

# NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 08/22/2008

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

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 03/26/2008

ACTION REQUESTED: Extension without change of a currently approved collection  
TYPE OF REVIEW REQUESTED: Regular  
ICR REFERENCE NUMBER: 200803-0648-005  
AGENCY ICR TRACKING NUMBER:  
TITLE: Alaska License Limitation Program for Groundfish, Crab, and Scallops  
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change  
OMB CONTROL NUMBER: 0648-0334

The agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

EXPIRATION DATE: 08/31/2011

DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	244	544	1,000
New	142	268	1,151
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	0	0	0
Change due to Agency Adjustment	-102	-276	151
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE:

OMB Authorizing Official:

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

List of ICs

IC Title	Form No.	Form Name	CFR Citation
Groundfish, Crab, and Scallop Transfers	NA, NA	Application for transfer LLP scallop license, Application for transfer of groundfish and crab LLP licenses	50 CFR 679
Transfer Appeals			50 CFR 679

# PAPERWORK REDUCTION ACT SUBMISSION

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

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

## 19. Certification for Paperwork Reduction Act Submissions

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

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

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

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

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

Signature of Senior Official or designee

Date

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

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

**SUPPORTING STATEMENT  
ALASKA LICENSE LIMITATION PROGRAM  
FOR GROUND FISH, CRAB AND SCALLOPS  
OMB CONTROL NO.: 0648-0334**

**INTRODUCTION**

National Marine Fisheries Service (NMFS), Alaska Region manages the fisheries in the exclusive economic zone off the coast of Alaska under the 1) Fishery Management Plan for Groundfish of the Gulf of Alaska, 2) Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area, 3) Fishery Management Plan (FMP) for Bering Sea/Aleutian Islands King and Tanner Crabs, and the 4) Fishery Management Plan for the Scallop Fishery off Alaska FMP. Under the Scallop FMP, management of all aspects of the scallop fishery, except limited access, is delegated to the State of Alaska. The North Pacific Fishery Management Council prepared, and NMFS approved, the FMP under the authority of the [Magnuson-Stevens Fishery Conservation and Management Act](#), 16 U.S.C. 1801 et seq. as amended by Public Law 109-479. These FMPs are implemented by regulations at [50 CFR part 679](#). This action requests renewal on this collection.

**A. JUSTIFICATION**

The License Limitation Program (LLP) is a step toward a comprehensive rationalization program to solve the conservation and management problems of Alaska's open access fisheries. The LLP provides stability in the fishing industry and identifies the field of participants in the fisheries. The LLP restricts access to the commercial groundfish fisheries, commercial crab fisheries and commercial scallop fisheries in the exclusive economic zone (EEZ) off Alaska except for certain areas where alternative programs exist. The intended effect of the LLP is to limit the number of participants and reduce fishing capacity in fisheries off Alaska.

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

The LLP originally collected basic information in order to make decisions regarding which owners of vessels were issued licenses. The decisions were based on the fishing history of the vessel and on the vessel's size. Now that the selection process is completed, and no more new permits will be issued, LLPs are issued to qualifying vessel owners only through transfer.

**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.**

Any person who wishes to deploy a harvesting vessel in the LLP king and tanner crab fisheries in the Bering Sea/Aleutian Islands (BSAI) and in the LLP groundfish fisheries in the Gulf of Alaska or the BSAI must hold a valid groundfish LLP license or crab LLP license.

The LLP is a Federal program; LLP licenses are not required for participation in fisheries that occur in the waters of the State of Alaska. The application period for initial allocation of groundfish and crab LLP licenses was from September 13, 1999, through December 17, 1999.

The application period for initial allocation of scallop LLP licenses was January 16, 2001, through February 12, 2001. Applications postmarked or hand-delivered after the ending date will be denied as untimely; however, persons who believe that a license should be issued to them may apply at any time for consideration.

The fisheries are essentially closed to any new LLP except by transfer. The LLP license authorizes a license holder to deploy a vessel to conduct directed fishing for LLP species only as listed in the endorsements on the face of the license, with the vessel name, specific area, specific species, vessel designation, gear designation, and the maximum length overall.

### Endorsements

LLP groundfish licenses are issued with area, gear, and Amendment 80 trawl gear catcher/processor endorsements. LLP groundfish licenses are issued with area endorsements which, except in one case, have the same boundaries as Federal statistical and reporting areas. In the BSAI there are two LLP endorsement areas: Bering Sea (BS) and Aleutian Islands (AI). In the Gulf of Alaska, there are three LLP endorsement areas: Western Gulf of Alaska, Central Gulf of Alaska, and Southeast (SE) Gulf of Alaska. The Central Gulf LLP area is the exception mentioned above because it includes the West Yakutat district. A Central Gulf LLP area endorsement is earned based on harvests both from the Central Gulf of Alaska and the West Yakutat District, which in turn, authorizes harvesting in the entire region from 140 to 159 degrees west longitude and south of the Kenai Peninsula/Aleutian Chain. LLP groundfish are defined as “target species” and the “other species” category, specified annually pursuant to § 679.20(a)(2), except that demersal (i.e. living near the bottom of the sea) shelf rockfish as defined in Table 10 to part 679 east of 140° W. longitude and sablefish managed under the individual fishing quota (IFQ) program are not considered LLP groundfish.

LLP crab licenses are issued with species-area (fishery) endorsements. Pursuant to the BSAI Crab Rationalization Program, all crab licenses endorsed for fisheries other than Norton Sound king crab were revised in September 2005 to reflect fisheries remaining under governance of the LLP program. The actual areas available for harvest during any open fishery may differ. For the latest crab management information, the Alaska Department of Fish and Game in Dutch Harbor must be contacted.

LLP scallop licenses are issued with endorsement for scallop registration areas, fishing seasons, open and closed fishing areas, the scallop observer program, bycatch limits, gear restrictions, and measures to limit processing efficiency (including a ban on the use of mechanical shucking machines and a limitation on crew size). The gear regulations limit vessels to using no more than two 15-foot (4.5 m) dredges, except in Cook Inlet (State Registration Area H) where vessels are limited to using a single 6-foot (1.8m) scallop dredge.

Endorsements on licenses cannot be separated from the license. A person who receives both a groundfish LLP license and a crab LLP license derived from the qualifying history of one vessel may not transfer one without transferring both. Also, an LLP license that is issued premised on the fishing history of a vessel used to make qualifying harvests of LLP groundfish or crab, but was not named on a Federal Fisheries Permit during the time period January 1, 1988, through October 8, 1998, will contain the name and other characteristics of the original qualifying vessel

as a permanent "endorsement" on the license, regardless of any other vessel on which that LLP license has been used.

### Transfers

LLP licenses may only be transferred to qualified persons. Permanent LLP licenses are transferable from the person holding the license to other persons. To be effective, an application for the transfer of a license must be submitted to, and approved by, NMFS. Transfer applications are available from NMFS Restricted Access Management (RAM) and online in Portable Document Format (PDF) format at the NMFS Alaska Region website at

[http://www.fakr.noaa.gov/ram/LLP\\_trans\\_form.pdf](http://www.fakr.noaa.gov/ram/LLP_trans_form.pdf) for groundfish and crab and at

[http://www.fakr.noaa.gov/ram/sllpransapp\\_inst.pdf](http://www.fakr.noaa.gov/ram/sllpransapp_inst.pdf) for scallop.

In addition:

- ◆ Unless the LLP license was initially issued, no person may hold more than ten groundfish LLP licenses or five crab LLP licenses at any one time.
- ◆ An LLP license may not be transferred voluntarily more than one time in a calendar year.
- ◆ Licenses may transfer by "operation of law" (foreclosure, inheritance, court order, etc.). Such transfers (which may or may not include a vessel) will not be considered a "voluntary transfer" for purposes of limiting the number of allowable transfers in a calendar year.
- ◆ Any transferable LLP license derived from an American Fisheries Act (AFA)-permitted vessel is transferable for use only on another AFA-permitted vessel.
- ◆ The transfer of a groundfish LLP license that was issued based on the documented harvests from a vessel that did not have an Federal Fisheries Permit (FFP) during the period beginning January 1, 1988, through October 8, 1998, is restricted by regulation. Under this transfer restriction, this type of groundfish LLP license cannot be transferred separately and used on a vessel other than the original qualifying vessel. This transfer restriction has two exceptions.

First, if the fishing history of a vessel that did not have an FFP was transferred before February 7, 1998, the qualifying vessel did not have to accompany the license.

Second, a vessel that is subject to this provision but that is lost or destroyed can be replaced under the general vessel replacement provisions of the LLP. However, subsequent transfers will require the license to be "coupled" with the existing vessel (i.e., the license cannot be transferred separately from the vessel named on the license).

### Application Forms

Applications for LLP permits were a one-time process. An LLP application originally was used to determine owners of vessels who were qualified to obtain an LLP license, and no new LLP permits may be issued except under very specific conditions. Permits have no expiration date,



but are transferable. This collection now supports LLP transfer activities for crab, scallops, and groundfish, and any appeals resulting from denied actions.

The LLP must have some basic information in order that decisions can be made regarding whether permit transfers may take place. Two sets of information are available under the LLP: the license transfer application and the appeals process. Two separate applications are used to request a transfer: one application for groundfish and crab, and the second, an application for scallop. Either or both the transferor/seller or the transferee/receiver may be represented by an authorized agent.

### **a. Groundfish and Crab LLP Transfer Application**

Each transfer request must include a completed transfer application, the original license, and a copy of the transfer contract or Bill of Sale. The financial information requested on the applications supplements information found on the transfer contract or Bill of Sale and is primarily used for research and program evaluation.

#### **Groundfish and Crab Transfer Application**

##### Block A – Required documentation

Information in this block is used to indicate which forms and other information must be included with transfer application. Check all applicable boxes.

##### Block B – Identification of license to be transferred

Indicate whether license is to be transferred is groundfish or crab and enter LLP license number.

##### Block C – Person transferring license (transferor/seller)

Name(s)

Permanent business mailing address

Temporary business mailing address for (if applicable)

Business telephone number, business fax number, and e-mail address

##### Block D – Person to whom license will be transferred (transferee/receiver)

Indicate if transferee is a U.S. Citizen. If NO, stop here. The person is not eligible to receive a license.

Name and NMFS person ID of receiver

Business mailing address

Temporary business mailing address (if applicable)

Business telephone number, business fax number, and e-mail address

##### Block E -- Vessel currently named on license

Name of vessel

Length overall (ft)

Alaska Department of Fish and Game (ADF&G) vessel registration number

U.S. Coast Guard (USCG) documentation number

##### Block F -- Vessel to be named on new license

Name of vessel

Length overall (LOA) (ft)

ADF&G vessel registration number

USCG documentation number

##### Block G – LLP Ownership documentation

Provide the names of all persons, to the individual level, holding an ownership interest in the LLP License being transferred and the percentage ownership each person and individual will hold in the LLP License.

##### Block H -- Transferor/seller information

Total amount being paid for the license in this transaction, including all fees

Indicate whether this price includes the price of the vessel.

Reason for transferring the license

Indicate whether a broker is employed to assist with this transaction.

If YES, enter price paid in brokerage fees or percent of total price.

##### Block I -- Transferee/receiver information

Indicate whether license is used as collateral for a loan.

If YES, enter the name of the party holding security interest or lien.  
Primary source of financing  
How the license was located  
Receiver's relationship to the license holder  
Indicate whether transfer of LLP license includes the sale of the fishing history of a vessel.

If YES, identify  
Name of vessel  
ADF&G number  
USCG documentation number  
Vessel LOA.

Indicate whether transfer of this LLP license is part of an agreement that also transfers ownership of a vessel.

If YES, identify  
Name of vessel  
ADF&G number  
USCG documentation number  
Vessel LOA.

Indicate whether there is an agreement to return the license to the transferor or to transfer it to any other person, or is there is any condition requiring the resale or conveyance of the license.

If YES, explain.

Block J -- Certification of transferor/seller

Printed name, signature, and date signed  
Name and signature of notary public, notary stamp or seal, and date commission expires

Block K -- Certification of transferee/receiver

Printed name, signature, and date signed  
Name and signature of notary public, notary stamp or seal, and date commission expires.

**b. Scallop LLP Transfer Application**

Block A – Identification of License to be transferred

License number  
Total price to be paid for the license, including fees  
Indicate whether this price includes the price of the vessel or other assets

Block B – Person transferring license (transferor/seller)

Name  
Business mailing address; indicate whether permanent or temporary  
Business telephone number, business fax number, and e-mail address

Block C – Person to whom license will be transferred (transferee/buyer)

Indicate whether transferee is a U.S. Citizen  
If NO, stop. Only U.S. citizens may hold this license

Name  
NMFS Person ID  
Business mailing address; indicate whether permanent or temporary  
Business telephone number, business fax number, and business e-mail address

Block D – LLP Ownership documentation

Provide the names of all persons, to the individual level, holding an ownership interest in the LLP License being transferred and the percentage ownership each person and individual will hold in the LLP License

Block E -- Certification of transferor/seller

Printed name, signature, and date signed  
If signed by representative, attach authorization  
Name and signature of notary public, notary stamp or seal, and date commission expires

Block F -- Certification of transferee/buyer

Printed name and signature and date signed  
Name and signature of notary public, notary stamp or seal, and date commission expires.

A total of 1,833 License Limitation Groundfish Permits (LLG) are currently active. A total of 351 License Limitation Crab (LLC) Permits are currently active. A total of nine License Limitation Scallop (LLS) are currently active. Some licenses have been revoked over the years

since implementation, and are not included in the totals. Each license can transfer once per calendar year, so all of the active LLPs potentially could be transferred. However, based on the past three years' data, 95-100 transfers occur annually. The number 100 is used in this analysis.

<b>Groundfish, crab, and scallop LLP transfer application, Respondent</b>	
<b>Total respondents</b>	100
<b>Total responses</b>	<b>100</b>
Frequency of response = 1	
<b>Total burden hours</b>	<b>100 hr</b>
Time per response = 1 hr	
<b>Total personnel cost (\$25 x 100)</b>	<b>\$2,500</b>
<b>Total miscellaneous costs</b>	<b>\$1,112</b>
Postage (0.82 x 100 = 82 )	
Photocopy (0.10 x 3 x 100 = 30)	
Notary (\$10 x 100 = 1000)	

<b>Groundfish, crab, and scallop LLP transfer application, Federal Government</b>	
<b>Total responses</b>	<b>100</b>
<b>Total burden hours</b>	<b>50 hr</b>
Time per response = 0.5	
<b>Total personnel costs (50 x \$25)</b>	<b>\$1,250</b>
<b>Total miscellaneous costs</b>	<b>0</b>

### c. LLP Transfer Appeals

To apply for a transfer appeal, the applicant must provide a written statement in support of the appeal and show why the initial determination should be reversed. The number of transfer appeals since the beginning of the program is 125. The estimated annual number of appeals are 42 (125/3).

<b>Transfer appeals, Respondent</b>	
<b>Total respondents</b>	42
<b>Total responses</b>	<b>42</b>
Frequency of response = 1	
<b>Total burden hours</b>	<b>168 hr</b>
Hours per response = 4 hr	
<b>Total personnel cost (\$25 x 168)</b>	<b>\$4,200</b>
<b>Total miscellaneous costs (38.64)</b>	<b>\$39</b>
Postage (0.82 x 42 = 34.44 )	
Photocopy (0.10 x 42 = 4.20)	

<b>Transfer appeals, Federal Government</b>	
<b>Total responses</b>	<b>42</b>
<b>Total burden hours</b>	<b>168 hr</b>
Hours per response = 4 hr	
<b>Total personnel cost (\$75 x 168)</b>	<b>\$12,600</b>
<b>Total miscellaneous costs</b>	<b>0</b>

It is anticipated that the information collected be disseminated to the public or used to support publicly disseminated information. As explained in the preceding paragraphs, the information gathered has utility. NMFS will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with National Oceanic and

Atmospheric Administration (NOAA) standards for confidentiality, privacy, and electronic information. See response #10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Prior to dissemination, the information will be subjected to quality control measures and a pre-dissemination review pursuant to Section 515 of Public Law 106-554.

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

The transfer applications may be completed online in PDF format at the NMFS Alaska Region website at [http://www.fakr.noaa.gov/ram/LLP\\_trans\\_form.pdf](http://www.fakr.noaa.gov/ram/LLP_trans_form.pdf) for groundfish and crab and at [http://www.fakr.noaa.gov/ram/sllptransapp\\_inst.pdf](http://www.fakr.noaa.gov/ram/sllptransapp_inst.pdf) for scallop. The participant may then download, print, and fax or email the application. NMFS is pursuing an Internet method in the future whereby all of the information will be entered online and submitted directly and automatically into a database.

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

None of the information collected as part of this information collection duplicates other collections. This information collection is part of a specialized and technical program that is not like any other.

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

The proposed collection-of-information does not impose a significant impact on small entities.

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

An essential feature of the LLP program is the ability for participants to transfer their LLP license. The transfer feature is not a mandated item nor does it contain a cycle of completion. Transfers are done when the participants deem it necessary. Without the ability to track the movement of the LLP license, NMFS would be unable to effectively manage the LLP program

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

No special circumstances exist.

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

A *Federal Register* notice published October 10, 2007 (72 FR 57522) solicited public comment. No comments were received.

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

No payment or gift will be provided under this program.

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

The information collected is confidential under section 402(b) of the Magnuson-Stevens Act (16 U.S.C. 1881a et seq.) and under NOAA Administrative Order (AO) 216-100, which sets forth procedures to protect confidentiality of fishery statistics. This protection is described in the Paperwork Reduction Act Statement on each form.

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

This information collection does not involve information of a sensitive nature.

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

Estimated total respondents: 142, down from 244. Estimated total responses: 142, down from 244. Estimated total burden: 268 down from 544 hours. Estimated total personnel costs: \$6,700, down from \$7,599.

**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).**

Estimated total miscellaneous costs: \$1,151, up from \$1,012.

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

Estimated total responses: 142, down from 244. Estimated total burden: 218 hr, down from 8,220 hr. Estimated total personnel costs: \$13,850, down from \$ 205,500.

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

Adjustments are necessary for the Application for Transfer of Groundfish, Crab, or Scallops:

- a decrease of 44 respondents and responses, 100 instead of 144
- a decrease of 44 hours burden, 100 hr instead of 144 hr
- an increase of \$248 in miscellaneous costs, \$1,112 instead of \$864\*.

\*Fax charges (\$6 x 144 = \$864) were removed because the notary requirement precludes sending the application by fax. Notary charges (\$10 x 100 = \$1,000) were added because this cost was inadvertently omitted from the last analysis.

Adjustments are necessary for the Transfer Appeals:

- a decrease of 58 respondents and responses, 42 instead of 100
- a decrease of 232 hours burden, 168 hr instead of 400 hr
- a decrease of \$109 in miscellaneous costs, \$39 instead of \$148

The net changes are: a decrease of 102 in respondents and responses, and a decrease of 276 hours, with estimates lower based on recent data and an increase of \$139 (lower costs due to fewer respondents, but an adjustment upward as explained above, for notary costs).

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

NMFS Alaska Region posts LLP license information on the web at <http://www.alaskafisheries.noaa.gov/ram/llp.htm#list>. The lists contain LLP groundfish and crab licenses issued as of the indicated preparation date. Data are sorted alphabetically and are updated daily. Under current regulations, vessels must be designated on the licenses and the identities of original qualifying vessels are provided for reference only.

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

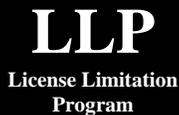
In accordance with OMB requirements, the control number and the expiration date of OMB approval is shown on the transfer applications. The appeals request is not a form, so does not contain any OMB information.

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

There are no exceptions.

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

This collection does not employ statistical methods.

	<b>APPLICATION FOR TRANSFER                  LICENSE LIMITATION PROGRAM                  GROUND FISH &amp; CRAB LICENSES</b>	U.S. Dept. of Commerce/NOAA National Marine Fisheries Service (NMFS) Alaska Region Restricted Access Management (RAM) P.O. Box 21668 Juneau, Alaska 99802-1668	
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***BLOCK A - REQUIRED DOCUMENTATION***

**Use this block to determine which forms and other information must be included with your transfer. Please check each applicable box below to ensure that your application is complete and can be processed in a timely manner.**

- |  |   |
|--|---|
| <input type="checkbox"/> Completed Application           | <input type="checkbox"/> Power of Attorney (if applicable)        |
| <input type="checkbox"/> Original License                | <input type="checkbox"/> Prepaid Express Mail or Courier Envelope |
| <input type="checkbox"/> Copy of Sale/Transfer Agreement | (if you are requesting special mailing procedures)                |

**NOTE:** The transfer of a license that was issued based on the documented harvests from a vessel that did not have a Federal Fisheries Permit during the period beginning January 1, 1988, through October 8, 1998, is restricted by regulation at 50 CFR 679.4(k)(7)(ix). Under this transfer restriction, this type of groundfish LLP license cannot be transferred separately and used on a vessel other than the original qualifying vessel.

***BLOCK B - IDENTIFICATION OF LICENSE TO BE TRANSFERRED***

Crab                       Groundfish                      License Number:

***BLOCK C - PERSON(S) TRANSFERRING LICENSE (TRANSFEROR/SELLER)***

1. Name of Transferor (as it appears on the license):	2. NMFS Person ID:	
3. Permanent Business Mailing Address:	4. Temporary Business Mailing Address:	
5. Business Telephone No.:	6. Business Fax No.:	7. E-mail Address:

<b>BLOCK D - PERSON(S) TO WHOM LICENSE WILL BE TRANSFERRED (TRANSFeree/RECEIVER)</b>		
1. Is the transferee a U.S. Citizen (individual, corporation, partnership, association, or other non-individual entity)? YES [ ] NO [ ] <b>STOP HERE.</b> This person is <b>not eligible</b> to receive a license.		
2. Name of Receiver(s) (as it will appear on the license):		3. NMFS Person ID:
4. Permanent Business Mailing Address:		5. Temporary Mailing Address:
6. Business Telephone No.	7. Business Fax No.	8. E-mail Address

<b>BLOCK E - VESSEL CURRENTLY NAMED ON LICENSE</b>	<b>BLOCK F - VESSEL TO BE NAMED ON NEW LICENSE</b> <i>If the LOA of this vessel exceeds the maximum LOA of the original qualifying vessel, this vessel may <u>not</u> receive this license by transfer.</i>
1. Name of Vessel:	1. Name of Vessel:
2. Length Overall (LOA) (FT):	2. LOA (FT):
3. ADF&G No.:	3. ADF&G No.:
4. USCG No.:	4. USCG No.:

<b>BLOCK G – LLP OWNERSHIP DOCUMENTATION</b> <i>To be completed by the Transferee/Receiver</i>			
Provide the names of all persons, to the individual level, holding an ownership interest in the LLP License being transferred and the percentage ownership each person and individual will hold in the LLP License			
Name	% Ownership	Name	% Ownership

**REQUIRED SUPPLEMENTAL INFORMATION**

**APPLICATIONS WILL NOT BE PROCESSED UNLESS ALL INFORMATION REQUESTED IN BLOCKS H & I IS PROVIDED**





6. Is the transfer of this LLP license part of an agreement that also transfers ownership of a vessel?

YES [ ] NO [ ]

If YES, identify the vessel below:

Name of Vessel:

ADF&G No.:

USCG No.:

LOA:

7. Is there an agreement to return the license to the transferor (seller) or to transfer it to any other person, or is there any condition requiring the resale or conveyance of the license?

YES [ ] NO [ ]

If YES, please explain (use attachment if necessary):

**BLOCK J - TRANSFEROR (SELLER)**

Under penalty of perjury, I hereby declare that I have examined this application, and the information presented herein is true, accurate, and complete to the best of my knowledge and belief.

1. Signature of Transferor (Seller) or Authorized Agent	2. Date
3. Printed Name of Transferor (Seller) or Authorized Agent (Note: If this is completed by an agent, attach authorization)	
4. Notary Public Signature <b>ATTEST</b>	5. Affix Notary Stamp or Seal Here
6. Commission Expires	

**BLOCK K - TRANSFEREE (RECEIVER)**

Under penalty of perjury, I hereby declare that I have examined this application, and the information presented herein is true, accurate, and complete to the best of my knowledge and belief.

1. Signature of Transferee (Receiver) or Authorized Agent	2. Date
3. Printed Name of Transferee (Receiver) or Authorized Agent (Note: If this is completed by an agent, attach authorization)	
4. Notary Public Signature <b>ATTEST</b>	5. Affix Notary Stamp or Seal Here
6. Commission Expires	

**PUBLIC REPORTING BURDEN STATEMENT**

Public reporting burden for this collection of information is estimated to average 1.0 hour per response, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to: Assistant Regional Administrator for National Marine Fisheries Service, Sustainable Fisheries Division, P.O. Box 21668, Juneau, AK 99802-1668.

**ADDITIONAL INFORMATION**

Before completing this form please note the following: 1) Notwithstanding any other provision of 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 of information displays a currently valid OMB Control Number; 2) This information is mandatory and is required to manage commercial fishing efforts under 50 CFR part 679 and under section 402(a) of the Magnuson-Stevens Act (16 U.S.C. 1801, et seq.); 3) Responses to this information request are confidential under section 402(b) of the Magnuson-Stevens Act. They also are confidential under NOAA Administrative Order 216-100, which sets forth procedures to protect confidentiality of fishery statistics.

**Instructions**  
**APPLICATION FOR TRANSFER**  
**LLP GROUND FISH & CRAB LICENSES**

The transfer of a groundfish LLP license that was issued based on the documented harvests from a vessel that did not have a Federal Fisheries Permit (FFP) during the period beginning January 1, 1988, through October 8, 1998, is restricted by regulation at 50 CFR 679.4(k)(7)(ix). Under this transfer restriction, the groundfish LLP license and the vessel from which the license was earned must be transferred together. In other words, this type of groundfish LLP license cannot be transferred separately and used on a vessel other than the original qualifying vessel.

If you have lost your original license, you will need to complete a replacement application form. This application is available on the NMFS, Alaska Region web site at <http://www.alaskafisheries.noaa.gov>. You may also call RAM at one of the numbers listed below and request the application be mailed or faxed to you; or you may visit the RAM office (709 W 9<sup>th</sup> Street, 7<sup>th</sup> Floor, Suite 713, Juneau, Alaska) and pick up the application.

When completed, mail the application to:

**NMFS Alaska Region**  
**Restricted Access Management (RAM)**  
**P.O. Box 21668**  
**Juneau, Alaska 99802-1668**

Or deliver to:

**NMFS Alaska Region**  
**Restricted Access Management (RAM)**  
**709 West 9<sup>th</sup> Street Suite 713**  
**Juneau, Alaska 99801**

Direct any questions you may have to:

**NMFS, RAM**  
**1-800-304-4846 (option 2) or**  
**(907) 586-7202 (option 2).**

An original application must be submitted; an application sent by fax will **not** be processed.

**Please allow at least ten working days for your application to be processed.** Items will be sent by first class mail, unless you provide alternate instructions **and** include a prepaid mailer with appropriate postage or corporate account number for express delivery.

It is important that all blocks are completed and attachments provided. Failure to answer any of the questions, provide any of the required documents, or to have signatures notarized could result in delays in the processing of your request for a transfer under the provisions of 50 CFR 679.4(k)(7).

## Completing the Application Form

### BLOCK A - REQUIRED DOCUMENTATION

Use this list as a guide to make sure you have included all the necessary items in the mailing of your transfer application. This will ensure timely processing of your transfer application.

### BLOCK B - IDENTIFICATION OF LICENSE TO BE TRANSFERRED

Enter the LLP license number to be transferred and indicate whether it is for crab or groundfish. Use one application for each license.

**Note:** If both crab and groundfish licenses resulted from the activities of the same qualifying vessel, the two licenses **may not be transferred independently** of each other.

### BLOCK C - PERSON(S) TRANSFERRING LICENSE (TRANSFEROR/SELLER)

1. Enter the full name of transferor as it appears on the license.
2. Enter NMFS Person ID. NMFS will provide this number, if you do not already have one.
3. Enter the permanent business mailing address; include city, state, and zip code.
4. Enter the temporary mailing address (include city, state, and zip code), if you would like the transfer documentation sent somewhere other than to your permanent address.
- 5-7. Enter the business telephone number, business fax number, including area code, and business email address.

### BLOCK D - PERSON(S) TO WHOM LICENSE WILL BE TRANSFERRED (TRANSFEEE/ RECEIVER)

1. Indicate whether transferee is a U.S. Citizen (i.e., an individual, corporation, partnership, association, or other non-individual entity, as defined at chapter 121, title 46, U.S.C.).  
If **NO, STOP!** This person is not eligible to receive a license.
2. Enter the full name of transferee as it will appear on the license.
3. Enter NMFS Person ID. NMFS will provide this number, if you do not already have one.
4. Enter the permanent business mailing address, including city, state, and zip code.
5. Enter the temporary mailing address (include city, state, and zip code), if you would like the transfer documentation sent somewhere other than to your permanent address.
- 6-8. Enter the business telephone number, business fax number, including area code, and business e-mail address.

**BLOCK E - VESSEL CURRENTLY NAMED ON LICENSE**

Enter the name of the vessel, the vessel’s Alaska Department of Fish and Game (ADF&G) vessel registration number, U.S. Coast Guard (USCG) documentation number, and the vessel’s length overall (LOA).

**BLOCK F - VESSEL TO BE NAMED ON NEW LICENSE**

Enter the name of the receiving vessel, the vessel’s ADF&G vessel registration number, USCG documentation number, and the vessel’s LOA.

**If no vessel is named in this block, no license will be issued until such time as a vessel is named.**

If the LOA of this vessel exceeds the maximum length overall (MLOA) of the original qualifying vessel, this vessel may **not** receive this license by transfer.

The transfer of a groundfish LLP license that was issued based on the documented harvests from a vessel that did not have an FFP during the period beginning January 1, 1988, through October 8, 1998, is restricted by regulation. Under this transfer restriction, this type of groundfish LLP license cannot be transferred separately and used on a vessel other than the original qualifying vessel. This transfer restriction has two exceptions.

First, if the fishing history of a vessel that did not have an FFP was transferred before February 7, 1998, the qualifying vessel did not have to accompany the license.

Second, a vessel that is subject to this provision but that is lost or destroyed can be replaced under the general vessel replacement provisions of the LLP. However, subsequent transfers will require the license to be “coupled” with the existing vessel (i.e., the license cannot be transferred separately from the vessel named on the license).

**BLOCK G – LLP OWNERSHIP DOCUMENTATION (to be provided by the transferee/receiver of the LLP license)**

Enter the names of all persons, to the individual level, holding an ownership interest in the LLP License being transferred and the percentage ownership each person and individual holds in LLP License.

If the LLP License Holder is a non-individual (i.e., a corporation, partnership or other entity), provide the names of, and the percentage of ownership held by, all of its owners. Information should be provided to the individual level. See example below:

<b>Name of Owner</b>	<b>% Interest</b>
Joe Groundfish	25%
Alice Groundfish	25%
LLP Family Holdings, Inc.	50%
A. LLP Holder	25% (of 50%)
B. LLP Holder	25% (of 50%)
C. LLP Holder	25% (of 50%)
D. LLP Holder	25% (of 50%)

**REQUIRED SUPPLEMENTAL INFORMATION**

**APPLICATION WILL NOT BE PROCESSED UNLESS ALL INFORMATION REQUESTED IN BLOCKS G AND H IS PROVIDED**

**NOTE:** Both the proposed transferor (seller) and the proposed transferee (receiver) must complete and sign this application.

**BLOCK H - TO BE COMPLETED BY THE TRANSFEROR (SELLER)**

1. Enter the total amount being paid for the license in this transaction. The total amount entered should include **any and all** monies collected on behalf of the seller for the subject license. If the sale of the license is combined with, or part of, the sale of some other asset (i.e., a vessel), the sales price of the license must be specified, including any fees that will later be paid out to other parties for the expenses of brokering or assisting in the sale of this license.
2. Indicate the reason(s) for transferring the license; check all that apply.
3. Indicate whether you are paying a permit broker or other third party to assist with this transaction. If **YES**, enter the total price paid to the broker or calculate how much was paid to the third party as a percentage of the total sale price (including fee).

**BLOCK I - TO BE COMPLETED BY THE TRANSFEREE (RECEIVER)**

1. Indicate if the license will be used as collateral.  
**If YES**, enter the name of entity or person(s) who will hold the lien.
2. Indicate the primary source of financing for this transfer. Please check any and all boxes that apply to this transaction.
3. Indicate how the license was located. Check all that apply.
4. Indicate the receiver's relationship to the license holder. Check all that apply.
5. Indicate whether the transfer of this LLP license includes the sale of the fishing history of a vessel.  
**If YES**, provide the name, LOA, ADF&G vessel registration number, and USCG documentation number of the vessel.
6. Indicate whether the transfer of this LLP license is part of an agreement that also transfers ownership of a vessel.  
**If YES**, provide the name, LOA, ADF&G vessel registration number, and USCG documentation number of the vessel.
7. Indicate whether there is an agreement to return the license to the transferor (seller), or any other person, or a condition placed on resale.  
**If YES**, provide details of the agreement. Attach additional sheets, if necessary.

## **BLOCKS J & K - CERTIFICATION OF TRANSFEROR, TRANSFEREE, AND NOTARY**

The transferor and transferee must sign, print name, and date the application in the presence of a Notary Public. A Notary Public must attest and affix a Notary Stamp or Seal to the application.

Application forms submitted to RAM must bear the **original signatures** of the parties — **RAM will not process faxed applications.**

Representatives signing for a transferor or transferee must submit proof of authorization (e.g., a Power of Attorney) to submit this application on their behalf.



	<p><b>APPLICATION FOR TRANSFER OF SCALLOP LICENSE</b></p>	U.S. Dept. of Commerce/NOAA National Marine Fisheries Service (NMFS) Restricted Access Management Program (RAM) P.O. Box 21668 Juneau, AK 99802-1668	
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**The original license to be transferred must be included with this application, together with a copy of the sales contract or other agreement between the parties that sets out the terms and conditions of the proposed transfer.**

<b>BLOCK A -- IDENTIFICATION OF LICENSE TO BE TRANSFERRED</b>
1. License Number: _____
2. What is the total <b>PRICE</b> (if any), including all fees, being paid for this license? \$_____
Does this price include the price of the vessel or other assets?  YES [ <input type="checkbox"/> ]                      NO [ <input type="checkbox"/> ]

<b>BLOCK B – PERSON TRANSFERRING LICENSE (TRANSFEROR/SELLER)</b>		
1. Name(s):	2. NMFS Person ID:	
3. Business Mailing Address [ <input type="checkbox"/> ] Permanent                      [ <input type="checkbox"/> ] Temporary		
4. Business Telephone No.:	5. Business Fax No.:	6. Business e-mail Address (if any):

**BLOCK C – PERSON TO WHOM LICENSE WILL BE TRANSFERRED (TRANSFeree/BUYER)**

1. Is the transferee a U.S. citizen (individual, corporation, partnership, association, or other non-individual entity)?  
 YES [ ]                      NO [ ]  
**If NO, STOP.** Only U.S. citizens may hold a scallop LLP license.

2. Name(s):	3. NMFS Person ID:	
4. Business Mailing Address:    [ ] Permanent                      [ ] Temporary		
5. Business Telephone No.:	6. Business Fax No.:	7. Business e-mail Address:

**BLOCK D – LLP OWNERSHIP DOCUMENTATION**  
*To be completed by the Transferee/Receiver*

Provide the names of all persons, to the individual level, holding an ownership interest in the LLP License being transferred and the percentage ownership each person and individual will hold in the LLP License

Name	% Ownership	Name	% Ownership

**NOTE:** All parties to the requested transfer must complete and sign this Application for Transfer of Scallop License and signatures must be notarized. **Failure to have signatures properly notarized will result in processing delays.**

***BLOCK E – CERTIFICATION OF TRANSFEROR (SELLER)***

Under penalty of perjury, I hereby declare that I have examined this application, and the information presented herein is true, accurate, and complete to the best of my knowledge and belief.

1. Signature of Transferor or Authorized Agent

2. Date

3. Printed Name of Transferor or Authorized Agent (Note: If this is completed by an agent, attach authorization)

4. Title, if Agent

5. Notary Public Signature

**ATTEST**

6. Affix Notary Stamp or Seal Here

7. Commission Expires

***BLOCK F – CERTIFICATION OF TRANSFEREE (BUYER)***

Under penalty of perjury, I hereby declare that I have examined this application, and the information presented herein is true, accurate, and complete to the best of my knowledge and belief.

1. Signature of Transferee or Authorized Agent

2. Date

3. Printed Name of Transferee or Authorized Agent (Note: If this is completed by an agent, attach authorization)

4. Title, if Agent

5. Notary Public Signature

**ATTEST**

6. Affix Notary Stamp or Seal Here

7. Commission Expires

**INSTRUCTIONS  
APPLICATION FOR  
TRANSFER OF SCALLOP LLP LICENSE**

**GENERAL INFORMATION**

The Scallop License Limitation Program is authorized in Federal regulations at 50 CFR Part 679, and provides that any vessel that is deployed in the scallop fisheries in Federal waters off Alaska must carry a valid scallop license.

A license is transferable; i.e., once issued, it may be transferred by its holder(s) to another person(s) who may then use the license aboard a vessel deployed in the Federal scallop fishery in the waters off Alaska (subject to the restrictions of the license).

Scallop licenses have no area endorsements, all licenses are statewide.

The information requested on this application is for the express purpose of ensuring that transfers of scallop licenses are properly executed as requested by the parties to the transfer and to ensure that all provisions of the federal regulations governing the transfer of such licenses, 50 CFR 679.4(1)(4), have been met.

**RESTRICTIONS**

**Gear:** If a vessel did not make a legal landing of scallops outside Cook Inlet (State of Alaska Registration Area H) in 1 of the 3 years 1996, 1997, or 1998, through October 9, 1998, the license would be restricted to a single 6 foot (1.8 m) dredge.

**Maximum Length Overall (MLOA):** Each license displays an MLOA (in feet). MLOA is restricted to 100% of the LOA of the qualifying vessel or, 100% of the LOA of the largest vessel used in the recent qualifying period.

**APPLICATION PROCESSING**

If you have lost your original license, you will need to complete a replacement application form. This application is available on the NMFS, Alaska Region web site at <http://www.fakr.noaa.gov>. You may also call RAM at one of the numbers listed below and request the application be mailed or faxed to you; or you may visit the RAM office (709 W 9<sup>th</sup> Street, 7<sup>th</sup> Floor, Suite 713, Juneau, Alaska) and pick up the application.

An original application must be submitted; an application sent by fax will not be processed. NMFS requires that this application be notarized.

When completed, mail the Application for Transfer of Scallop License and any required attachments, including the original license, to:

**NMFS Alaska Region  
Restricted Access Management (RAM)  
P.O. Box 21668  
Juneau, Alaska 99802-1668**

Or deliver to:

**NMFS Alaska Region  
Restricted Access Management (RAM)  
709 West 9<sup>th</sup> Street Suite 713  
Juneau, Alaska 99801**

Direct any questions you may have to:

**National Marine Fisheries Service  
Restricted Access Management  
P.O. Box 21668  
709 W. 9th St., Suite 713  
Juneau, AK 99802-1668**

**Telephone: 800-304-4846 (#2) or 907-586-7202 (#2)  
Fax: 907-586-7354**

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**Please allow at least 10 days for processing of your application.** Upon approval of an Application for Transfer of Scallop License, RAM will void the license in the name of the transferor and mail a new license to the new holder's address via first class mail, unless a pre-paid express envelope or an account number for a private express carrier has been provided, or arrangements have been made to have the transaction expedited by a private facilitator or courier.

#### **COMPLETING THE APPLICATION**

*Note: The original LLP license must be included with the application, together with a complete copy of the sales contract, or other agreement between the parties, that sets out the terms and conditions of the proposed transfer.*

#### **BLOCK A -- IDENTIFICATION OF LICENSE TO BE TRANSFERRED**

1. Enter the number of the scallop LLP license to be transferred.
2. Enter the total price, including brokerage fees, being paid for the license. Enter "zero" if the transfer is being proposed pursuant to a gift agreement or for non-monetary consideration.

#### **BLOCK B -- PERSON TRANSFERRING LICENSE (TRANSFEROR/SELLER)**

1. Enter the transferor's name(s).
2. Enter NMFS Person ID. NMFS will provide this number, if you do not already have one.
3. Enter the business mailing address, including street or P.O. Box, city, state, and zip code.
- 4-6. Enter the business telephone number, including area code, business fax number, and e-mail address.

**BLOCK C -- PERSON(S) TO WHOM LICENSE WILL BE TRANSFERRED (TRANSFEREE/ BUYER).**

1. Indicate if the proposed transferee is a U.S. citizen (individual, corporation, partnership, association, or other non-individual entity).  
**If NO, STOP.** Only U.S. citizens may hold a scallop license.
2. Enter the transferee's name(s).
3. Enter NMFS Person ID. NMFS will provide this number, if you do not already have one.
4. Enter the business mailing address, including street or P.O. Box, city, state, and zip code.
- 5-7. Enter the business telephone number, including area code, business fax number, and e-mail address.

**BLOCK D – LLP OWNERSHIP DOCUMENTATION (to be provided by the transferee/receiver of the LLP license)**

Enter the names of all persons, to the individual level, holding an ownership interest in the LLP License being transferred and the percentage ownership each person and individual holds in LLP License.

If the LLP License Holder is a non-individual (i.e., a corporation, partnership or other entity), provide the names of, and the percentage of ownership held by, all of its owners. Information should be provided to the individual level. See example below:

<b>Name of Owner</b>	<b>% Interest</b>
Joe Groundfish	25%
Alice Groundfish	25%
LLP Family Holdings, Inc.	50%
A. LLP Holder	25% (of 50%)
B. LLP Holder	25% (of 50%)
C. LLP Holder	25% (of 50%)
D. LLP Holder	25% (of 50%)

**BLOCKS E and F – TRANSFEROR AND TRANSFEREE CERTIFICATION**

The transferor and transferee must sign, print name, and date the application in the presence of a Notary Public. If an agent is signing on behalf of the proposed transferor or transferee, authorization (in the form of a Power of Attorney or other legally sufficient documentation) must be submitted with the application or be currently on file with the RAM Program. Enter the title of the agent, if any. A Notary Public must attest and affix a Notary Stamp or Seal to the application.

Application forms submitted to RAM must bear the original signatures of the parties — RAM will not process faxed applications.

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### **PUBLIC REPORTING BURDEN STATEMENT**

Public reporting burden for this collection of information is estimated to average 1.0 hour per response, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Assistant Regional Administrator, National Marine Fisheries Service, Alaska Region, Sustainable Fisheries Division, P.O. Box 21668, Juneau, AK 99802-1668.

### **ADDITIONAL INFORMATION**

Before completing this application, please note the following: 1) Notwithstanding any other provision of 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 of information displays a currently valid OMB Control Number; 2) This information is being used to manage the Scallop License Limitation Program; 3) Submission of an Application for Transfer of Scallop License is required of those seeking to obtain such a transfer; 5) Responses to this information request are confidential under section 402(b) of the Magnuson-Stevens Act. They are also confidential under NOAA Administrative Order 216-100, which sets forth procedures to protect confidentiality of fishery statistics.

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(a) FINDINGS.—The Congress finds and declares the following:

(1) The fish off the coasts of the United States, the highly migratory species of the high seas, the species which dwell on or in the Continental Shelf appertaining to the United States, and the anadromous species which spawn in United States rivers or estuaries, constitute valuable and renewable natural resources. These fishery resources contribute to the food supply, economy, and health of the Nation and provide recreational opportunities.

**104-297**

(2) Certain stocks of fish have declined to the point where their survival is threatened, and other stocks of fish have been so substantially reduced in number that they could become similarly threatened as a consequence of (A) increased fishing pressure, (B) the inadequacy of fishery resource conservation and management practices and controls, or (C) direct and indirect habitat losses which have resulted in a diminished capacity to support existing fishing levels.

(3) Commercial and recreational fishing constitutes a major source of employment and contributes significantly to the economy of the Nation. Many coastal areas are dependent upon fishing and related activities, and their economies have been badly damaged by the overfishing of fishery resources at an ever-increasing rate over the past decade. The activities of massive foreign fishing fleets in waters adjacent to such coastal areas have contributed to such damage, interfered with domestic fishing efforts, and caused destruction of the fishing gear of United States fishermen.

(4) International fishery agreements have not been effective in preventing or terminating the overfishing of these valuable fishery resources. There is danger that irreversible effects from overfishing will take place before an effective international agreement on fishery management jurisdiction can be negotiated, signed, ratified, and implemented.

(5) Fishery resources are finite but renewable. If placed under sound management before overfishing has caused irreversible effects, the fisheries can be conserved and maintained so as to provide optimum yields on a continuing basis.

**104-297**

(6) A national program for the conservation and management of the fishery resources of the United States is necessary to prevent overfishing, to rebuild overfished stocks, to insure conservation, to facilitate long-term protection of essential fish habitats, and to realize the full potential of the Nation's fishery resources.

**95-354**

(7) A national program for the development of fisheries which are underutilized or not utilized by the United States fishing industry, including bottom fish off Alaska, is necessary to assure that our citizens benefit from the employment, food supply, and revenue which could be generated thereby.

**101-627**

(8) The collection of reliable data is essential to the effective conservation, management, and scientific understanding of the fishery resources of the United States.

**104-297**

(9) One of the greatest long-term threats to the viability of commercial and recreational fisheries is the continuing loss of marine, estuarine, and other aquatic habitats. Habitat considerations should receive increased attention for the conservation and management of fishery resources of the United States.

**104-297**

(10) Pacific Insular Areas contain unique historical, cultural, legal, political, and geographical circumstances which make fisheries resources important in sustaining their economic growth.

**109-479**

(11) A number of the Fishery Management Councils have demonstrated significant progress in integrating ecosystem considerations in fisheries management using the existing authorities provided under this Act.

**109-479**

(12) International cooperation is necessary to address illegal, unreported, and unregulated fishing and other fishing practices which may harm the sustainability of living marine resources and disadvantage the United States fishing industry.

(b) PURPOSES.—It is therefore declared to be the purposes of the Congress in this Act—

**99-659, 101-627, 102-251**

(1) to take immediate action to conserve and manage the fishery resources found off the coasts of the United States, and the anadromous species and Continental Shelf fishery resources of the United States, by exercising (A) sovereign rights for the purposes of exploring, exploiting, conserving, and managing all fish within the exclusive economic zone established by Presidential Proclamation 5030, dated March 10, 1983, and (B) exclusive fishery management authority beyond the exclusive economic zone over such anadromous species and Continental Shelf fishery resources[, and fishery resources in the special areas]\*;

(2) to support and encourage the implementation and enforcement of international fishery agreements for the conservation and management of highly migratory species, and to encourage the negotiation and implementation of additional such agreements as necessary;

**104-297**

(3) to promote domestic commercial and recreational fishing under sound conservation and management principles, including the promotion of catch and release programs in recreational fishing;

(4) to provide for the preparation and implementation, in accordance with national standards, of fishery management plans which will achieve and maintain, on a continuing basis, the optimum yield from each fishery;

**101-627**

(5) to establish Regional Fishery Management Councils to exercise sound judgment in the stewardship of fishery resources through



the preparation, monitoring, and revision of such plans under circumstances (A) which will enable the States, the fishing industry, consumer and environmental organizations, and other interested persons to participate in, and advise on, the establishment and administration of such plans, and (B) which take into account the social and economic needs of the States;

**95-354, 96-561, 104-297**

(6) to encourage the development by the United States fishing industry of fisheries which are currently underutilized or not utilized by United States fishermen, including bottom fish off Alaska, and to that end, to ensure that optimum yield determinations promote such development in a non-wasteful manner; and

**104-297**

(7) to promote the protection of essential fish habitat in the review of projects conducted under Federal permits, licenses, or other authorities that affect or have the potential to affect such habitat.

(c) POLICY.—It is further declared to be the policy of the Congress in this Act—

(1) to maintain without change the existing territorial or other ocean jurisdiction of the United States for all purposes other than the conservation and management of fishery resources, as provided for in this Act;

(2) to authorize no impediment to, or interference with, recognized legitimate uses of the high seas, except as necessary for the conservation and management of fishery resources, as provided for in this Act;

**101-627, 104-297**

(3) to assure that the national fishery conservation and management program utilizes, and is based upon, the best scientific information available; involves, and is responsive to the needs of, interested and affected States and citizens; considers efficiency; draws upon Federal, State, and academic capabilities in carrying out research, administration, management, and enforcement; considers the effects of fishing on immature fish and encourages development of practical measures that minimize bycatch and avoid unnecessary waste of fish; and is workable and effective;

(4) to permit foreign fishing consistent with the provisions of this Act;

**99-659, 101-627**

(5) to support and encourage active United States efforts to obtain internationally acceptable agreements which provide for effective conservation and management of fishery resources, and to secure agreements to regulate fishing by vessels or persons beyond the exclusive economic zones of any nation;

**101-627**

(6) to foster and maintain the diversity of fisheries in the United States; and

**104-297**

(7) to ensure that the fishery resources adjacent to a Pacific Insular Area, including resident or migratory stocks within the exclusive economic zone adjacent to such areas, be explored, developed, conserved, and managed for the benefit of the people of such area and of the United States.

**SEC. 3. DEFINITIONS**

**16 U.S.C. 1802**

As used in this Act, 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.

**104-297**

(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.

**104-297**

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

**104-297**

(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.

**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.

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**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, academics, persons with expertise in assessments and survey design, and appropriate 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 tsunami, 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.

## § 679.1 Purpose and scope

### ***Subpart A--General***

#### **§ 679.1 Purpose and scope.**

Regulations in this part were developed by the Council under the Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act. Along with part 600 of this chapter, these regulations implement the following:

#### ***(a) Fishery Management Plan for Groundfish of the Gulf of Alaska.***

(1) Regulations in this part govern commercial fishing for groundfish in the GOA by vessels of the United States (see subparts A, B, D, and E of this part).

(2) The following State of Alaska regulations are not preempted by this part for vessels regulated under this part fishing for demersal shelf rockfish in the Southeast Outside District, and which are registered under the laws of the State of Alaska: 5 AAC 28.110, fishing seasons; 5 AAC 28.130, gear; 5 AAC 28.160, harvest guidelines; 5 AAC 28.190, harvest of bait by commercial permit holders.

#### ***(b) Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area.***

Regulations in this part govern commercial fishing for groundfish in the BSAI by vessels of the United States (see subparts A, B, C, D, and E of this part).

#### ***(c) [Reserved]***

#### ***(d) IFQ Program for sablefish and halibut.***

The IFQ management measures for the commercial fisheries that use fixed gear to harvest sablefish and halibut (see subparts A, B, D, and E of this part).

#### ***(1) Sablefish.***

(i) Regulations in this part govern commercial fishing for sablefish by vessels of the United States:

(A) Using fixed gear within that portion of the GOA and the BSAI over which the United States exercises exclusive fishery management authority; and

(B) Using fixed gear in waters of the State of Alaska adjacent to the BSAI and the GOA, provided that aboard such vessels are persons who currently hold quota shares, IFQ permits, or IFQ cards.

(ii) Regulations in this part do not govern commercial fishing for sablefish in Prince William Sound or under a State of Alaska limited entry program.

#### ***(2) Halibut.***

Regulations in this part govern commercial fishing for halibut by vessels of the United States using fixed gear, as that term is defined in 50 CFR 679.2, in and off of Alaska.

#### ***(e) Western Alaska CDQ Program.***

The goals and purpose of the CDQ program are to allocate CDQ to eligible Western Alaska communities to provide the means for starting or supporting commercial fisheries business activities that will result in an ongoing, regionally based, fisheries-related economy.

#### ***(f) Groundfish Observer Program. (applicable through December 31, 2007).***

Regulations in this part govern elements of the Groundfish Observer Program for the BSAI groundfish and GOA groundfish fisheries under the Council's authority (see subpart E of this part).

#### ***(g) Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs.***

Regulations in this part govern commercial fishing for king and Tanner crab in the Bering Sea and Aleutian Islands Area by vessels of the United States, **and supersede** State of Alaska regulations applicable

### § 679.1 Purpose and scope

to the commercial king and Tanner crab fisheries in the Bering Sea and Aleutians Islands Area EEZ that are determined to be inconsistent with the FMP (see **subpart A, B, and E** of this part). **Additional regulations governing commercial fishing for, and processing of, king and Tanner crab managed pursuant to section 313(j) of the Magnuson-Stevens Act and the Crab Rationalization Program are codified at 50 CFR part 680.**

#### *(h) Fishery Management Plan for the Scallop Fishery off Alaska.*

(1) Regulations in this part govern commercial fishing for scallops in the Federal waters off Alaska by vessels of the United States (see subpart A of this part).

(2) State of Alaska laws and regulations that are consistent with the FMP and with the regulations in this part apply to vessels of the United States that are fishing for scallops in the Federal waters off Alaska.

#### *(i) Fishery Management Plan for the Salmon Fisheries in the EEZ off the Coast of Alaska (Salmon FMP).*

(1) Regulations in this part govern fishing for salmon by fishing vessels of the United States in the Salmon Management Area.

(2) State of Alaska laws and regulations that are consistent with the Salmon FMP and with the regulations in this part apply to vessels of the United States that are fishing for salmon in the Salmon Management Area.

#### *(j) License Limitation Program (LLP).*

(1) Regulations in this part implement the **LLP** for the commercial groundfish fisheries in the EEZ off Alaska and **the LLP** for the commercial crab fisheries in the Bering Sea and Aleutians Islands Area.

(2) Regulations in this part govern the commercial fishing for **groundfish under the LLP** by vessels of the United States using authorized gear within the GOA and the **Bering Sea and Aleutians Islands Area** and the commercial fishing for crab species **under the LLP** by vessels of the United States

using authorized gear within the Bering Sea and Aleutians Islands Area.

(3) Regulations in this part implement the license limitation program for the commercial scallop fishery in the EEZ off Alaska.

(4) Regulations in this part govern the commercial fishing for scallops by vessels of the United States using authorized gear within the EEZ off Alaska.

#### *(k) American Fisheries Act and AI directed pollock fishery measures.*

Regulations in this part were developed by NMFS and the Council under the Magnuson-Stevens Act, the American Fisheries Act (AFA), and the Consolidated Appropriations Act of 2004 to govern commercial fishing for BSAI pollock according to the requirements of the AFA and the Consolidated Appropriations Act of 2004. This part also governs payment and collection of the loan, under the AFA, the Magnuson-Stevens Act, and Title XI of the Merchant Marine Act, 1936, made to all those persons who harvest pollock from the directed fishing allowance allocated to the inshore component under section 206(b)(1) of the AFA.



## Fishery Conservation and Management

## § 679.4

(i) If the application is for an amended permit, the current Federal processor permit number and an update of the permit information that has changed.

(ii) The shoreside processor's name, business street address, telephone number, and fax number.

(iii) The shoreside processor owner's name or names, business mailing address, managing company, if any, telephone number, ADF&G Processor Code, and fax number.

(iv) Indication of the fishery or fisheries for which the permit is requested.

(v) Indication of the shoreside processor operations category.

(vi) *Signature.* The owner or agent of the owner of the shoreside processor must sign and date the application. If the owner is a company, the agent of the owner must sign and date the application.

(3) *Issuance.* (i) Upon receipt of a properly completed permit application, the Regional Administrator will issue a Federal processor permit required by this paragraph (f).

(ii) The Regional Administrator will send the Federal processor permit to the applicant with the shoreside processor logbook, as provided under § 679.5.

(4) *Duration.* (i) A Federal processor permit is issued for a 3-year period and remains in full force and effect from the date of issuance through the end of the current NMFS 3-year renewal cycle, unless it is revoked, suspended, or modified under § 600.735 or § 600.740 of this chapter.

(ii) A Federal processor permit is surrendered when the original permit is submitted to and received by the Program Administrator, RAM Division, Juneau, AK.

(5) *Transfer.* A Federal processor permit issued under this paragraph (f) is not transferable or assignable and is valid only for the processor for which it is issued.

(6) *Inspection.* (i) An original Federal processor permit issued under this paragraph (f) must be on site at the shoreside processor at all times. Photocopied or faxed copies are not considered originals.

(ii) A permit issued under this paragraph (f) must be presented for inspec-

tion upon the request of any authorized officer.

(g) *Scallop LLP—(1) General requirements.* In addition to the permit and licensing requirements prescribed in this part, each vessel within the EEZ off Alaska that is catching and retaining scallops, must have an original scallop LLP license on board at all times it is catching and retaining scallops. This scallop LLP license, issued by NMFS, authorizes the person named on the license to catch and retain scallops in compliance with regulations of the State of Alaska and only with a vessel that does not exceed the MLOA specified on the license and the gear designation specified on the license.

(2) *Qualifications for a scallop LLP license.* A scallop LLP license will be issued to an eligible applicant who:

(i) Is a qualified person;

(ii) Was named on a State of Alaska scallop moratorium permit or Federal scallop moratorium permit on February 8, 1999;

(iii) Used the moratorium permit held on February 8, 1999, to make legal landings of scallops in each of any 2 calendar years during the qualification period beginning January 1, 1996, through October 9, 1998; and

(iv) Submitted a complete application for a scallop license during the application period specified pursuant to paragraph (g)(4) of this section.

(3) *Scallop license conditions and endorsements.* A scallop license authorizes the license holder to catch and retain scallops only if the vessel length and gear used do not exceed the vessel length and gear endorsements specified on the license. These endorsements will be determined as follows.

(i) The MLOA specified on the scallop license is equal to the length overall on February 8, 1999, of the longest vessel that was authorized by a Federal or State of Alaska Scallop Moratorium Permit to harvest scallops and used by the eligible applicant to make legal landings of scallops during the scallop LLP qualification period, as specified at § 679.4(g)(2)(iii) of this part.

(ii) The gear specified on a scallop license will be restricted to a single 6-ft (1.8-m) dredge in all areas if the eligible applicant was a moratorium permit holder with a Scallop Registration

Area H (Cook Inlet) endorsement and did not make a legal landing of scallops caught outside of Area H during the qualification period specified in paragraph (g)(2)(iii) of this section.

(4) *Application for a scallop license*—(i) *General.* The Regional Administrator will issue a scallop license to an applicant if a complete application is submitted by or on behalf of the applicant during the specified application period, and if that applicant meets all the criteria for eligibility in this part. An application that is postmarked or hand delivered after the ending date for the application period for the scallop LLP specified in paragraph §679.4(g)(4)(ii) will be denied. An application form will be sent to the last known address of the person identified as an eligible applicant by the official LLP record. An application form may be requested from the Regional Administrator.

(ii) *Application Period.* January 16, 2001, through February 12, 2001.

(iii) *Contents of application.* To be complete, an application for a scallop license must be signed and dated by the applicant, or the individual representing the applicant, and contain the following information, as applicable:

(A) Scallop Moratorium Permit number under which legal landings of scallops were made during the qualification period specified in paragraph (g)(2)(iii) of this section;

(B) Name, business address, telephone number, FAX number, and social security number or tax ID number of the applicant, and whether the applicant is a U.S. citizen or a U.S. business;

(C) Name of the managing company, if any;

(D) Evidence of legal landings in the qualifying years and registration areas;

(E) For the vessel(s) being used as the basis for eligibility for a license, the name, state registration number (e.g., ADF&G number), the USCG documentation number, and valid evidence of the LOA on February 8, 1999, of the longest vessel used by the applicant during the qualification period specified in paragraph (g)(2)(iii) of this section.

(iv) *Successor-in-interest.* If an applicant is applying as the successor-in-in-

terest to an eligible applicant, an application, to be complete, also must contain valid evidence proving the applicant's status as a successor-in-interest to that eligible applicant and:

(A) Valid evidence of the death of that eligible applicant at the time of application, if the eligible applicant was an individual; or

(B) Valid evidence that the eligible applicant is no longer in existence at the time of application, if the eligible applicant is not an individual.

(v) *Application evaluation.* The Regional Administrator will evaluate an application submitted during the specified application period and compare all claims in the application with the information in the official LLP record. Claims in the application that are consistent with information in the official LLP record will be accepted by the Regional Administrator. Inconsistent claims in the application, unless verified by evidence, will not be accepted. An applicant who submits inconsistent claims, or an applicant who fails to submit the information specified in paragraphs (g)(4)(iii) and (g)(4)(iv) of this section, will be provided a 60-day evidentiary period pursuant to paragraph (g)(4)(vii) of this section to submit the specified information, submit evidence to verify his or her inconsistent claims, or submit a revised application with claims consistent with information in the official LLP record. An applicant who submits claims that are inconsistent with information in the official LLP record has the burden of proving that the submitted claims are correct.

(vi) *Additional information or evidence.* The Regional Administrator will evaluate additional information or evidence to support an applicant's inconsistent claims submitted within the 60-day evidentiary period pursuant to paragraph (g)(4)(vii) of this section. If the Regional Administrator determines that the additional information or evidence meets the applicant's burden of proving that the inconsistent claims in his or her application are correct, the official LLP record will be amended and the information will be used in determining whether the applicant is eligible for a

license. However, if the Regional Administrator determines that the additional information or evidence does not meet the applicant's burden of proving that the inconsistent claims in his or her application is correct, the applicant will be notified by an initial administrative determination, pursuant to paragraph (g)(4)(viii) of this section, that the applicant did not meet the burden of proof to change the information in the official LLP record.

(vii) *60-day evidentiary period.* The Regional Administrator will specify by letter a 60-day evidentiary period during which an applicant may provide additional information or evidence to support the claims made in his or her application, or to submit a revised application with claims consistent with information in the official LLP record, if the Regional Administrator determines that the applicant did not meet the burden of proving that the information on the application is correct through evidence provided with the application. Also, an applicant who fails to submit information as specified in paragraphs (g)(4)(iii) and (g)(4)(iv) of this section will have 60 days to provide that information. An applicant will be limited to one 60-day evidentiary period. Additional information or evidence, or a revised application, received after the 60-day evidentiary period specified in the letter has expired will not be considered for purposes of the initial administrative determination.

(viii) *Initial administrative determinations (IAD).* The Regional Administrator will prepare and send an IAD to the applicant following the expiration of the 60-day evidentiary period if the Regional Administrator determines that the information or evidence provided by the applicant fails to support the applicant's claims and is insufficient to rebut the presumption that the official LLP record is correct, or if the additional information, evidence, or revised application is not provided within the time period specified in the letter that notifies the applicant of his or her 60-day evidentiary period. The IAD will indicate the deficiencies in the application, including any deficiencies with the information, the evidence submitted in support of the in-

formation, or the revised application. The IAD will also indicate which claims cannot be approved based on the available information or evidence. An applicant who receives an IAD may appeal pursuant to § 679.43. An applicant who avails himself or herself of the opportunity to appeal an IAD will not receive a transferable license until after the final resolution of that appeal in the applicant's favor.

(ix) *Issuance of a non-transferable license.* The Regional Administrator will issue a non-transferable license to the applicant at the same time notification is provided to the applicant of his or her 60-day evidentiary period if issuance is required by the license renewal provisions of 5 U.S.C. 558. A non-transferable license authorizes a person to catch and retain scallops as specified on the non-transferable license, and will have the specific endorsements and designations based on the claims in his or her application. A non-transferable license will expire upon final agency action.

(5) *Transfer of a Scallop License—(i) General.* The Regional Administrator will approve the transfer of a scallop license if a complete transfer application is submitted to Restricted Access Management, Alaska Region, NMFS, and if the transfer meets all the eligibility criteria as specified in paragraph (g)(5)(ii) of this section. An application form may be requested from the Regional Administrator.

(ii) *Eligibility criteria for transfers.* A scallop license can be transferred if:

(A) The designated transferee is eligible to document a fishing vessel under Chapter 121, Title 46, U.S.C.;

(B) The parties to the transfer do not have any fines, civil penalties, other payments due and outstanding, or outstanding permit sanctions resulting from Federal fishing violations;

(C) The transfer will not cause the designated transferee to exceed the license limit in § 679.7(i); and

(D) The transfer does not violate any other provision specified in this part.

(iii) *Contents of transfer application.* To be complete, an application for a scallop license transfer must be signed by the license holder and the designated transferee, or the individuals

representing them, and contain the following information, as applicable:

(A) Name, business address, telephone number, and FAX number of the license holder and of the designated transferee;

(B) License number and total price being paid for the license;

(C) Certification that the designated transferee is a U.S. citizen, or a U.S. corporation, partnership, or other association;

(D) A legible copy of a contract or sales agreement that specifies the license to be transferred, the license holder, the designated transferee, the monetary value or the terms of the license transfer; and

(E) Other information the Regional Administrator deems necessary for measuring program performance.

(iv) *Incomplete applications.* The Regional Administrator will return an incomplete transfer application to the applicant and identify any deficiencies if the Regional Administrator determines that the application does not meet all the criteria identified in paragraph (g)(5) of this section.

(v) *Transfer by court order, operation of law, or as part of a security agreement.* The Regional Administrator will transfer a scallop license based on a court order, operation of law, or a security agreement if the Regional Administrator determines that the transfer application is complete and the transfer will not violate any of the provisions of this section.

(h) *High Seas Salmon permits*—(1) *Operators of commercial fishing vessels using power troll gear.* The operator of a fishing vessel using power troll gear may engage in commercial fishing for salmon in the High Seas Salmon Management Area if the operator:

(i) Held a valid State of Alaska power troll permanent entry permit on May 15, 1979, or is a transferee under paragraph (h)(13) of this section from an operator who held such a permit on that date;

(ii) Held a valid State of Alaska power troll interim use permit on May 15, 1979; or

(iii) Holds a High Seas Salmon Fishery permit issued by the Regional Administrator under paragraph (h)(7) of this section.

(2) *Crew members and other persons not the operator of a commercial fishing vessel using power troll gear.* Crew members or other persons aboard but not the operator of a fishing vessel may assist in the vessel's commercial salmon fishing operations in the High Seas Management Area without a permit if a person described in paragraph (h)(1)(i) through (iii) of this section is also aboard the vessel and is engaged in the vessel's commercial fishing operations.

(3) *Personal use fishing.* Any person who holds a valid State of Alaska sport fishing license may engage in personal use fishing in the High Seas Salmon Management Area.

(4) *Duration.* Authorization under this paragraph (h) to engage in fishing for salmon in the High Seas Salmon Management Area constitutes a use privilege which may be revoked or modified without compensation.

(5) *Eligibility criteria for permits issued by the Regional Administrator.* (i) Any person is eligible to be issued a High Seas Salmon Fishery permit under paragraph (h)(7) of this section if that person, during any one of the calendar years 1975, 1976, or 1977:

(A) Operated a fishing vessel in the High Seas Salmon Management Area.

(B) Engaged in commercial fishing for salmon in the High Seas Salmon Management Area.

(C) Caught salmon in the High Seas Salmon Management Area using power troll gear.

(D) Landed such salmon.

(ii) The following persons are not eligible to be issued a High Seas Salmon Fishery permit under paragraph (h)(7) of this section:

(A) Persons described in paragraph (h)(1)(i) or (h)(1)(ii) of this section.

(B) Persons who once held but no longer hold a State of Alaska power troll permanent entry or interim-use permit.

(6) *Application.* Applications for a High Seas Salmon Fishery permit must be in writing, signed by the applicant, and submitted to the Regional Administrator, at least 30 days prior to the date the person wishes to commence fishing, and must include:

(i) The applicant's name, mailing address, and telephone number.

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(16) *Appeals and hearings.* (i) A decision by the Regional Administrator to deny a permit under paragraph (h)(7) of this section or to deny transfer of authority to engage in commercial fishing for salmon in the High Seas Salmon Management Area under paragraphs (h)(13) and (h)(14) of this section will:

(A) Be in writing.

(B) State the facts and reasons therefor.

(C) Advise the applicant of the rights provided in this paragraph (h)(16).

(ii) Any such decision of the Regional Administrator shall be final 30 days after receipt by the applicant, unless an appeal is filed with the NOAA/NMFS Assistant Administrator within that time.

(iii) Failure to file a timely appeal shall constitute waiver of the appeal.

(iv) Appeals under this paragraph (h)(16) must:

(A) Be in writing.

(B) Set forth the reasons why the appellant believes the Regional Administrator's decision was in error.

(C) Include any supporting facts or documentation.

(v) At the time the appeal is filed with the Assistant Administrator, the appellant may request a hearing with respect to any disputed issue of material fact. Failure to request a hearing at this time will constitute a waiver of the right to request a hearing.

(vi) If a hearing is requested, the Assistant Administrator may order an informal fact-finding hearing if it is determined that a hearing is necessary to resolve material issues of fact and shall so notify the appellant.

(vii) If the Assistant Administrator orders a hearing, the order will appoint a hearing examiner to conduct the hearing.

(viii) Following the hearing, the hearing examiner shall promptly furnish the Assistant Administrator with a report and appropriate recommendations.

(ix) As soon as practicable after considering the matters raised in the appeal, and any report or recommendation of the hearing examiner in the event a hearing is held under this paragraph (h)(16), the Assistant Administrator shall decide the appeal.

(x) The Assistant Administrator shall promptly notify the appellant of the final decision. Such notice shall set forth the findings of the Assistant Administrator and set forth the basis of the decision. The decision of the Assistant Administrator shall be the final administrative action of the Department of Commerce.

(i) *Experimental fisheries permits.* (See § 679.6.)

(j) *Salmon donation program permits.* (See § 679.26(a)(3).)

(k) *Licenses for license limitation groundfish or crab species—(1) General requirements.* (i) In addition to the permit and licensing requirements prescribed in this part, and except as provided in paragraph (k)(2) of this section, each vessel within the GOA or the BSAI must have a groundfish license on board at all times it is engaged in fishing activities defined in § 679.2 as directed fishing for license limitation groundfish. This groundfish license, issued by NMFS to a qualified person, authorizes a license holder to deploy a vessel to conduct directed fishing for license limitation groundfish only in the specific area(s) designated on the license and may only be used on a vessel that complies with the vessel designation and MLOA specified on the license.

(ii) In addition to the permit and licensing requirements prescribed in this part, and except as provided in paragraph (k)(2) of this section, each vessel within the Bering Sea and Aleutian Islands Area must have a crab species license on board at all times it is engaged in fishing activities defined in § 679.2 as directed fishing for crab species. This crab species license, issued by NMFS to a qualified person, authorizes a license holder to deploy a vessel to conduct directed fishing for crab species only for the specific species and in the specific area(s) designated on the license, and may be used only on a vessel that complies with the vessel designation and MLOA specified on the license.

(2) *Exempt vessels.* Notwithstanding the requirements of paragraph (k)(1) of this section,

(i) A catcher vessel or catcher/processor vessel that does not exceed 26 ft

(7.9 m) LOA may conduct directed fishing for license limitation groundfish in the GOA without a groundfish license;

(ii) A catcher vessel or catcher/processor vessel that does not exceed 32 ft (9.8 m) LOA may conduct directed fishing for license limitation groundfish in the BSAI without a groundfish license and may conduct directed fishing for crab species in the Bering Sea and Aleutian Islands Area without a crab species license;

(iii) A catcher vessel or catcher/processor vessel that does not exceed 60 ft (18.3 m) LOA may use a maximum of 5 jig machines, one line per jig machine, and a maximum of 15 hooks per line, to conduct directed fishing for license limitation groundfish in the BSAI without a groundfish license; or

(iv) A catcher vessel or catcher/processor vessel that does not exceed 125 ft (38.1 m) LOA, and that was, after November 18, 1992, specifically constructed for and used exclusively in accordance with a CDP approved by NMFS under Subpart C of this part, and is designed and equipped to meet specific needs that are described in the CDP may conduct directed fishing for license limitation groundfish in the GOA and in the BSAI area without a groundfish license and for crab species in the Bering Sea and Aleutian Islands Area without a crab species license.

(3) *Vessel designations and vessel length categories*—(i) *General*. A license can be used only on a vessel that complies with the vessel designation specified on the license and that has an LOA less than or equal to the MLOA specified on the license.

(ii) *Vessel designations*—(A) *Catcher/processor vessel*. A license will be assigned a catcher/processor vessel designation if:

(1) For license limitation groundfish, license limitation groundfish were processed on the vessel that qualified for the groundfish license under paragraph (k)(4) of this section during the period January 1, 1994, through June 17, 1995, or in the most recent calendar year of participation during the area endorsement qualifying period specified in paragraph (k)(4)(ii) of this section; or

(2) For crab species, crab species were processed on the vessel that qualified

for the crab species license under paragraph (k)(5) of this section during the period January 1, 1994, through December 31, 1994, or in the most recent calendar year of participation during the area endorsement qualifying period specified in paragraph (k)(5)(i) of this section.

(3) For purposes of paragraphs (k)(3)(ii)(A)(1) and (k)(3)(ii)(A)(2) of this section, evidence of processing must be demonstrated by Weekly Production Reports or other valid documentation demonstrating that processing occurred on the vessel during the relevant period.

(B) *Catcher vessel*. A license will be assigned a catcher vessel designation if it does not meet the criteria in paragraph (k)(3)(ii)(A)(1) or (k)(3)(ii)(A)(2) of this section to be assigned a catcher/processor vessel designation.

(C) *Changing a vessel designation*. A person who holds a groundfish license or a crab species license with a catcher/processor vessel designation may, upon request to the Regional Administrator, have the license reissued with a catcher vessel designation. The vessel designation change to a catcher vessel will be permanent, and that license will be valid for only those activities specified in the definition of catcher vessel designation at §679.2.

(iii) *Vessel length categories*. A vessel's eligibility will be determined using the following three vessel length categories, which are based on the vessel's LOA on June 17, 1995, or, if the vessel was under reconstruction on June 17, 1995, the vessel's length on the date that reconstruction was completed.

(A) Vessel length category "A" if the LOA of the qualifying vessel on the relevant date was equal to or greater than 125 ft (38.1 m) LOA.

(B) Vessel length category "B" if the LOA of the qualifying vessel on the relevant date was equal to or greater than 60 ft (18.3 m) but less than 125 ft (38.1 m) LOA.

(C) Vessel length category "C" if the LOA of the qualifying vessel on the relevant date was less than 60 ft (18.3 m) LOA.

(4) *Qualifications for a groundfish license*. A groundfish license will be issued to an eligible applicant that meets the criteria in paragraphs

(k)(4)(i) and (k)(4)(ii) of this section. For purposes of the license limitation program, evidence of a documented harvest must be demonstrated by a state catch report, a Federal catch report, or other valid documentation that indicates the amount of license limitation groundfish harvested, the groundfish reporting area in which the license limitation groundfish was harvested, the vessel and gear type used to harvest the license limitation groundfish, and the date of harvesting, landing, or reporting. State catch reports are Alaska, California, Oregon, or Washington fish tickets. Federal catch reports are Weekly Production Reports required under § 679.5.

(i) *General qualification periods (GQP).*

(A) At least one documented harvest of any amount of license limitation groundfish species must have been made from a vessel to qualify for one or more of the area endorsements in paragraphs (k)(4)(ii)(A) and (k)(4)(ii)(B) of this section. This documented harvest must have been of license limitation groundfish species caught and retained in the BSAI or in the State waters shoreward of the BSAI and must have occurred during the following periods:

(1) January 1, 1988, through June 27, 1992;

(2) January 1, 1988, through December 31, 1994, provided that the harvest was of license limitation groundfish using pot or jig gear from a vessel that was less than 60 ft (18.3 m) LOA; or

(3) January 1, 1988, through June 17, 1995, provided that, during the period January 1, 1988, through February 9, 1992, the vessel made a legal landing of any king or Tanner crab species harvested in the Bering Sea and Aleutian Islands Area, and, during the period February 10, 1992, through December 11, 1994, made a legal landing of any groundfish species harvested in the GOA or BSAI using trawl gear or a legal landing harvested in the GOA or BSAI of any groundfish species using longline gear, except sablefish landed using fixed gear.

(B) At least one documented harvest of any amount of license limitation groundfish species must have been made from a vessel to qualify for one or more of the area endorsements in

paragraphs (k)(4)(ii)(C) through (k)(4)(ii)(E) of this section. This documented harvest must have been of fish caught and retained in the GOA or in the State waters shoreward of the GOA and must have occurred during the following periods:

(1) January 1, 1988, through June 27, 1992;

(2) January 1, 1988, through December 31, 1994, provided that the harvest was of license limitation groundfish using pot or jig gear from a vessel that was less than 60 ft (18.3 m) LOA; or

(3) January 1, 1988, through June 17, 1995, provided that, during the period January 1, 1988, through February 9, 1992, the vessel made a legal landing of any king or Tanner crab species harvested in the Bering Sea and Aleutian Islands Area, and during the period February 10, 1992, through December 11, 1994, made a legal landing of any groundfish species harvested in the GOA or BSAI using trawl gear or a legal landing of any groundfish species harvested in the GOA or BSAI using longline gear, except sablefish landed using fixed gear.

(ii) *Endorsement qualification periods (EQP).* A groundfish license will be assigned one or more area endorsements based on the criteria in paragraphs (k)(4)(ii)(A) through (k)(4)(ii)(E) of this section.

(A) *Aleutian Islands area endorsement.* For a license to be assigned an Aleutian Islands endorsement, at least one documented harvest of any amount of license limitation groundfish must have been made from a vessel in any vessel length category (vessel categories "A" through "C") between January 1, 1992, and June 17, 1995, and in the Aleutian Islands Subarea or in State waters shoreward of that subarea.

(B) *Bering Sea area endorsement.* For a license to be assigned a Bering Sea area endorsement, at least one documented harvest of any amount of license limitation groundfish must have been made from a vessel in any vessel length category (vessel categories "A" through "C") between January 1, 1992, and June 17, 1995, and in the Bering Sea Subarea or in State waters shoreward of that subarea.

(C) *Western Gulf Area Endorsement.* (1) *Vessel length category "A."* For a license to be assigned a Western Gulf area endorsement based on the participation from a vessel in vessel length category "A," at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel in each of any 2 calendar years from January 1, 1992, through June 17, 1995, in the Western Area of the Gulf of Alaska or in State waters shoreward of that area.

(2) *Vessel length category "B" and catcher vessel designation.* For a license to be assigned a Western Gulf area endorsement based on the participation from a vessel in vessel length category "B" and that would qualify for a catcher vessel designation under this section, at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel from January 1, 1992, through June 17, 1995, in the Western Area of the Gulf of Alaska or in State waters shoreward of that area.

(3) *Vessel length category "B" and catcher/processor vessel designation.* For a license to be assigned a Western Gulf area endorsement based on the participation from a vessel in vessel length category "B" and that would qualify for a catcher/processor vessel designation under this section, at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel in each of any 2 calendar years from January 1, 1992, through June 17, 1995, in the Western Area of the Gulf of Alaska or in State waters shoreward of that area, or at least four documented harvests of any amount of license limitation groundfish harvested from January 1, 1995, through June 17, 1995, in the Western Area of the Gulf of Alaska or in State waters shoreward of that area.

(4) *Vessel length category "C."* For a license to be assigned a Western Gulf area endorsement based on the participation from a vessel in vessel length category "C", at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel from January 1, 1992, through June 17, 1995. This documented harvest must have recorded a harvest occurring in the Western Area of the

Gulf of Alaska or in State waters shoreward of that area for a Western Gulf area endorsement.

(D) *Central Gulf area endorsement—(1) Vessel length category "A."* For a license to be assigned a Central Gulf area endorsement based on the participation of a vessel in vessel length category "A", at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel in each of any 2 calendar years from January 1, 1992, through June 17, 1995. These documented harvests must have recorded harvests occurring in the Central Area of the Gulf of Alaska or in State waters shoreward of that area, or in the West Yakutat District or in state waters shoreward of that district.

(2) *Vessel length category "B."* For a license to be assigned a Central Gulf area endorsement based on the participation from a vessel in vessel length category "B", at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel in each of any 2 calendar years from January 1, 1992, through June 17, 1995, or at least four documented harvests from January 1, 1995, through June 17, 1995. These documented harvests must have recorded harvests occurring in the Central Area of the Gulf of Alaska or in State waters shoreward of that area, or in the West Yakutat District or in state waters shoreward of that district.

(3) *Vessel length category "C."* For a license to be assigned a Central Gulf area endorsement based on the participation from a vessel in vessel length category "C", at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel from January 1, 1992, through June 17, 1995. This documented harvest must have recorded a harvest occurring in the Central Area of the Gulf of Alaska or in State waters shoreward of that area, or in the West Yakutat District or in state waters shoreward of that district.

(E) *Southeast Outside area endorsement—(1) Vessel length category "A."* For a license to be assigned a Southeast Outside area endorsement based on the participation from a vessel in vessel length category "A", at least



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one documented harvest of any amount of license limitation groundfish must have been made from that vessel in each of any 2 calendar years from January 1, 1992, through June 17, 1995. These documented harvests must have recorded harvests occurring in the Southeast Outside District or in State waters shoreward of that district.

(2) *Vessel length category "B"*. For a license to be assigned a Southeast Outside area endorsement based on the participation from a vessel in vessel length category "B", at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel in each of any 2 calendar years from January 1, 1992, through June 17, 1995, or at least four documented harvests from January 1, 1995, through June 17, 1995. These documented harvests must have recorded harvests occurring in the Southeast Outside District or in State waters shoreward of that district.

(3) *Vessel length category "C"*. For a license to be assigned a Southeast outside area endorsement based on the participation from a vessel in vessel length category "C", at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel from January 1, 1992, through June 17, 1995. This documented harvest must have recorded a harvest occurring in the Southeast Outside District or in State waters shoreward of that district.

(iii) An eligible applicant that is issued a groundfish license based on a vessel's qualifications under paragraph (k)(4)(i)(A)(2) or (k)(4)(i)(B)(2) of this section must choose only one area endorsement for that groundfish license even if the vessel qualifies for more than one area endorsement.

(iv) Notwithstanding the provisions in paragraph (k)(4) of this section, a license with the appropriate area endorsements will be issued to an eligible applicant whose vessel meets the requirements of paragraph (k)(4)(i)(A), and the requirements of paragraph (k)(4)(ii)(C), (k)(4)(ii)(D), or (k)(4)(ii)(E) of this section, but

(A) From whose vessel no documented harvests were made in the GOA or state waters shoreward of the GOA

between January 1, 1988, and June 27, 1992, and

(B) From whose vessel no documented harvests were made in the BSAI or state waters shoreward of the BSAI between January 1, 1992, and June 17, 1995.

(v) Notwithstanding the provisions of paragraph (k)(4) of this section, a license with the appropriate area endorsements will be issued to an eligible applicant whose vessel meets the requirements of paragraph (k)(4)(i)(B) of this section, and the requirements of paragraph (k)(4)(ii)(A) or (k)(4)(ii)(B) of this section, but

(A) From whose vessel no documented harvests were made in the BSAI or state waters shoreward of the BSAI between January 1, 1988, and June 27, 1992, and

(B) From whose vessel no documented harvests were made in the GOA or state waters shoreward of the GOA between January 1, 1992, and June 17, 1995.

(5) *Qualifications for a crab species license*. A crab species license will be issued to an eligible applicant who owned a vessel that meets the criteria in paragraphs (k)(5)(i) and (k)(5)(ii) of this section, except that vessels are exempt from the requirements in paragraph (k)(5)(i) of this section for the area/species endorsements in paragraph (k)(5)(ii)(A) and (k)(5)(ii)(G) of this section.

(i) *General qualification period (GQP)*. To qualify for one or more of the area/species endorsements in paragraph (k)(5)(ii) of this section:

(A) At least one documented harvest of any amount of crab species must have been made from a vessel between January 1, 1988, and June 27, 1992; or

(B) At least one documented harvest of any amount of crab species must have been made from a vessel between January 1, 1988, and December 31, 1994, providing that, during the period January 1, 1988, through February 9, 1992, the vessel for which the documented harvest was made also made a legal landing of any groundfish species harvested in the GOA or BSAI with any authorized gear, except sablefish caught with fixed gear, and, during the period February 10, 1992, through December 11, 1994, made a legal landing of

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any king or Tanner crab species harvested in the Bering Sea and Aleutian Islands Area.

(ii) *Area/Species Endorsements.* A crab species license will be assigned one or more area/species endorsements specified at § 679.2 based on the criteria in paragraphs (k)(5)(ii)(A) through (G) of this section.

(A) *Pribilof red king and Pribilof blue king.* At least one documented harvest of any amount of red king or blue king crab harvested in the area described in the definition for the Pribilof red king and Pribilof blue king area/species endorsement in § 679.2 must have been made from a vessel between January 1, 1993, and December 31, 1994, to qualify for a Pribilof red king and Pribilof blue king area/species endorsement.

(B) *Bering Sea and Aleutian Islands Area C. opilio and C. bairdi.* At least three documented harvests of any amount of *C. opilio* or *C. bairdi* crab harvested in the area described in the definition for the Bering Sea and Aleutian Islands Area *C. opilio* or *C. bairdi* area/species endorsement in § 679.2 must have been made from a vessel between January 1, 1992, and December 31, 1994, to qualify for a *C. opilio* and *C. bairdi* area/species endorsement.

(C) *St. Matthew blue king.* At least one documented harvest of any amount of blue king crab harvested in the area described in the definition for the St. Matthews blue king area/species endorsement in § 679.2 must have been made from a vessel between January 1, 1992, and December 31, 1994, to qualify for a St. Matthew blue king area/species endorsement.

(D) *Aleutian Islands brown king.* At least three documented harvests of any amount of brown king crab harvested in the area described in the definition for the Aleutian Islands brown king area/species endorsement in § 679.2 must have been made from a vessel between January 1, 1992, and December 31, 1994, to qualify for a Aleutian Islands brown king area/species endorsement.

(E) *Aleutian Islands red king.* At least one documented harvest of any amount of red king crab harvested in the area described in the definition for the Aleutian Islands red king area/species endorsement in § 679.2 must have been

made from a vessel between January 1, 1992, and December 31, 1994, to qualify for a Aleutian Islands red king area/species endorsement.

(F) *Bristol Bay red king.* At least one documented harvest of any amount of red king crab harvested in the area described in the definition for the Bristol Bay red king area/species endorsement in § 679.2 must have been made from a vessel between January 1, 1991, and December 31, 1994, to qualify for a Bristol Bay red king area/species endorsement.

(G) *Norton Sound red king and Norton Sound blue king.* At least one documented harvest of any amount of red king or blue king crab harvested in the area described in the definition for the Norton Sound red king and Norton Sound blue king area/species endorsement in § 679.2 must have been made from a vessel between January 1, 1993, and December 31, 1994, to qualify for a Norton Sound red king and Norton Sound blue king area/species endorsement.

(6) *Application for a groundfish license or a crab species license.* (i) *General.* The Regional Administrator will issue a groundfish license or a crab species license to an applicant if a complete application is submitted by or on behalf of the applicant during the specified application period, and if that applicant meets all the criteria for eligibility in paragraph (k) of this section. An application that is postmarked or delivered after the ending date for the application period for the License Limitation Program specified in the *Federal Register* will be denied. An application form will be sent to the last known address of a person identified as an eligible applicant by the official LLP record. An application form may be requested from the Regional Administrator.

(ii) *Application period.* An application period of no less than 90 days will be specified by notification in the *Federal Register* and other information sources deemed appropriate by the Regional Administrator.

(iii) *Contents of application.* To be complete, an application for a groundfish license or a crab species license must be signed by the applicant, or the individual representing the applicant,

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and contain the following, as applicable:

(A) Name, business address, telephone number, and FAX number of the applicant;

(B) Name, state registration number (e.g., ADF&G number), and, if applicable, the USCG documentation number of the vessel being used as the basis for eligibility for a license; and name, state registration number (e.g., ADF&G number), and, if applicable, the USCG documentation number of the vessel to be deployed with the license if different than the vessel used as the basis of eligibility for a license;

(C) Name of the managing company, if any;

(D) Valid evidence of the documented harvests that are the basis of eligibility for a license, including harvest area, gear used, date of landing, and, if applying for a crab species license, species;

(E) Valid evidence of LOA on June 24, 1992, of the vessel used as the basis of eligibility for a license, except if that vessel was under reconstruction on that date, valid evidence of LOA on the date reconstruction was completed and valid evidence of when reconstruction began and ended;

(F) Valid evidence of LOA on June 17, 1995, of the vessel used as the basis of eligibility for a license, except if that vessel was under reconstruction on that date, valid evidence of LOA on the date reconstruction was completed, and valid evidence of when reconstruction began and ended;

(G) Valid evidence to support the applicant's claim for a vessel designation of catcher vessel or catcher/processor vessel;

(H) Valid evidence of ownership of the vessel being used as the basis for eligibility for a license (for USCG documented vessels, valid evidence must be the USCG Abstract of Title), or if eligibility is based on a fishing history that has been separated from a vessel, valid evidence of ownership of the fishing history being used as the basis of eligibility for a license; and

(I) Valid evidence of the LOA of the vessel to be deployed by the license if different than the vessel used as the basis for eligibility for a license.

(iv) *Other information required for special circumstances.*

(A) *Successor-in-interest.* If an applicant is applying as the successor-in-interest to an eligible applicant, an application, to be complete, also must contain valid evidence proving the applicant's status as a successor-in-interest to that eligible applicant and:

(1) Valid evidence of the death of that eligible applicant at the time of application, if the eligible applicant was or is an individual; or

(2) Valid evidence that the eligible applicant is no longer in existence at the time of application, if the eligible applicant is not an individual.

(B) *Norton Sound crab species license endorsement.* If an applicant is applying for a crab species license endorsement for Norton Sound and if the applicant is a person, an application, to be complete, must contain valid evidence that the applicant was a State of Alaska permit holder for the Norton Sound king crab summer fishery in 1993 or 1994. If the applicant is a corporation, an application, to be complete, must contain valid evidence that the corporation owned or had a lease for a vessel on June 17, 1995, that participated in the Norton Sound king crab summer fishery in 1993 or 1994.

(C) *Extended general qualification period.* If an applicant is applying for a license based on meeting the general qualification period requirements of paragraph (k)(4)(i)(A)(2) or (k)(4)(i)(B)(2) of this section, the application, to be complete, must indicate which single endorsement area the applicant has selected for license. A license cannot be endorsed for more than one area, notwithstanding the fact that the applicant may have the documented harvests to qualify for more than one endorsement area.

(D) *Unavoidable circumstances.* If an applicant is applying for a license based on an unavoidable circumstance pursuant to paragraph (k)(8)(iv) of this section, an application, to be complete, must contain the information required by that paragraph and valid evidence of the date the vessel on which the application is based was lost, damaged, or otherwise unable to participate in the fishery, and the date a documented

harvest was made from the replacement vessel.

(v) *Application evaluation.* The Regional Administrator will evaluate an application submitted during the specified application period and compare all claims in the application with the information in the official LLP record. Claims in the application that are consistent with information in the official LLP record will be accepted by the Regional Administrator. Inconsistent claims in the application, unless verified by evidence, will not be accepted. Pursuant to paragraph (k)(6)(vii) of this section, an applicant who submits inconsistent claims, or an applicant who fails to submit the information specified in paragraphs (k)(6)(iii) and (k)(6)(iv) of this section, will be provided a 60-day evidentiary period pursuant to paragraph (k)(6)(vii) of this section to submit the specified information, submit evidence to verify his or her inconsistent claims, or submit a revised application with claims consistent with information in the official LLP record. An applicant who submits claims that are inconsistent with information in the official LLP record has the burden of proving that the submitted claims are correct.

(vi) *Additional information or evidence.* The Regional Administrator will evaluate additional information or evidence to support an applicant's inconsistent claims submitted within the 60-day evidentiary period pursuant to paragraph (k)(6)(vii) of this section. If the Regional Administrator determines that the additional information or evidence meets the applicant's burden of proving that the inconsistent claims in his or her application is correct, the official LLP record will be amended and the information will be used in determining whether the applicant is eligible for a license. However, if the Regional Administrator determines that the additional information or evidence does not meet the applicant's burden of proving that the inconsistent claims in his or her application is correct, the applicant will be notified by an initial administrative determination, pursuant to paragraph (k)(6)(viii) of this section, that the applicant did not meet the burden of proof to change the information in the official LLP record.

(vii) *60-day evidentiary period.* The Regional Administrator will specify by letter a 60-day evidentiary period during which an applicant may provide additional information or evidence to support the claims made in his or her application, or to submit a revised application with claims consistent with information in the official LLP record, if the Regional Administrator determines that the applicant did not meet the burden of proving that the information on the application is correct through evidence provided with the application. Also, an applicant who fails to submit information as specified in paragraphs (k)(6)(iii) and (k)(6)(iv) of this section will have 60 days to provide that information. An applicant will be limited to one 60-day evidentiary period. Additional information or evidence, or a revised application, received after the 60-day evidentiary period specified in the letter has expired will not be considered for purposes of the initial administrative determination.

(viii) *Initial administrative determinations (IAD).* The Regional will prepare and send an IAD to the applicant following the expiration of the 60-day evidentiary period if the Regional Administrator determines that the information or evidence provided by the applicant fails to support the applicant's claims and is insufficient to rebut the presumption that the official LLP record is correct, or if the additional information, evidence, or revised application is not provided within the time period specified in the letter that notifies the applicant of his or her 60-day evidentiary period. The IAD will indicate the deficiencies in the application, including any deficiencies with the information, the evidence submitted in support of the information, or the revised application. The IAD will also indicate which claims cannot be approved based on the available information or evidence. An applicant who receives an IAD may appeal pursuant to § 679.43. An applicant who avails himself or herself of the opportunity to appeal an IAD will not receive a transferable license until after the final resolution of that appeal, notwithstanding the eligibility of that applicant for

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some claims based on consistent information in the application.

(ix) *Issuance of a non-transferable license.* The Regional Administrator will issue a non-transferable license to the applicant on issuance of an IAD if required by the license renewal provisions of 5 U.S.C. 558. A non-transferable license authorizes a person to deploy a vessel to conduct directed fishing for license limitation groundfish or crab species as specified on the non-transferable license, and will have the specific endorsements and designations based on the claims in his or her application. A non-transferable license will expire upon final agency action.

(7) *Transfer of a groundfish license or a crab species license*—(i) *General.* The Regional Administrator will transfer a groundfish license or a crab species license if a complete transfer application is submitted to Restricted Access Management, Alaska Region, NMFS, and if the transfer meets the eligibility criteria as specified in paragraph (k)(7)(ii) of this section. An application form may be requested from the Regional Administrator.

(ii) *Eligibility criteria for transfers.* A groundfish license or crab species license can be transferred if:

(A) The designated transferee is eligible to document a fishing vessel under Chapter 121, Title 46, U.S.C.;

(B) The parties to the transfer do not have any fines, civil penalties, other payments due and outstanding, or outstanding permit sanctions resulting from Federal fishing violations;

(C) The transfer will not cause the designated transferee to exceed the license caps in § 679.7(i); and

(D) The transfer does not violate any other provision specified in this part.

(iii) *Contents of application.* To be complete, an application for a groundfish license transfer or a crab species license transfer must be signed by the license holder and the designated transferee, or the individuals representing them, and contain the following, as applicable:

(A) Name, business address, telephone number, and FAX number of the license holder and the designated transferee;

(B) Name, state registration number (e.g., ADF&G number), and, if applica-

ble, the USCG documentation number of the vessel to be deployed with the license (i.e., the designated vessel) after the transfer is approved;

(C) Valid evidence that the designated transferee is a person eligible to document a fishing vessel under Chapter 121, Title 46, U.S.C.;

(D) A legible copy of a contract or sales agreement that specifies the license to be transferred, the license holder, the designated transferee, the monetary value or the terms of the license transfer, and the signature of the license holder and the designated transferee; and

(E) Information regarding whether a broker was used for the transaction, whether the license was collateralized, and other information the Regional Administrator deems necessary for measuring program performance.

(iv) *Incomplete applications.* The Regional Administrator will return an incomplete transfer application to the applicant and identify any deficiencies if the Regional Administrator determines that the application does not meet all the criteria identified in paragraph (k)(7) of this section.

(v) *Transfer by court order, operation of law, or as part of a security agreement.* The Regional Administrator will transfer a groundfish license or a crab species license based on a court order, operation of law, or a security agreement if the Regional Administrator determines that the transfer application is complete and the transfer will not violate any of the provisions of this section.

(vi) *Voluntary transfer limitation.* A groundfish license or a crab species license may be voluntarily transferred only once in any calendar year. A voluntary transfer is a transfer other than one pursuant to a court order, operation of law, or a security agreement. An application for transfer that would cause a person to exceed the transfer limit of this provision will not be approved.

(vii) *Request to change the designated vessel.* A request to change the vessel designated on an LLP groundfish or crab species license must be made on a transfer application. If this request is approved and made separately from a license transfer, it will count towards

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the annual limit on voluntary transfers specified in paragraph (k)(7)(vi) of this section.

(viii) *Severability of licenses.* (A) Area endorsements or area/species endorsements specified on a license are not severable from the license and must be transferred together.

(B) A groundfish license and a crab species license issued based on the legal landings of the same vessel and initially issued to the same qualified person are not severable and must be transferred together.

(8) *Other provisions.* (i) Any person committing, or a fishing vessel used in the commission of, a violation of the Magnuson-Stevens Fishery Conservation and Management Act or any regulations issued pursuant thereto, is subject to the civil and criminal penalty provisions and the civil forfeiture provisions of the Magnuson-Stevens Fishery Conservation and Management Act, part 621 of this chapter, 15 CFR part 904 (Civil Procedure), and other applicable law. Penalties include, but are not limited to, permanent or temporary sanctions to licenses.

(ii) Notwithstanding the provisions of the license limitation program in this part, vessels fishing for species other than license limitation groundfish as defined in § 679.2 that were authorized under Federal regulations to incidentally catch license limitation groundfish without a Federal fisheries permit described at § 679.4(b) will continue to be authorized to catch the maximum retainable bycatch amounts of license limitation groundfish as provided in this part without a groundfish license.

(iii) An eligible applicant, who qualifies for a groundfish license or crab species license but whose vessel on which the eligible applicant's qualification was based was lost or destroyed, will be issued a license. This license:

(A) Will have the vessel designation of the lost or destroyed vessel.

(B) Cannot be used to conduct directed fishing for license limitation groundfish or to conduct directed fishing for crab species on a vessel that has an LOA greater than the MLOA designated on the license.

(iv) A qualified person who owned a vessel on June 17, 1995, that made a documented harvest of license limita-

tion groundfish, or crab species if applicable, between January 1, 1988, and February 9, 1992, but whose vessel was unable to meet all the criteria in paragraph (k)(4) of this section for a groundfish license or paragraph (k)(5) of this section for a crab species license because of an unavoidable circumstance (i.e., the vessel was lost, damaged, or otherwise unable to participate in the license limitation groundfish or crab fisheries) may receive a license if the qualified person is able to demonstrate that:

(A) The owner of the vessel at the time of the unavoidable circumstance held a specific intent to conduct directed fishing for license limitation groundfish or crab species with that vessel during a specific time period in a specific area.

(B) The specific intent to conduct directed fishing for license limitation groundfish or crab species with that vessel was thwarted by a circumstance that was:

(1) Unavoidable.

(2) Unique to the owner of that vessel, or unique to that vessel.

(3) Unforeseen and reasonably unforeseeable to the owner of the vessel.

(C) The circumstance that prevented the owner from conducting directed fishing for license limitation groundfish or crab species actually occurred.

(D) Under the circumstances, the owner of the vessel took all reasonable steps to overcome the circumstance that prevented the owner from conducting directed fishing for license limitation groundfish or crab species.

(E) Any amount of license limitation groundfish or appropriate crab species was harvested on the vessel in the specific area that corresponds to the area endorsement or area/species endorsement for which the qualified person who owned a vessel on June 17, 1995, is applying and that the license limitation groundfish or crab species was harvested after the vessel was prevented from participating by the unavoidable circumstance but before June 17, 1995.

(v) A groundfish license or a crab species license may be used on a vessel that complies with the vessel designation on the license and that does not exceed the MLOA on the license.

## § 679.20 General limitations

### Subpart B – Management Measures

#### § 679.20 General limitations.

**(Effective January 1, 2008)** This section applies to vessels engaged in directed fishing for groundfish in the GOA and **or the** BSAI.

##### *(a) Harvest limits*

###### (1) OY.

The OY for BSAI and GOA target species and the “other species” category is a range that can be harvested consistently with this part, plus the amounts of “nonspecified species” taken incidentally to the harvest of target species and the “other species” category. The species categories are defined in Table 1 of the specifications as provided in paragraph (c) of this section.

(i) BSAI. The OY for groundfish in the BSAI regulated by this section and by part 600 of this chapter is 1.4 to 2.0 million mt.

(ii) GOA. The OY for groundfish in the GOA regulated by this section and by part 600 of this chapter is 116,000 to 800,000 mt.

###### (2) TAC.

NMFS, after consultation with the Council, will specify and apportion the annual TAC and reserves for each calendar year among the GOA and BSAI target species and the “other species” categories. TACs in the target species category may be split or combined for purposes of establishing new TACs with apportionments thereof under paragraph (c) of this section. The sum of the TACs so specified must be within the OY range specified in paragraph (a)(1) of this section.

###### (3) Annual TAC determination.

The annual determinations of TAC for each target species and the “other species” category, and the reapportionment of reserves may be adjusted, based upon a review of the following:

###### (i) Biological condition of groundfish stocks.

Resource assessment documents prepared annually for the Council that provide information on historical catch trend; updated estimates of the MSY of the

groundfish complex and its component species groups; assessments of the stock condition of each target species and the “other species” category; assessments of the multispecies and ecosystem impacts of harvesting the groundfish complex at current levels, given the assessed condition of stocks, including consideration of rebuilding depressed stocks; and alternative harvesting strategies and related effects on the component species group.

###### (ii) Socioeconomic considerations.

Socioeconomic considerations that are consistent with the goals of the fishery management plans for the groundfish fisheries of the BSAI and the GOA, including the need to promote efficiency in the utilization of fishery resources, including minimizing costs; the need to manage for the optimum marketable size of a species; the impact of groundfish harvests on prohibited species and the domestic target fisheries that utilize these species; the desire to enhance depleted stocks; the seasonal access to the groundfish fishery by domestic fishing vessels; the commercial importance of a fishery to local communities; the importance of a fishery to subsistence users; and the need to promote utilization of certain species.

###### (4) Sablefish TAC.

(i) Eastern GOA regulatory area. Vessels in the Eastern GOA regulatory area using trawl gear will be allocated 5 percent of the sablefish TAC for bycatch in other trawl fisheries.

###### (ii) Central and Western GOA regulatory areas.

(A) Hook-and-line gear. Vessels in the Central and Western GOA regulatory areas using hook-and-line gear will be allocated 80 percent of the sablefish TAC in each of the Central and Western GOA regulatory areas.

(B) Trawl gear. Vessels using trawl gear will be allocated 20 percent of the sablefish TAC in these areas.

###### (iii) Bering Sea subarea.

(A) Hook-and-line or pot gear. Vessels in the Bering Sea subarea using hook-and-line or pot gear will be allocated 50 percent of each TAC for sablefish.

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(B) Trawl gear. Vessels in the Bering Sea subarea using trawl gear will be allocated 50 percent of each TAC for sablefish.

(iv) Aleutian Islands subarea.

(A) Hook-and-line or pot gear. Vessels in the Aleutian Islands subarea using hook-and-line or pot gear will be allocated 75 percent of each TAC for sablefish.

(B) Trawl gear. Vessels in the Aleutian Islands subarea using trawl gear will be allocated 25 percent of each TAC for sablefish.

(5) Pollock TAC.

(i) Bering Sea Subarea

(A) AFA allocations. The pollock TAC apportioned to the Bering Sea Subarea, after subtraction of the 10 percent CDQ reserve under § 679.31(a), will be allocated as follows:

(1) Incidental catch allowance. The Regional Administrator will establish an incidental catch allowance to account for projected incidental catch of pollock by vessels engaged in directed fishing for groundfish other than pollock and by vessels harvesting non-pollock CDQ. If during a fishing year, the Regional Administrator determines that the incidental catch allowance has been set too high or too low, he/she may issue inseason notification in the *Federal Register* that reallocates incidental catch allowance to the directed fishing allowance, or vice versa, according to the proportions established under paragraph (a)(5)(i)(A) of this section.

(2) Directed fishing allowance. The remaining pollock TAC apportioned to the Bering Sea subarea is established as a directed fishing allowance.

(3) Inshore sector allocation. Fifty percent of the directed fishing allowance will be allocated to AFA catcher vessels harvesting pollock for processing by AFA inshore processors. The inshore allocation will be further divided into separate allocations for cooperative and open access fishing.

(i) Inshore cooperatives. The inshore cooperative allocation will be equal to the aggregate annual allocations of all AFA inshore catcher vessel

cooperatives that receive pollock allocations under § 679.62(e).

(ii) Inshore open access. The inshore open access allocation will equal that portion of the inshore sector allocation that is not allocated to inshore cooperatives.

(4) Catcher/processor sector allocation. Forty percent of the directed fishing allowance will be allocated to AFA catcher/processors and AFA catcher vessels delivering to catcher processors.

(i) Catcher/processor and catcher vessel cooperatives. If by December 1 of the year prior to the year when fishing under the cooperative agreement will begin, NMFS receives filing of cooperative contracts and/or an inter-cooperative agreement entered into by listed AFA catcher/processors and all AFA catcher vessels with catcher/processor sector endorsements, and the Regional Administrator determines that such contracts provide for the distribution of harvest between catcher/processors and catcher vessels in a manner agreed to by all members of the catcher/processor sector cooperative(s), then NMFS will not subdivide the catcher/processor sector allocation between catcher vessels and catcher/processors.

(ii) Catcher vessel allocation. If such contract is not filed with NMFS by December 1 of the preceding year, then NMFS will allocate 91.5 percent of the catcher/processor sector allocation to AFA catcher/processors engaged in directed fishing for pollock and 8.5 percent of the catcher/processor sector allocation to AFA catcher vessels delivering to catcher/processors.

(iii) Unlisted AFA catcher processors. Unlisted AFA catcher/processors will be limited to harvesting not more than 0.5 percent of catcher/processor sector allocation.

(5) Mothership sector allocation. Ten percent of the directed fishing allowance will be allocated to AFA catcher vessels harvesting pollock for processing by AFA motherships.

(6) Excessive harvesting share. NMFS will establish an excessive harvesting share limit equal to 17.5 percent of the sum of the directed fishing allowances established under paragraphs (a)(5)(i) and (a)(5)(ii) of this section. The excessive harvesting share limit will be published in the annual harvest specifications and is subject to revision on an inseason



## § 679.20 General limitations

basis if NMFS reallocates unharvested amounts of the incidental catch allowance to the directed fishing allowance, or vice versa.

(7) Excessive processing share. NMFS will establish an excessive processing share limit equal to 30.0 percent of the sum of the directed fishing allowances established under paragraphs (a)(5)(i) and (a)(5)(ii) of this section. The excessive processing share limit will be published in the annual harvest specifications and is subject to revision on an inseason basis if NMFS reallocates unharvested amounts of the incidental catch allowance to the directed fishing allowance, or vice versa.

### (B) BSAI seasonal allowances for AFA and CDQ

(1) Inshore, catcher/processor, mothership, and CDQ components. The portions of the BS subarea pollock directed fishing allowances allocated to each component under Sections 206(a) and 206(b) of the AFA and the CDQ allowance in the BSAI will be divided into two seasonal allowances corresponding to the two fishing seasons set out at § 679.23(e)(2), as follows:

- A Season, 40 percent;
- B Season, 60 percent.

(2) Inseason adjustments. Within any fishing year, the Regional Administrator may add or subtract any under harvest or over harvest of a seasonal allowance for a component to the subsequent seasonal allowance for the component through notification published in the *Federal Register*.

(C) Steller sea lion conservation area (SCA) harvest limit. For each component under Sections 206(a) and 206(b) of the AFA and for the open access fishery, no more than 28 percent of the annual pollock directed fishery allowance may be taken from the SCA before April 1. The SCA is defined at § 679.22(a)(7)(vii).

(ii) Bogoslof District. If the Bogoslof District is open to directed fishing for pollock by regulation, then the pollock TAC for this district will be allocated according to the same procedure established for the Bering Sea subarea at paragraph (a)(5)(i) of this section. If the Bogoslof District is closed to directed fishing for pollock by regulation, then the entire TAC for this district will be allocated as an incidental catch allowance.

### (iii) AI.

(A) If a directed fishery for pollock in the AI is not specified under paragraph (c) of this section, then the entire TAC for this subarea will be allocated as an incidental catch allowance.

(B) If the AI is open to directed fishing for pollock under paragraph (c) of this section, then the pollock TAC for this subarea will be specified, allocated, seasonally apportioned, and reallocated as follows:

(1) AI annual TAC limitations. When the AI pollock ABC is less than 19,000 mt, the annual TAC will be no greater than the ABC. When the AI pollock ABC equals or exceeds 19,000 mt, the annual TAC will be equal to 19,000 mt.

### (2) Allocations.

(i) CDQ Directed fishing allowance. 10 percent of the annual TAC will be allocated to the CDQ pollock reserve established under § 679.31(a)(2).

(ii) Incidental catch allowance. The Regional Administrator will determine the amount of the pollock incidental catch necessary to support an incidental catch allowance in the AI during the fishing year for each season. This amount of pollock will be deducted from the annual TAC. If during a fishing year, the Regional Administrator determines that the incidental catch allowance is excessive or inadequate, the Regional Administrator may reallocate the excess of the incidental catch allowance to the directed pollock fishery, or may reallocate pollock from the directed pollock fishery to the incidental catch allowance as necessary to support incidental catch of pollock in AI groundfish fisheries, by publication in the *Federal Register*.

(iii) Directed Pollock Fishery. The amount of the TAC remaining after subtraction of the CDQ directed fishing allowance and the incidental catch allowance will be allocated to the Aleut Corporation as a directed pollock fishery allocation.

(3) Seasonal apportionment. The seasonal harvest of pollock in the AI directed pollock fishery shall be:

(i) A season. No greater than the lesser of the annual initial TAC plus any A season CDQ pollock

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directed fishery allowance or 40 percent of the AI pollock ABC. The total A season apportionment, including the AI directed pollock fishery allocation, the CDQ pollock directed fishery seasonal allowance, and the incidental catch amount, shall not exceed 40 percent of the ABC.

(ii) B season. The B season apportionment of the AI directed pollock fishery shall equal the annual initial TAC minus the A season directed pollock fishery apportionment under paragraph (a)(5)(iii)(B)(3)(i) of this section and minus the incidental catch amount under paragraph (a)(5)(iii)(B)(2)(ii) of this section.

(iii) Inseason adjustments for the directed pollock fishery. During any fishing year, the Regional Administrator may add any under harvest of the A season directed pollock fishery apportionment to the B season directed pollock fishery apportionment by inseason notification published in the *Federal Register* if the Regional Administrator determines that the harvest capacity in the B season is sufficient to harvest the adjusted B season apportionment.

(iv) Inseason adjustments for the incidental catch allowance. During any fishing year, the Regional Administrator may add any under harvest of the A season incidental catch allowance apportionment to the B season incidental catch allowance apportionment by publication in the *Federal Register* if the Regional Administrator determines that the additional B season incidental catch allowance is necessary to support other groundfish fisheries.

(4) Reallocation of the annual AI directed pollock fishery and AI CDQ allocations. As soon as practicable, if the Regional Administrator determines that vessels participating in either the AI directed pollock fishery or the AI CDQ directed pollock fishery likely will not harvest the entire AI directed pollock fishery or CDQ pollock directed fishing allowance, the Regional Administrator may reallocate some or all of the projected unused directed pollock fishery allocation to the Bering Sea subarea directed pollock fishery or AI CDQ pollock directed fishing allowance to the Bering Sea subarea CDQ pollock directed fishing allowance by inseason notification published in the *Federal Register*.

(5) Allocations to small vessels. The annual allocation for vessels 60 feet (18.3 m) LOA or less participating in the AI directed pollock fishery will be:

(i) No more than 25 percent of the AI directed pollock fishery allocation through 2008;

(ii) No more than 50 percent of the AI directed pollock fishery allocation from 2009 through 2012; and

(iii) 50 percent of the AI directed pollock fishery allocation in 2013 and beyond.

(iv) GOA.

(A) Apportionment by area. The TAC for pollock in the combined GOA Western and Central Regulatory Areas will be apportioned among statistical areas 610, 620, and 630 in proportion to the distribution of the pollock biomass as determined by the most recent NMFS surveys.

(B) GOA Western and Central Regulatory Areas seasonal apportionments. Each apportionment established under paragraph (a)(5)(iv)(A) of this section will be divided into four seasonal apportionments corresponding to the four fishing seasons set out at § 679.23(d)(2) as follows:

- A Season, 25 percent;
- B Season, 25 percent;
- C Season, 25 percent; and
- D Season, 25 percent.

Within any fishing year, underharvest or overharvest of a seasonal apportionment may be added to or subtracted from remaining seasonal apportionments in a manner to be determined by the Regional Administrator, provided that any revised seasonal apportionment does not exceed 20 percent of the seasonal TAC apportionment for the statistical area. The reapportionment of underharvest will be applied to the subsequent season within the same statistical area up to the 20 percent limit specified in this paragraph. Any underharvest remaining beyond the 20 percent limit may be further apportioned to the subsequent season in the other statistical areas, in proportion to estimated biomass and in an amount no more than 20 percent of the seasonal TAC apportionment for the statistical area.

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(6) GOA inshore-offshore allocations.

(i) GOA pollock. The apportionment of pollock in all GOA regulatory areas for each seasonal allowance described in paragraph (a)(5)(iv) of this section will be allocated entirely to vessels harvesting pollock for processing by the inshore component in the GOA after subtraction of an amount that is projected by the Regional Administrator to be caught by, or delivered to, the offshore component in the GOA incidental to directed fishing for other groundfish species.

(ii) GOA Pacific cod. The apportionment of Pacific cod in all GOA regulatory areas will be allocated 90 percent to vessels harvesting Pacific cod for processing by the inshore component in the GOA and 10 percent to vessels harvesting Pacific cod for processing by the offshore component in the GOA.

(7) Pacific cod TAC, BSAI.

**(i) CDQ reserve and seasonal allowances (Effective January 1, 2008).**

**(A) (Effective January 1, 2008) A total of 10.7 percent of the annual Pacific cod TAC will be allocated to the CDQ Program in the annual harvest specifications required under paragraph (c) of this section. The Pacific cod CDQ allocation will be deducted from the annual Pacific cod TAC before allocations to the non-CDQ sectors are made under paragraph (a)(7)(ii) of this section.**

**(B) (Effective January 1, 2008) The BSAI Pacific cod CDQ gear allowances by season, as those seasons are specified under § 679.23(e)(5), are as follows:**

<b>Gear Type</b>	<b>A season</b>	<b>B season</b>	<b>C season</b>
<b>(1) Trawl</b>	<b>60%</b>	<b>20%</b>	<b>20%</b>
<b>(i) Trawl CV</b>	<b>70%</b>	<b>10%</b>	<b>20%</b>
<b>(ii) Trawl CP</b>	<b>50%</b>	<b>30%</b>	<b>20%</b>
<b>(2) Hook-and-line CP and hook-and-line CV ≥60 ft (18.3 m) LOA</b>	<b>60%</b>	<b>40%</b>	<b>no C season</b>
<b>(3) Jig</b>	<b>40%</b>	<b>20%</b>	<b>40%</b>
<b>(4) All other non-trawl gear</b>	<b>no seasonal allowance</b>	<b>no seasonal allowance</b>	<b>no seasonal allowance</b>

**(ii) Non-CDQ allocations (Effective January 1, 2008).**

**(A) Sector allocations (Effective January 1, 2008).** The remainder of the BSAI Pacific cod TAC after subtraction of the CDQ reserve for Pacific cod will be allocated to non-CDQ sectors as follows:

<b>Sector</b>	<b>% Allocation</b>
<b>(1) Jig vessels</b>	<b>1.4</b>
<b>(2) Hook-and-line/pot CV &lt;60 ft (18.3 m) LOA</b>	<b>2</b>
<b>(3) Hook-and-line CV ≥60 ft (18.3 m) LOA</b>	<b>0.2</b>
<b>(4) Hook-and-line CP</b>	<b>48.7</b>
<b>(5) Pot CV ≥60 ft (18.3 m) LOA</b>	<b>8.4</b>
<b>(6) Pot CP</b>	<b>1.5</b>
<b>(7) AFA trawl CP</b>	<b>2.3</b>
<b>(8) Amendment 80 sector</b>	<b>13.4</b>
<b>(9) Trawl CV</b>	<b>22.1</b>

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(B) Incidental catch allowance (Effective January 1, 2008). During the annual harvest specifications process set forth at paragraph (c) of this section, the Regional Administrator will specify an amount of Pacific cod that NMFS estimates will be taken as incidental catch in directed fisheries for groundfish other than Pacific cod by the hook-and-line and pot gear sectors. This amount will be the incidental catch allowance and will be deducted from the aggregate portion of Pacific cod TAC annually allocated to the hook-and-line and pot gear sectors before the allocations under paragraph (a)(7)(ii)(A) of this section are made to these sectors.

(iii) Reallocation among non-CDQ sectors (Effective January 1, 2008). If, during a fishing year, the Regional Administrator determines that a non-CDQ sector will be unable to harvest the entire amount of Pacific cod allocated to that sector under paragraph (a)(7)(ii)(A) of this section, the Regional Administrator will reallocate the projected unused amount of Pacific cod to other sectors through notification in the *Federal Register*. Any reallocation decision by the Regional Administrator will take into account the capability of a sector to harvest the reallocated amount of Pacific cod, and the following reallocation hierarchy:

(A) Catcher vessel sectors (Effective January 1, 2008). The Regional Administrator will reallocate projected unharvested amounts of Pacific cod TAC from a catcher vessel sector as follows: first to the jig sector, or to the less than 60 ft (18.3 m) LOA hook-and-line or pot catcher vessel sector, or to both of these sectors; second, to the greater than or equal to 60 ft (18.3 m) LOA hook-and-line or to the greater than or equal to 60 ft (18.3 m) LOA pot catcher vessel sectors; and third to the trawl catcher vessel sector. If the Regional Administrator determines that a projected unharvested amount from the jig sector allocation, the less than 60 ft (18.3 m) LOA hook-and-line or pot catcher vessel sector allocation, or the greater than or equal to 60 ft (18.3 m) LOA hook-and-line catcher vessel sector allocation is unlikely to be harvested through this hierarchy, the Regional Administrator will reallocate that amount to the hook-and-line catcher/processor sector. If the Regional Administrator determines that a projected unharvested amount from a greater than or equal

to 60 ft (18.3 m) LOA pot catcher vessel sector allocation is unlikely to be harvested through this hierarchy, the Regional Administrator will reallocate that amount to the pot catcher/processor sector in accordance with the hierarchy set forth in paragraph (a)(7)(iii)(C) of this section. If the Regional Administrator determines that a projected unharvested amount from a trawl catcher vessel sector allocation is unlikely to be harvested through this hierarchy, the Regional Administrator will reallocate that amount to the other trawl sectors in accordance with the hierarchy set forth in paragraph (a)(7)(iii)(B) of this section.

(B) Trawl gear sectors (Effective January 1, 2008). The Regional Administrator will reallocate any projected unharvested amounts of Pacific cod TAC from the trawl catcher vessel or AFA trawl catcher/processor sectors to other trawl sectors before unharvested amounts are reallocated and apportioned to specified gear sectors as follows:

(1) 83.1 percent to the hook-and-line catcher/processor sector,

(2) 2.6 percent to the pot catcher/processor sector, and

(3) 14.3 percent to the greater than or equal to 60 ft (18.3 m) LOA pot catcher vessel sector.

(C) Pot gear sectors (Effective January 1, 2008). The Regional Administrator will reallocate any projected unharvested amounts of Pacific cod TAC from the pot catcher/processor sector to the greater than or equal to 60 ft (18.3 m) LOA pot catcher vessel sector, and from the greater than or equal to 60 ft (18.3 m) LOA pot catcher vessel sector to the pot catcher/processor sector before reallocating it to the hook-and-line catcher/processor sector.

(iv) Non-CDQ seasonal allowances (Effective January 1, 2008).

(A) Seasonal allowances by sector (Effective January 1, 2008). The BSAI Pacific cod sector allowances are apportioned by seasons, as those seasons are specified at § 679.23(e)(5), as follows:

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Sector	Seasonal Allowances		
	A season	B season	C season
(1) Trawl			
(i) Trawl CV	74 %	11 %	15 %
(ii) Trawl CP	75 %	25 %	0 %
(2) Hook-and-line <b>CP</b> , hook-and-line <b>CV</b> ≥60 ft (18.3 m) LOA, <b>and</b> <b>pot</b> gear vessels ≥60 ft (18.3 m) LOA	51 %	49 %	no C season
(3) Jig vessels	60 %	20 %	20 %
(4) All other nontrawl vessels	no seasonal allowance	no seasonal allowance	no seasonal allowance

(B) Unused seasonal allowances (Effective January 1, 2008). Any unused portion of a seasonal allowance of Pacific cod **from any sector except the jig sector** will be reallocated to **that sector's next season** during the current fishing year **unless the Regional Administrator makes a determination under paragraph (a)(7)(iii) of this section that the sector will be unable to harvest its allocation.**

(C) Jig sector (Effective January 1, 2008). The Regional Administrator will reallocate any projected unused portion of a seasonal allowance of Pacific cod for the jig sector under this section to the less than 60 ft (18.3 m) LOA hook-and-line or pot catcher vessel sector. The Regional Administrator will reallocate the projected unused portion of the jig sector's C season allowance on or about September 1 of each year.

(v) ITAC allocation to the Amendment 80 sector (Effective January 1, 2008). A percentage of the Pacific cod TAC, after subtraction of the CDQ reserve, will be allocated as ITAC to the Amendment 80 sector as described in Table 33 to this part. Separate allocations for each Amendment 80 cooperative and the Amendment 80 limited access fishery are described under § 679.91. The allocation of Pacific cod to the Amendment 80 sector will be further divided into seasonal apportionments as described under paragraph (a)(7)(iv)(A)(1)(ii) of this section.

(A) Use of seasonal apportionments by Amendment 80 cooperatives (Effective January 1, 2008).

(1) The amount of Pacific cod listed on a CQ permit that is assigned for use in the A season may be used in the B or C season.

(2) The amount of Pacific cod that is listed on a CQ permit that is assigned for use in the B season may not be used in the A season.

(3) The amount of Pacific cod listed on a CQ permit that is assigned for use in the C season may not be used in the A or B seasons.

(B) Harvest of seasonal apportionments in the Amendment 80 limited access fishery (Effective January 1, 2008).

(1) Pacific cod ITAC assigned for harvest by the Amendment 80 limited access fishery in the A season may be harvested in the B seasons.

(2) Pacific cod ITAC assigned for harvest by the Amendment 80 limited access fishery in the B season may not be harvested in the A season.

(3) Pacific cod ITAC assigned for harvest by the Amendment 80 limited access fishery in the C season may not be harvested in the A or B seasons.

(vi) ITAC rollover to Amendment 80 cooperatives (Effective January 1, 2008). If during a fishing year, the Regional Administrator determines that a portion of the Pacific cod TAC is unlikely to be harvested and is made available for reallocation to the Amendment 80 sector according to the provisions under paragraph (a)(7)(iii) of this section, the Regional Administrator may issue inseason notification in the *Federal Register* that reallocates that remaining amount of Pacific cod to

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### **Amendment 80 cooperatives, according to the procedures established under § 679.91(f).**

#### (8) BSAI Atka mackerel.

(i) Jig gear. Vessels using jig gear will be allocated up to 2 percent of the TAC of Atka mackerel specified for the Eastern Aleutian Islands District and Bering Sea subarea, after subtraction of reserves, based on the following criteria:

(A) The amount of Atka mackerel harvested by vessels using jig gear during recent fishing years;

(B) The anticipated harvest of Atka mackerel by vessels using jig gear during the upcoming fishing year; and

(C) The extent to which the jig-gear allocation will support the development of a jig-gear fishery for Atka mackerel while minimizing the amount of Atka mackerel TAC annually allocated to vessels using jig gear that remains unharvested at the end of the fishing year.

**(ii) ITAC allocation to Amendment 80 and BSAI trawl limited access sectors (Effective January 1, 2008).** The remainder of the Atka mackerel TAC, after subtraction of the jig gear allocation, **CDQ reserve, and incidental catch allowance for the BSAI trawl limited access sector and vessels using non-trawl gear, will be allocated as ITAC to the Amendment 80 and BSAI trawl limited access sectors.**

(A) Seasonal allowances. The Atka mackerel TAC specified for each subarea or district of the BSAI will be divided equally, after subtraction of the jig gear allocation and reserves, into two seasonal allowances corresponding to the A and B seasons defined at § 679.23(e)(3).

(B) Overages and underages. Within any fishing year, unharvested amounts of the A season allowance will be added to the B season allowance and harvests in excess of the A season allowance will be deducted from the B season allowance.

(C) Harvest limit area (HLA) limits. Atka mackerel harvest is limited in the HLA, as defined in § 679.2, as follows:

(1) The Regional Administrator will establish an HLA harvest limit of no more than 60 percent of the seasonal TAC as specified in paragraph (a)(8)(ii)(A) of this section.

(2) CDQ fishing. A CDQ group is prohibited from exceeding the CDQ portion of the percentage of annual Atka mackerel in areas 542 and/or 543 specified in paragraph (a)(8)(ii)(C)(1) of this section for the HLA.

#### (iii) Atka mackerel HLA directed fishing.

(A) Registration. All vessels using trawl gear to conduct directed fishing for Atka mackerel in the HLA, as defined in § 679.2, are required to register with NMFS. To register, the vessel owner or operator must provide information required by § 679.4(b)(5)(vi) for an endorsement to the vessel's Federal Fisheries Permit issued under § 679.4.

(1) To participate in the A season HLA fishery, registration information must be received by NMFS, Restricted Access Management Program, by 4:30 p.m., A.l.t., of the first working day following January 1.

(2) To participate in the B season HLA fishery,

(i) The vessel must be registered for the A season HLA fishery and must maintain registration for the HLA fishery through the first working day following July 31, or

(ii) The vessel must be registered for the HLA fishery with NMFS, Restricted Access Management Program, by 4:30 p.m., A.l.t., of the first working day following July 31.

(B) HLA assignment. For each season, NMFS will manage the HLA directed fishery for the vessels registered to fish in areas 542 or 543 under paragraph (a)(8)(iii)(A) of this section as follows:

(1) Lottery. The Regional Administrator or his/her designee will randomly assign each vessel to one of two directed fisheries for each statistical area in which the vessel is registered under paragraph (a)(8)(iii)(A) of this section. Each HLA directed fishery within a statistical area will be assigned an equal number of vessels unless there is an odd number of vessels under paragraph (a)(8)(iii)(A) of this section. In the case of an odd number of vessels, the Regional

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Administrator or his/her designee will assign one additional vessel to one HLA directed fishery. Vessels registering under paragraph (a)(8)(iii)(A) of this section to fish in both area 542 and area 543 will be randomly assigned to an HLA directed fishery in area 542 and will be placed in the area 543 HLA directed fishery occurring at an alternate time during the season.

(2) **Notification.** The Regional Administrator will provide the results of the lottery under (a)(8)(iii)(B)(1) of this section by notification published in the *Federal Register* and other means of practicable notification.

(C) **HLA directed fisheries.** 48 hours after a prohibited directed fishing for Atka mackerel in area 541, the Regional Administrator will allow directed fishing within the HLA in areas 542 and 543. The Regional Administrator will provide notification by publication in the *Federal Register* of the opening and closure dates of the HLA directed fisheries, as determined by paragraph (a)(8)(iii)(E) of this section. Closures specified in Table 6 to this part and in § 679.22(a)(8) will remain in effect.

(D) **HLA harvest limit.** The Regional Administrator will establish the harvest limit for each HLA directed fishery for each area based on the seasonal apportionment at paragraph (a)(8)(ii)(C) of this section and in proportion to the number of vessels in an HLA directed fishery compared to the total number of vessels fishing in the HLA of an area during a season.

(E) **HLA directed fishery closure.** The Regional Administrator will establish the closure date of the Atka mackerel HLA directed fishery for each statistical area based on the estimated fishing capacity of vessels registered to fish in the area and assigned to the HLA directed fishery under paragraph (a)(8)(iii)(B) of this section. Each HLA directed fishery will last no longer than 14 days.

(F) **Groundfish directed fishery prohibition.** Vessels registering under paragraph (a)(8)(iii)(A) of this section are prohibited from participating in any groundfish directed fishery, other than Atka mackerel, during the opening of the first HLA directed fishery assigned to the vessel in a season, as specified in § 679.7(a)(19).

**(iv) Amendment 80 sector allocation (Effective January 1, 2008). The allocation of Atka mackerel**

**ITAC to the Amendment 80 sector is established in Table 33 to this part. The allocation of Atka mackerel ITAC to the Amendment 80 sector will be further divided into seasonal apportionments under § 679.23(e)(3), and separate allocations for each Amendment 80 cooperative and the Amendment 80 limited access fishery as described under § 679.91.**

**(A) Use of seasonal apportionments by Amendment 80 cooperatives (Effective January 1, 2008).**

**(1) The amount of Atka mackerel listed on a CQ permit that is assigned for use in the A season may be used in the B season.**

**(2) The amount of Atka mackerel listed on a CQ permit that is assigned for use in the B season may not be used in the A season.**

**(B) Harvest of seasonal apportionments in the Amendment 80 limited access fishery (Effective January 1, 2008).**

**(1) Atka mackerel ITAC assigned for harvest by the Amendment 80 limited access fishery in the A season may be harvested in the B season.**

**(2) Atka mackerel ITAC assigned for harvest by the Amendment 80 limited access fishery in the B season may not be harvested in the A season.**

**(v) BSAI trawl limited access sector allocation (Effective January 1, 2008).**

**(A) BSAI trawl limited access sector directed fishing allowance (Effective January 1, 2008). The amount of Atka mackerel ITAC assigned as a directed fishing allowance to the BSAI trawl limited access sector is established in Table 33 to this part.**

**(B) BSAI trawl limited access sector incidental catch allowance and ITAC rollover (Effective January 1, 2008). If, during a fishing year, the Regional Administrator determines that a portion of the Atka mackerel incidental catch allowance or ITAC assigned to the BSAI trawl limited access sector is unlikely to be harvested, the Regional Administrator may issue inseason notification in the *Federal Register* that reallocates that remaining amount of Atka mackerel directed fishing allowance**

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to Amendment 80 cooperatives, according to the procedures established under § 679.91(f).

(9) BSAI shortraker rockfish and rougheye rockfish.

After subtraction of reserves, the TAC of shortraker rockfish and rougheye rockfish specified for the Aleutian Islands subarea will be allocated 30 percent to vessels using non-trawl gear and 70 percent to vessels using trawl gear.

(10) Amendment 80 species except Pacific cod and Atka mackerel (Effective January 1, 2008).

(i) ITAC allocation to the Amendment 80 and BSAI trawl limited access sectors (Effective January 1, 2008). The remainder of the TACs for each Amendment 80 species other than Atka mackerel and Pacific cod, after subtraction of the CDQ reserve and incidental catch allowance for the BSAI trawl limited access sector and vessels using non-trawl gear, will be allocated as ITAC to the Amendment 80 and BSAI trawl limited access sectors.

(ii) Amendment 80 sector ITAC (Effective January 1, 2008). The allocation of ITAC for each Amendment 80 species other than Atka mackerel and Pacific cod to the Amendment 80 sector is established in Tables 33 and 34 to this part. The allocation of these species to the Amendment 80 sector will be further divided into separate allocations for each Amendment 80 cooperative and the Amendment 80 limited access fishery as described under § 679.91.

(iii) BSAI trawl limited access sector allocation (Effective January 1, 2008).

(A) BSAI trawl limited access sector directed fishing allowance (Effective January 1, 2008). The amount of ITAC for each Amendment 80 species other than Atka mackerel and Pacific cod assigned as a directed fishing allowance to the BSAI trawl limited access sector is established in Tables 33 and 34 to this part.

(B) BSAI trawl limited access sector ITAC rollover (Effective January 1, 2008). If, during a fishing year, the Regional Administrator determines that a portion of the incidental catch allowance or ITAC assigned to the BSAI trawl limited access

sector for each Amendment 80 species other than Atka mackerel and Pacific cod is unlikely to be harvested, the Regional Administrator may issue inseason notification in the *Federal Register* that reallocates that remaining amount to Amendment 80 cooperatives, according to the procedures established under § 679.91(f).

(11) All other groundfish TAC.

The initial TAC for each target species and the “other species” category will be 85 percent of the TAC as provided under paragraph (b) of this section.

(12) GOA Pacific cod TAC.

(i) Seasonal apportionment. The TAC established for Pacific cod in the Western and Central Regulatory Areas of the GOA will be divided 60 percent to the A season and 40 percent to the B season, as specified in § 679.23(d)(3).

(ii) The Regional Administrator may apply any underage or overage of Pacific cod harvest from one season to the subsequent season. In adding or subtracting any underages or overages to the subsequent season, the Regional Administrator shall consider bycatch needed to optimize catch by gear groups and sectors.

(iii) Pacific cod catch between the A and B seasons. Pacific cod harvested between the closure of the A season and opening of the B season shall be deducted from the B season TAC apportionment.

(b) *Reserves*

(1) BSAI.

(i) Nonspecified reserve. Fifteen percent of the BSAI TAC for each target species and the “other species” category, except pollock, Pacific cod, the hook-and-line and pot gear allocation for sablefish, and the Amendment 80 species, is automatically placed in the nonspecified reserve before allocation to any sector. The remaining 85 percent of each TAC is apportioned to the initial TAC for each target species that contributed to the nonspecified reserve and the “other species” category. The nonspecified reserve is not designated by species or species group. Any amount of the nonspecified reserve may be apportioned to target species that contributed to the



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**nonspecified reserve or the “other species” category**, provided that such apportionments are consistent with paragraph (a)(3) of this section and do not result in overfishing of a target species or the “other species” category.

(ii) CDQ reserves.

(A) Pollock CDQ reserves

(1) Bering Sea. In the annual harvest specifications required by paragraph (c) of this section, 10 percent of the Bering Sea subarea pollock TAC will be allocated to a CDQ reserve as a directed fishing allowance.

(2) Aleutian Islands subarea and Bogoslof District. In the annual harvest specifications required by paragraph (c) of this section, 10 percent of the Aleutian Islands subarea and Bogoslof District pollock TACs will be allocated to a CDQ reserve as a directed fishing allowance unless the Aleutian Islands subarea or Bogoslof District is closed to directed fishing for pollock by regulation. If the Aleutian Islands subarea and/or Bogoslof District is closed to directed fishing for pollock by regulation, then no pollock CDQ reserve will be established for those areas and incidental harvest of pollock by CDQ groups will accrue against the incidental catch allowance for pollock established under paragraph (a)(5)(i)(A)(1) of this section.

(B) Fixed gear sablefish CDQ reserves. Twenty percent of the **hook-and-line or pot gear** allocation of sablefish established under paragraphs (a)(4)(iii)(A) and (a)(4)(iv)(A) of this section will be allocated to a CDQ reserve for each subarea.

(C) CDQ reserves for Amendment 80 species. An amount equal to 10.7 percent of the BSAI TACs for Atka mackerel, Aleutian Islands Pacific ocean perch, yellowfin sole, rock sole, flathead sole, and Pacific cod will be allocated to a CDQ reserve for each of these species by management area, subarea, or district.

(D) CDQ reserves for other groundfish species. An amount equal to 10.7 percent of the BSAI TACs for Bering Sea Greenland turbot and arrowtooth flounder, and 7.5 percent of the trawl gear allocation of sablefish in the BS and AI is apportioned from the nonspecified reserve

established under paragraph (b)(1)(i) of this section to a CDQ reserve for each of these species by management area, subarea, or district.

(E) If the groundfish harvest specifications required by paragraph (c) of this section change a TAC category allocated to a CDQ reserve under paragraphs (b)(1)(ii)(A) through (D) of this section by combining or splitting a species, species group, or management area, then the same percentage of the TAC apportioned to a CDQ reserve in paragraphs (b)(1)(ii)(A) through (D) of this section will apply to the new TAC categories.

(iii) [Removed]

~~(iv) Pacific cod. (Effective January 1, 2008) Any amounts of the BSAI nonspecific reserve that are apportioned to Pacific cod as provided by paragraph (b)(1)(ii) of this section must be apportioned among vessels using jig, hook and line or pot, and trawl gear in the same proportion specified in paragraph (a)(7)(i) of this section, unless the Regional Administrator determines under paragraph (a)(7)(ii) of this section that vessels using a certain gear type will not be able to harvest the additional amount of Pacific cod. In this case, the nonspecific reserve will be apportioned to vessels using the other gear type(s).~~

(2) GOA.

Initial reserves are established for pollock, Pacific cod, flatfish, and “other species,” which are equal to 20 percent of the TACs for these species or species groups.

(i) Pollock inshore-offshore reapportionment.

Any amounts of the GOA reserve that are reapportioned to pollock as provided by paragraph (b) of this section must be apportioned for processing by the inshore component in the GOA and the offshore component in the GOA in the same proportions specified in paragraph (a)(6)(i) of this section.

(ii) Pacific Cod inshore-offshore reapportionment. Any amounts of the GOA reserve that are reapportioned to Pacific cod as provided by paragraph (b) of this section must be apportioned for processing by the inshore component in the GOA and the offshore component in the GOA in the same proportion specified in paragraph (a)(6)(ii) of this section.

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### (3) Apportionment of reserves.

#### (i) Notification.

(A) As soon as practicable after April 1, June 1, and August 1, and on such other dates as NMFS determines appropriate, NMFS will, by notification in the *Federal Register*, apportion all or part of the BSAI or GOA reserve in accordance with this paragraph (b).

(B) No apportionment, retention, or PSC limit adjustment may take effect until notification has been published in the *Federal Register* with a statement of the findings upon which the apportionment, retention, or adjustment is based.

#### (ii) Apportionment.

(A) Except as provided in paragraph (b)(3)(ii)(B) of this section, NMFS will apportion the amount of BSAI or GOA reserve that will be harvested by U.S. vessels during the remainder of the year.

(B) Exception. Part or all of the BSAI or GOA reserve may be withheld if an apportionment would adversely affect the conservation of groundfish resources or prohibited species.

#### (iii) Public comment.

(A) Prior comment. NMFS will provide all interested persons an opportunity to comment on the proposed apportionments, retentions, or PSC limit adjustments under this paragraph (b) before such apportionments, retentions, or adjustments are made, unless NMFS finds that there is good cause for not providing a prior comment opportunity, and publishes the reasons therefore in the notification of apportionment, retention, or adjustment.

(B) Submittal dates. Comments provided for in this paragraph (b)(3)(iii) must be received by NMFS not later than 5 days before April 1, June 1, and August 1, or other dates that may be specified.

(C) Subsequent comment. If NMFS determines for good cause that notification of apportionment, retention or PSC limit adjustment must be issued without providing interested persons a prior opportunity for public comment, comments on the apportionment, retention or adjustment will be received for a period of 15 days after its effective date.

(D) Response to comments. NMFS will consider all timely comments in deciding whether to make a proposed apportionment, retention, or PSC limit adjustment or to modify an apportionment, retention, or adjustment that previously has been made, and shall publish responses to those comments in the *Federal Register* as soon as practicable.

(E) Data available. The Regional Administrator will make available to the public during business hours the aggregate data upon which any preliminary TAC or PSC limit figure is based or the data upon which any apportionment or retention of surplus or reserve, or PSC limit adjustment was or is proposed to be based. These data will be available for a sufficient period to facilitate informed comment by interested persons.

### (c) Annual specifications.

#### (1) Proposed specifications.

(i) Notification. As soon as practicable after consultation with the Council, NMFS will publish proposed specifications for the groundfish fisheries in the BSAI and the GOA.

(ii) Public comment. NMFS will accept public comment on the proposed specifications established by this section and by § 679.21 for a period specified in the notice of proposed specifications published in the *Federal Register*.

(iii) GOA. The proposed specifications will specify for up to two fishing years the annual TAC for each target species and the “other species” category and apportionments thereof, halibut prohibited species catch amounts, and seasonal allowances of pollock and Pacific cod.

(iv) BSAI. The proposed specifications will specify for up to two fishing years the annual TAC for each target species and the “other species” category and apportionments thereof, PSQ reserves and prohibited species catch allowances, seasonal allowances of pollock, Pacific cod, and Atka mackerel TAC (including pollock, Pacific cod, and Atka mackerel CDQ), and CDQ reserve amounts.

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### (2) Interim specifications. (Applicable until April 1, 2005).

Interim harvest specifications will be in effect on January 1 and will remain in effect until superseded by the filing of the final specifications by the Office of the *Federal Register*. Interim specifications will be established as follows:

(i) GOA. One-fourth of each proposed TAC and apportionment thereof (not including the reserves or the first seasonal allowances of pollock or Pacific cod), one-fourth of the proposed halibut prohibited species catch amounts, and the proposed first seasonal allowances of pollock and Pacific cod.

(ii) BSAI. Except for pollock, Pacific cod, Atka mackerel, and the hook-and-line and pot gear allocation of sablefish, one quarter of each proposed initial TAC and apportionment thereof, one quarter of each CDQ reserve established by paragraph (b)(1)(iii) of this section, and one quarter of the proposed PSQ reserve and prohibited species catch allowances established by § 679.21.

(A) The interim specifications for pollock, Pacific cod, and Atka mackerel will be equal to the first seasonal allowances for pollock, Pacific cod, and Atka mackerel that are published in the proposed specifications under paragraph (c)(1) of this section.

(B) The interim specifications for CDQ pollock, CDQ Atka mackerel, and CDQ Pacific cod will be equal to the first seasonal allowances that are published in the proposed specifications under paragraph (c)(1) of this section.

### (3) Final specifications.

(i) Procedure and notification. NMFS will consider comments on the proposed specifications and, after consultation with the Council, will publish a notice of final specifications in the *Federal Register* unless NMFS determines that the final specifications would not be a logical outgrowth of the notice of proposed specifications. In that event, NMFS will either:

(A) Publish a revised notice of proposed specifications in the *Federal Register* for public comment, and after considering comments received on the revised proposed specifications, publish a notice of final specifications in the *Federal Register*; or

(B) Publish a notice of final specifications in the *Federal Register* without an additional opportunity for public comment based on a finding that good cause pursuant to the Administrative Procedure Act justifies waiver of the requirement for a revised notice of proposed specifications and opportunity for public comment thereon.

(ii) GOA. The final specifications will specify for up to two fishing years the annual TAC for each target species and the “other species” category and apportionments thereof, halibut prohibited species catch amounts, and seasonal allowances of pollock and Pacific cod.

(iii) BSAI. The final specifications will specify for up to two fishing years the annual TAC for each target species and the “other species” category and apportionments thereof, PSQ reserves and prohibited species catch allowances, seasonal allowances of pollock (including pollock, Pacific cod, and Atka mackerel CDQ), and CDQ reserve amounts.

### (4) AFA and Inshore-offshore allocations.

(i) BSAI pollock. The annual harvest specifications will specify the allocation of pollock for processing by each AFA industry component in the BSAI, and any seasonal allowances thereof, as authorized under paragraph (a)(5) of this section.

(ii) GOA pollock and Pacific cod. The annual harvest specifications will specify the allocation of GOA pollock and GOA Pacific cod for processing by the inshore component in the GOA and the offshore component in the GOA, and any seasonal allowances thereof, as authorized under paragraphs (a)(5) and (a)(6) of this section.

### (5) BSAI Pacific cod gear allocations. (Effective April 1, 2005)

The proposed and final specifications will specify the allocation of BSAI Pacific cod among gear types as authorized under paragraph (a)(7) of this section.

### (6) BSAI Atka mackerel allocations. (Effective April 1, 2005)

The proposed and final specifications will specify the allocation of BSAI Atka mackerel among gear types and HLA fisheries as authorized under paragraph (a)(8) of this section.

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### *(d) Fishery closures.*

#### (1) Directed fishing allowance.

(i) General. If the Regional Administrator determines that any allocation or apportionment of a target species or “other species” category specified under paragraph (c) of this section has been or will be reached, the Regional Administrator may establish a directed fishing allowance for that species or species group.

#### (ii) Specified fishery amounts.

(A) Inseason adjustments. The category allocations or apportionments established under paragraph (c) of this section may be revised by inseason adjustments, as defined at § 679.25, for a given species or species group or pollock allowance, as identified by regulatory area, subarea, or district, and, if applicable, as further identified by gear type.

(B) Incidental catch. In establishing a directed fishing allowance, the Regional Administrator shall consider the amount of the allocation or apportionment established under paragraph (c) of this section that will be taken as incidental catch in directed fishing for other species in the same subarea, regulatory area, or district.

#### (iii) Directed fishing closure.

(A) Notification. If the Regional Administrator establishes a directed fishing allowance for a fishery allocation or apportionment under this paragraph (d), and that allowance has been or will be reached before the end of the fishing season or year, NMFS will publish notification in the *Federal Register* prohibiting directed fishing in the specified subarea, regulatory area, or district.

(B) Retention of incidental species. Except as described in § 679.20(e)(3)(iii), if directed fishing for a target species, species group, or the “other species” category is prohibited, a vessel may not retain that incidental species in an amount that exceeds the maximum retainable amount, as calculated under paragraphs (e) and (f) of this section, at any time during a fishing trip.

#### (iv) AFA sideboard limitations.

(A) If the Regional Administrator determines that any sideboard harvest limit for a group of AFA vessels established under § 679.64 has been or will be reached, the Regional Administrator may establish a sideboard directed fishing allowance for the species or species group applicable only to the identified group of AFA vessels.

(B) In establishing a directed fishing allowance under paragraph (d)(1)(iv)(A) of this section, the Regional Administrator will consider the amount of the sideboard limit established for a group of AFA vessels under § 679.64 that will be taken as incidental catch by those vessels in directed fishing for other species.

(C) If the Regional Administrator determines that a sideboard amount is insufficient to support a directed fishery for that species then the Regional Administrator may set the sideboard directed fishing allowance at zero for that species or species group.

#### (v) Amendment 80 GOA sideboard limits--GOA groundfish.

**(A) If the Regional Administrator determines that a GOA sideboard limit for a GOA groundfish species as described under Table 37 to this part is sufficient to support a directed fishing allowance for that species, the Regional Administrator may establish a directed fishing allowance for the species applicable only to Amendment 80 vessels subject to the GOA groundfish sideboard limit.**

**(B) If the Regional Administrator determines that a GOA groundfish sideboard limit as described under Table 37 to this part is insufficient to support a directed fishing allowance by Amendment 80 vessels for that species, then the Regional Administrator may set the directed fishing allowance to zero for that species for Amendment 80 vessels.**

**(C) Upon determining that a GOA sideboard limit as described under Table 37 to this part for a species is or will be reached, the Regional Administrator will publish notification in the *Federal Register* prohibiting directed fishing for that species by the Amendment 80 vessels to which the GOA sideboard limit applies.**

#### (vi) Amendment 80 GOA sideboard limits--halibut PSC.

## § 679.20 General limitations

**(A) If the Regional Administrator determines that a GOA sideboard limit for halibut PSC is sufficient to support a directed fishery for a species or species group, management area, and season specified in Table 38 to this part, then the Regional Administrator may establish a halibut PSC sideboard limit for that species or species group, management area, and season applicable to the Amendment 80 vessels to which the halibut PSC limit applies.**

**(B) If the Regional Administrator determines that a halibut PSC sideboard limit is insufficient to support a directed fishery for a species or species group, management area, and season as specified in Table 38 to this part then the Regional Administrator may set the halibut PSC sideboard limit for that species or species group to zero for the Amendment 80 vessels to which the halibut PSC limit applies.**

**(C) Upon determining that a halibut PSC sideboard limit for a species or species group, management area, and season as specified in Table 38 to this part is or will be reached, the Regional Administrator will publish notification in the *Federal Register* prohibiting directed fishing for a specific species or species group by the Amendment 80 vessels to which the halibut PSC limit applies as follows:**

**(1) If the halibut PSC sideboard limit is reached for the deep-water species fishery as defined in § 679.21(d)(3)(iii)(B) for a season, then NMFS will close directed fishing in the GOA for all species in the deep-water species fishery except northern rockfish, Pacific ocean perch, and pelagic shelf rockfish in the Central GOA for that season.**

**(2) If the halibut PSC sideboard limit is reached for the shallow-water species fishery as defined in § 679.21(d)(3)(iii)(A) for a season, then NMFS will close directed fishing in the GOA for all species in the shallow-water species fishery for that season.**

**(2) Groundfish as prohibited species closure.**

When the Regional Administrator determines that the TAC of any target species or the “other species” category specified under paragraph (c) of this section, or the share of any TAC assigned to any type of gear, has been or will be achieved prior to the end of a year,

NMFS will publish notification in the *Federal Register* requiring that target species or the “other species” be treated in the same manner as a prohibited species, as described under § 679.21(b), for the remainder of the year.

**(3) Overfishing closure.**

(i) Notification. If, in making a determination under paragraph (d)(2) of this section, the Regional Administrator also determines that fishing for other target species or species groups in the area, district or part thereof where the notification applies, may lead to the overfishing of the species or species group for which the allocation or apportionment has been or will be reached, NMFS will publish notification in the *Federal Register* specifying limitations or prohibitions designed to prevent overfishing of that species or species group.

(ii) Limitations and prohibitions. These limitations and prohibitions may prohibit directed fishing for other species or species groups in the area, district, or part thereof where the notification applies, or may limit time, area, or gear types that may be used in directed fishing for the other species or species groups.

(iii) Factors to be considered. When making the determinations specified under paragraphs (d)(1), (d)(2), and (d)(3) of this section, the Regional Administrator may consider allowing fishing to continue or resume with certain gear types or in certain areas and times based on findings of:

(A) The risk of biological harm to a groundfish species or species group for which the TAC or PSC limit is or will be reached.

(B) The risk of socioeconomic harm to authorized users of the groundfish for which the TAC or PSC limit will be or has been reached.

(C) The impact that the continued closure might have on the socioeconomic well-being of other domestic fisheries.

**(4) Harvest control for pollock, Atka mackerel, and Pacific cod.**

If a biological assessment of stock condition for pollock, Pacific cod, or Atka mackerel within an area projects that the spawning biomass in that area will be

## § 679.20 General limitations

equal to or below 20 percent of the projected unfished spawning biomass during a fishing year, the Regional Administrator will prohibit the directed fishery for the relevant species within the area. The Regional Administrator will prohibit the directed fishery under this paragraph by notification published in the *Federal Register*. The directed fishery will remain closed until a subsequent biological assessment projects that the spawning biomass for the species in the area will exceed 20 percent of the projected unfished spawning biomass during a fishing year.

### *(e) Maximum retainable amounts.*

#### (1) Proportion of basis species.

The maximum retainable amount of an incidental catch species is calculated as a proportion of the basis species retained on board the vessel using:

(i) The retainable percentages in Table 10 to this part for the GOA species categories (except the Rockfish Program fisheries, which are described in Table 30 to this part for the Rockfish Program fisheries); and

(ii) Table 11 to this part for the BSAI species categories.

#### (2) Calculation.

(i) To calculate the maximum retainable amount for a specific incidental catch species, an individual retainable amount must be calculated with respect to each basis species that is retained on board that vessel.

(ii) To obtain these individual retainable amounts, multiply the appropriate retainable percentage for the incidental catch species/basis species combination, set forth in Table 10 to this part for the GOA species categories (except the Rockfish Program fisheries, which are described in Table 30 to this part for the Rockfish Program fisheries), and Table 11 to this part for the BSAI species categories, by the amount of that basis species, in round-weight equivalents.

(iii) The maximum retainable amount for that specific incidental catch species is the sum of the individual retainable amounts.

#### (3) Application.

(i) For catcher vessels, the maximum retainable amount for vessels fishing during a fishing trip in areas closed to directed fishing is the lowest maximum retainable amount applicable in any area, and this maximum retainable amount must be applied at any time and to all areas for the duration of the fishing trip.

(ii) For catcher/processors fishing in an area closed to directed fishing for a species or species group, the maximum retainable amount for that species or species group applies at any time for the duration of the fishing trip.

(iii) For all vessels not listed in subpart F of this section, the maximum retainable amount for pollock harvested in the BSAI is calculated at the end of each offload and is based on the basis species harvested since the previous offload. For purposes of this paragraph, offload means the removal of any fish or fish product from the vessel that harvested the fish or fish product to any other vessel or to shore.

### *(f) Directed fishing calculations and determinations*

#### (1) Round-weight equivalents.

Any determination concerning directed fishing, the amount or percentage of any species, species group, or any fish or fish products must be calculated in round-weight equivalents.

#### (2) Retainable amounts.

Except as provided in Table 10 to this part, arrowtooth flounder, or any groundfish species for which directed fishing is closed, may not be used to calculate retainable amounts of other groundfish species. Only fish harvested under the CDQ Program may be used to calculate retainable amounts of other CDQ species. Only primary rockfish species harvested under the Rockfish Program may be used to calculate retainable amounts of other species, as provided in Table 30 to this part.

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### *(g) Allowable retention of pollock roe*

#### (1) Percentage of pollock roe.

(i) Pollock roe retained on board a vessel at any time during a fishing trip must not exceed the following percentages of the total round-weight equivalent of pollock, as calculated from the primary pollock product on board the vessel during the same fishing trip.

(A) 7 percent in the Gulf of Alaska, and

(B) 9 percent in the Bering Sea and Aleutian Islands.

(ii) Determinations of allowable retention of pollock roe will be based on amounts of pollock harvested, received, or processed during a single fishing trip.

(iii) Pollock or pollock products from previous fishing trips that are retained on board a vessel may not be used to determine the allowable retention of pollock roe for that vessel.

#### (2) Primary product.

(i) For purposes of this paragraph (g), only one primary pollock product per fish, other than roe, may be used to calculate the round-weight equivalent.

(ii) A primary pollock product that contains roe (such as headed and gutted pollock with roe) may not be used to calculate the round-weight equivalent of pollock.

(iii) The primary pollock product must be distinguished from ancillary pollock products in the DCPL required under § 679.5(a)(9).

#### (3) Pollock product recovery rates (PRRs).

Use the product types and standard PRRs for pollock found in Table 3 to this part to calculate round-weight equivalents for pollock for purposes of this paragraph (g).

#### (4) Calculation of retainable pollock roe.

##### (i) Round-weight equivalent.

(A) To calculate the amount of pollock roe that can be retained on board during a fishing trip, first calculate the round-weight equivalent by dividing the total amount of primary product on board by the appropriate PRR.

(B) To determine the maximum amount of pollock roe that can be retained on board a vessel during the same fishing trip, multiply the round-weight equivalent by 0.07 in the Gulf of Alaska or 0.09 in the Bering Sea and Aleutian Islands.

(C) Pollock roe retained on board from previous fishing trips will not be counted.

##### (ii) Two or more products from different fish.

(A) If two or more products, other than roe, are made from different fish, round-weight equivalents are calculated separately for each product.

(B) To determine the maximum amount of pollock roe that can be retained on board a vessel during a fishing trip, add the round-weight equivalents together; then, multiply the sum by 0.07 in the Gulf of Alaska or 0.09 in the Bering Sea and Aleutian Islands.

(iii) Two or more products from same fish. If two or more products, other than roe, are made from the same fish, the maximum amount of pollock roe that can be retained during a fishing trip is determined from the primary product.

#### (5) Primary pollock product.

(i) Process prior to transfer. Any primary pollock product used to calculate retainable amounts of pollock roe must be frozen, canned, or reduced to meal by the vessel retaining the pollock roe prior to any transfer of the product to another vessel.

(ii) No discard of processed product. Any pollock product that has been processed may not be discarded at sea unless such discarding is necessary to meet other requirements of this part.

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### ***(h) Standard product types and standard PRRs***

#### **(1) Calculating round-weight equivalents from standard PRRs.**

Round-weight equivalents for groundfish products are calculated using the product codes and standard PRRs specified in Table 3 to this part.

#### **(2) Adjustments.**

The Regional Administrator may adjust standard PRRs and product types specified in Table 3 to this part if he or she determines that existing standard PRRs are inaccurate or if new product types are developed.

(i) Adjustments to any standard PRR listed in Table 3 to this part that are within and including 15 percent of that standard PRR may be made without providing notification and opportunity for prior public comment.

(ii) Adjustments of any standard PRR during a calendar year, when aggregated with all other adjustments made during that year, will not exceed 15 percent of the standard PRR listed in Table 3 to this part at the beginning of that calendar year.

(iii) No new product type will be announced until NMFS publishes the proposed adjustment and/or new product type in the *Federal Register* and provides the public with at least 30 days opportunity for public comment.

(iv) Any adjustment of a PRR that acts to further restrict the fishery will not be effective until 30 days after the date of publication in the *Federal Register*.

(v) If NMFS makes any adjustment or announcement without providing a prior notification and opportunity for prior public comment, the Regional Administrator will receive public comments on the adjustment or announcement for a period of 15 days from the date of publication in the *Federal Register*.

### ***(i) Forage fish***

(1) Definition. See Table 2c to this part.

#### **(2) Applicability.**

The provisions of § 679.20(i) apply to all vessels fishing for groundfish in the BSAI or GOA, and to all

vessels processing groundfish harvested in the BSAI or GOA.

#### **(3) Closure to directed fishing.**

Directed fishing for forage fish is prohibited at all times in the BSAI and GOA.

#### **(4) Limits on sale, barter, trade, and processing.**

The sale, barter, trade, or processing of forage fish is prohibited, except as provided in paragraph (i)(5) of this section.

#### **(5) Allowable fishmeal production.**

Retained catch of forage fish not exceeding the maximum retainable bycatch amount may be processed into fishmeal for sale, barter, or trade.

### ***(j) Full retention of Demersal Shelf Rockfish (DSR) in the Southeast Outside District of the GOA (SEO)***

#### **(1) Retention and landing requirements.**

The operator of a catcher vessel that is required to have a Federal fisheries permit, or that harvests IFQ halibut with hook and line or jig gear, must retain and land all DSR that is caught while fishing for groundfish or IFQ halibut in the SEO.

#### **(2) Disposal of DSR when closed to directed fishing.**

When DSR is closed to directed fishing in the SEO, the operator of a catcher vessel that is required to have a Federal fisheries permit under § 679.4(b), or the manager of a shoreside processor that is required to have a Federal processor permit under § 679.4(f), must dispose of DSR retained and landed in accordance with paragraph (j)(1) of this section as follows:

(i) A person may sell, barter, or trade a round weight equivalent amount of DSR that is less than or equal to 10 percent of the aggregate round weight equivalent of IFQ halibut and groundfish species, other than sablefish, that are landed during the same fishing trip.

(ii) A person may sell, barter, or trade a round weight equivalent amount of DSR that is less than or equal to 1 percent of the aggregate round weight equivalent of IFQ sablefish that are landed during the same fishing trip.



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(iii) Amounts of DSR retained by catcher vessels under paragraph (j)(1) of this section that are in excess of the limits specified in paragraphs (j)(2)(i) and (ii) may be put to any use, including but not limited to personal consumption or donation, but must not enter commerce through sale, barter, or trade.

## SECTION 515 PRE-DISSEMINATION REVIEW & DOCUMENTATION GUIDELINES

### Background

Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554, aka the Data Quality Act or Information Quality Act) directed the Office of Management and Budget (OMB) to issue government-wide guidelines 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.” OMB complied by issuing guidelines which direct each federal agency to 1) issue its own guidelines; 2) establish administrative mechanisms allowing affected persons to seek and obtain correction of information that does not comply with the OMB 515 Guidelines or the agency guidelines; and 3) report periodically to OMB on the number and nature of complaints received by the agency and how the complaints were handled. The OMB Guidelines can be found at:

<http://www.whitehouse.gov/omb/fedreg/reproducible2.pdf>

The Department of Commerce Guidelines can be found at: <http://www.osec.doc.gov/cio/oipr/iqg.htm>

The NOAA Section 515 Information Quality Guidelines, created with input and reviews from each of the components of NOAA Fisheries, went into effect on October 1, 2002. **The NOAA Information Quality Guidelines are posted on the NOAA home page under “Information Quality.”** <http://www.noaanews.noaa.gov/stories/iq.htm>

The guidelines apply to a wide variety of government information products and all types of media, including printed, electronic, broadcast or other. The guidelines define “Information” as, “any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms.” For example, this definition includes information that an agency disseminates from a web page. The guidelines define “Dissemination” as, “agency initiated or sponsored distribution of information to the public.” Explicitly **not** included within this term is distribution limited to “government employees or agency contractors or grantees; intra- or inter-agency use or sharing of government information; and responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or other similar law.” It also does not include distribution limited to correspondence with individuals or persons, press releases, archival records, public filings, subpoenas or adjudicative processes. (See the NOAA IQ Guidelines, pgs 5-6).

To assist in Data Quality Act compliance, NOAA Fisheries has established a series of actions that should be completed for each new information product subject to the Data Quality Act. (See “Information Generation and Compliance Documentation” and “Pre-Dissemination Review” below.) **In addition to the information contained in this document, familiarity with the NOAA Section 515 Information Quality Guidelines (<http://www.noaanews.noaa.gov/stories/iq.htm>) is crucial for NOAA Fisheries employees who engage in the generation and dissemination of information.**

### Information Generation and Compliance Documentation

- The fundamental step in the process is to create a Sec. 515 Information Quality file for each new information product. To aid in this process, a Section 515 Pre-Dissemination Review and Documentation form has been created. These guidelines are intended to serve as a supplement to the Pre-Dissemination Review and Documentation Form. The basic steps to the documentation process are outlined below.
- Complete general information (e.g., author/responsible office, title/description) section of the form.
- Determine the information category (i.e., original data; synthesized products; interpreted products; hydrometeorological, hazardous chemical spill, and space weather warnings, forecasts, and advisories; experimental products; natural resource plans; corporate and general information). **For most information products, you will only need to check one box.** More complex documents may be an “aggregate” of different categories of information products.
- Generate the information in a way that meets each of the applicable standards for the appropriate information category. See the NOAA Information Quality Guidelines.
- Document how the standards for **utility, integrity and objectivity** are met for each information product, describing what measures were taken to meet each of the applicable standards. Use the 2 page Pre-Dissemination Review & Documentation Form to document compliance with the Utility and Integrity standards contained in NOAA’s Information Quality Guidelines. The Utility and Integrity standards pertain to all categories of information disseminated by NOAA. Use these guidelines (pgs 4-11) to document compliance with the applicable objectivity standards for your information product and attach that documentation to the Pre-Dissemination Review & Documentation Form.
- Maintain the Sec. 515 Information Quality file in a readily accessible place. [Pre-Dissemination Review](#)
- Before information is disseminated, it must be reviewed for compliance with the NOAA Sec. 515 Information Quality Guidelines. This is accomplished by reviewing the information and the Sec. 515 Information Quality file.
- The Pre-Dissemination Review should be conducted during the normal course of clearing the information product for release. The person conducting the Pre-Dissemination Review will sign and date the Pre-Dissemination Review & Documentation Form. The reviewing official must be at least one level above the person generating the information product.
- The Pre-Dissemination Review form and the supporting information quality documentation must accompany the information product through the clearance process and be maintained on file.

### Completing the Section 515 Pre-Dissemination Review & Documentation Form

Using the Section 515 Pre-Dissemination Review & Documentation Form and these guidelines, document how the information product meets the

following standards for **Utility, Integrity and Objectivity**. **Please note:** Use the Pre-Dissemination Review & Documentation Form to document how the information product complies with the Utility and Integrity standards that pertain to all categories of information products. The Utility and Integrity standards are presented here for your convenience. Use these guidelines to explain how the information product meets the applicable Objectivity standards for the information product and attach that documentation to the Pre-Dissemination Review & Documentation Form.

### I. Utility of Information Product

Utility means that disseminated information is useful to its intended users. "Useful" means that the content of the information is helpful, beneficial, or serviceable to its intended users, or that the information supports the usefulness of other disseminated information by making it more accessible or easier to read, see, understand, obtain or use.

- A. Is the information helpful, beneficial or serviceable to the intended user? Explain.
- B. Who are the intended users of the data or information product? (e.g., the American public; other federal agencies; state and local governments; recreational concerns; national and international organizations). Is this data or information product an improvement over previously available information? Is it more detailed or current? Is it more useful or accessible to the public? Has it been improved based on comments or interactions with users?
- C. What media are used in the dissemination of the information? Printed publications? CD-ROM? Internet?  
Is the product made available in a standard data format?  
Does it use consistent attribute naming and unit conventions to ensure that the information is accessible to a broad range of users with a variety of operating systems and data needs?

### II. Integrity of Information Product

Integrity refers to security - the protection of information from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification. Prior to dissemination, NOAA information, independent of the specific intended distribution mechanism, is safeguarded from improper access, modification, or destruction, to a degree commensurate with the risk and magnitude of harm that could result from the loss, misuse, or unauthorized access to or modification of such information. **Please note: all electronic information disseminated by NOAA adheres to the standards set forth in paragraph A below. If the information product is disseminated electronically, simply circle paragraph II(A) on the form.** You may also contact your IT Manager for further information.

Explain (circle) how the information product meets the following standards for integrity:

- A. All electronic information disseminated by NOAA adheres to the standards set out in Appendix III, "Security of Automated Information Resources," OMB Circular A-130; the Computer Security Act; and the Government Information Security Reform Act.
- B. If information is confidential, it is safeguarded pursuant to the Privacy Act and Titles 13, 15, and 22 of the U. S. Code (confidentiality of census, business and financial information).
- C. Other/Discussion  
(e.g., 50 CFR 600, Subpart E, Confidentiality of Statistics of the Magnuson-Stevens Fishery Conservation and Management Act; NOAA Administrative Order 216-100, Protection of Confidential Fisheries Statistics; 50 CFR 229.11, Confidentiality of information collected under the Marine Mammal Protection Act.)

### III. Objectivity of Information Product

(1) Indicate which one of the following categories of information products apply for this product (check one):

- Original Data - go to Section A
- Synthesized Products - go to Section B
- Interpreted Products - go to Section C
- Hydrometeorological, Hazardous Chemical Spill, and Space Weather Warnings, Forecasts, and Advisories - go to Section D
- Experimental Products - go to Section E
- Natural Resource Plans - go to Section F
- Corporate and General Information - go to Section G

(2) Describe how this information product meets the applicable objectivity standards.

General Standard: Information is presented in an accurate, clear, complete, and unbiased manner, and in proper context. The substance of the information is accurate, reliable, and unbiased; in the scientific, financial or statistical context, original and supporting data are generated and the analytical results are developed using sound, commonly accepted scientific and research methods. "Accurate" means that information is within an acceptable degree of imprecision or error appropriate to the particular kind of information at issue and otherwise meets commonly accepted scientific, financial and statistical standards.

If the information is "influential," that is, it is expected to have a genuinely clear and substantial impact on major public policy and private sector decisions, it is noted as such and it is presented with the highest degree of transparency. If influential information constitutes an assessment of risks to human health, safety or the environment, indicate whether the risk assessment was qualitative or quantitative, and describe which SDWA-adapted quality standards at page 9 of NOAA's Section 515 Information Quality Guidelines were applied to the information product.

Use of third party information in the product (information not collected or generated by NOAA) is only done when the information is of known quality and consistent with NOAA's Section 515 Guidelines; any limitations, assumptions, collection methods, or uncertainties concerning the information are taken into account and disclosed.

Specific Standards: Specific objectivity standards for categories of information products disseminated by NOAA are listed below. Document how the general and specific objectivity standards for the particular information product were met.

**A. Original Data**

Original Data are data in their most basic useful form. These are data from individual times and locations that have not been summarized or processed to higher levels of analysis. While these data are often derived from other direct measurements (e.g., spectral signatures from a chemical analyzer, electronic signals from current meters), they represent properties of the environment. These data can be disseminated in both real time and retrospectively. Examples of original data include buoy data, survey data (e.g., living marine resource and hydrographic surveys), biological and chemical properties, weather observations, and satellite data.

Objectivity of original data is achieved using sound quality control techniques.

Detail how the data collection methods, systems, instruments, training, and/or tools are appropriate to meet the requirements of the intended users.

Were the methods, systems, instruments, etc., validated before use?

Were standard operating procedures (SOPs) followed for time series data collections? If not, document the valid scientific reasons for the deviation.

Document the quality control techniques used, for example:

- Gross error checks for data that fall outside of physically realistic ranges (e.g., a minimum, maximum or maximum change)
- Comparisons made with other independent sources of the same measurement
- Examination of individual time series and statistical summaries
- Application of sensor drift coefficients determined by a comparison of pre- and post-deployment calibrations
- Visual inspection of data

Describe any evolution and/or improvements in survey techniques, instrument performance and/or data processing.

Have metadata record descriptions and explanations of the methods and quality controls to which original data are subjected been included in the disseminated product? If not, they must be made available upon request.

**B. Synthesized Products**

Synthesized Products are those that have been developed through analysis of original data. This includes analysis through statistical methods; model interpolations, extrapolations, and simulations; and combinations of multiple sets of original data.

While some scientific evaluation and judgment is needed, the methods of analysis are well documented and relatively routine.

Examples of synthesized products include summaries of fisheries landings statistics, weather statistics, model outputs, data display through Geographical Information System techniques, and satellite-derived maps.

The objectivity of synthesized products is achieved by using data of known quality, applying sound analytical techniques, and reviewing the products or processes used to create them before dissemination. For synthesized products, please document the following:

Identify data sources (preferred option) or be prepared to make them available upon request.

Are the data used of known quality or from sources acceptable to the relevant scientific and technical communities?

Are the methods used to create the synthesized product published in standard methods manuals or generally accepted by the relevant scientific and technical communities? Are the methods documented in readily accessible formats by the disseminating office?

Describe the review process used to ensure the validity of the synthesized product or the procedures used to create them, e.g., statistical procedures, models, or other analysis tools.

If the synthesized product is unique or not regularly produced, was this product reviewed by internal and/or external experts?

If this is a routinely produced synthesized product, was the process for developing the product reviewed by internal and/or external experts?

Does the synthesized product include information about the methods used to create the product? If not, the methods must be made available upon request.

**C. Interpreted Products**

Interpreted Products are those that have been developed through interpretation of original data and synthesized products. In many cases, this information incorporates additional contextual and/or normative data, standards, or information that puts original data and synthesized products into larger spatial, temporal, or issue contexts. This information is subject to scientific interpretation, evaluation, and judgment. Examples of interpreted products include journal articles, scientific papers, technical reports, and production of and contributions to integrated assessments.

Objectivity of interpreted products is achieved by using data of known quality or from sources acceptable to the relevant scientific and technical communities and reliable supporting products, applying sound analytical techniques, presenting the information in the proper context, and reviewing the products before dissemination.

Are all data and information sources identified or properly referenced?

Are the methods used to create the interpreted product generally accepted by the relevant scientific and technical communities?

Is information concerning the quality and limitations of the interpreted product provided to help the user assess the suitability of the product for the user's application?

Describe the review process used to ensure that the product is valid, complete, unbiased, objective and relevant. For example, peer reviews, ranging from internal peer review by staff who were not involved in the development of the product to formal, independent, external peer review. The review should be conducted at a level commensurate with the importance of the interpreted product.

Does the interpreted product include a description of the methods used to create the product? If not, they must be made available upon

request.

**D. Hydrometeorological, Hazardous Chemical Spill, and Space Weather**

**Warnings, Forecasts, and Advisories**

Hydrometeorological, Hazardous Chemical Spill, and Space Weather Warnings, Forecasts, and Advisories are time-critical interpretations of original data and synthesized products, prepared under tight time constraints and covering relatively short, discrete time periods. As such, these warnings, forecasts, and advisories represent the best possible information in given circumstances. They are subject to scientific interpretation, evaluation, and judgment. Some products in this category, such as weather forecasts, are routinely prepared. Other products, such as tornado warnings, hazardous chemical spill trajectories, and solar flare alerts, are of an urgent nature and are prepared for unique circumstances.

Objectivity of information in this category is achieved by using reliable data collection methods and sound analytical techniques and systems to ensure the highest possible level of accuracy given the time critical nature of the products.

What is the source of the data or information used in the product? Are the data used of known quality or from sources acceptable to the relevant scientific and technical communities? Are the sources included in the information product? If not, they must be made available upon request. Are the methods used to create the product generally accepted by the relevant scientific and technical communities?

Please note if individual best judgment was used due to the time-critical nature of the product.

What mechanisms were used to evaluate the accuracy of the information product? Statistical analysis may be carried out for a subset of products for verification purposes.

**E. Experimental Products**

Experimental products are products that are experimental (in the sense that their quality has not yet been fully determined) in nature, or are products that are based in part on experimental capabilities or algorithms. Experimental products fall into two classes.

They are either (1) disseminated for experimental use, evaluation or feedback, or (2) used in cases where, in the view of qualified scientists who are operating in an urgent situation in which the timely flow of vital information is crucial to human health, safety, or the environment, the danger to human health, safety, or the environment will be lessened if every tool available is used. Examples of experimental products include imagery or data from non-NOAA sources, algorithms currently being tested and evaluated, experimental climate forecasts, and satellite imagery processed with developmental algorithms for urgent needs (e.g., wildfire detection).

Objectivity of experimental products is achieved by using the best science and supporting studies available, in accordance with sound and objective scientific practices, evaluated in the relevant scientific and technical communities, and peer-reviewed where feasible.

Describe the science and/or supporting studies used, the evaluation techniques used, and note any peer-review of the experimental product. Were the results of initial tests or evaluations made available where possible? Describe the review, by the appropriate NOAA unit, of the experimental products and capabilities documentation, along with any tests or evaluations.

Are explicit limitations provided concerning the quality of the experimental product? Is the degree of uncertainty indicated?

Describe the testing process used, e.g., the experimental product or capabilities are used only after careful testing, evaluation, and review by NOAA experts, and then are approved for provisional use only by selected field offices or other NOAA components. This process is repeated as needed to ensure an acceptable and reliable level of quality.

**F. Natural Resource Plans**

Natural Resource Plans are information products that are prescribed by law and have content, structure, and public review processes (where applicable) that will be based upon published standards, e.g., statutory or regulatory guidelines. Examples of such published standards include the National Standard Guidelines (50 CFR Part 600, Subpart D), Essential Fish Habitat Guidelines, and Operational Guidelines - Fishery Management Plan Process, all under the Magnuson-Stevens Fishery Conservation and Management Act; and the National Marine Sanctuary Management Plan Handbook (16 U.S.C. section 1434) under the National Marine Sanctuary Act. These Natural Resource Plans are a composite of several types of information (e.g., scientific, management, stakeholder input, and agency policy) from a variety of internal and external sources. Examples of Natural Resources Plans include fishery, protected resource, and sanctuary management plans and regulations, and natural resource restoration plans.

Objectivity of Natural Resource Plans will be achieved by adhering to published standards, using information of known quality or from sources acceptable to the relevant scientific and technical communities, presenting the information in the proper context, and reviewing the products before dissemination.

What published standard(s) governs the creation of the Natural Resource Plan? Does the Plan adhere to the published standards? (See the NOAA Sec. 515 Information Quality Guidelines, Section II(F) for links to the published standards for the Plans disseminated by NOAA.)

Was the Plan developed using the best information available? Please explain.

Have clear distinctions been drawn between policy choices and the supporting science upon which they are based? Have all supporting materials, information, data and analyses used within the Plan been properly referenced to ensure transparency?

Describe the review process of the Plan by technically qualified individuals to ensure that the Plan is valid, complete, unbiased, objective and relevant. For example, internal review by staff who were not involved in the development of the Plan to formal, independent, external peer review. The level of review should be commensurate with the importance of the Plan and the constraints imposed by legally enforceable deadlines.

**G. Corporate and General Information**

Corporate or general information includes all non-scientific, non-financial, non-statistical information. Examples include program and organizational descriptions, brochures, pamphlets, education and outreach materials, newsletters, and other general descriptions of NOAA operations and capabilities.

Corporate and general information disseminated by NOAA must be presented in a clear, complete, and unbiased manner, and in a context that enhances usability to the intended audience. To the extent possible, identify the sources of the disseminated information, consistent with confidentiality, privacy and security considerations and protections, and taking into account timely presentation, the medium of dissemination, and the importance of the information, balanced against the resources required and the time available.

Information disseminated by NOAA is reliable and accurate to an acceptable degree of error as determined by factors such as the importance of the information, the intended use, time sensitivity, expected degree of permanence, relation to the primary mission(s) of the disseminating office, and the context of the dissemination, balanced against the resources required and the time available.

For non-scientific, non-statistical information, has the information product been reasonably determined to be factually correct in the view of the disseminating office as of the time of dissemination?

Describe the review process for the information product. Review can be accomplished in a number of ways, including but not limited to combinations of the following:

- Active personal review of information by supervisory and management layers, either by reviewing each individual dissemination, or selected samples, or by any other reasonable method.
- Use of quality check lists, charts, statistics, or other means of tracking quality, completeness, and usefulness.
- Process design and monitoring to ensure that the process itself imposes checks on information quality .
- Review during information preparation.
- Use of management controls.
- Any other method, which serves to enhance the accuracy, reliability and objectivity of the information.

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**SEC. 402. INFORMATION COLLECTION**

16 U.S.C. 1881a

109-479

(a) COLLECTION PROGRAMS.—

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

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

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(b) CONFIDENTIALITY OF INFORMATION.—

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

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

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

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

(D) when required by court order;

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

(e) **RESOURCE ASSESSMENTS.**—

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

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

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

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

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

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

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**SEC. 403. OBSERVERS**

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

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

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

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

# Administrative Management and Executive Secretariat

NAO 216-100

**PROTECTION OF CONFIDENTIAL FISHERIES STATISTICS** Eff: 7/18/94; Iss: 7/26/94

## 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 nonconfidential 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.

- b. **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 (Not included --WebEd).

**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 (Not include --WebEd)]. 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 (Not included -- WebEd).

**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.

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

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

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

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

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

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

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

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

(B) the operator of any such vessel; or

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

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

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

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

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

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

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

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

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

(A) present participation in the fishery,

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

(C) the economics of the fishery,

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

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

(F) any other relevant considerations;

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

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

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

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



16 U.S.C. 1853

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

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

97-453, 104-297

In accordance with the provisions of Section 766.24(e) of the EAR, the Respondents may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202-4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request with the Assistant Secretary not later than 20 days before the expiration date and serving the request on the Respondents. The Respondents may oppose a request to renew this Order by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be served on the Respondents and shall be published in the **Federal Register**.

This Order is effective upon date of publication and shall remain in effect for 180 days.

Entered this 1st day of October, 2007.

**Darryl W. Jackson,**

*Assistant Secretary of Commerce for Export Enforcement.*

[FR Doc. 07-4995 Filed 10-9-07; 8:45 am]

**BILLING CODE 3510-DT-M**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Proposed Information Collection; Comment Request; Saltonstall-Kennedy Grant Program (S-K Program) Applications and Reports

**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 December 10, 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](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Stephen Aguzin, 301-713-2358 or [Stephen.Aguzin@noaa.gov](mailto:Stephen.Aguzin@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

The S-K Program provides financial assistance on a competitive basis for research and development projects that benefit the U.S. fishing industry (commercial and recreational). In addition to standard Federal government grant application requirements, S-K applicants must provide a project narrative and a budget narrative. Successful grant applicants are required to submit semi-annual progress reports plus a final report.

##### II. Method of Collection

All documents are submitted in electronic format through NOAA's grant Web site [https://\\*grants\\*on\\*line\\*.rdc.noaa.gov/](https://*grants*on*line*.rdc.noaa.gov/).

##### III. Data

*OMB Number:* 0648-0135.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Not-for-profit institutions; business or other for-profit organizations; individuals or households; and state, local or tribal government.

*Estimated Number of Respondents:* 98.

*Estimated Time per Response:* 1 hour for a project narrative; 1 hour for a budget narrative; 2 hours and 30 minutes for a semi-annual progress report; and 13 hours for a final report.

*Estimated Total Annual Burden Hours:* 980.

*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: October 3, 2007.

**Gwellnar Banks,**

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

[FR Doc. E7-19857 Filed 10-9-07; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Proposed Information Collection; Comment Request; Alaska License Limitation Program for Groundfish, Crab, and Scallops

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

**ACTION:** Notice.

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

**DATES:** Written comments must be submitted on or before December 10, 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](mailto:dHynek@doc.gov)).

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

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

The License Limitation Program (LLP) restricts access to the commercial groundfish fisheries in the Exclusive Economic Zone off Alaska except for certain areas where alternative programs exist. The LLP also restricts access to the commercial crab fisheries for the Bering Sea and Aleutian Islands (BSAI) and access to the commercial scallop fisheries off Alaska.

Applications for permits were a one-time process. An LLP application

originally was used to determine owners of vessels who were qualified to obtain an LLP license, and no new LLP permits may be issued except under very specific conditions. Permits have no expiration date, but are transferable. This collection now supports LLP transfer activities for crab, scallops, and groundfish, and any appeals resulting from denied actions.

## II. Method of Collection

Transfer requests may be submitted by FAX or as paper submissions. Appeals may be submitted by mail as paper submissions.

## III. Data

OMB Number: 0648-0334.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit; Individuals or households.

Estimated Number of Respondents: 144.

Estimated Time per Response: 1 hour to complete and submit a groundfish and crab LLP transfer application; 1 hour to complete and submit a scallop LLP transfer application; 4 hours to complete and submit a transfer appeal.

Estimated Total Annual Burden Hours: 544.

Estimated Total Annual Cost to Public: \$1,012.

## 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: October 3, 2007.

### Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7-19863 Filed 10-9-07; 8:45 am]

BILLING CODE 3510-22-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XD09

### Marine Mammals; File Nos. 10045, 532-1822

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

**ACTION:** Notice; receipt of application and amendment request.

**SUMMARY:** Notice is hereby given that Samuel Wasser, University of Washington, Box 351800, Seattle, WA 98195, has applied for a scientific research permit (File No. 10045) and Kenneth Balcomb, Center for Whale Studies, P.O. Box 1577, Friday Harbor, WA 98250, has requested an amendment to scientific research Permit No. 532-1822-02.

**DATES:** Written, telefaxed, or e-mail comments must be received on or before November 9, 2007.

**ADDRESSES:** The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713-2289; fax (301)427-2521; and

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115-0700; phone (206)526-6150; fax (206)526-6426.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301)427-2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is [NMFS.Pr1Comments@noaa.gov](mailto:NMFS.Pr1Comments@noaa.gov). Include in the subject line of the e-mail comment the file number of the application you are commenting on: File No. 10045 or 532-1822.

### FOR FURTHER INFORMATION CONTACT:

Jaclyn Daly or Jennifer Skidmore, (301)713-2289.

**SUPPLEMENTARY INFORMATION:** The subject permit and amendment requests are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222-226).

Permit No. 10045 would authorize fecal collections from killer whales year round in Puget Sound and the Georgia Basin, WA. The purpose of the research is to investigate the impacts of prey availability, toxins, and vessel traffic on killer whales using hormone fecal analysis. The applicant is requesting to harass 30 southern resident killer whales and a total of 10 transient, offshore, and northern resident killer whales annually. The permit would expire 5 years from date of issuance and would require annual re-authorization.

An amendment to Permit No. 532-1822-02, issued on July 17, 2006, is requested by Mr. Balcomb. The permit currently authorizes the permit holder to conduct aerial and vessel surveys, behavioral observations, photo-ID, and fecal and prey collection on southern resident killer whales (*Orcinus orcas*). The permit holder is requesting an additional 12 takes, annually, for satellite dart tagging of southern residents in California, Oregon, and Washington. The permit would expire April 14, 2011 and requires annual re-authorization.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of these applications to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: October 3, 2007.

### P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7-19925 Filed 10-9-07; 8:45 am]

BILLING CODE 3510-22-S