 1983, and 1984.
- (d) \$480,000 for each of the fiscal years ending September 30, 1985 and 1986.

42 USC § 4375.

(a) There is established an Office of Environmental Quality Management Fund (hereinafter referred to as the "Fund") to receive advance payments from other agencies or accounts that may be used solely to finance --

- 1. study contracts that are jointly sponsored by the Office and one or more other Federal agencies; and
- 2. Federal interagency environmental projects (including task forces) in which the Office participates.

(b) Any study contract or project that is to be financed under subsection (a) of this section may be initiated only with the approval of the Director.

(c) The Director shall promulgate regulations setting forth policies and procedures for operation of the Fund.

§ 1802. Definitions

As used in this chapter, unless the context otherwise requires--

(1) The term "anadromous species" means species of fish which spawn in fresh or estuarine waters of the United States and which migrate to ocean waters.

(2) The term "bycatch" means fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards. Such term does not include fish released alive under a recreational catch and release fishery management program.

(3) The term "charter fishing" means fishing from a vessel carrying a passenger for hire (as defined in section 2101(21a) of Title 46) who is engaged in recreational fishing.

(4) The term "commercial fishing" means fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter or trade.

(5) The term "conservation and management" refers to all of the rules, regulations, conditions, methods, and other measures

(A) which are required to rebuild, restore, or maintain, and which are useful in rebuilding, restoring, or maintaining, any fishery resource and the marine environment; and

(B) which are designed to assure that--

(i) a supply of food and other products may be taken, and that recreational benefits may be obtained, on a continuing basis;

(ii) irreversible or long-term adverse effects on fishery resources and the marine environment are avoided; and

(iii) there will be a multiplicity of options available with respect to future uses of these resources.

(6) The term "Continental Shelf" means the seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, of the United States, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of such areas.

(7) The term "Continental Shelf fishery resources" means the following:

CNIDARIA Bamboo Coral--*Acanella* spp.;
Black Coral--*Antipathes* spp.;
Gold Coral--*Callogorgia* spp.;
Precious Red Coral--*Corallium* spp.;
Bamboo Coral--*Keratoisis* spp.; and
Gold Coral--*Parazoanthus* spp.

CRUSTACEA

Tanner Crab--*Chionoecetes tanneri*;
Tanner Crab--*Chionoecetes opilio*;
Tanner Crab--*Chionoecetes angulatus*;
Tanner Crab--*Chionoecetes bairdi*;
King Crab--*Paralithodes camtschatica*;
King Crab--*Paralithodes platypus*;
King Crab--*Paralithodes brevipes*;
Lobster--*Homarus americanus*;
Dungeness Crab--*Cancer magister*;

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**California King Crab--*Paralithodes californiensis*;
California King Crab--*Paralithodes rathbuni*;
Golden King Crab--*Lithodes aequispinus*;
Northern Stone Crab--*Lithodes maja*;
Stone Crab--*Menippe mercenaria*; and
Deep-sea Red Crab--*Chaceon quinquegens*. **MOLLUSKS**
Red Abalone--*Haliotis rufescens*;
Pink Abalone--*Haliotis corrugata*;
Japanese Abalone--*Haliotis kamtschatkana*;
Queen Conch--*Strombus gigas*;
Surf Clam--*Spisula solidissima*; and
Ocean Quahog--*Artica islandica*.**

SPONGES

**Glove Sponge--*Spongia cheiris*;
Sheepswool Sponge--*Hippiospongia lachne*;
Grass Sponge--*Spongia graminea*; and
Yellow Sponge--*Spongia barbera*.**

If the Secretary determines, after consultation with the Secretary of State, that living organisms of any other sedentary species are, at the harvestable stage, either-

(A) immobile on or under the seabed, or

(B) unable to move except in constant physical contact with the seabed or subsoil, of the Continental Shelf which appertains to the United States, and publishes notice of such determination in the Federal Register, such sedentary species shall be considered to be added to the foregoing list and included in such term for purposes of this chapter.

(8) The term "Council" means any Regional Fishery Management Council established under section 1852 of this title.

(9) The term "economic discards" means fish which are the target of a fishery, but which are not retained because they are of an undesirable size, sex, or quality, or for other economic reasons.

(10) The term "essential fish habitat" means those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity.

(11) The term "exclusive economic zone" means the zone established by Proclamation Numbered 5030, dated March 10, 1983. For purposes of applying this chapter, the inner boundary of that zone is a line coterminous with the seaward boundary of each of the coastal States.

(12) The term "fish" means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals, and birds.

(13) The term "fishery" means--

(A) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational and economic characteristics; and

(B) any fishing for such stocks.

(14) The term "fishery resource" means any fishery, any stock of fish, any species of fish, and any habitat of fish.

(15) The term "fishing" means--

(A) the catching, taking, or harvesting of fish;

(B) the attempted catching, taking, or harvesting of fish;

(C) any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(D) any operations at sea in support of, or in preparation for, any activity described in subparagraphs (A) through (C). Such term does not include any scientific research activity which is conducted by a scientific research vessel.

(16) The term "fishing community" means a community which is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, operators, and crew and United States fish processors that are based in such community.

(17) The term "fishing vessel" means any vessel, boat, ship, or other craft, which is used for, equipped to be used for, or of a type, which is normally used for--

(A) fishing; or

(B) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

(18) The term "foreign fishing" means fishing by a vessel other than a vessel of the United States.

(19) The term "high seas" means all waters beyond the territorial sea of the United States and beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States.

(20) The term "highly migratory species" means tuna species, marlin (*Tetrapturus* spp. and *Makaira* spp.), oceanic sharks, sailfishes (*Istiophorus* spp.), and swordfish (*Xiphias gladius*).

(21) The term "individual fishing quota" means a Federal permit under a limited access system to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person. Such term does not include community development quotas as described in section 1855(i) of this title.

(22) The term "international fishery agreement" means any bilateral or multilateral treaty, convention, or agreement which relates to fishing and to which the United States is a party.

(23) The term "large-scale driftnet fishing" means a method of fishing in which a gillnet composed of a panel or panels of webbing, or a series of such gillnets, with a total length of two and one-half kilometers or more is placed in the water and allowed to drift with the currents and winds for the purpose of entangling fish in the webbing.

(24) The term "special areas" means the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, the term refers to those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but

beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.

(24) The term "Marine Fisheries Commission" means the Atlantic States Marine Fisheries Commission, the Gulf States Marine Fisheries Commission, or the Pacific Marine Fisheries Commission.

(25) The term "migratory range" means the maximum area at a given time of the year within which fish of an anadromous species or stock thereof can be expected to be found, as determined on the basis of scale pattern analysis, tagging studies, or other reliable scientific information, except that the term does not include any part of such area which is in the waters of a foreign nation.

(26) The term "national standards" means the national standards for fishery conservation and management set forth in section 1851 of this title.

(27) The term "observer" means any person required or authorized to be carried on a vessel for conservation and management purposes by regulations or permits under this Act.

(28) The term "optimum", with respect to the yield from a fishery, means the amount of fish which-

(A) will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems;

(B) is prescribed on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant social, economic, or ecological factor; and

(C) in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in such fishery.

(29) The terms "overfishing" and "overfished" mean a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.

(30) The term "Pacific Insular Area" means American Samoa, Guam, the Northern Mariana Islands, Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, Wake Island, or Palmyra Atoll, as applicable, and includes all islands and reefs appurtenant to such island, reef, or atoll.

(31) The term "person" means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

(32) The term "recreational fishing" means fishing for sport or pleasure.

(33) The term "regulatory discards" means fish harvested in a fishery which fishermen are required by regulation to discard whenever caught, or are required by regulation to retain but not sell.

(34) The term "Secretary" means the Secretary of Commerce or his designee.

(35) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States.

(36) The term "special areas" means the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990. In particular, the term refers to those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.

(37) The term "stock of fish" means a species, subspecies, geographical grouping, or other category of fish capable of management as a unit.

(38) The term "treaty" means any international fishery agreement which is a treaty within the meaning of section 2 of article II of the Constitution.

(39) The term "tuna species" means the following:

Albacore Tuna--Thunnus alalunga;
Bigeye Tuna--Thunnus obesus;
Bluefin Tuna--Thunnus thynnus;
Skipjack Tuna-Katsuwonus pelamis; and
Yellowfin Tuna--Thunnus albacares.

(40) The term "United States", when used in a geographical context, means all the States thereof.

(41) The term "United States fish processors" means facilities located within the United States for, and vessels of the United States used or equipped for, the processing of fish for commercial use or consumption.

(42) The term "United States harvested fish" means fish caught, taken, or harvested by vessels of the United States within any fishery regulated under this chapter has been implemented.

(43) The term "vessel of the United States" means--

(A) any vessel documented under chapter 121 of Title 46;

(B) any vessel numbered in accordance with chapter 123 of Title 46 and measuring less than 5 net tons;

(C) any vessel numbered in accordance with chapter 123 of Title 46 and used exclusively for pleasure; or

(D) any vessel not equipped with propulsion machinery of any kind and used exclusively for pleasure.

(44) The term "vessel subject to the jurisdiction of the United States" has the same meaning such term has in section 3(c) of the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1903(c)).

(45) The term "waters of a foreign nation" means any part of the territorial sea or exclusive economic zone (or the equivalent) of a foreign nation, to the extent such territorial sea or exclusive economic zone is recognized by the United States.

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

SEC. 104. FISHERY MANAGEMENT PLAN REQUIREMENTS.

- (a) IN GENERAL- Section 303(a) (16 U.S.C. 1853(a)) is amended--
- (1) by striking `and charter fishing' in paragraph (5) and inserting `charter fishing, and fish processing';
 - (2) by inserting `economic information necessary to meet the requirements of this Act,' in paragraph (5) after `number of hauls,';
 - (3) by striking `and' after the semicolon in paragraph (9)(A);
 - (4) by inserting `and' after the semicolon in paragraph (9)(B);
 - (5) by inserting after paragraph (9)(B) the following:
 - (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;';
 - (6) by striking `fishery' the first place it appears in paragraph (13) and inserting `fishery, including its economic impact,';
 - (7) by striking `and' after the semicolon in paragraph (13);
 - (8) by striking `allocate' in paragraph (14) and inserting `allocate, taking into consideration the economic impact of the harvest restrictions or recovery benefits on the fishery participants in each sector,';
 - (9) by striking `fishery.' in paragraph (14) and inserting `fishery and;'; and
 - (10) by adding at the end the following:
 - (15) establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.'
- (b) EFFECTIVE DATES; APPLICATION TO CERTAIN SPECIES- The amendment made by subsection (a)(10)--
- (1) shall, unless otherwise provided for under an international agreement in which the United States participates, take effect--
 - (A) in fishing year 2010 for fisheries determined by the Secretary to be subject to overfishing; and
 - (B) in fishing year 2011 for all other fisheries; and
 - (2) shall not apply to a fishery for species that have a life cycle of approximately 1 year unless the Secretary has determined the fishery is subject to overfishing of that species; and
 - (3) shall not limit or otherwise affect the requirements of section 301(a)(1) or 304(e) of the Magnuson -Stevens Fishery Conservation and Management Act (16 U.S.C. 1851(a)(1) or 1854(e), respectively).
- (c) CLARIFICATION OF REBUILDING PROVISION- Section 304(e) (16 U.S.C. 1854(e)) is amended--
- (1) by striking `one year of' in paragraph (3) and inserting `2 years after';
 - (2) by inserting `and implement' after `prepare' in paragraph (3);
 - (3) by inserting `immediately' after `overfishing' in paragraph (3)(A);
 - (4) by striking `ending overfishing and' in paragraph (4)(A); and
 - (5) by striking `one-year' in paragraph (5) and inserting `2-year'.
- (d) EFFECTIVE DATE FOR SUBSECTION (c)- The amendments made by subsection (c) shall take effect 30 months after the date of enactment of this Act.

Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006

Public Law 109-479

109th Congress (2nd Session)

The following are excerpts, **highlighted in red**, from the final legislation and/or conference report which contain references to and studies for The National Academies. (Pound signs [##] between passages denote the deletion of unrelated text.)

HR5946 Pombo (R.-Calif.) 12/09/06
Enrolled (finally passed both houses)

To amend the Magnuson-Stevens Fishery Conservation and Management Act to authorize activities to promote improved monitoring and compliance for high seas fisheries, or fisheries governed by international fishery management agreements, and for other purposes.

SEC. 113. REGIONAL COASTAL DISASTER ASSISTANCE, TRANSITION, AND RECOVERY PROGRAM.

(a) IN GENERAL.—Title III (16 U.S.C. 1851 et seq.) is amended by adding at the end the following:

“SEC. 315. REGIONAL COASTAL DISASTER ASSISTANCE, TRANSITION, AND RECOVERY PROGRAM.

“(a) IN GENERAL.—When there is a catastrophic regional fishery disaster the Secretary may, upon the request of, and in consultation with, the Governors of affected States, establish a regional economic transition program to provide immediate disaster relief assistance to the fishermen, charter fishing operators, United States fish processors, and owners of related fishery infrastructure affected by the disaster.

“(b) PROGRAM COMPONENTS.—

“(1) IN GENERAL.—Subject to the availability of appropriations, the program shall provide funds or other economic assistance to affected entities, or to governmental entities for disbursement to affected entities, for—

“(A) meeting immediate regional shoreside fishery infrastructure needs, including processing facilities, cold storage facilities, ice houses, docks, including temporary docks and storage facilities, and other related shoreside fishery support facilities and infrastructure while ensuring that those projects will not result in an increase or replacement of fishing capacity;

“(B) financial assistance and job training assistance for fishermen who wish to remain in a fishery in the region that may be temporarily closed as a result of environmental or other effects associated with the disaster;

“(C) funding, pursuant to the requirements of section 312(b), to fishermen who are willing to scrap a fishing vessel and permanently surrender permits for fisheries named on that vessel; and

“(D) any other activities authorized under section 312 of this Act or section 308(d) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(d)).

“(2) JOB TRAINING.—Any fisherman who decides to scrap a fishing vessel under the program shall be eligible for job training assistance.

“(3) STATE PARTICIPATION OBLIGATION.—The participation by a State in the program shall be conditioned upon a commitment by the appropriate State entity to ensure that the relevant State fishery meets the requirements of section 312(b) of this Act to ensure excess capacity does not re-enter the fishery.

“(4) NO MATCHING REQUIRED.—The Secretary may waive the matching requirements of section 312 of this Act, section 308 of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107), and any other provision of law under which the Federal share of the cost of any activity is limited to less than 100 percent if the Secretary determines that—

“(A) no reasonable means are available through which applicants can meet the matching requirement; and

“(B) the probable benefit of 100 percent Federal financing outweighs the public interest in imposition of the matching requirement.

“(5) NET REVENUE LIMIT INAPPLICABLE.—Section 308(d)(3) of the Interjurisdictional Fisheries Act (16 U.S.C. 4107(d)(3)) shall not apply to assistance under this section.

“(c) REGIONAL IMPACT EVALUATION.—Within 2 months after a catastrophic regional fishery disaster the Secretary shall provide the Governor of each State participating in the program a comprehensive economic and socio-economic evaluation of the affected region’s fisheries to assist the Governor in assessing the current and future economic viability of affected fisheries, including the economic impact of foreign fish imports and the direct, indirect, or environmental impact of the disaster on the fishery and coastal communities.

“(d) CATASTROPHIC REGIONAL FISHERY DISASTER DEFINED.—In this section the term ‘catastrophic regional fishery disaster’ means a natural disaster, including a hurricane or tsunami, or a regulatory closure (including regulatory closures resulting from judicial action) to protect human health or the marine environment, that—

“(1) results in economic losses to coastal or fishing communities;

“(2) affects more than 1 State or a major fishery managed by a Council or interstate fishery commission; and

“(3) is determined by the Secretary to be a commercial fishery failure under section 312(a) of this Act or a fishery resource disaster or section 308(d) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(d)).”.

(b) SALMON PLAN AND STUDY.—

(1) RECOVERY PLAN.—Not later than 6 months after the date of enactment of this Act, the Secretary of Commerce shall complete a recovery plan for Klamath River Coho salmon and make it available to the public.

(2) ANNUAL REPORT.—Not later than 2 years after the date of enactment of this Act, and annually thereafter, the Secretary of Commerce shall submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Resources on—

(A) the actions taken under the recovery plan and other law relating to recovery of Klamath River Coho salmon, and how those actions are specifically contributing to its recovery;

(B) the progress made on the restoration of salmon spawning habitat, including water conditions as they relate to salmon health and recovery, with emphasis on the Klamath River and its tributaries below Iron Gate Dam;

(C) the status of other Klamath River anadromous fish populations, particularly Chinook salmon; and

(D) the actions taken by the Secretary to address the calendar year 2003 National Research Council recommendations regarding monitoring and research on Klamath River Basin salmon stocks.

(c) OREGON AND CALIFORNIA SALMON FISHERY.—Federally recognized Indian tribes and small businesses, including fishermen, fish processors, and related businesses serving the fishing industry, adversely affected by Federal closures and fishing restrictions in the Oregon and California 2006 fall Chinook salmon fishery are eligible to receive direct assistance under section 312(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(a)) and section 308(d) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(d)). The Secretary may use no more than 4 percent of any monetary assistance to pay for administrative costs.

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SEC. 201. RECREATIONAL FISHERIES INFORMATION.

Section 401 (16 U.S.C. 1881) is amended by striking subsection (g) and inserting the following:

“(g) RECREATIONAL FISHERIES.—

“(1) FEDERAL PROGRAM.—The Secretary shall establish and implement a regionally based registry program for recreational fishermen in each of the 8 fishery management regions. The program, which shall not require a fee before January 1, 2011, shall provide for—

“(A) the registration (including identification and contact information) of individuals who engage in recreational fishing—

“(i) in the Exclusive Economic Zone;

“(ii) for anadromous species; or

“(iii) for Continental Shelf fishery resources beyond the Exclusive Economic Zone; and

“(B) if appropriate, the registration (including the ownership, operator, and identification of the vessel) of vessels used in such fishing.

“(2) STATE PROGRAMS.—The Secretary shall exempt from registration under the program recreational fishermen and charter fishing vessels licensed, permitted, or registered under the laws of a State if the Secretary determines that information from the State program is suitable for the Secretary’s use or is used to assist in completing marine recreational fisheries statistical surveys, or evaluating the effects of proposed conservation and management measures for marine recreational fisheries.

“(3) DATA COLLECTION.—

“(A) IMPROVEMENT OF THE MARINE RECREATIONAL FISHERY STATISTICS SURVEY.—Within 24 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, the Secretary, in consultation with representatives of the recreational fishing industry and experts in statistics, technology, and other appropriate fields, shall establish a program to improve the quality and accuracy of information generated by the Marine Recreational Fishery Statistics Survey, with a goal of achieving acceptable accuracy and utility for each individual fishery.

“(B) NRC REPORT RECOMMENDATIONS.—The program shall take into consideration and, to the extent feasible, implement the recommendations of the National Research Council in its report *Review of Recreational Fisheries Survey Methods (2006)*, including—

“(i) redesigning the Survey to improve the effectiveness and appropriateness of sampling and estimation procedures, its applicability to various kinds of management decisions, and its usefulness for social and economic analyses; and

“(ii) providing for ongoing technical evaluation and modification as needed to meet emerging management needs.

“(C) METHODOLOGY.—Unless the Secretary determines that alternate methods will achieve this goal efficiently and effectively, the program shall, to the extent possible, include—

“(i) an adequate number of intercepts to accurately estimate recreational catch and effort;

“(ii) use of surveys that target anglers registered or licensed at the State or Federal level to collect participation and effort data;

“(iii) collection and analysis of vessel trip report data from charter fishing vessels;

“(iv) development of a weather corrective factor that can be applied to recreational catch and effort estimates; and

“(v) an independent committee composed of recreational fishermen, fishery academics, persons with expertise in assessment and survey design, and other personnel from the National Marine Fisheries Service to evaluate the collection estimates, geographic, and other variables related to intercepts dockside and to identify deficiencies in recreational data collection, and possible correction measures.

“(D) DEADLINE.—The Secretary shall complete the program under this paragraph and implement the improved

Marine Recreational Fishery Statistics Survey not later than January 1, 2009.

“(4) REPORT.—Within 24 months after establishment of the program, the Secretary shall submit a report to Congress that describes the progress made toward achieving the goals and objectives of the program.”.

SEC. 212. IMPACT OF TURTLE EXCLUDER DEVICES ON SHRIMPING.

(a) **IN GENERAL.**—The Undersecretary of Commerce for Oceans and Atmosphere shall execute an agreement with the National Academy of Sciences to conduct, jointly, a multi-year, comprehensive in-water study designed—

- (1) to measure accurately the efforts and effects of shrimp fishery efforts to utilize turtle excluder devices;
- (2) to analyze the impact of those efforts on sea turtle mortality, including interaction between turtles and shrimp trawlers in the inshore, nearshore, and offshore waters of the Gulf of Mexico and similar geographical locations in the waters of the Southeastern United States; and
- (3) to evaluate innovative technologies to increase shrimp retention in turtle excluder devices while ensuring the protection of endangered and threatened sea turtles.

(b) **OBSERVERS.**—In conducting the study, the Undersecretary shall ensure that observers are placed onboard commercial shrimp fishing vessels where appropriate or necessary.

(c) **INTERIM REPORTS.**—During the course of the study and until a final report is submitted to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Resources, the National Academy of Sciences shall transmit interim reports to the Committees biannually containing a summary of preliminary findings and conclusions from the study.

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SEC. 701. STUDY OF THE ACIDIFICATION OF THE OCEANS AND EFFECT ON FISHERIES.

The Secretary of Commerce shall request the National Research Council to conduct a study of the acidification of the oceans and how this process affects the United States.

SEC. 804. TSUNAMI FORECASTING AND WARNING PROGRAM.

(a) **In General.**—The Administrator, through the National Weather Service and in consultation with other relevant Administration offices, shall operate a program to provide tsunami detection, forecasting, and warnings for the Pacific and Arctic Ocean regions and for the Atlantic Ocean, Caribbean Sea, and Gulf of Mexico region.

(b) **Components.**—The program under this section shall—

- (1) include the tsunami warning centers established under subsection (d);
- (2) utilize and maintain an array of robust tsunami detection technologies;
- (3) maintain detection equipment in operational condition to fulfill the detection, forecasting, and warning requirements of this title;
- (4) provide tsunami forecasting capability based on models and measurements, including tsunami inundation models and maps for use in increasing the preparedness of communities, including through the TsunamiReady program;
- (5) maintain data quality and management systems to support the requirements of the program;

(6) include a cooperative effort among the Administration, the United States Geological Survey, and the National Science Foundation under which the Geological Survey and the National Science Foundation shall provide rapid and reliable seismic information to the Administration from international and domestic seismic networks;

(7) provide a capability for the dissemination of warnings to at-risk States and tsunami communities through rapid and reliable notification to government officials and the public, including utilization of and coordination with existing Federal warning systems, including the National Oceanic and Atmospheric Administration Weather Radio All Hazards Program;

(8) allow, as practicable, for integration of tsunami detection technologies with other environmental observing technologies; and

(9) include any technology the Administrator considers appropriate to fulfill the objectives of the program under this section.

(c) System Areas.—The program under this section shall operate—

(1) a Pacific tsunami warning system capable of forecasting tsunami anywhere in the Pacific and Arctic Ocean regions and providing adequate warnings; and

(2) an Atlantic Ocean, Caribbean Sea, and Gulf of Mexico tsunami warning system capable of forecasting tsunami and providing adequate warnings in areas of the Atlantic Ocean, Caribbean Sea, and Gulf of Mexico that are determined—

(A) to be geologically active, or to have significant potential for geological activity; and

(B) to pose significant risks of tsunami for States along the coastal areas of the Atlantic Ocean, Caribbean Sea, or Gulf of Mexico.

(d) Tsunami Warning Centers.—

(1) IN GENERAL.—The Administrator, through the National Weather Service, shall maintain or establish—

(A) a Pacific Tsunami Warning Center in Hawaii;

(B) a West Coast and Alaska Tsunami Warning Center in Alaska; and

(C) any additional forecast and warning centers determined by the National Weather Service to be necessary.

(2) RESPONSIBILITIES.—The responsibilities of each tsunami warning center shall include—

(A) continuously monitoring data from seismological, deep ocean, and tidal monitoring stations;

(B) evaluating earthquakes that have the potential to generate tsunami;

(C) evaluating deep ocean buoy data and tidal monitoring stations for indications of tsunami resulting from earthquakes and other sources;

(D) disseminating forecasts and tsunami warning bulletins to Federal, State, and local government officials and the public;

(E) coordinating with the tsunami hazard mitigation program described in section 805 to ensure ongoing sharing of information between forecasters and emergency management officials; and

(F) making data gathered under this title and post-warning analyses conducted by the National Weather Service or other relevant Administration offices available to researchers.

(e) Transfer of Technology; Maintenance and Upgrades.—

(1) IN GENERAL.—In carrying out this section, the National Weather Service, in consultation with other relevant Administration offices, shall—

(A) develop requirements for the equipment used to forecast tsunamis, which shall include provisions for multipurpose detection platforms, reliability and performance metrics, and to the maximum extent practicable how the equipment will be integrated with other United States and global ocean and coastal observation systems, the global earth observing system of systems, global seismic networks, and the Advanced National Seismic System;

(B) develop and execute a plan for the transfer of technology from ongoing research described in section 806 into the program under this section; and

(C) ensure that maintaining operational tsunami detection equipment is the highest priority within the program carried out under this title.

(2) REPORT TO CONGRESS.—

(A) Not later than 1 year after the date of enactment of this Act, the National Weather Service, in consultation with other relevant Administration offices, shall transmit to Congress a report on how the tsunami forecast system under this section will be integrated with other United States and global ocean and coastal observation systems, the global earth observing system of systems, global seismic networks, and the Advanced National Seismic System.

(B) Not later than 3 years after the date of enactment of this Act, the National Weather Service, in consultation with other relevant Administration offices, shall transmit a report to Congress on how technology developed under section 806 is being transferred into the program under this section.

(f) Federal Cooperation.—When deploying and maintaining tsunami detection technologies, the Administrator shall seek the assistance and assets of other appropriate Federal agencies.

(g) Annual Equipment Certification.—At the same time Congress receives the budget justification documents in support of the President's annual budget request for each fiscal year, the Administrator shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science of the House of Representatives a certification that—

(1) identifies the tsunami detection equipment deployed pursuant to this title, as of December 31 of the preceding calendar year;

(2) certifies which equipment is operational as of December 31 of the preceding calendar year;

(3) in the case of any piece of such equipment that is not operational as of such date, identifies that equipment and describes the mitigation strategy that is in place—

(A) to repair or replace that piece of equipment within a reasonable period of time; or

(B) to otherwise ensure adequate tsunami detection coverage;

(4) identifies any equipment that is being developed or constructed to carry out this title but which has not yet been deployed, if the Administration has entered into a contract for that equipment prior to December 31 of the preceding calendar year, and provides a schedule for the deployment of that equipment; and

(5) certifies that the Administrator expects the equipment described in paragraph (4) to meet the requirements, cost, and schedule provided in that contract.

(h) Congressional Notifications.—The Administrator shall notify the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science of the House of Representatives within 30 days of—

(1) impaired regional forecasting capabilities due to equipment or system failures; and

(2) significant contractor failures or delays in completing work associated with the tsunami forecasting and warning system.

(i) Report.—Not later than January 31, 2010, the Comptroller General of the United States shall transmit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science of the House of Representatives that—

(1) evaluates the current status of the tsunami detection, forecasting, and warning system and the tsunami hazard mitigation program established under this title, including progress toward tsunami inundation mapping of all coastal areas vulnerable to tsunami and whether there has been any degradation of services as a result of the expansion of the program;

(2) evaluates the National Weather Service's ability to achieve continued improvements in the delivery of tsunami detection, forecasting, and warning services by assessing policies and plans for the evolution of modernization systems, models, and computational abilities (including the adoption of new technologies); and

(3) lists the contributions of funding or other resources to the program by other Federal agencies, particularly agencies participating in the program.

(j) External Review.—The Administrator shall enter into an arrangement with the National Academy of Sciences to review the tsunami detection, forecast, and warning program established under this title to assess further modernization and coverage needs, as well as long-term operational reliability issues, taking into account measures implemented under this title. The review shall also include an assessment of how well the forecast equipment has been integrated into other United States and global ocean and coastal observation systems and the global earth observing system of systems. Not later than 2 years after the date of enactment of this Act, the Administrator shall transmit a report containing the National Academy of Sciences' recommendations, the Administrator's responses to the recommendations, including those where the Administrator disagrees with the Academy, a timetable to implement the accepted recommendations, and the cost of implementing all the Academy's recommendations, to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science of the House of Representatives.

(k) Report.—Not later than 3 months after the date of enactment of this Act, the Administrator shall establish a process for monitoring and certifying contractor performance in carrying out the requirements of any contract to construct or deploy tsunami detection equipment, including procedures and penalties to be imposed in cases of significant contractor failure or negligence.

Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554)

Sec. 515. (a) In General.--The Director of the Office of Management and Budget shall, by not later than September 30, 2001, and with public and Federal agency involvement, issue guidelines under sections 3504(d)(1) and 3516 of title 44, United States Code, that provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies in fulfillment of the purposes and provisions of chapter 35 of title 44, United States Code, commonly referred to as the Paperwork Reduction Act.

(b) Content of Guidelines.--The guidelines under subsection (a) shall--

(1) apply to the sharing by Federal agencies of, and access to, information disseminated by Federal agencies; and

(2) require that each Federal agency to which the guidelines apply--

(A) issue guidelines ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by the agency, by not later than 1 year after the date of issuance of the guidelines under subsection (a);

(B) establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the guidelines issued under subsection (a); and

(C) report periodically to the Director--

(i) the number and nature of complaints received by the agency regarding the accuracy of information disseminated by the agency; and

(ii) how such complaints were handled by the agency.

The [full text of Public Law 106-554](#) is available through the Government Printing Office website.

National Oceanic and Atmospheric Administration	NOAA Administrative Order 216-100	
NOAA ADMINISTRATIVE ORDER SERIES	Date of Issuance July 26, 1994	Effective Date July 18, 1994
SUBJECT PROTECTION OF CONFIDENTIAL FISHERIES STATISTICS		

SECTION 1. PURPOSE.

.01 This Order:

- a. prescribes policies and procedures for protecting the confidentiality of data submitted to and collected by the National Oceanic and Atmospheric Administration (NOAA)/National Marine Fisheries Service (NMFS) as authorized or required by law;
- b. informs authorized users of their obligations for maintaining the confidentiality of data received by NMFS;
- c. provides for operational safeguards to maintain the security of data; and
- d. states the penalties provided by law for disclosure of confidential data.

SECTION 2. SCOPE.

This Order covers all confidential data received, collected, maintained, or used by NMFS.

SECTION 3. DEFINITIONS.

- .01 Access to data means the freedom or ability to use data, conditioned by a statement of nondisclosure and penalties for unauthorized use.
- .02 Aggregate or summary form means data structured so that the identity of the submitter cannot be determined either from the present release of the data or in combination with other releases.
- .03 Agreement refers to all binding forms of mutual commitment under a stated set of conditions to achieve a specific objective.
- .04 Assistant Administrator means the Assistant Administrator for Fisheries, NOAA, or a designee authorized to have access to confidential data.
- .05 Authorized Use/User.
 - a. Authorized use is that specific use authorized under the governing statute, regulation, order, contract or agreement.
 - b. An authorized user is any person who, having the need to collect or use confidential data in the performance of an official activity, has read this Order and has signed a statement of nondisclosure

affirming the user's understanding of NMFS obligations with respect to confidential data and the penalties for unauthorized use and disclosure.

.06 Confidential data means data that are identifiable with any person, accepted by the Secretary, and prohibited by law from being disclosed to the public. The term "as used" does not convey data sensitivity for national security purposes [See Executive Order (E.O.) 12356 dated April 2, 1982].

.07 Data refers to information used as a basis for reasoning, discussion, or calculation that a person may submit, either voluntarily or as required by statute or regulation.

.08 GC means the Office of General Counsel, NOAA.

.09 Person means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of such governments, including Regional Fishery Management Councils (Councils).

.10 Public means any person who is not an authorized user.

.11 Region means NMFS Regional field offices, Fisheries Science Centers, and associated laboratories.

.12 Source document means the document, paper, or electronic format on which data are originally recorded.

.13 State employee means any member of a State agency responsible for developing and monitoring the State's program for fisheries or Marine Mammal Protection Act (MMPA) program.

.14 Submitter means any person or the agent of any person who provides data to NMFS either voluntarily or as required by statute or regulation.

SECTION 4. POLICY.

For data subject to this Order, it is NMFS policy that:

a. confidential data shall only be disclosed to the public if required by the Freedom of Information Act (FOIA), 5 U.S.C. 552, the Privacy Act, 5 U.S.C. 552a, or by court order. Disclosure of data pursuant to a subpoena issued by an agency of competent jurisdiction is a lawful disclosure. Disclosure pursuant to a subpoena must be approved by GC;

b. individual identifiers shall be retained with data, unless the permanent deletion is consistent with the needs of NMFS and good scientific practice [See Section 6.02c]; and

c. a notice is required on all report forms requesting data and must comply with 5 U.S.C. 552a(e)(3) and Paperwork Reduction Act requirements in NAO 216-8, Information Collections and Requirements Needing Office of Management and Budget Clearance. [See E.O. 12600 of June 23, 1987, for additional information regarding the rights of submitters to designate commercial confidential data at the time of submission.]

SECTION 5. OPERATIONAL RESPONSIBILITIES.

.01 The Regional Director of each region (or, in the case of headquarters, each Office Director) has the responsibility to maintain the confidentiality of all data collected, maintained, and disclosed by the respective region.

.02 Each region shall submit to the Assistant Administrator specific procedures governing the collection, maintenance, and disclosure of confidential data. These documents shall be compiled as regional handbooks following the guidelines and standards:

- a. handbooks are to be developed in detail to ensure the maintenance of confidential data on a functional basis in each region; and
- b. handbooks shall be coordinated through the National Data Management Committee (a NMFS group established by the Assistant Administrator to develop data management policies and procedures) and reviewed annually. The regional handbooks will address, at minimum, the contents of Sections 6-7.

SECTION 6. PROCEDURES.

.01 Data Collection. To collect data, the Secretary may use Federal employees, contractor employees, or, pursuant to an agreement, State employees.

a. General Requirements.

1. Personnel authorized to collect Federal data must maintain all documents containing confidential data in secure facilities; and
2. may not disclose confidential data, whether recorded or not, to anyone not authorized to receive and handle such data.

b. Specific Requirements.

1. Each Federal or contractor employee collecting or processing confidential data will be required to read, date, and sign a statement of nondisclosure, that affirms the employee's understanding of NMFS obligations with respect to confidential data and the penalties for unauthorized use and disclosure of the data. Upon signature, the employee's name will be placed on record as an "authorized user," and the employee will be issued certification.
2. Data collected by a contractor must be transferred timely to authorized Federal employees; no copies of these data may be retained by the contractor. NMFS may permit contractors to retain aggregated data. A data return clause shall be included in the agreement. All procedures applicable to Federal employees must be followed by contractor employees collecting data with Federal authority.
3. Under agreements with the State, each State data collector collecting confidential data will sign a statement at least as protective as the one signed by Federal employees, which affirms that the signer understands the applicable procedures and regulations and the penalties for unauthorized disclosure.

.02 Maintenance.

a. Maintenance is defined as the procedures required to keep confidential data secure from the time the source documents are received by NMFS to their ultimate disposition, regardless of format. [See National Institute of Standards and Technology "Computer Security Publications, List 91" for guidance.]

b. Specific procedures in regional handbooks must deal with the following minimum security requirements, as well as any others that may be necessary because of the specific data, equipment, or physical facilities:

1. the establishment of an office or person responsible for evaluating requests for access to data;
2. the identifications of all persons certified as authorized users. These lists shall be kept current and reviewed on an annual basis;
3. the issuance of employee security rules that emphasize the confidential status of certain data and the consequences of unauthorized removal or disclosure;
4. the description of the security procedures used to prevent unauthorized access to and/or removal of confidential data;
5. the development of a catalog/inventory system of all confidential data received including: the type of source document; the authority under which each item of data was collected; any statutory or regulatory restriction(s) which may apply; and routing from the time of receipt until final disposition; and
6. The development of an appropriate coding system for each set of confidential data so that access to data that identifies, or could be used to identify, the person or business of the submitter is controlled by the use of one or more coding system(s). Lists that contain the codes shall be kept secure.

c. The permanent deletion of individual identifiers from a database shall be addressed on a case-by-case basis. Identifiers may only be deleted after:

1. future uses of data have thoroughly been evaluated, e.g., the need for individual landings records for allocating shares under an individual transferable quota program;
2. consultation with the agency(s) collecting data (if other than NMFS), the relevant Council(s), and NMFS Senior Scientist; and
3. concurrence by the Assistant Administrator has been received prior to deletion.

.03 Access to Data Subject to This Order.

a. General Requirements. In determining whether to grant a request for access to confidential data, the following information shall be taken into consideration:

1. the specific types of data required;

2. the relevance of the data to the intended uses;
3. whether access will be continuous, infrequent, or one-time;
4. an evaluation of the requester's statement of why aggregate or non-confidential summaries of data would not satisfy the requested needs; and
5. the legal framework for the disclosure, in accordance with GC and this Order.

b. Within NMFS. NMFS employees requesting confidential data must have certification as being authorized users for the particular type of data requested.

c. Councils. Upon written request by the Council Executive Director:

1. "authorized user" status for confidential data collected under the Magnuson Fishery Conservation and Management Act (Magnuson Act) may be granted to a Council for use by the Council for conservation and management purposes consistent with the approval of the Assistant Administrator as described in 50 CFR 603.5;
2. "authorized user" status for confidential data, collected under the Magnuson Act and MMPA, will be granted to Council employees who are responsible for Fishery Management Plan development and monitoring; and
3. Councils that request access to confidential data must submit, on an annual basis, a copy of their procedures for ensuring the confidentiality of data to the region, or in the case of intercouncil fisheries, regions. The procedures will be evaluated for their effectiveness and, if necessary, changes may be recommended. As part of this procedure, an updated statement of nondisclosure will be included for each employee and member who requires access to confidential data.

d. States.

1. Requests from States for confidential data shall be directed in writing to the NMFS office that maintains the source data.
2. Each request will be processed in accordance with any agreement NMFS may have with the State:
 - (a) confidential data collected solely under Federal authority will be provided to a State by NMFS only if the Assistant Administrator finds that the State has authority to protect the confidentiality of the data comparable to, or more stringent than, NMFS' requirements; and
 - (b) the State will exercise its authority to limit subsequent access and use of the data to those uses allowed by authorities under which the data was collected.
3. If the State has no agreement with NMFS for the collection and exchange of confidential data, the request shall be treated as a public request and disclosure may be denied subject to FOIA or the Privacy Act.

4. Where a State has entered into a cooperative exchange agreement with another State(s), NMFS will facilitate transfer or exchange of State-collected data in its possession if:

- (a) NMFS has written authorization for data transfer from the head of the collecting State agency; and
- (b) the collecting State has provided NMFS a list of authorized users in the recipient State(s); and
- (c) the collecting State agrees to hold the United States Government harmless for any suit that may arise from the misuse of the data.

e. Contractors.

- 1. Pursuant to an agreement with NMFS, a NMFS contractor (including universities, Sea Grant investigators, etc.) may be granted "authorized user" status consistent with this Order if the use furthers the mission of NMFS.
- 2. The region will notify the contractor of its decision on access in writing within 30 calendar days after receipt of the request.
- 3. Contingent upon approval, the contractor will be provided with details regarding conditions of data access, any costs involved, formats, timing, and security procedures. If the request is denied, the reason(s) for denial will be given by the NMFS office involved. The denial will not preclude NMFS consideration of future requests from the contractor.
- 4. If access is granted, language in the agreement specifically dealing with confidentiality of data will be required. The language shall include all of the relevant portions of this Order and shall prohibit the further disclosure of the data. No data may be retained beyond the termination date of the agreement; and any disclosure of data derived from the accessed confidential data must be approved by NMFS.
- 5. Each agreement shall be reviewed by GC prior to its execution, and shall, to the extent possible, be consistent with the model agreement contained in Appendix D.

f. Submitters. The Privacy Act allows for data to be released back to the submitter upon receipt and verification of a written request stating the data required.

04. Requests for Confidential Data. NMFS is authorized to collect data under various statutes [See Appendix A]. Two types of statutes govern the disclosure of confidential data collected by the Federal Government, those that contain specific and non-discretionary language within the Act, and those that provide overall guidance to the Federal Government. Sections of these Acts that deal with exceptions to disclosure may be found in Appendix B.

a. Magnuson Act and MMPA.

- 1. Data collected under 16 U.S.C. 1853 (a) or (b), and 16 U.S.C. 1383a(c),(d),(e),(f),or (h) will be handled in the following manner:
 - (a) data will only be disclosed to Federal employees and Council employees who are responsible for management plan development and monitoring; State employees pursuant to an agreement with the

Secretary that prevents public disclosure of the identity or business of any person; a Council for conservation and management purposes [not applicable for MMPA data] or when required by court order. [See 50 CFR 229.10 and part 603];

(b) Council advisory groups are not permitted access to such confidential data [See 50 CFR 601.27(b)];

(c) requests from States that do not have an agreement with the Secretary will be processed in accordance with the Privacy Act or FOIA; and

(d) data collected by an observer under 16 U.S.C. 1853 (a) or (b) are not considered to have been "submitted to the Secretary by any person," and therefore are not confidential under Section 6.04.a of this Order. Data collected by an observer may be withheld from disclosure under the Privacy Act, or subsections (b)(3),(4),(5),(6), or (7) of FOIA.

2. Confidential data submitted to the Secretary under other Sections of the Magnuson Act or MMPA may only be disclosed in accordance with the Privacy Act or FOIA. Types of data and the collection authority may include among others:

(a) Processed Product Data -- 16 U.S.C. 1854(e);

(b) Fish Meal and Oil, Monthly -- 16 U.S.C. 1854(e);

(c) Data Collected Under State Authority and Provided to NMFS -- 16 U.S.C. 1854(e); and

(d) Tuna-Dolphin Observer Program -- 16 U.S.C. 1361 *et seq.*

b. South Pacific Tuna Act. Data collected under South Pacific Tuna Act 16 U.S.C. 973j is protected from disclosure to the public in accordance with section 973j(b).

c. Other Statutes. Confidential data collected under other NMFS programs as authorized by statutes other than South Pacific Tuna Act (16 U.S.C 973j), MMPA (16 U.S.C. 1361 *et seq.*), and Magnuson Act (16 U.S.C. 1801 *et seq.*), may only be disclosed to the public in accordance with the Privacy Act and FOIA. Types of data and the collection authority may include among others:

(1) Monthly Cold Storage Fish Report -- 16 U.S.C. 742(a);

(2) Market News Data -- 16 U.S.C. 742(a); and

(3) Seafood Inspection Data -- 7 U.S.C. 1621 *et seq.*

d. Special Procedures.

1. Cold Storage Summary Reports. NMFS publishes monthly cold storage holdings of fishery products. Advance knowledge of the content of these reports could give those who trade in the products an opportunity to gain competitive advantage. Therefore, in addition to the confidential protection provided to individual reports, the monthly summary report will not be disclosed to the public until 3:00 p.m. Eastern Time of the official release date. Release dates for these data are published 1 year in

advance in November, and can be obtained from the NMFS Fisheries Statistics Division.

2. Surplus commodity purchases by USDA. NMFS and the Department of Agriculture (USDA) have an interagency agreement relating to the purchase of surplus fishery products. NMFS is responsible for providing confidential data and recommendations to the USDA regarding these purchases. Advance knowledge of these data could cause a competitive advantage or disadvantage to the general public, fishing industry, and the program. Therefore, all NMFS personnel engaged in the surplus commodity purchase program will be required to sign a specific "USDA Responsibility Statement." A copy will be maintained in the Office of Trade Services.

3. Agreements for Disclosure of Confidential Data.

A letter of agreement may authorize the disclosure of confidential data when both the Government and the submitter agree to disclosure of the data. The need to provide security for the data will vary depending on the type of data collected and the form of the disclosure. Disclosure can be undertaken if all the following conditions are met:

- (a) the person has agreed in writing to the disclosure and is aware that disclosure is irrevocable;
- (b) the recipient has been informed in writing of the sensitivity of the data; and
- (c) the wording of the agreement has been approved by GC.

.05 Disposal. NAO 205-1, NOAA Records Management Program, shall govern the disposition of records covered under this Order.

SECTION 7. PENALTIES.

.01 Civil and Criminal. Persons who make unauthorized disclosure of confidential data may be subject to civil penalties or criminal prosecution under:

- a. Trade Secrets Act (18 U.S.C. 1905);
- b. Privacy Act (5 U.S.C. 552a(i)(1));
- c. Magnuson Act (16 U.S.C. 1858); and
- d. MMPA (16 U.S.C. 1375).

.02 Conflict of Interest. Employees are prohibited by Department of Commerce employee conduct regulations [15 CFR part 0] and by ethics regulations applicable to the Executive Branch [5 CFR 2635.703] from using nonpublic information subject to this Order for personal gain, whether or not there is a disclosure to a third party.

.03 Disciplinary Action. Persons may be subject to disciplinary action, including removal, for failure to comply with this Order. Prohibited activities include, but are not limited to, unlawful disclosure or use of the data, and failure to comply with implementing regulations or statutory prohibitions relating to the collection, maintenance, use and disclosure of data covered by this Order.

SECTION 8. EFFECT ON OTHER ISSUANCES.

None.

Director, Office of Administration

Office of Primary Interest:
National Marine Fisheries Service
Office of Research and Environmental Information
Fisheries Statistics Division (F/RE1)

STATUTES

NMFS is authorized to collect biological, economic, social, and other data under the following statutes, among others:

- a. Agricultural Marketing Act of 1946, 7 U.S.C. 1621-1627;
- b. Agricultural Trade Development and Assistance Act of 1954, 7 U.S.C. 1704;
- c. Anadromous Fish Conservation Act, 16 U.S.C. 757-757f;
- d. Atlantic Coast Fish Study for Development and Protection of Fish Resources, 1950, 16 U.S.C. 760a;
- e. Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971-971i;
- f. Eastern Pacific Tuna Licensing Act of 1984, 16 U.S.C. 972-972h;
- g. Endangered Species Act, 16 U.S.C. 1531-1543;
- h. Farrington Act of 1947, 16 U.S.C. 758-758d;
- i. Fish and Wildlife Act of 1956, 16 U.S.C. 742(a) *et seq*;
- j. Fish and Wildlife Coordination Act of 1934, 16 U.S.C. 661-666c;
- k. Fishery Market News Service Act of 1937; 50 Stat. 296;
- l. Fur Seal Act, 16 U.S.C. 1151-1175;
- m. Interjurisdictional Fisheries Act of 1986, 16 U.S.C. 4101 *et seq*;
- n. Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq*;
- o. Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq*;
- p. Marine Migratory Gamefish Act of 1959, 16 U.S.C. 760e;
- q. South Pacific Tuna Act of 1988, 16 U.S.C. 973-973n; and
- r. Tuna Conventions Act of 1950, 16 U.S.C. 951-961.

PRIMARY PROTECTIVE AUTHORITIES

a. Magnuson Fishery Conservation and Management Act,
16 U.S.C. 1853d, (Magnuson Act).

Data required as part of a reporting requirement under the Magnuson Act are protected from disclosure to the public by section 303(d) which provides: "Any statistic submitted to the Secretary by any person in compliance with any requirement under subsections 303(a) and (b) shall be confidential and shall not be disclosed except:

- (1) to Federal employees and Council employees who are responsible for management plan development and monitoring;
- (2) to State employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person; or
- (3) when required by court order.

The Secretary shall, by regulation [See 50 CFR part 603], prescribe such procedures as may be necessary to preserve such confidentiality, except that the Secretary may release or make public any such statistics in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such statistics. 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 statistic submitted in compliance with a requirement under subsection (a) or (b)."

b. Marine Mammal Protection Act, 16 U.S.C. 1383a(j), (MMPA)

Certain MMPA data are protected from disclosure by section 114(j) which provides: "Any information collected under subsection (c),(d),(e),(f), or (h) of this section shall be confidential and shall not be disclosed except:

- (A) to Federal employees whose duties require access to such information;
- (B) to State employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person;
- (C) when required by court order; or
- (D) in the case of scientific information involving fisheries, to employees of Regional Fishery Management Councils who are responsible for fishery management plan development and monitoring....
The Secretary shall prescribe such procedures [See 50 CFR 229.10] as may be necessary to preserve such confidentiality, except that the Secretary shall release or make public any such information in aggregate, summary, or other form which does not directly or indirectly disclose the identity or business of any person."

c. South Pacific Tuna Act 16 U.S.C. 973j(b).

Certain data are protected from disclosure by section 973j(b) which provides: "Information provided by license holders in Schedules 5 and 6 of Annex 1 of the Treaty shall be provided to the Secretary for transmittal to the Administrator and to an entity designated by the license holder. Such information thereafter shall not be released and shall be maintained as confidential by the Secretary, including information requested under Section 552 of Title 5, unless disclosure is required under court order or unless the information is essential for an enforcement action under section 973c, 973h(c), or 973i of this title, or any other proper law enforcement action."

d. Freedom of Information Act, 5 U.S.C. 552 (FOIA)

Although FOIA generally requires agencies to make records available to any person requester, it does provide specific exemptions for which an agency may deny disclosure as follows:

"...(b) This section does not apply to matters that are... (3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) records or information compiled for law enforcement purposes,..."

e. Trade Secrets Act 18 U.S.C. 1905

The Trade Secrets Act forbids disclosure only to the extent that other laws do not require the information be released. The courts have interpreted its protection to be virtually coextensive with exception of FOIA exemption 4.

The Trade Secrets Act states: "Whoever, being an officer or employee of the United States or of any department or agency thereof, or agent of the Department of Justice as defined in the Antitrust Civil Process Act (15 U.S.C. 1311-1314), publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except

as provided by law; shall be fined not more than \$1,000, or imprisoned not more than one year, or both; and shall be removed from office or employment."

f. Privacy Act, 5 U.S.C. 552a(b)

Privacy Act records are to be handled according to NAO 205-15.

The Privacy Act prohibits disclosure stating:

"...(b) Conditions of Disclosure. No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be:

- (1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;
- (2) required under section 552 of this title;
- (3) for a routine use as defined in subsection (a) (7) of this section and described under subsection (e) (4) (D) of this section;
- (4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;
- (5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;
- (6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;
- (7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;
- (8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;
- (9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;
- (10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;
- (11) pursuant to the order of a court of competent jurisdiction; or

(12) to a consumer reporting agency in accordance with section 3711(f) of title 31.

g. Government in the Sunshine Act 5 U.S.C. 552b(c)

The Sunshine Act provides for open access to meetings held by the government. The Act provides for certain cases when, with prior notice to the public, a meeting may be closed.

Authorized users of NMFS confidential data should be aware of these exceptions when holding an open meeting. The Act states:

"Except in a case where the agency finds that the public interest requires otherwise, the second sentence of subsection (b) shall not apply to any portion of an agency meeting, and the requirements of subsections (d) and (e) shall not apply to any information pertaining to such meeting otherwise required by this section to be disclosed to the public, where the agency properly determines that such portion or portions of its meeting or the disclosure of such information is likely to ... (3) disclose matters specifically exempted from disclosure by statute (other than section 552 of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) involve accusing any person of a crime, or formally censuring any person;

(6) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;..."

MODEL
AGREEMENT OF ACCESS

I. Purpose

The purpose of this agreement is to outline the understanding between the National Marine Fisheries Service (NMFS) and the _____ regarding access to, subsequent storage, and usage of confidential data provided to the Secretary of Commerce.

II. References and Authorities

[Cite specific Authorities]

III. Definitions

The terms in this agreement except where specifically defined below have the meanings that are prescribed in 50 CFR 601.2.

- A. The term "detailed statistics" refers solely to the use of raw unaggregated data submitted in confidence in response to Federal requirements and/or requests.
- B. The term "landings data" refers to those data related to the catch, landings, and value of commercial fishery products collected through the use of "weigh-out" slips by agents of the NMFS or the term "port sampling data" refers to those data related to the catch, fishing effort, etc., of commercial fishermen collected by means of personal interviews by agents of the NMFS.

IV. Responsibilities of the Parties

A. Contractor

1. Disclosure of the data made available under this agreement to anyone other than a duly authorized NMFS or _____ employee is forbidden unless specifically provided for herein. A list of _____ employees and agents authorized to receive the data is included in this agreement. Any additions or deletions must be approved by the NMFS _____ Regional Office.

For the purposes of access to, storage, and disclosure of the subject data, agents and employees of the contractor shall be considered as agents of the Federal Government and shall be subject to the provisions of sections 1905 and 201-209 of Title 18 of the United States Code (commonly referred to as the Trade Secrets Laws and Conflict of Interests Laws respectively).

2. Contractor safeguards of data include:
- a. Signed, witnessed, and approved certificates from each employee and prospective agent of the contractor as to their awareness of the provisions of 18 U.S.C. 1905 and of sections 201-209 for misuse of raw data of a confidential nature. Each approved certificate will be appended to, and made a part of the agreement.
 - b. Each certificate shall continue in force for the duration of the employee or agent's relationship with the contractor; and for one year thereafter; upon termination of the relationship of any contractor access control codes will be changed immediately through an amendment to this agreement.
 - c. All print-outs of raw, unaggregated data will be kept under lock and key by the contractor and by the principal agent(s) (Principal Investigators) of the contractors.
 - d. Contractor employees and agents will be required to sign out for required print-outs and, upon return of the print-outs, to sign again. Logbooks will be maintained under lock and key by
-

(i.e., the senior contract employees or by the principal agents (Principal Investigators)).

- e. Remote, direct access to raw data of confidential nature by contractor employees and/or agents will be by dual coding, i.e., two persons will be required to achieve access, each possessing a code number known and maintained only by himself or herself. The computer addressed should log both numbers prior to allowing access. A monthly tabulation, by day, of access/code numbers logged will be forwarded to the NMFS Regional Office.
 - f. All print-outs and other documents containing confidential data, when surplus to the needs of the contractor employees or agents, will be returned to NMFS.
3. Identification of persons or organizations who will have access to data under this agreement:
- 4. The contractor hereby holds NMFS, NOAA, DOC, and the United States harmless for any civil suit that may arise from the misuse by the contractor of the subject data.
 - 5. The contractor agrees to notify NMFS of the filing of or notice of the probability of a civil suit being filed against the contractor involving the subject data.
 - 6. The contractor agrees to notify the appropriate NMFS Regional office on termination of access need on the part of any contractor employee and agent.

B. Federal

The NMFS, _____ Region, shall provide to the contractor on request:

- 1. A current identification of Federally collected fishery-related data as specified in the agreement.
- 2. A means of access to the data as currently available in computerized format.

V. General Understanding

It is understood between the parties to this agreement that the contractor may let subcontracts to private and public organizations for the access, collation, analysis, and/or storage of the subject data; and that such contracts shall include a provision incorporating all of the safeguards, certificates, prohibitions, and limitations of this agreement. The contracts will include at a minimum:

- A. an identification of those people who would have access to the data;
- B. incorporation of the access safeguards found in section IV(A)(2); and
- C. provision for the execution of employee certificate(s) as required by this agreement.

VI. Safeguards

The _____ on behalf of itself, its employees, contractors, and agents specifically agrees:

- A. To establish and maintain procedures for preserving the confidentiality of the data made accessible to it under this agreement.
- B. To provide the _____ appropriate NMFS Regional Office with a description of the procedures specified in paragraph VI(A) of this section so that their effectiveness may be determined and evaluated, and to make any changes in such procedures as may be requested.
- C. Not to disclose any data in a manner that is inconsistent with this agreement.

VII. Review and Amendments

- A. This agreement will be reviewed periodically, but not less than annually. It may be subject to reconsideration at such other times as may be required or requested and as agreed to by the parties entering into the agreement.
- B. This agreement may be amended at any time by the mutual consent of the parties entering into the agreement.

VIII. Other Provisions

Nothing herein is intended to conflict with current NOAA or NMFS orders. If the terms of this agreement are inconsistent with controlling NMFS orders, then those portions of this agreement which are determined to be inconsistent shall be invalid; but the remaining terms and conditions of this agreement not affected by any inconsistency shall remain in full force and effect. At the first opportunity for review of the agreement, such changes as are deemed necessary will be accomplished by either an amendment to this agreement or by entering into a new agreement, which ever is deemed expedient to the interest of both parties.

Should disagreement arise as to the interpretation of the provisions of this agreement, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be reduced to writing by each party and presented to the other party for consideration at least 14 days prior to forwarding to the Assistant Administrator for Fisheries for appropriate resolution.

XI. Terms of Agreement

The terms of this agreement will become effective upon the signature of both the approving officials of NMFS and the contractor entering into this agreement.

The terms of this agreement will remain in effect for the period of the contract unless terminated by (1) mutual agreement, (2) (specific date) with advanced (60-day) written notice by either party for cause or (3) the operation/terms of this agreement, whichever shall first occur.

Signature for Contractor	Printed Name & Title	Date
Signature for NMFS	Printed Name & Title	Date

CERTIFICATE

Date: _____

This is to certify that:

1. As a (temporary) (full-time) (contractual) employee of the _____, I have need for access to and for usage of certain written records, data files, and data banks pertaining to fisheries matters; and that:
2. I am fully aware of the civil and criminal penalties prescribed by law for Federal employees who would misuse or otherwise violate the confidentiality of such data; and that
3. To gain the necessary access and usage, I request that I be considered as a Federal employee, for the sole purpose of the laws regarding confidentiality of data, but that no remuneration or other benefit shall accrue as a result.

Signature of Employee

Signature of Witness

Approved until otherwise notified; as per conditions of the Agreement of Access dated _____, of which this certificate is made a part.

Signature of Contractor's Representative

Printed Name and Title of
Contractor's Representative

**SOUTHEAST FISHERIES SCIENCE CENTER
STATEMENT OF NON-DISCLOSURE**

This is to certify that:

1. It has been determined by **Name:** _____;

Title: _____; **Organization:** _____; that in order for me to carry out my fisheries-related work assignments I require access to NMFS Government computer systems and/or NMFS data files which may contain information declared to be held confidential by NMFS. My affiliation with the NMFS Southeast Regional Office or the Southeast Fisheries Science Center is:

Affiliation (Check one)	(Complete All)
<input type="checkbox"/> NMFS	Agency: _____
<input type="checkbox"/> Other Federal	
<input type="checkbox"/> State Employee: (State) _____	Division: _____
<input type="checkbox"/> Fisheries Council	
<input type="checkbox"/> Fisheries Commission	Location: _____
<input type="checkbox"/> Contractor	
<input type="checkbox"/> Other (Specify) _____	_____

2. In using NMFS computers and data, I agree to uphold the government's security provisions for preserving the safety and integrity of the systems accessed and protecting against misuse or destruction of the computer systems and data being accessed.
3. I have read NOAA Administrative Order 216-100 (PROTECTION OF CONFIDENTIAL FISHERIES STATISTICS) and/or NOAA Computer Users' Guide to Protecting Information Resources and understand the contents of these documents.
4. I am fully aware of the civil and criminal penalties for unauthorized disclosure, misuse, or other violation of the confidentiality of such data.
5. I will not knowingly disclose any data identified as confidential under this agreement to any person or persons, except as authorized by the NMFS Assistant Administrator for Fisheries, or the Administrator's designee, in accordance with the law, as authorized by the NOAA office of General Counsel.

Notification: This notification is to inform you that NOAA/NMFS monitors all usage of Electronic mail, Internet activities, and Data retrieval under the jurisdiction of the Federal Government. There are severe penalties for the misuse of these resources. Your Signature on this form acknowledges you have been notified and are aware of this monitoring.

Name of User (type or print)	Signature	Date
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Name (NMFS Supervisor/Program Mgr.)	Signature	Date
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Name of the SEC-ITSSO	Signature	Date
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Access Certification: _____

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act.

Dated: October 31, 2006.

David M. Spooner,
Assistant Secretary for Import Administration.

[FR Doc. E6-18886 Filed 11-7-06; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

Exporters' Textile Advisory Committee (ETAC); Notice of Open Meeting

A meeting of the Exporters' Textile Advisory Committee will be held on December 7, 2006 from 1:00 pm–4:00 pm at the Trade Information Center, Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Avenue, NW, Washington, DC, 20004, Training Room C.

The ETAC is a national advisory committee that advises Department of Commerce officials on the identification of export barriers, and on market expansion activities. With the elimination of textile quotas under the WTO agreement on textiles and clothing, the Administration is committed to encouraging U.S. textile and apparel firms to export and remain competitive in the global market.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes, contact Rachel Alarid at (202) 482-5154. Date: November 2, 2006.

Philip J. Martello,

Acting Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. E6-18879 Filed 11-7-06; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; NOAA's Teacher at Sea 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, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 8, 2007.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Elizabeth McMahon, (301) 713-7611, or elizabeth.mcmahon@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA provides educators an opportunity to gain first-hand experience with field research activities through the Teacher at Sea Program. Through this program, educators spend up to 3 weeks at sea on a NOAA research vessel, participating in an on-going research project with NOAA scientists. The application solicits information from interested educators: Basic personal information, teaching experience and ideas for applying program experience in their classrooms, plus two recommendations and a NOAA Health Services Questionnaire required of anyone going to sea. Once educators are selected and participate on a cruise, they write a report detailing the events of the cruise and ideas for classroom activities based on what they learned while at sea. These materials are then made available to other educators so they may benefit from the experience, without actually going to sea themselves. NOAA does not collect information from this universe of respondents for any other purpose.

II. Method of Collection

On-line forms can be filled-in on-line, printed, and mailed. Persons with full Adobe Acrobat software can save the on-line form and submit it electronically.

III. Data

OMB Number: 0648-0283.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 375.

Estimated Time Per Response: 45 minutes to read a complete application; 15 minutes to complete a Health Services Questionnaire; 15

minutes to deliver and discuss recommendation forms to persons from whom recommendations are being requested; 15 minutes to complete a recommendation form; and 2 hours for a follow-up report.

Estimated Total Annual Burden Hours: 309.

Estimated Total Annual Cost to Public: \$660.

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: November 2, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6-18865 Filed 11-7-06; 8:45 am]

BILLING CODE 3510-12-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Southeast Region Office Socioeconomic Survey of Gulf Shrimp Fishermen

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

ACTION: Notice.

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

DATES: Written comments must be submitted on or before January 8, 2007.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Christopher Liese, 305-365-4109 or Christopher.Liese@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA proposes to collect socioeconomic data from commercial fishermen in the Gulf of Mexico shrimp fishery who hold a permit for shrimp fishing in federal waters (U.S. Exclusive Economic Zone). Information about revenues, variable and fixed costs, capital investment and other socioeconomic information will be collected. This data complements other data already collected and is needed to conduct socioeconomic analyses that will improve the management of the shrimp fishery and to satisfy legal requirements. The data will be used to assess how fishermen will be impacted and respond to federal regulation likely to be considered by fishery managers. In addition, this data will be used to determine how fishing communities will be impacted by proposed fishing regulations.

II. Method of Collection

The information will be collected either through face-to-face interviews or by mail.

III. Data

OMB Number: 0648-0476.

Form Number: None.

Type of Review: Regular submission.

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

Estimated Number of Respondents: 900.

Estimated Time per Response: 60 minutes.

Estimated Total Annual Burden Hours: 900.

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: November 2, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6-18887 Filed 11-7-06; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Olympic Coast National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice and request for applications.

SUMMARY: The Olympic Coast National Marine Sanctuary (OCNMS or sanctuary) is seeking applicants for the following vacant seats on its Sanctuary Advisory Council (council): Education and Commercial Fishing. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to service 3-year terms, pursuant to the council's Charter
DATES: Applications are due by December 15, 2006.

ADDRESSES: Application kits may be obtained from Andrew Palmer, Olympic Coast National Marine Sanctuary, 115 East Railroad Ave., Suite 301, Port Angeles, WA 98362. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT:

Andrew Palmer, Olympic Coast National Marine Sanctuary, 115 East Railroad Ave., Suite 301, Port Angeles, WA 98362, Phone (350) 457-6622, ext. 15, e-mail andrew.palmer@noaa.gov.

SUPPLEMENTARY INFORMATION: Sanctuary Advisory Council members and alternates serve three-year terms. The Advisory Council meets bi-monthly in public sessions in communities in and around the Olympic Coast National Marine Sanctuary. The Olympic Coast National Marine Sanctuary Advisory Council was established in December 1998 to assure continued public participation in the management of the sanctuary. Serving in a volunteer capacity, the advisory council's 15 voting members represent a variety of local user groups, as well as the general public. In addition, five Federal Government agencies and one federally funded program serve as non-voting, ex officio members. Since its establishment, the advisory council has played a vital role in advising the sanctuary and NOAA on critical issues. In addition to providing advice on management issues facing the Sanctuary, the Council members serve as a communication bridge between constituents and the Sanctuary staff.

Authority: 16 U.S.C. 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

November 1, 2006.

Daniel J. Basta,

Director, National Marine Sanctuary Program, National Ocean Service, National Oceanic and Atmosphere Administration.

[FR Doc. 06-9115 Filed 11-7-06; 8:45 am]

BILLING CODE 3510-NK-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 103006A]

Endangered Species; File No. 1547

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that the New York State Department of Environmental Conservation (Kathryn Hattala, Principal Investigator), 21 South Putt Corners Road; New Paltz, NY 12561 has been issued a permit to conduct scientific research on shortnose sturgeon (*Acipenser brevirostrum*).