

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 04/14/2008

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

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 04/14/2008

ACTION REQUESTED: Revision of a currently approved collection  
TYPE OF REVIEW REQUESTED: Regular  
ICR REFERENCE NUMBER: 200804-0648-007  
AGENCY ICR TRACKING NUMBER:  
TITLE: Atlantic Sea Scallops Amendment 10 Data Collection  
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change  
OMB CONTROL NUMBER: 0648-0491

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: 03/31/2011

DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	236,219	7,949	1,445,823
New	278,373	11,688	1,489,055
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	42,154	3,739	43,232
Change due to Agency Adjustment	0	0	0
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE:

OMB Authorizing Official:

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

List of ICs

IC Title	Form No.	Form Name	CFR Citation
VMS: trip declaration, trip termination, compensation trip ID, powerdown provision and polling fees			50 CFR 648
Broken trip adjustment and access area trip exchange	NA, NA	Atlantic Sea Scallop Broken Trip Adjustment Sheet, Atlantic Sea Scallop Area Access Trip Exchange Request Form	50 CFR 648
VMS purchase and installation verification			50 CFR 648
Limited Access Permit Applications	NA	Federal Limited Access General Category Scallop Permit Application	
IFQ Ownership Cap Forms			50 CFR 648
IFQ, NGOM, ICS Appeals			50 CFR 648
RUPH Applications			50 CFR 648
VMS Pre-Landing Notification Form (IFQ, NGOM)	NA	General Category Scallop IFQ and NGOM Pre-Land Notification Form	
VMS State Waters Exemption Program	NA	State Waters Exemption Form	
Quota Transfer Applications - Temporary and Permanent	NA	General Category Scallop IFQ Temporary and Permanent Transfer Application	
Cost Recovery			50 CFR 648
Sector Proposals			50 CFR 648
Sector Operation Plans			50 CFR 648
IFQ, NGOM and ICS VMS Trip Declaration and Power Down and Polling Fees			50 CFR 648

# 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  
ATLANTIC SEA SCALLOP AMENDMENT 10 DATA COLLECTION  
OMB CONTROL NO.: 0648-0491**

**INTRODUCTION:**

This Paperwork Reduction Act (PRA) submission requests Office of Management and Budget (OMB) approval of the information collection requirements contained in Amendment 11 to the Atlantic Sea Scallop Fishery Management Plan (FMP) (Amendment 11).

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

The requirements under Amendment 11 to the FMP include collection information that is already accounted for under the Northeast Region Logbook Family of Forms (OMB Control No.: 0648-0212) and the Atlantic Sea Scallop Amendment 10 Data Collection (OMB Control No.: 0648-0491). Amendment 11 contains the following provisions that would increase the annual budget for the Atlantic Sea Scallop Amendment 10 Data Collection (OMB Control No.: 0648-0491):

1. Three new limited access general category scallop permit categories: limited access general category individual fishing quota (IFQ) scallop permit, IFQ Northern Gulf of Maine (NGOM) scallop permit, and IFQ incidental catch scallop (ICS) permit;
2. Vessel monitoring system (VMS) reporting requirements for all general category vessels;
3. IFQ and NGOM VMS pre-landing notification requirements;
4. State Waters Exemption Program VMS enrollment requirements;
5. An IFQ temporary transfer and permanent transfer program;
6. An IFQ cost recovery program; and
7. A new general category sector program.

**A. JUSTIFICATION**

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

Under the Magnuson-Stevens Fishery Conservation and Management Act, as amended in 2006 ([Magnuson-Stevens Act](#)), the Secretary of Commerce (Secretary) has responsibility for the conservation and management of marine fishery resources off the coast of the United States. The majority of this responsibility has been delegated to the Fishery Management Councils and the National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS).

The general category scallop fishery in NMFS' Northeast Regional Office (NERO) is currently an open access fishery that allows any vessel to apply for, and be issued, a general category permit. The general category permit was created in 1994 under Amendment 4 to the FMP to allow vessels fishing in non-scallop fisheries to catch scallops as incidental catch, and for a small-scale scallop fishery to continue outside of the large scale limited access scallop fishery. Over time, participation in the general category fishery has increased. In 1994, there were 1,992 general category permits issued. By 2005 that number had increased to 2,950.

In January of 2006, the New England Fishery Management Council (Council) began the development of Amendment 11 to evaluate alternatives for a limited access program for the general category fishery to improve resource conservation, minimize the potential for excess harvesting capacity in the fishery, and provide a platform to promote long-term economic stability for harvesters, processors, and fishing communities. Amendment 11 was adopted by the Council on June 20, 2007. This amendment is designed to meet all the requirements of the Magnuson-Stevens Fishery Conservation and Management Act, as well as other applicable laws.

Following is justification for each of the new reporting requirements that would be established by Amendment 11.

### **New Limited Access Permit Categories**

Amendment 11 would implement a limited access program to control general category scallop fishing capacity and fishing mortality. There would be 3 new limited access general category scallop permit categories: IFQ, ICS, and NGOM. IFQ permit holders would be allocated an annual IFQ, the ICS permit holders would have a small incidental catch possession limit, and NGOM permit holders would be able to fish in the Northern Gulf of Maine Management Area. To qualify for an IFQ permit, a vessel must have had a valid scallop permit between March 1, 2000, and November 1, 2004, and landed at least 1,000 lb of scallops within 1 fishing year between March 1, 2000, and November 1, 2004. To qualify for either an ICS permit or NGOM permit, the vessel must have had a valid scallop permit on November 1, 2004. To obtain one of the above 3 permits, vessel owners must demonstrate their vessel's eligibility by submitting an initial permit application with supporting documentation. If a vessel qualifies for and is issued a limited access general category permit, they would be required to renew their permit(s) annually to maintain their eligibility. Like all of NERO limited access programs, if a vessel owner wants to move their permit to a new vessel or retain their permit eligibility through a confirmation of permit history (CPH), they must complete a replacement, upgrade, permit history (RUPH) application.

The above listed application requirements are necessary to: (1) qualify eligible vessels, (2) allow vessel owners to maintain their eligibility from year to year, and (3) allow vessel owners to transfer their eligibility to a new vessel or retain their eligibility in CPH.

Initial permit applicants that are denied would be given the opportunity to appeal their denial through the submission of additional information demonstrating why the determination made by NMFS was incorrect.

To maintain the historical character of the general category fishery, there would be restrictions on the amount of quota a given vessel owner or individual vessel could have. Specifically, vessel owners could not own more than 5% of the general category IFQ Total Allowable Catch (TAC) and individual vessels could not have more than 2% of the IFQ TAC. Consequently, IFQ permit holders would be required to submit an ownership form with their permit renewal each year documenting all of the IFQ vessels they have an ownership interest in. The ownership form is necessary to effectively administer the ownership quota cap. The 2% vessel quota cap would not require the submission of information by industry, and would be administered internally using NMFS permit data.

## **New VMS Requirements**

Currently, there are 2 open access general category fishing permits; 1A and 1B. The 1A permit category, which allows a vessel to possess up to 40 lb of scallops, does not have VMS requirements. The 1B permit, which allows vessels to possess up to 400 lb of scallops and participate in the access area program, currently, has VMS requirements. Under Amendment 11, VMS reporting requirements would extend to all general category vessels. Vessels that apply and qualify for a general category scallop permit would be required to purchase, install, and maintain a VMS on their vessel. VMS reporting requirements would be identical to 1B VMS reporting requirements (OMB Control No.: 0648-0491); including trip declaration, power down, and polling frequency requirements.

Amendment 11 would require IFQ and NGOM vessels to submit a VMS pre-landing notification form prior to crossing the demarcation line on their return to port that would provide scallop hail weight, estimated time and port of landing. Data from the VMS pre-landing notification form submitted by IFQ vessels would be used to enforce and oversee individual fishing quotas, alert enforcement personnel approximately when, where and how much a vessel should have onboard, and enforce the 400 lb IFQ possession limit. Data from the VMS pre-landing notification form submitted by NGOM vessels would be used to monitor the Northern Gulf of Maine Management Area TAC quota and to enforce the 200 lb Northern Gulf of Maine Management Area possession limit.

The FMP established the state waters exemption program. This program allows vessels to fish exclusively in state waters, exempting them from Federal gear restrictions and possession limits. Currently, to enroll in this program, a vessel must call the Interactive Voice Response System (IVR), an automated telephone response system. Since all scallop vessels would be required to have VMS, Amendment 11 would require vessel owners to declare into the state waters exemption program through their VMS and not through IVR. This adjustment was made to streamline permit reporting requirements and facilitate NMFS access to state waters exemption program data.

These VMS requirements have been implemented to improve scallop regulation enforcement and oversight of the above permit restrictions and requirements.

## **IFQ Transfers**

Amendment 11 would establish an IFQ transfer program which would allow IFQ permit holders to temporarily and/or permanently transfer individual fishing quota from one IFQ vessel to another. Quota transfers would occur through the submission of transfer applications. Required information would include vessel information, quota transfer information, and authorizing signatures from both parties.

The IFQ transfer program is entirely optional, and has been developed to provide greater flexibility for IFQ permit holders.

## **Cost Recovery**

Section 304(d)(2) of the Magnuson-Stevens Act (MSA) requires an IFQ cost recovery plan to recover management and enforcement costs for IFQ fisheries. Amendment 11 would implement an IFQ cost recovery program, whereby NMFS would collect up to 3% of ex-vessel value of



landed product to cover actual costs directly related to enforcement and management of the IFQ program. IFQ permit holders would be required to submit a cost recovery payment annually via a pre-existing Federal payment system called [www.pay.gov](http://www.pay.gov), which is also currently used by the Alaska Region and the Southeast Region.

Information submitted via the Internet would require the user to establish an online account, including personal and financial information.

## **IFQ Sector Program**

Amendment 11 contains provisions that would authorize a portion of the overall TAC to be allocated to a self-selected group of IFQ permit holders (sector), provided the sector provides adequate information describing the formation of the sector and its intended plan of operations. The proposed sector would be required to submit documents as described below.

### **Sector Allocation Proposal**

Any person may submit a Sector allocation proposal for a group of limited access general category scallop vessels to the Council, at least 1 year in advance of the start of a sector, and request that the Sector be implemented through a framework procedure specified at §648.55.

This document specifies the proposed maximum amount of TAC to be allocated to sector participants and the sector's proposed rules describing movement of vessels among sectors or to the common pool of vessels managed under the FMP. This document would be required to include an appropriate analysis that assesses the impacts of the proposed sector, in compliance with the National Environmental Policy Act (NEPA).

### **Plan of Operations**

A group that wants to form a sector and receive an allocation is required to submit a legally binding operations plan to the Council and the Regional Administrator. The operations plan must be agreed upon and signed by all members of the sector and, if approved, would constitute a contract.

This document provides a list of all participants involved with the sector; a contract signed by all proposed participants; historic information on the catch history, TAC associated with the proposed sector; detailed information regarding potential redistribution of TAC within the sector, if applicable; a plan and analysis of specific management rules for sector participants, including plans for the enforcement of sector rules and the monitoring of landings and discards; and procedures for the removal of participants from the sector. This document would be required to include a supplementary NEPA analysis that would include a revised assessment of the impacts of the proposed sector based upon changes that may have occurred since the submission of the sector allocation proposal mentioned above.

A sector is required to resubmit its operations plan to the Regional Director no later than December 1 of each year, whether or not the plan has changed. NMFS may consult with the Council and would solicit public comment on the operations plan for at least 15 days, through proposed rulemaking in the Federal Register. Upon review of the public comments, the Regional Administrator may approve or disapprove sector operations, through a final determination pursuant to the Administrative Procedure Act.

This information is necessary to describe the proposed sector and the proposed rules under which the sector would operate. This information would be used to determine whether this sector would maintain consistency with the goals and objectives of the FMP.

As current permit holders in addition to an estimated 175 not currently holding permits under this information collection may choose to apply for these new permits, the annualized total respondents affected by this collection are estimated to be 898.

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

**New Limited Access Permit Categories**

Vessels applying for a general category permit under the proposed limited access program would be required to complete an initial application for the limited access permit category for which they are applying. This information would be used by NMFS to qualify vessels for the applicable limited access permit category. The initial application for a limited access permit would be submitted only once. If a vessel is determined to qualify for a limited access permit, the owner must renew that permit annually.

To ensure owners do not exceed the 5% general category IFQ ownership cap, IFQ permit holders would be required to submit an ownership form each year with their permit renewal listing all IFQ vessels they have an ownership interest in.

If a limited access permit application is denied, the applicant would be given the opportunity to appeal their denial by submitting additional information that demonstrates why the determination made by NMFS was incorrect. This information would be used by NMFS to assess the merits of the appeal.

Each RUPH action would require an RUPH application. This information is necessary to execute the RUPH transaction as requested by the applicant.

Vessel permit information is available to the public via NERO's web site at [www.nero.noaa.gov](http://www.nero.noaa.gov), and is also available upon request. In most cases, vessel permit information is provided in aggregate form. However, there are cases, such as for law enforcement or mailings, that individual permit information is required. The individual vessel information used for mailings that is derived from the vessel permit application provides NMFS with the assurance of reaching all affected constituents with notices of fishery closures, regulatory changes, and other important information. Thus, this information is used frequently; at least once a month.

**New VMS Requirements**

Although many vessels that qualify for a general category scallop permit would already have a VMS unit, some would not. Vessel owners that must purchase a unit to participate in the general category fishery must verify the installation and operation of the unit prior to a permit being issued. Installation verification is a one time requirement that is necessary to ensure a vessel has an operational VMS unit prior to participating in the fishery.

Prior to moving the vessel from the dock or mooring, vessel operators must send a VMS fishery declaration code that specifies the intent of the vessel, thereby identifying what regulations the vessel is subject to. Upon returning to the dock or mooring at the end of a trip, vessel operators are allowed to submit a power down code pursuant to regulations specified at 50 CFR 648.9(b)(2). The power down code allows the owner to turn off the VMS unit while the vessel is at the dock or mooring to reduce reporting polling costs and preserve battery power.

Unless the vessel has submitted a power down code, the VMS unit would send a position polling signal every ½ hour. Automatic polling monitors the vessel's geographic location, ensuring the vessel complies with spatial and temporal restrictions.

The VMS pre-landing notification for IFQ and NGOM vessels would be submitted by the vessel operator prior to crossing the demarcation line at the end of each general category scallop trip. Data from these forms would be used to enforce and oversee individual fishing quotas and monitor the Northern Gulf of Maine TAC.

To participate in the state waters exemption program, vessel operators would submit a VMS declaration code and VMS enrollment form instead of calling into the IVR system as is the current practice. The state waters exemption program requires the enrollment of at least 7 days. The enrollment form would notify NMFS of the period of time the vessel would be enrolled in the program. The VMS declaration code and enrollment form would be critical in the enforcement and oversight of the state waters exemption program.

### **IFQ Transfers**

Each quota transfer would require a transfer application signed by both parties. This information is necessary to process transfer applications.

### **Cost Recovery**

Under section 304(d)(2) of the MSA, IFQ permit holders would be required to submit cost recovery payments annually to NMFS to enable the collection of funds for the purpose of offsetting the administrative and enforcement burden incurred by NMFS as the result of the IFQ program. This information would be collected via a secure Internet website.

### **IFQ Sector Program**

Amendment 11 would establish a process by which industry participants may propose the creation of a sector fishery. A sector allocation proposal, operation plan, and accompanying analysis included within each document would be reviewed by Council and NMFS staff for consistency with the objectives of the FMP. No limit to the number of sectors that may be proposed has been defined in the proposed rule for Amendment 11.

Any person may submit a Sector allocation proposal for a group of limited access general category scallop vessels to the Council, at least 1 year in advance of the start of a sector, and request that the Sector be implemented through a framework procedure specified at §648.55.

A sector is required to resubmit its operations plan to the Regional Director no later than December 1 of each year, whether or not the plan has changed. NMFS may consult with the

Council and would solicit public comment on the operations plan for at least 15 days, through proposed rulemaking in the Federal Register. Upon review of the public comments, the Regional Administrator may approve or disapprove sector operations, through a final determination pursuant to the Administrative Procedure Act.

It is anticipated that the information collected for all of the above listing reporting requirements would be disseminated to the public or used to support publicly disseminated information. As explained in the preceding paragraphs, the information gathered has utility. NMFS would retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. See 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 would be subjected to quality control measures and pre-dissemination review pursuant to Section 515 of Public law 106-554.

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

**New Limited Access Permit Categories**

After initial permit issuance, permit renewal is made as easy as possible for both the public and the issuing office. The information obtained from the vessel's initial permit application is used to prepare a computer generated pre-printed renewal form. This pre-printed form is sent directly to the vessel owner each year along with permit renewal instructions. If there are no changes to the information contained on the pre-printed renewal form, renewal only requires the applicant's signature. This feature minimizes the reporting burden on the public and administrative burden on the agency. Furthermore, vessel owners may also request a pre-printed renewal form at any time during the year to make necessary changes to their permit or contact information.

In addition to being available upon request, vessel permit information and all initial permit applications and forms, in addition to RUPH and CPH applications, are available on the Northeast Regional Office's web site at [www.nero.noaa.gov](http://www.nero.noaa.gov). Posting this information on the web makes it easier for the general public to obtain necessary forms and instructions, and eases the administrative burden on the agency.

**New VMS Requirements**

VMS position data is collected via automated polling. The VMS pre-landing notification form and the state waters exemption program enrollment form are available electronically through the vessel's VMS unit. These VMS forms are submitted electronically from the vessel.

**IFQ Transfers**

IFQ transfer applications would be available via NERO's website, [www.nero.noaa.gov](http://www.nero.noaa.gov). Applications must be mailed because NMFS requires original signatures of the two parties involved in the transfer.

## Cost Recovery

Vessel owners would submit payment via the secure Internet site: [www.pay.gov](http://www.pay.gov).

## IFQ Sector Program

Due to the size of sector applications, operation plans, and associated analyses and reports, submission of these documents via the Internet would not be feasible at this time.

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

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

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

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

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

As described in the above responses, these collection requirements are necessary to implement Amendment 11 to the FMP. Specifically, the general category limited access program is necessary to improve scallop resource conservation, minimize the potential for excess harvesting capacity in the fishery, and provide a platform to promote long-term economic stability for harvesters, processors, and fishing communities. The one-time initial permit application is a requirement that is necessary to identify the universe of eligible fishery participants. The appeals process affords vessel owners recourse to demonstrate why a denial was made in error. The RUPH applications are consistent with all other NERO limited access fisheries, and provide vessel owners flexibility to move and maintain their eligibility for the general category scallop fishery as they change vessels.

VMS polling and reporting requirements are critical in the enforcement of scallop regulations and the oversight of individual fishing quotas, the Northern Gulf of Maine Management Area TAC, and access area trip quotas. Without these requirements, it would be extremely difficult to enforce spatial and temporal restrictions in addition to other regulatory requirements, and impossible to effectively manage access area trip limits and the Northern Gulf of Maine Management Area TAC.

IFQ transfer applications are needed to implement a transfer program. Without these applications, industry would not be afforded the benefit of the transfer program.

The cost recovery requirements are critical to administer the cost recovery program and collect payment from IFQ permit holders. The minimum amount of information would be collected to effectively administer this program.

Without sector application, analysis, and reporting requirements, NMFS could not successfully implement a sector program.

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

Vessel applicants would be required to submit RUPH applications for each such action. It is possible that an applicant may perform a replacement or CPH more often than quarterly. Vessels would be required to submit a VMS trip declaration and pre-landing notification report each fishing trip. Consequently, individuals may be required to submit a trip identification code more often than quarterly. IFQ vessel owner's may transfer quota more frequently than quarterly, but this collection is completely voluntary and to the benefit of the fishing industry. A vessel owner may submit more than one transfer application quarterly. Each time a vessel enrolls in the state waters exemption program, they would be required to submit the appropriate VMS code and enrollment form. They are allowed to enroll in this program more often than quarterly.

**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.**

The information collections contained in this submission are part of a proposed rule, RIN: 0648-AU32, scheduled to publish in December, 2007.

The Council held 35 public meetings that received public comment, as part of the development of Amendment 11 to the FMP. These meetings took place from January 2006 through the present.

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

No payment or gift would be made to respondents.

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

All data would be kept confidential as required by Section 402(b) of the Magnuson-Stevens Act, and in accordance with NOAA Administrative Order 216-100, Confidentiality of Fisheries Statistics, and would not be transferred for public use except in aggregate statistical form (and without identifying the source of data, i.e. vessel name, owner, etc.)

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

There are no questions of a sensitive nature.

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

A full summary of the burden increase to the public associated with this collection of information can be found in Table 1. *The total estimated increase in unduplicated respondents is 175, the total response increase is 42,154, and the total burden hour increase is 3,739 hours; the new hourly burden including this increase is 11,688.*

### **Application Process**

It is estimated that there would be 500 applicants for an IFQ permit, 200 applicants for a NGOM permit, and 500 applicants for an ICS permit. Each IFQ application will take approximately 30 minutes to process, while each NGOM and ICS permit application will take approximately 15 minutes to process. Consequently, the total time burden for the initial applications will be of 425 hours ( $500 \times 30 \text{ minutes}/60 \text{ minutes} = 250$ ;  $200 \times 15 \text{ minutes}/60 \text{ minutes} = 50$ ;  $500 \times 15 \text{ minutes}/60 \text{ minutes} = 125$ ;  $250 + 50 + 125 = 425$ ). According to Council analysis performed for Amendment 11, only 370 IFQ, 190 NGOM, and 465 ICS applicants are expected to qualify and consequently renew their application each year. Permit renewal is estimated to take 15 minutes per application on average, for a total burden of 256 hours per year ( $370 + 190 + 465 = 1025 \times 15 \text{ minutes}/60 \text{ minutes} = 256$ ). The 3 year average total public time burden for IFQ, NGOM, and ICS initial permit applications, and permits renewals would thus be **312 hours** ( $425 + 256 + 256/3 = 312$ ). The labor cost, at an hourly rate of \$15, would be \$4,684.

To implement the 5% IFQ ownership cap, vessel owners would be required to submit an ownership form with each permit renewal. Since it is estimated there would be 370 IFQ permits, there would be 370 ownership forms each in the second and third years. It is estimated it would take 5 minutes to complete each ownership form; therefore, the annual reporting burden would be 31 hours ( $370 \times 5 \text{ minutes}/60 \text{ minutes}$ ), or **21 hours**, averaged over the first three years ( $0 + 31 + 31 = 62/3 = 20.6$  or 21 hours). At an hourly rate of \$15, the annualized time burden would be approximately \$315.

Up to 80 applicants are expected to appeal the denial of their permit application over the course of the three month application period. The appeals process is estimated to take 2 hours per appeal to complete, on average, for a total burden of 160 hours. The burden of this one-time appeal, annualized over three years, would be **54 hours**. At an hourly rate of \$15, the time burden would be approximately \$810.

### **RUPH Applications**

General category scallop vessels would be subject to the same replacement and permit history restrictions as other NERO limited access fisheries. Completion of an RUPH application requires an estimated 3 hours per response. It is estimated that no more than 100 RUPH applications would be received annually. The resultant burden would be up to **300** ( $3 \times 100$ ) **hours**. At an hourly rate of \$15 / hour, the total public cost burden for RUPH applications would be \$4,500 per year.

### **New VMS Reporting Requirements**

Most vessels that qualify for an IFQ permit would already be participating in the directed general category scallop fishery. To participate in this fishery, a vessel must have a 1B permit, which

already has VMS reporting requirements. Therefore, it is likely that most vessels that qualify for an IFQ permit already have VMS. Vessels that qualify for an ICS or NGOM would not likely be participating in the directed general category scallop fishery. However, vessels that qualify for an ICS or NGOM permit may already have VMS reporting requirements through other fisheries, particularly the Northeast multispecies fishery. Since it is not economically practical for a vessel to purchase, install and operate a VMS unit solely for a NGOM or ICS permit, it is unlikely that Amendment 11 would result in vessels purchasing or installing new VMS units. However, it is possible that some new permit holders would decide to purchase and install new VMS units in order to participate in one of these fisheries. Therefore, it is estimated that up to 10 vessels would purchase and install VMS units as a result of Amendment 11. It is estimated that it would take 2 hours to purchase each unit for a time burden of 20 hours (2 x 10); annualized over 3 years, the burden would be **7 hours**. It is anticipated that vessel owners would hire a VMS technician to install the VMS unit; therefore there would be no installation time burden. At an hourly rate of \$15 / hour, the total public cost burden for VMS purchases would be \$105 (7 x \$15). Since position polling is automated, there is no associated time burden with this reporting requirement.

### **IFQ Notification Requirements**

Each time a general category vessel leaves port or is moved from the dock or mooring, the operator must submit a VMS trip declaration code to notify NMFS of their intent, and consequently, what regulations the operator must adhere to.

According to 2007 VMS trip declaration data for 1B scallop vessels, approximately 40% of the time general category 1B vessels declare a general category scallop trip; the remainder are codes for other activities (if a vessel leaves port, general category regulations require it to declare a trip, regardless of the fishing activity). The 2008 scallop harvest specifications have not yet been finalized, but the proposed IFQ quota is 2.5 million lbs. Assuming each trip harvests the 400 lb possession limit, there would be an estimated 6,250 IFQ trip declarations per year ( $2.5 \text{ million} / 400 = 6,250$ ), with an additional 9,375 trip declarations for some activity other than scallop fishing, for a total of 15,625 trip declarations. Following each trip, it is anticipated that the vessel operator would submit a power down code to reduce polling costs and conserve battery power. It is estimated that it takes approximately 2 minutes to submit a trip declaration or power down code. It is estimated the IFQ fleet would submit 31,250 VMS declaration codes (15,625 trip declarations and 15,625 corresponding power down code submissions); therefore, the annual IFQ trip declaration time burden would be **1,042 hours** per year ( $31,250 \times 2 \text{ minutes} / 60 \text{ minutes}$ ). At an hourly rate of \$15, this burden would be \$15,630.

### **NGOM Notification Requirements**

The proposed Northern Gulf of Maine Management Area TAC is expected to be 64,000 to 100,030 lbs each year. Assuming each trip lands the 200 lb possession limit, and using the upper limit of the proposed TAC, it is projected that there would be up to 500 NGOM trip declarations per year ( $100,030 / 200 \text{ lb}$ ). As previously noted, for economic purposes it is unlikely that a vessel owner would incur the cost of a VMS unit solely to have a NGOM permit. Therefore, assuming these vessels already have VMS reporting requirements for other fisheries, VMS declaration reporting requirements for activities other than NGOM activity have already been accounted for in other PRA collections. The increased reporting burden resulting from the NGOM permit category would be approximately 500 trip declarations and 500 power down declarations. Assuming each declaration takes approximately 2 minutes, the annual NGOM trip



declaration time burden would be approximately **34 hours** (2 x 500 x 2 minutes/60 minutes). At an hourly rate of \$15, this burden would be \$510.

### **ICS Notification Requirements**

In 2004 and 2005, dealer data indicated that the percent of scallops landed in quantities of 40 lb or less was 0.02% and 0.06%, respectively. The average pounds of scallops landed in quantities of 40 lb in 2004 and 2005 was 19,363 lb. Using this average, it is estimated that there were approximately 500 general category 1A trips that landed scallops. Assuming this rate would remain approximately the same, there would be an estimated 500 ICS trip declarations made annually. As previously noted, for economic purposes it is unlikely that a vessel owner would incur the cost of a VMS unit solely to have an ICS permit. Therefore, assuming these vessels already have VMS reporting requirements for other fisheries, VMS declaration reporting requirements for activities other than ICS activity have already been accounted for in other PRA collections. The increased reporting burden resulting from the ICS permit category would be approximately 500 trip declarations and 500 power down declarations. Assuming each trip declaration takes approximately 2 minutes, the annual ICS trip declaration time burden would be approximately **34 hours** (2 x 500 x 2 minutes/60 minutes). At an hourly rate of \$15, this burden would be \$510.

### **Pre-landing Notification Requirements**

VMS pre-landing notification forms would be required for each IFQ and NGOM trip. Therefore, there would be 6,250 IFQ and 500 NGOM pre-landing notification forms submitted annually. It is estimated that it would take 5 minutes per each of the 6750 reports, for an annual pre-landing notification time burden of **563 hours** (6750 x 5 minutes/60 minutes). At an hourly rate of \$15, this burden would be \$8,445.

### **State Waters Exemption Program Requirements**

The state waters exemption program enrollment form is estimated to take 5 minutes to submit through the VMS, the same amount of time as it has taken to enroll through IVR. State waters exemption program trip declaration requirements are already accounted for in OMB Control No.: 0648-0202. Therefore, this burden would not increase the collection budget.

### **IFQ Transfers**

Quota temporary transfers and permanent transfers apply to IFQ vessels only.

Using the Northeast Region's Northeast Multispecies Days-at-Sea (DAS) Leasing Program (OMB Control No.: 0648-0475) as a proxy for the response rate for the quota leasing program, it is anticipated there would be approximately 75 quota temporary transfers annually. Each application would include information from both parties involved in the temporary transfer; therefore there would be 2 responses per application. It is estimated that it would take 5 minutes per response, or 10 minutes per temporary quota transfer application. Therefore, the estimated temporary transfer burden would be **13 hours** (75 x 2 x 5 minutes/60 minutes). At an hourly rate of \$15 / hour, the total public cost burden for temporary quota transfer applications would be \$195.

The Northeast Multispecies DAS Permanent Transfer Program cannot be easily correlated with the general category permanent quota transfer program because of the Northeast Multispecies Program has a 20% conservation tax on all transfers while there is no conservation tax on scallop quota transfers. Although it is anticipated there would be more quota transfers than DAS transfers, quota transfers would be restricted by the requirement that no IFQ vessel owner have more than 5% of the IFQ quota nor any individual vessel have more than 2% of the IFQ quota at any time. It is anticipated there would be approximately 10 permanent quota transfers per year. Each application would include information from both parties involved in the transfer; therefore there would be 2 responses per application. It is estimated that it would take 5 minutes per response, or 10 minutes per permanent transfer application. Therefore, the estimated permanent quota transfer burden would be **2 hours**. At an hourly rate of \$15 / hour, the total public cost burden for permanent quota transfer applications would be \$30.

### **Cost Recovery**

As we are initiating cost recovery for this program, there are no current data for use in estimating the burden associated with submitting a cost recovery payment. Using the burden per response used by the Alaska Region's Alaska Individual Fishing Quota Cost-Recovery Program Requirements (OMB Control No.: 0648-0398) as a proxy for the scallop IFQ program, it is estimated that it would take 2 hours per response. Each IFQ permit holder would be required to submit a cost recovery payment once annually. Therefore, 370 payments would take **740 hours**. At an hourly rate of \$15 / hour, the total public cost burden for cost recovery would be \$11,100.

### **IFQ Sector Program**

Based on conversations with Council and NMFS staff, and the general category scallop fishing industry, it is estimated there would be 9 sector proposals received over the next three years (2008-2009); 5 in the first, 2 in the 2<sup>nd</sup> year and 2 in the 3<sup>rd</sup> year. The earliest the sectors proposed in the 2008 year could be implemented would be the 2009 fishing year. Therefore, these sectors would be required to submit operation plans for the 2010 fishing year.

Any person may submit a Sector allocation proposal for a group of limited access general category scallop vessels to the Council at least 1 year in advance of the start of a sector, and request that the Sector be implemented through a framework procedure specified at §648.55. Based upon consultations with the Northeast multispecies sector program, it is estimated it would take 150 hours to prepare and submit a sector proposal. Therefore, the three year average annualized time burden for sector proposals would be **450 hours** per year (9 x 150/3). At an hourly rate of \$15 / hour, the total public cost burden for sector proposals would be \$6,750.

A sector is required to resubmit its operations plan to the Regional Director no later than December 1 of each year, whether or not the plan has changed. Based upon consultations with the Northeast multispecies sector program, each operations plan takes approximately 100 hours. The earliest sector operation plans would be submitted in 2010 for the proposals submitted in 2008. Therefore, it is estimated it would take 500 hours to submit 5 operation plans. The 3 year average annualized time burden would be **167 hours** per year (5 operation plans over 3 years). At an hourly rate of \$15/ hour, the annual time burden cost would be approximately \$2,500.

**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).**

A full summary of the increased cost to the public associated with this collection of information can be found in Table 1. *The total cost increase is \$42,232, and the new total including this increase is \$1,489,055.*

**Limited Access Application Process**

It is estimated that it would cost \$0.41 in postage fees to submit an initial permit application and permit renewal application. Therefore, it would cost on average over a three year period an estimated \$444 per year in postage fees (1,200 initial applications + 1,025 renewals + 1,025 renewals = 3,250 x \$0.41 = \$1,333 / 3years = **\$444**).

It is estimated that it would cost \$0.41 in mailing fees and \$0.10 in copy fees to submit an ownership cap form. Since it is estimated that there will be 370 ownership cap forms submitted annually, the additional expense resulting from this requirement would be **\$189** (370 x \$0.51).

It is estimated that it would cost approximately \$1 in mail fees and \$1 in copy fees (10 pages at \$0.10 per page) to submit materials supporting an appeal. Since it is anticipated that there will be approximately 80 appeals during the 90 day application period, annualized to 27 appeals, the cost burden resulting from the appeals process would be approximately **\$54** (\$2 x 27).

**RUPH Applications**

It is estimated that it would cost approximately \$1 in mail fees and \$1 in copy fees to submit an RUPH application. Therefore, it is estimated that 100 RUPH applications submitted annually would cost **\$200** to print and mail (\$2 x 100).

**New VMS Reporting Requirements**

Since the purchase of the VMS unit would be reimbursed by NMFS, there would be no new cost burden as the result of new VMS unit purchases. VMS installation costs on average \$340. Therefore the cost burden of installing 10 VMS units would be approximately \$3,400 (\$340 x 10); the annualized cost would be **\$1,134**. The annual VMS polling cost per vessel averages \$954. For the estimated 10 new VMS units as the result of Amendment 11, the new VMS polling cost not covered by other PRA collections would be **\$9,540** (\$954 x 10).

It is estimated that it costs \$0.79 to send a VMS declaration code, including power down codes. Therefore, the cost burden resulting from Amendment 11 VMS requirements would be **\$26,268** per year (31,250 IFQ declarations + 1,000 NGOM declarations + 1,000 ICS declarations = 33,250 x \$0.79).

Each VMS pre-landing notification form is estimated to cost \$0.79. Therefore, 6,750 pre-landing notification forms would cost **\$5,333** (6,250 IFQ + 500 NGOM = 6,750 x \$0.79).

Each VMS state waters exemption program enrollment form is estimated to cost \$0.79 to submit

(although the submission burden is already covered under 0202, there is a cost for the new form). Only 13 vessels enrolled in the state waters exemption program in the previous calendar year (October 1, 2006 – September 30, 2007). It is anticipated that this rate would continue in the coming years. Therefore, it is estimated that the cost burden associated with the state waters exemption program VMS enrollment form would be **\$10** per year ( $\$0.79 \times 13 = 10$ ).

### **IFQ Transfers**

It is estimated that IFQ transfer submission would cost \$0.41 postage and \$0.10 copy fees per transfer application (\$0.51 total). Since NMFS anticipates approximately 85 transfers per year (75 temporary transfers, 10 permanent transfers), the resultant cost burden would be **\$43** per year ( $85 \times \$0.51$ ).

### **Cost Recovery**

PRA collection cost does not include the actual cost recovery funds submitted by industry; only the costs associated with the submission of these funds. Since cost recovery would be collected only via the Internet, there is no cost burden associated with this cost recovery program.

### **IFQ Sector Program**

The submission of sector allocation proposals and plans of operations required under Amendment 11 would incur costs from copying and postage of these documents. Based upon Northeast multispecies sector program estimates as documented in OMB Collection No.: 0648-0489, the total cost burden for each sector proposal or operation plan is estimated to cost \$3.64 (\$2 for two copies of a 10-page document, and two \$0.41 stamps for each document:  $\$2 + (2 \times \$0.82)$ ). Therefore, the 3 year average annual cost for 9 sector proposals and 5 operation plans would be **\$17** ( $14 \times 3.64 = \$51/3$ ).

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

A full summary of the increased cost to the Federal Government associated with this collection of information can be found in Table 2. *The total cost increase is \$63,181 and the new total including this increase is \$67,519.*

### **Limited Access Application Process**

The estimated average cost to the Federal Government to issue a Federal fishery permit is \$33 per permit, including labor, printing, distribution, computer time, and handling. In the 1<sup>st</sup> year there would be 500 IFQ, 200 NGOM, and 500 ICS initial applications = 1,200. The following 2 years, there would be 740 IFQ, 380 NGOM, and 930 ICS renewal applications =  $1,025 \times 2 = 2,050$  over the two years. Therefore, at an hourly rate of \$25, it would cost on average over a three year period an estimated **\$35,750** per year ( $1,200 + 2,050 = 3,250 \times 33 = \$107,250/3$  to process all limited access scallop permits).

The annual estimated cost to the Federal Government is estimated to be \$25 for processing appeals, vessel replacements, vessel upgrades, and confirmations of permit history applications. It is estimated that there would be 80 appeals the first year, and 100 RUPH applications processed annually, which would increase the annual government burden by **\$4,500** ( $\$180 \times \$25$ ).

It takes approximately 10 minutes to process each ownership cap form. Since there are 370 ownership cap forms per year, at an hourly rate of \$25, the annual government burden would be **\$1,542** (370 x 10 minutes/60 minutes x \$25).

### **New VMS Reporting Requirements**

The estimated 10 new VMS units that would result from Amendment 11 are not expected to increase the government cost burden appreciably above the current burden as accounted for in OMB Control No.: 0648-0202.

It is estimated that it would take 1 minute to process each VMS pre-landing notification form and VMS state waters exemption program enrollment form. Therefore, at a cost per hour of \$25, these reporting requirements would increase the government cost burden by **\$2,818** per year (6,750 pre-land notification forms, and 13 state water exemption program enrollment forms = 6,763 x 1 minute/60 minutes x \$25).

### **IFQ Transfers**

It is estimated that it would take 30 minutes to process each transfer request. Since it is estimated that NMFS would process 85 transfers per year, the annual government cost would be **\$1,063** (85 x 30 minutes/60 minutes x \$25).

### **Cost Recovery**

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

### **IFQ Sector Program**

Based upon Northeast multispecies sector program estimates, sector proposals and operation plans require extensive review by the Council and NMFS staff to ensure that proposals and operation plans meet the objectives of the FMP. It is estimated that each proposal and operation plan requires approximately 150 hours to review and implement. Using a wage rate of \$25/hour, this results in a 3-year average annual cost to the government of **\$17,500** per year (5 proposals the 1<sup>st</sup> year, 2 proposals the second year, 2 proposals and 5 operation plans the third year)(14 x 150 = 2,100 x 25/3).

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

OMB Control No.: 0648-0491 responses would increase from 236,219 by approximately 42,154 to 278,373; hours, from 7,949 by 3,739 to 11,688, and cost, from \$1,445,823 by \$43,232 to \$1,489,055, as a result of Amendment 11.

### **Limited Access Application Process**

The IFQ permitting requirements, which includes the initial permit application and permit renewals, would increase the 3-year annual budget on average by 17 minutes and \$4.74 per response. The 3 year average total public time burden and cost for IFQ, NGOM, and ICS initial permit applications, and permits renewals would thus be 312 hours and \$444.

The IFQ ownership cap form would increase the annual budget by approximately 10 minutes and \$0.51 per response. The average overall public burden would be approximately 21 hours and \$54.

The Appeals process would increase the annual budget by approximately 2 hours and \$11 per response. The average overall public burden would be approximately 54 hours and \$106.

RUPH applications would increase the annual budget by approximately 3 hours and \$2 per response. The overall public burden would be approximately 300 hours and \$200.

### **New VMS Reporting Requirements**

The purchase and installation of new VMS units, annualized, would increase the annual budget by approximately 2 hours and \$126 per response. The overall increase would be approximately 7 hours and \$378.

VMS polling fees would not increase the burden hours, but would increase the annual budget by approximately \$954 per respondent. The overall increase would be approximately \$9,540.

VMS trip declaration and power down for IFQ vessels would increase the annual budget by approximately 2 minutes and \$0.79 per response. The overall increase would be approximately 1042 hours and \$26,628.

VMS trip declaration and power down for NGOM vessels would increase the annual budget by approximately 2 minutes and \$0.79 per response. The overall public burden would be approximately 34 hours and \$403.

VMS trip declaration and power down for ICS vessels would increase the annual budget by approximately 2 minutes and \$0.79 per response. The overall public burden would be approximately 34 hours and \$403.

The VMS pre-landing notification form would increase the annual budget by approximately 5 minutes and \$0.79 per response. The overall public burden would be approximately 563 hours and \$5,333.

The VMS state waters exemption program enrollment form would not increase the burden hours, but would increase the annual budget by approximately \$0.79 per response. The overall public burden would be approximately \$10.

## **IFQ Transfers**

IFQ transfer applications would increase the annual budget by approximately 5 minutes and \$0.26 per response. The overall public burden would be approximately 15 hours and \$43.

## **Cost Recovery**

The cost recovery program would increase the annual budget by approximately 2 hours per response. Cost would not increase since [www.pay.gov](http://www.pay.gov) is a free service. The overall public burden would be approximately 740 hours.

## **IFQ Sector Program**

Sector proposals would increase the 3-year annualized budget by approximately 150 hours and \$2.67 per response. The average overall public burden would be increased approximately 450 hours and \$8.

Sector operation plans would increase the 3-year annualized budget by approximately 33 hours and \$2 per response. The average overall public burden would be approximately 150 hours and \$6.

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

The results from this collection may be used in scientific, management, technical or general information publications such as the Fisheries of the United States, which follows prescribed statistical tabulations and summary table format, and the annual Stock Assessment and Fishery Evaluation (SAFE) Report prepared by the New England Fishery Management Council (NEFMC) for the herring fishery. Data obtained from this collection would be available to the public upon request in summary form only. Furthermore, data are available to NMFS employees in detailed form on a need-to-know basis only.

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

Except for VMS forms, all forms would display the OMB control number and expiration date along with information relevant to the Paperwork Reduction Act of 1995. The VMS forms would not display this information because these forms are in electronic media format only. There is limited space in this format to provide a PRA statement. Additionally, one of the approved VMS vendors (Boatrac, Inc) has a limit of 50 lines of text per macro or VMS form, and is also limited to a total of 600 lines of text for all macros. As VMS requirements become more complex with changing Northeast regulations, the macros are approaching these limits. Including the PRA text would negatively impact NMFS' ability to expand the macros within the current limits to comply with regulatory changes.

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

All instances of this submission comply with 5 CFR 1320.9.

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

No statistical methods are employed in the information collection procedures.



**TABLE 1**

<b>Reporting Requirement</b>	<b># Items</b>	<b>Responses per Item</b>	<b>Total Responses</b>	<b>Burden Hours</b>	<b>Wages and Salaries</b>	<b>Recordkeeping /Reporting Costs</b>
<b>Permit Application (IFQ, NGOM, ICS) (3-year average)</b>	1,083	1	1,083	312	\$4,680	\$444
<b>IFQ Ownership Cap Forms</b>	370	1	370	21	\$315	\$189
<b>Appeals (IFQ, NGOM, ICS) (3-year average)</b>	27	1	27	54	\$810	\$54
<b>RUPH applications</b>	100	1	100	300	\$4,500	\$200
<b>New VMS Purchases (3-year average)</b>	3	1	3	7	\$105	\$0
<b>New VMS Installation (3-year average)</b>	3	1	3	0	\$0	\$1,134
<b>VMS polling fees</b>	10	1	10	0	\$0	\$9,540
<b>IFQ, NGOM, ICSVMS Trip Declaration and Power Down</b>	33,250	1	33,250	1,110	\$16,650	\$26,268
<b>VMS Pre-Landing Notification Form (IFQ, NGOM)</b>	6,750	1	6,750	563	\$8,445	\$5,333
<b>VMS State Waters Exemption Program Enrollment Form (IFQ, NGOM, ICS)</b>	13	1	13	0	\$0	\$10
<b>Quota Transfer Applications (temporary and permanent)</b>	85	2	170	15	\$225	\$43
<b>Cost Recovery</b>	370	1	370	740	\$11,100	\$0
<b>Sector Proposals (3 year average)</b>	3	1	3	450	\$6,750	\$11
<b>Sector Operation Plans (3 year average)</b>	1.67(2)	1	1.67 (2)	167	\$2,505	\$6
<b>TOTAL</b>	-	-	<b>42,154</b>	<b>3,739</b>	<b>\$56,085</b>	<b>\$43,232</b>

**TABLE 2**

<b>GOVERNMENT COST</b>					
<b>Requirement</b>	<b># Entities</b>	<b>Items per Entity</b>	<b>Total Items</b>	<b>Cost Per Item</b>	<b>Total Cost</b>
<b>Permit Application (IFQ, NGOM, ICS) (3-year average)</b>	1,083	1	1,083	\$33	\$35,750
<b>Ownership Cap Forms</b>	370	1	370	\$4.17	\$1,542
<b>Appeals</b>	80	1	80	\$25	\$2,000
<b>RUPH Applications</b>	100	1	100	\$25	\$2,500
<b>VMS Pre-Landing Notification Form</b>	6,750	1	6,750	\$0	\$2,818
<b>Quota Transfer Applications (temporary and permanent)</b>	85	1	85	\$13	\$1,063
<b>Cost Recovery Programming Cost (3-year average)</b>	1	1	1	\$8	\$8
<b>Sector Proposals + Operation Plans (3 year average)</b>	5	1	5	\$3,750	\$17,500
<b>TOTAL</b>					<b>\$63,181</b>

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

**Application for  
 Federal Limited Access  
 General Category Scallop Permits  
 DATE, 2008**

**Please see attachment for application instructions**

**Section 1 - Owner and Vessel Information**

Name of Vessel: Owner Name: Street Address: City: State: Zip Code:	Northeast Federal Vessel Permit Number:  USCG Documentation Number or State Registration Number:
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**Section 2 - Fishery Information**

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

<b>Fishery:</b>	<b>Categories</b> [read attached instructions before checking off categories.]:	<b>Gear Codes:</b> please write in the gear codes from the list above that you intend to fish with.						
<b>General Category Scallop</b>	<input type="checkbox"/> <b>Individual Fishing Quota</b> <input type="checkbox"/> <b>Northern Gulf Of Maine</b> <input type="checkbox"/> <b>Incidental Catch</b>	<table border="1" style="width: 100%; height: 40px; border-collapse: collapse;"> <tr><td style="width: 50%;"></td><td style="width: 50%;"></td></tr> <tr><td></td><td></td></tr> <tr><td></td><td></td></tr> </table>						

**Section 3 - Owner's Signature**

<input type="checkbox"/> Issue with Requested Changes Above  <input type="checkbox"/> No Longer Own Vessel <input type="checkbox"/> Vessel Sold <input type="checkbox"/> Vessel Destroyed	<p>I, the undersigned, am the owner or legally authorized agent of the owner of the vessel named in Section 1 above. I affirm, subject to the penalties provided in 18 USC 1001, that all information that I have given in obtaining this permit is true and correct.</p> Signature: _____ Print Name: _____ Date: _____
---	--

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

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

Instructions - Northeast Federal Fisheries  
**Initial Application for General Category Scallop Limited Access Permit**

This is your Initial Vessel Permit Application for **Federal General Category Scallop Limited Access** permit that are required by **DATE**. If you wish to apply for this permit, and **you have already renewed** your vessel's permit(s) for the 2008 permit year, verify and complete all sections, and return this application to the address on the front of this form.

If you wish to apply for this permit, and **your vessel has not been issued a permit for the 2008 permit year**, you must:

1. Verify and complete the **Federal General Category Scallop Limited Access** application and return it along with a copy of the vessel's unexpired Coast Guard Documentation or State Registration.

**If your vessel is owned by a corporation, Partnership, or LLC, you must also submit:**

2. A list, signed and dated, of the names and addresses of all corporate officers and shareholders owning twenty-five (25) percent or more of the corporation.
3. Or a current copy of the Partnership Agreement and a list of the names and addresses of all partners.

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*SECTION 1: VESSEL/OWNER INFORMATION:* Enter information only for items that have changed or are incorrect

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*SECTION 2: FISHERY INFORMATION*

Category: You must also submit documentation that the vessel meets the eligibility criteria for the permit category as outlined in the attached letter. Documentation will be reviewed against these criteria only for the categories you have selected. **BE CERTAIN TO INDICATE THE LIMITED ACCESS CATEGORY FOR WHICH YOU WISH TO HAVE THIS VESSEL EVALUATED.**

CPH: A person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has not been replaced, should apply for a Confirmation of Permit History (CPH) to document limited access eligibility. CPH applications must be requested by calling 978-281-9315.

Gear Code: You must select at least one gear code or multiple gear codes from those listed on the front of this form.

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*SECTION 3: OWNER'S SIGNATURE AND INSTRUCTIONS*

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

PAPERWORK REDUCTION ACT STATEMENT: Public reporting burden for this collection of information is estimated to average 30 minutes per Individual Fishing Quota application and 15 minutes per Northern Gulf of Maine and Incidental Catch applications, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other suggestions for reducing this burden to the Assistant Regional Administrator, Sustainable Fisheries Division, NOAA National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930.

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

SCALLOP STATE WATERS EXEMPTION PROGRAM FORM

Enrollment Date<sup>1</sup>: \_\_\_\_\_

End date<sup>2</sup>: \_\_\_\_\_

<sup>1</sup>*Vessel must remain enrolled for at least 7 full days*

<sup>2</sup>*Vessel must cancel enrollment by submitting this form following the minimum 7-day enrollment period.*

GENERAL CATEGORY SCALLOP INDIVIDUAL FISHING QUOTA AND  
NORTHERN GULF OF MAINE PRE-LAND NOTIFICATION FORM

Estimated Scallops on Board: \_\_\_\_\_ lbs

Estimated Landing Date: \_\_\_\_\_

Estimated Landing Time: \_\_\_\_\_

Estimated Landing Port State: \_\_\_\_\_

Estimated Landing Port City: \_\_\_\_\_

*50 CFR 648.10 (c)(6) VMS catch reports by general category vessels must be sent prior to crossing the VMS demarcation line on the way into port at the end of the trip and must include the amount of scallop meats to be landed, the estimated time of arrival in port, and the port at which the scallops will be landed.*

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

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

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

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

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

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

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

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

### **104-297**

(a) REVIEW OF PLANS.—

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

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

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

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

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

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

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

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

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

(B) the nature of such inconsistencies; and

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

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

(4) If the Secretary disapproves or partially approves a plan or amendment, the Council may submit a revised plan or amendment to the Secretary for review under this subsection.

(5) For purposes of this subsection and subsection (b), the term “immediately” means on or before the 5th day after the day on which a Council transmits to the Secretary a fishery management plan, plan amendment, or proposed regulation that the Council characterizes as final.

**104-297**

**(b) REVIEW OF REGULATIONS.—**

(1) Upon transmittal by the Council to the Secretary of proposed regulations prepared under section 303(c), the Secretary shall immediately initiate an evaluation of the proposed regulations to determine whether they are consistent with the fishery management plan, plan amendment, this Act and other applicable law. Within 15 days of initiating such evaluation the Secretary shall make a determination and—

(A) if that determination is affirmative, the Secretary shall publish such regulations in the Federal Register, with such technical changes as may be necessary for clarity and an explanation of those changes, for a public comment period of 15 to 60 days; or

(B) if that determination is negative, the Secretary shall notify the Council in writing of the inconsistencies and provide recommendations on revisions that would make the proposed regulations consistent with the fishery management plan, plan amendment, this Act, and other applicable law.

(2) Upon receiving a notification under paragraph (1)(B), the Council may revise the proposed regulations and submit them to the Secretary for reevaluation under paragraph (1).

(3) The Secretary shall promulgate final regulations within 30 days after the end of the comment period under paragraph (1)(A). The Secretary shall consult with the Council before making any revisions to the proposed regulations, and must publish in the Federal Register an explanation of any differences between the proposed and final regulations.

**97-453, 99-659, 104-297**

**(c) PREPARATION AND REVIEW OF SECRETARIAL PLANS.—**

(1) The Secretary may prepare a fishery management plan, with respect to any fishery, or any amendment to any such plan, in accordance with the national standards, the other provisions of this Act, and any other applicable law, if—

(A) the appropriate Council fails to develop and submit to the Secretary, after a reasonable period of time, a fishery management plan for such fishery, or any necessary amendment to such a plan, if such fishery requires conservation and management;

(B) the Secretary disapproves or partially disapproves any such plan or amendment, or disapproves a revised plan or amendment, and the Council involved fails to submit a revised or further revised plan or amendment; or

(C) the Secretary is given authority to prepare such plan or amendment under this section.



**16 U.S.C. 1854**  
**MSA § 304**

In preparing any such plan or amendment, the Secretary shall consult with the Secretary of State with respect to foreign fishing and with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea. The Secretary shall also prepare such proposed regulations as he deems necessary or appropriate to carry out each plan or amendment prepared by him under this paragraph.

- (2) In preparing any plan or amendment under this subsection, the Secretary shall—
- (A) conduct public hearings, at appropriate times and locations in the geographical areas concerned, so as to allow interested persons an opportunity to be heard in the preparation and amendment of the plan and any regulations implementing the plan; and
  - (B) consult with the Secretary of State with respect to foreign fishing and with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea.

**109-479**

(3) Notwithstanding paragraph (1) for a fishery under the authority of a Council, the Secretary may not include in any fishery management plan, or any amendment to any such plan, prepared by him, a provision establishing a limited access system, including any limited access privilege program unless such system is first approved by a majority of the voting members, present and voting, of each appropriate Council.

- (4) Whenever the Secretary prepares a fishery management plan or plan amendment under this section, the Secretary shall immediately—
- (A) for a plan or amendment for a fishery under the authority of a Council, submit such plan or amendment to the appropriate Council for consideration and comment; and
  - (B) publish in the Federal Register a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.

(5) Whenever a plan or amendment is submitted under paragraph (4)(A), the appropriate Council must submit its comments and recommendations, if any, regarding the plan or amendment to the Secretary before the close of the 60-day period referred to in paragraph (4)(B). After the close of such 60-day period, the Secretary, after taking into account any such comments and recommendations, as well as any views, information, or comments submitted under paragraph (4)(B), may adopt such plan or amendment.

(6) The Secretary may propose regulations in the Federal Register to implement any plan or amendment prepared by the Secretary. In the case of a plan or amendment to which paragraph (4)(A) applies, such regulations shall be submitted to the Council with such plan or amendment. The comment period on proposed regulations shall be 60 days, except that the Secretary may shorten the comment period on minor revisions to existing regulations.

(7) The Secretary shall promulgate final regulations within 30 days after the end of the comment period under paragraph (6). The Secretary must publish in the Federal Register an explanation of any substantive differences between the proposed and final rules. All final regulations must be consistent with the fishery management plan, with the national standards and other provisions of this Act, and with any other applicable law.

**97-453, 104-297**

(d) ESTABLISHMENT OF FEES.—

(1) The Secretary shall by regulation establish the level of any fees which are authorized to be charged pursuant to section 303(b)(1). The Secretary may enter into a cooperative agreement with the States concerned under which the States administer the permit system and the agreement may provide that all or part of the fees collected under the system shall accrue to the States. The level of fees charged under this subsection shall not exceed the administrative costs incurred in issuing the permits.

**109-479**

(2)(A) Notwithstanding paragraph (1), the Secretary is authorized and shall collect a fee to recover the actual costs directly related to the management, data collection, and enforcement of any—

- (i) limited access privilege program; and
- (ii) community development quota program that allocates a percentage of the total allowable catch of a fishery to such program.

(B) Such fee shall not exceed 3 percent of the ex-vessel value of fish harvested under any such program, and shall be collected at either the time of the landing, filing of a landing report, or sale of such fish during a fishing season or in the last quarter of the calendar year in which the fish is harvested.

(C)(i) Fees collected under this paragraph shall be in addition to any other fees charged under this Act and shall be deposited in the Limited Access System Administration Fund established under section 305(h)(5)(B).

(ii) Upon application by a State, the Secretary shall transfer to such State up to 33 percent of any fee collected pursuant to subparagraph (A) under a community development quota program and deposited in the Limited Access System Administration Fund in order to reimburse such State for actual costs directly incurred in the management and enforcement of such program.

**104-297**

(e) REBUILDING OVERFISHED FISHERIES.—

(1) The Secretary shall report annually to the Congress and the Councils on the status of fisheries within each Council's geographical area of authority and identify those fisheries that are overfished or are approaching a condition of being overfished. For those fisheries managed under a fishery management plan or international agreement, the status shall be determined using the criteria for overfishing specified in such plan or agreement. A fishery shall be classified as approaching a condition of being overfished if, based on trends in fishing effort, fishery resource size, and other appropriate factors, the Secretary estimates that the fishery will become overfished within two years.

(2) If the Secretary determines at any time that a fishery is overfished, the Secretary shall immediately notify the appropriate Council and request that action be taken to end overfishing in the fishery and to implement conservation and management measures to rebuild affected stocks of fish. The Secretary shall publish each notice under this paragraph in the Federal Register.

**109-479**

(3) Within 2 years after an identification under paragraph (1) or notification under paragraphs (2) or (7), the appropriate Council (or the Secretary, for fisheries under section 302(a)(3)) shall prepare and implement a fishery management plan, plan amendment, or proposed regulations for the fishery to which the identification or notice applies—

(A) to end overfishing immediately in the fishery and to rebuild affected stocks of fish; or

(B) to prevent overfishing from occurring in the fishery whenever such fishery is identified as approaching an overfished condition.

**109-479**

(4) For a fishery that is overfished, any fishery management plan, amendment, or proposed regulations prepared pursuant to paragraph (3) or paragraph (5) for such fishery shall—

(A) specify a time period for rebuilding the fishery that shall—

(i) be as short as possible, taking into account the status and biology of any overfished stocks of fish, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the overfished stock of fish within the marine ecosystem; and

(ii) not exceed 10 years, except in cases where the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise;

(B) allocate both overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery; and

(C) for fisheries managed under an international agreement, reflect traditional participation in the fishery, relative to other nations, by fishermen of the United States.

(5) If, within the 2-year period beginning on the date of identification or notification that a fishery is overfished, the Council does not submit to the Secretary a fishery management plan, plan amendment, or proposed regulations required by paragraph (3)(A), the Secretary shall prepare a fishery management plan or plan amendment and any accompanying regulations to stop overfishing and rebuild affected stocks of fish within 9 months under subsection (c).

(6) During the development of a fishery management plan, a plan amendment, or proposed regulations required by this subsection, the Council may request the Secretary to implement interim measures to reduce overfishing under section 305(c) until such measures can be replaced by such plan, amendment, or regulations. Such measures, if otherwise in compliance with the provisions of this Act, may be implemented even though they are not sufficient by themselves to stop overfishing of a fishery.

(7) The Secretary shall review any fishery management plan, plan amendment, or regulations required by this subsection at routine intervals that may not exceed two years. If the Secretary finds as a result of the review that such plan, amendment, or regulations have not resulted in adequate progress toward ending overfishing and rebuilding affected fish stocks, the Secretary shall—

(A) in the case of a fishery to which section 302(a)(3) applies, immediately make revisions necessary to achieve adequate progress; or

(B) for all other fisheries, immediately notify the appropriate Council. Such notification shall recommend further conservation and management measures which the Council should consider under paragraph (3) to achieve adequate progress.

**101-627, 104-297**

(f) FISHERIES UNDER AUTHORITY OF MORE THAN ONE COUNCIL.—

(1) Except as provided in paragraph (3)<sup>18</sup>, if any fishery extends beyond the geographical area of authority of any one Council, the Secretary may—

(A) designate which Council shall prepare the fishery management plan for such fishery and any amendment to such plan; or

(B) may require that the plan and amendment be prepared jointly by the Councils concerned.

No jointly prepared plan or amendment may be submitted to the Secretary unless it is approved by a majority of the voting members, present and voting, of each Council concerned.

(2) The Secretary shall establish the boundaries between the geographical areas of authority of adjacent Councils.

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<sup>18</sup> Former paragraph (3) now appears at section 302(a)(3) and section 304(g).

**104-297**

(g) ATLANTIC HIGHLY MIGRATORY SPECIES.—

(1) PREPARATION AND IMPLEMENTATION OF PLAN OR PLAN AMENDMENT.—The Secretary shall prepare a fishery management plan or plan amendment under subsection (c) with respect to any highly migratory species fishery to which section 302(a)(3) applies. In preparing and implementing any such plan or amendment, the Secretary shall—

(A) consult with and consider the comments and views of affected Councils, commissioners and advisory groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species, and the advisory panel established under section 302(g);

(B) establish an advisory panel under section 302(g) for each fishery management plan to be prepared under this paragraph;

(C) evaluate the likely effects, if any, of conservation and management measures on participants in the affected fisheries and minimize, to the extent practicable, any disadvantage to United States fishermen in relation to foreign competitors;

(D) with respect to a highly migratory species for which the United States is authorized to harvest an allocation, quota, or at a fishing mortality level under a relevant international fishery agreement, provide fishing vessels of the United States with a reasonable opportunity to harvest such allocation, quota, or at such fishing mortality level;

(E) review, on a continuing basis (and promptly whenever a recommendation pertaining to fishing for highly migratory species has been made under a relevant international fishery agreement), and revise as appropriate, the conservation and management measures included in the plan;

(F) diligently pursue, through international entities (such as the International Commission for the Conservation of Atlantic Tunas), comparable international fishery management measures with respect to fishing for highly migratory species; and

(G) ensure that conservation and management measures under this subsection--

(i) promote international conservation of the affected fishery;

(ii) take into consideration traditional fishing patterns of fishing vessels of the United States and the operating requirements of the fisheries;

(iii) are fair and equitable in allocating fishing privileges among United States fishermen and do not have economic allocation as the sole purpose; and

(iv) promote, to the extent practicable, implementation of scientific research programs that include the tagging and release of Atlantic highly migratory species.

**109-479**

(2) CERTAIN FISH EXCLUDED FROM “BYCATCH” DEFINITION.—

Notwithstanding section 3(2), fish harvested in a commercial fishery managed by the Secretary under this subsection or the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971d), or highly migratory species harvested in a commercial fishery managed by a Council under this Act or the Western and Central Pacific Fisheries Convention Implementation Act, that are not regulatory discards and that are tagged and released alive under a scientific tagging and release program established by the Secretary shall not be considered bycatch for purposes of this Act.

**104-297**

(h) REPEAL OR REVOCATION OF A FISHERY MANAGEMENT PLAN.—The Secretary may repeal or revoke a fishery management plan for a fishery under the authority of a Council only if the Council approves the repeal or revocation by a three-quarters majority of the voting members of the Council.

**109-479**

(i)[sic]<sup>19</sup> ENVIRONMENTAL REVIEW PROCESS.—

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

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

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

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

(3) SCHEDULE FOR PROMULGATION OF FINAL PROCEDURES.—The Secretary shall—

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

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

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

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

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<sup>19</sup> So in original. P.L. 109-479 added two subsections as 304(i).

**16 U.S.C. 1854, 1854 note**  
**MSA §§ 304, 304 note**

**109-479**

(i) [sic]<sup>20</sup> **INTERNATIONAL OVERFISHING.**—The provisions of this subsection shall apply in lieu of subsection (e) to a fishery that the Secretary determines is overfished or approaching a condition of being overfished due to excessive international fishing pressure, and for which there are no management measures to end overfishing under an international agreement to which the United States is a party. For such fisheries—

(1) the Secretary, in cooperation with the Secretary of State, [sic]<sup>20a</sup> immediately take appropriate action at the international level to end the overfishing; and

(2) within 1 year after the Secretary’s determination, the appropriate Council, or Secretary, for fisheries under section 302(a)(3) shall—

(A) develop recommendations for domestic regulations to address the relative impact of fishing vessels of the United States on the stock and, if developed by a Council, the Council shall submit such recommendations to the Secretary; and

(B) develop and submit recommendations to the Secretary of State, and to the Congress, for international actions that will end overfishing in the fishery and rebuild the affected stocks, taking into account the relative impact of vessels of other nations and vessels of the United States on the relevant stock.

**P.L. 109-479, sec. 104(d), MSA § 304 note**

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

**EFFECTIVE DATE FOR SUBSECTION (c).**—The amendments made by subsection (c)<sup>21</sup> shall take effect 30 months after the date of enactment of this Act.

**P.L. 101-627, sec. 108(k), MSA § 304 note**

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

**INTERIM MANAGEMENT OF HIGHLY MIGRATORY SPECIES FISHERIES.**—

Notwithstanding the amendments made by subsections (a) and (g) [of section 108 of Pub. L. 101-627], any fishery management plan or amendment which—

(1) addresses a highly migratory species fishery to which section 304(f)(3) of the Magnuson Fishery Conservation and Management Act (as amended by this Act [101-627]) applies,

(2) was prepared by one or more Regional Fishery Management Councils, and

(3) was in force and effect on January 1, 1990,

shall remain in force and effect until superseded by a fishery management plan prepared by the Secretary, and regulations implementing that plan.

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<sup>20</sup> So in original. P.L. 109-479 added two subsections as 304(i).

<sup>20a</sup> So in original.

<sup>21</sup> Section 104(c) of P.L. 109-479 amended section 304(e)(3)-(5).

**P.L. 104-297, sec. 109(h), MSA § 304 note**

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

**COMPREHENSIVE MANAGEMENT SYSTEM FOR ATLANTIC PELAGIC LONGLINE FISHERY.—**

(1) The Secretary of Commerce shall—

(A) establish an advisory panel under section 302(g)(4) of the Magnuson Fishery Conservation and Management Act, as amended by this Act, for pelagic longline fishing vessels that participate in fisheries for Atlantic highly migratory species;

(B) conduct surveys and workshops with affected fishery participants to provide information and identify options for future management programs;

(C) to the extent practicable and necessary for the evaluation of options for a comprehensive management system, recover vessel production records; and

(D) complete by January 1, 1998, a comprehensive study on the feasibility of implementing a comprehensive management system for pelagic longline fishing vessels that participate in fisheries for Atlantic highly migratory species, including, but not limited to, individual fishing quota programs and other limited access systems.

(2) Based on the study under paragraph (1)(D) and consistent with the requirements of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), in cooperation with affected participants in the fishery, the United States Commissioners on the International Commission for the Conservation of Atlantic Tunas, and the advisory panel established under paragraph (1)(A), the Secretary of Commerce may, after October 1, 1998, implement a comprehensive management system pursuant to section 304 of such Act (16 U.S.C. 1854) for pelagic longline fishing vessels that participate in fisheries for Atlantic highly migratory species. Such a system may not implement an individual fishing quota program until after October 1, 2000.

**P.L. 104-297, sec. 109(j), MSA § 304 note**

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

**AMERICAN LOBSTER FISHERY.**—Section 304(h) of the Magnuson Fishery Conservation and Management Act, as amended by this Act [Public Law 104-297], shall not apply to the American Lobster Fishery Management Plan.

**SEC. 305. OTHER REQUIREMENTS AND AUTHORITY**

**16 U.S.C. 1855**

**104-297**

(a) GEAR EVALUATION AND NOTIFICATION OF ENTRY—

(1) Not later than 18 months after the date of enactment of the Sustainable Fisheries Act, the Secretary shall publish in the Federal Register, after notice and an opportunity for public comment, a list of all fisheries—

(A) under the authority of each Council and all fishing gear used in such fisheries, based on information submitted by the Councils under section 303(a); and

(B) to which section 302(a)(3) applies and all fishing gear used in such fisheries.

(2) The Secretary shall include with such list guidelines for determining when fishing gear or a fishery is sufficiently different from those listed as to require notification under paragraph (3).



## Fishery Conservation and Management

## § 648.55

and/or (b) of this section remains subject to all other requirements of this part.

(g) Possession restriction exemption. Any vessel issued a limited access permit that is exempt under paragraph (a) of this section from the DAS requirements of § 648.53(b), or any vessel issued a general scallop permit is exempt from the possession restrictions specified in § 648.52(a) while fishing exclusively landward of the outer boundary of the waters of a state that has been determined by the Regional Administrator under paragraph (b)(3) of this section to have a scallop fishery and a scallop conservation program that does not jeopardize the fishing mortality/effort reduction objectives of the Scallop FMP, provided the vessel complies with paragraphs (c) through (f) of this section.

[61 FR 34968, July 3, 1996, as amended at 62 FR 14649, Mar. 27, 1997; 62 FR 43470, Aug. 14, 1997]

### § 648.55 Framework specifications.

(a) Annually, or upon a request from the NEFMC, the Regional Administrator will provide the NEFMC with information on the status of the scallop resource.

(b) Within 60 days of receipt of that information, the NEFMC PDT shall assess the condition of the scallop resource to determine the adequacy of the total allowable DAS reduction schedule, described in § 648.53(b), and of other management measures to achieve the stock-rebuilding objectives. In addition, the PDT shall make a determination whether other resource conservation issues exist that require a management response in order to meet the goals and objectives outlined in the Scallop FMP. The PDT shall report its findings and recommendations to the NEFMC. In its report to the NEFMC, the PDT shall provide the appropriate rationale and economic and biological analysis for its recommendation, utilizing the most current catch, effort, and other relevant data from the fishery.

(c) Based on this review, the NEFMC PDT shall recommend total allowable DAS reduction schedules and develop options necessary to achieve the FMP goals and objectives, which may in-

clude a preferred option. The NEFMC PDT must demonstrate through analysis and documentation that the options it develops are expected to meet the Scallop FMP goals and objectives. The range of options developed by the NEFMC PDT may include any of the management measures in the Scallop FMP, including, but not limited to the categories described in § 648.53(d).

(d) After receiving the PDT findings and recommendations, the NEFMC shall determine whether adjustments to, or additional management measures are necessary to meet the goals and objectives of the Scallop FMP. After considering the PDT's findings and recommendations, or at any other time, if the NEFMC determines that adjustments to, or additional management measures are necessary, it shall develop and analyze appropriate management actions over the span of at least two NEFMC meetings. The NEFMC shall provide the public with advance notice of the availability of both the proposals and the analyses, and opportunity to comment on them prior to and at the second NEFMC meeting. The NEFMC's recommendation on adjustments or additions to management measures must come from one or more of the following categories:

- (1) DAS changes.
- (2) Shell height.
- (3) Offloading window reinstatement.
- (4) Effort monitoring.
- (5) Data reporting.
- (6) Trip limits.
- (7) Gear restrictions.
- (8) Permitting restrictions.
- (9) Crew limits.
- (10) Small mesh line.
- (11) Onboard observers.
- (12) Modifications to the overfishing definition.
- (13) VMS Demarcation Line for DAS monitoring.
- (14) DAS allocations by gear type.
- (15) Temporary leasing of scallop DAS requiring full public hearings.
- (16) Scallop size restrictions, except a minimum size or weight of individual scallop meats in the catch.
- (17) Aquaculture enhancement measures and closures.
- (18) Closed areas to lessen the amount of DAS reductions.

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(19) Closed areas to increase the size of scallops caught.

(20) Modifications to the opening dates of closed areas.

(21) Any other management measures currently included in the FMP.

(e) The Council may make recommendations to the Regional Administrator to implement measures in accordance with the procedures described in this subpart to address gear conflict as defined under 50 CFR 600.10. In developing such recommendation, the Council shall define gear management areas, each not to exceed 2700 mi<sup>2</sup> (5000.4 km<sup>2</sup>), and seek industry comments by referring the matter to its standing industry advisory committee for gear conflict, or to any ad hoc industry advisory committee that may be formed. The standing industry advisory committee or ad hoc committee on gear conflict shall hold public meetings seeking comments from affected fishers and develop findings and recommendations on addressing the gear conflict. After receiving the industry advisory committee findings and recommendations, or at any other time, the Council shall determine whether it is necessary to adjust or add management measures to address gear conflicts and which FMPs must be modified to address such conflicts. If the Council determines that adjustments or additional measures are necessary, it shall develop and analyze appropriate management actions for the relevant FMPs over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of the recommendation, the appropriate justification and economic and biological analyses, and opportunity to comment on them prior to and at the second or final Council meeting before submission to the Regional Administrator. The Council's recommendation on adjustments or additions to management measures for gear conflicts must come from one or more of the following categories:

(1) Monitoring of a radio channel by fishing vessels.

(2) Fixed gear location reporting and plotting requirements.

(3) Standards of operation when gear conflict occurs.

(4) Fixed gear marking and setting practices.

(5) Gear restrictions for specific areas (including time and area closures).

(6) Vessel monitoring systems.

(7) Restrictions on the maximum number of fishing vessels or amount of gear.

(8) Special permitting conditions.

(f) The measures shall be evaluated and approved by the relevant committees with oversight authority for the affected FMPs. If there is disagreement between committees, the Council may return the proposed framework adjustment to the standing or ad hoc gear conflict committee for further review and discussion.

(g) After developing management actions and receiving public testimony, the NEFMC shall make a recommendation to the Regional Administrator. The NEFMC's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to publish the management measures as a final rule. If the NEFMC recommends that the management measures should be published as a final rule, the NEFMC must consider at least the following factors and provide support and analysis for each factor considered:

(1) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(2) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the NEFMC's recommended management measures.

(3) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts.

(4) Whether there will be a continuing evaluation of management measures adopted following their promulgation as a final rule.

(h) If the NEFMC's recommendation includes adjustments or additions to

management measures, and if, after reviewing the NEFMC's recommendation and supporting information:

(1) The Regional Administrator concurs with the NEFMC's recommended management measures and determines that the recommended management measures may be published as a final rule based on the factors specified in paragraph (d) of this section, the action will be published in the FEDERAL REGISTER as a final rule; or

(2) The Regional Administrator concurs with the NEFMC's recommendation and determines that the recommended management measures should be published first as a proposed rule, the action will be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if the Regional Administrator concurs with the NEFMC recommendation, the action will be published as a final rule in the FEDERAL REGISTER; or

(3) The Regional Administrator does not concur, the NEFMC will be notified, in writing, of the reasons for the non-concurrence.

(i) If the Regional Administrator concurs in the NEFMC's recommendation, a final rule shall be published in the FEDERAL REGISTER on or about February 1 of each year. If the NEFMC fails to submit a recommendation to the Regional Administrator by December 1 that meets the FMP goals and objectives, the Regional Administrator may publish as a proposed rule one of the options reviewed and not rejected by the NEFMC, provided that the option meets the FMP objective and is consistent with other applicable law. If, after considering public comment, the Regional Administrator decides to approve the option published as a proposed rule, the action will be published as a final rule in the FEDERAL REGISTER.

(j) Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson Act.

[61 FR 34968, July 3, 1996, as amended at 62 FR 1404, Jan. 10, 1997; 64 FR 14839, Mar. 29, 1999]

**§ 648.57 Closed and regulated areas.**

(a) Hudson Canyon Sea Scallop Access Area. Through February 29, 2004, except as provided in §§648.52 and 648.58, no vessel may fish for scallops in or land scallops from the area known as the Hudson Canyon Sea Scallop Access Area, and no vessel may possess scallops in the Hudson Canyon Sea Scallop Access Area, unless such vessel is only transiting the area with all fishing gear unavailable for immediate use as defined in §648.23(b), or there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use. The Hudson Canyon Sea Scallop Access Area (copies of a chart depicting this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
H1	39 30' N.	73 10' W.
H2	39 30' N.	72 30' W.
H3	38 30' N.	73 30' W.
H4	38 40' N.	73 50' W.

(b) Virginia Beach Sea Scallop Access Area. Through February 29, 2004, except as provided in §§648.52 and 648.58, no vessel may fish for scallops in or land scallops from the area known as the Virginia Beach Sea Scallop Access Area, and no vessel may possess scallops in the Virginia Beach Sea Scallop Access Area, unless such vessel is only transiting the areas with all fishing gear unavailable for immediate use as defined in §648.23(b), or, there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use. The Virginia Beach Sea Scallop Access Area (copies of a chart depicting this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
V1	37 00' N.	74 55' W.
V2	37 00' N.	74 35' W.
V3	36 25' N.	74 45' W.
V4	36 25' N.	74 55' W.

[66 FR 45785, Aug. 30, 2001, as amended at 68 FR 9587, Feb. 28, 2003]

# **The National Environmental Policy Act of 1969**

**The National Environmental Policy Act of 1969**, as amended

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

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

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

## **Purpose**

### **Sec. 2 [42 USC § 4321].**

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

## **TITLE I**

### **CONGRESSIONAL DECLARATION OF NATIONAL ENVIRONMENTAL POLICY**

#### **Sec. 101 [42 USC § 4331].**

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

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

programs, and resources to the end that the Nation may --

1. fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
2. assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
3. attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
4. preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;
5. achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
6. enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

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

**Sec. 102 [42 USC § 4332].**

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

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

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

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

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

- (iii) alternatives to the proposed action,
- (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
- (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

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

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

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

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

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

(F) recognize the worldwide and long-range character of environmental problems and,

where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

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

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

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

**Sec. 103 [42 USC § 4333].**

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

**Sec. 104 [42 USC § 4334].**

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

**Sec. 105 [42 USC § 4335].**

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

**TITLE II**

**COUNCIL ON ENVIRONMENTAL QUALITY**

**Sec. 201 [42 USC § 4341].**

The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation

in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

**Sec. 202 [42 USC § 4342].**

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

**Sec. 203 [42 USC § 4343].**

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

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

**Sec. 204 [42 USC § 4344].**

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

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



of such policy, and to make recommendations to the President with respect thereto;

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

**Sec. 205 [42 USC § 4345].**

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

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

**Sec. 206 [42 USC § 4346].**

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

**Sec. 207 [42 USC § 4346a].**

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

**Sec. 208 [42 USC § 4346b].**

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

**Sec. 209 [42 USC § 4347].**

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

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

**42 USC § 4372.**

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

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

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

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

1. providing the professional and administrative staff and support for the Council on Environmental Quality established by Public Law 91- 190;
2. assisting the Federal agencies and departments in appraising the effectiveness of existing and proposed facilities, programs, policies, and activities of the Federal Government, and those specific major projects designated by the President which

do not require individual project authorization by Congress, which affect environmental quality;

3. reviewing the adequacy of existing systems for monitoring and predicting environmental changes in order to achieve effective coverage and efficient use of research facilities and other resources;
4. promoting the advancement of scientific knowledge of the effects of actions and technology on the environment and encouraging the development of the means to prevent or reduce adverse effects that endanger the health and well-being of man;
5. assisting in coordinating among the Federal departments and agencies those programs and activities which affect, protect, and improve environmental quality;
6. assisting the Federal departments and agencies in the development and interrelationship of environmental quality criteria and standards established throughout the Federal Government;
7. collecting, collating, analyzing, and interpreting data and information on environmental quality, ecological research, and evaluation.

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

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

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

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

**42 USC § 4375.**


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

1. study contracts that are jointly sponsored by the Office and one or more other Federal agencies; and

2. Federal interagency environmental projects (including task forces) in which the Office participates.

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

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

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## e-CFR Data is current as of December 3, 2007

### Title 50: Wildlife and Fisheries

#### PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES Subpart A—General Provisions

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#### § 648.9 VMS requirements.

[Link to an amendment published at 72 FR 51702, Sept. 11, 2007.](#)

(a) *Approval.* The Regional Administrator will annually approve VMS that meet the minimum performance criteria specified in paragraph (b) of this section. Any changes to the performance criteria will be published annually in the Federal Register and a list of approved VMS will be published in the Federal Register upon addition or deletion of a VMS from the list. In the event that a VMS is deleted from the list, vessel owners that purchased a VMS unit that is part of that VMS prior to publication of the revised list will be considered to be in compliance with the requirement to have an approved unit, unless otherwise notified by the Regional Administrator.

(b) *Minimum VMS performance criteria.* The basic required features of the VMS are as follows:

(1) The VMS shall be tamper proof, i.e., shall not permit the input of false positions; furthermore, if a system uses satellites to determine position, satellite selection should be automatic to provide an optimal fix and should not be capable of being manually overridden by any person aboard a fishing vessel or by the vessel owner.

(2) The VMS shall be fully automatic and operational at all times, regardless of weather and environmental conditions, unless exempted under paragraph (c)(2) of this section.

(3) The VMS shall be capable of tracking vessels in all U.S. waters in the Atlantic Ocean from the shoreline of each coastal state to a line 215 nm offshore and shall provide position accuracy to within 400 m (1,300 ft).

(4) The VMS shall be capable of transmitting and storing information including vessel identification, date, time, and latitude/longitude.

(5) The VMS shall provide accurate hourly position transmissions every day of the year unless otherwise required under paragraph (c)(1)(ii) of this section, or unless exempted under paragraph (c)(2) of this section. In addition, the VMS shall allow polling of individual vessels or any set of vessels at any time, and receive position reports in real time. For the purposes of this specification, "real time" shall constitute data that reflect a delay of 15 minutes or less between the displayed information and the vessel's actual position.

(6) The VMS shall be capable of providing network message communications between the vessel and shore. The VMS shall allow NMFS to initiate communications or data transfer at any time.

(7) The VMS vendor shall be capable of transmitting position data to a NMFS-designated computer system via a modem at a minimum speed of 9600 baud. Transmission shall be in a file format acceptable to NMFS. The VMS shall be capable of providing vessel locations relative to international boundaries and fishery management areas.

(8) The VMS vendor shall be capable of archiving vessel position histories for a minimum of 1 year and providing transmission to NMFS of specified portions of archived data in response to NMFS requests and in a variety of media (tape, floppy, etc.).

(c) *Operating requirements for all vessels.* (1) Except as provided in paragraph (c)(2) of this section, or unless otherwise required by paragraph (c)(1)(ii) or (iii) of this section, all required VMS units must transmit a signal indicating the vessel's accurate position, as specified under paragraph (c)(1)(i) of this section.

(i) At least every hour, 24 hours a day, throughout the year.

(ii) NMFS may initiate at its discretion, the transmission of a signal indicating the vessel's accurate position, at least twice per hour, 24 hours a day, for all NE multispecies DAS vessels that elect to fish with a VMS specified in §648.10(b) or that are required to fish with a VMS as specified in §648.85(a), for each groundfish DAS trip that the vessel has elected to fish in the U.S./Canada Management Areas, and as specified in §648.85(b) for each groundfish trip that the vessel has elected to fish in either the CA II Yellowtail Flounder SAP, the CA I Hook Gear Haddock SAP, the Regular B DAS Pilot Program, or the Eastern U.S./Canada Haddock SAP Pilot Program.

(iii) At least twice per hour, 24 hours a day, throughout the year, for vessels issued a general scallop permit and subject to the requirements of §648.4(a)(2)(ii)(B).

(2) *Power down exemption.* (i) Any vessel required to transmit the vessel's location at all times, as required in paragraph (c)(1) of this section, is exempt from this requirement if it meets one or more of the following conditions and requirements:

(A) The vessel will be continuously out of the water for more than 72 consecutive hours, the vessel signs out of the VMS program by obtaining a valid letter of exemption pursuant to paragraph (c)(2)(ii) of this section, and the vessel complies with all conditions and requirements of said letter;

(B) For vessels fishing with a valid NE multispecies limited access permit, the vessel owner signs out of the VMS program for a minimum period of 30 consecutive days by obtaining a valid letter of exemption pursuant to paragraph (c)(2)(ii) of this section, the vessel does not engage in any fisheries until the VMS unit is turned back on, and the vessel complies with all conditions and requirements of said letter; or

(C) The vessel has been issued a limited access herring permit, and is in port, unless required by other permit requirements for other fisheries to transmit the vessel's location at all times. Such vessels must activate the VMS unit and enter the appropriate activity code prior to leaving port.

(D) The vessel has been issued a general scallop permit and is required to operate VMS as specified in §648.10(b)(1)(iv), is not in possession of any scallops onboard the vessel, is tied to a permanent dock or mooring, and the vessel operator has notified NMFS through VMS by transmitting the appropriate VMS power down code, that the VMS will be powered down, unless required by other permit requirements for other fisheries to transmit the vessel's location at all times. Such a vessel must repower the VMS prior to moving from the fixed dock or mooring. VMS codes and instructions are available from the Regional Administrator upon request.

(ii) *Letter of exemption —(A) Application.* A vessel owner may apply for a letter of exemption from the VMS transmitting requirements specified in paragraph (c)(1) of this section for his/her vessel by sending a written request to the Regional Administrator and providing the following: The location of the vessel during the time an exemption is sought; and the exact time period for which an exemption is needed ( i.e., the time the VMS signal will be turned off and turned on again); and, in the case of a vessel meeting the conditions of paragraph (c)(2)(i)(A) of this section, sufficient information to determine that the vessel will be out of the water for more than 72 continuous hours. The letter of exemption must be on board the vessel at all times, and the vessel may not turn off the VMS signal until the letter of exemption has been received.

(B) *Issuance.* Upon receipt of an application, the Regional Administrator may issue a letter of exemption to the vessel if it is determined that the vessel owner provided sufficient information as required under paragraph (c)(2) of this section, and that the issuance of the letter of exemption will not jeopardize accurate monitoring of the vessel's DAS. Upon written request, the Regional Administrator may change the time period for which the exemption is granted.

(d) *Presumption.* If a VMS unit fails to transmit an hourly signal of a vessel's position, the vessel shall be deemed to have incurred a DAS, or fraction thereof, for as long as the unit fails to transmit a signal, unless a preponderance of evidence shows that the failure to transmit was due to an unavoidable malfunction or disruption of the transmission that occurred while the vessel was declared out of the scallop fishery or NE multispecies or monkfish fishery, as applicable, or was not at sea.

(e) *Replacement.* Should a VMS unit require replacement, a vessel owner must submit documentation to the Regional Administrator, within 3 days of installation and prior to the vessel's next trip, verifying that the new VMS unit is an operational, approved system as described under paragraph (a) of this section.

(f) *Access.* As a condition to obtaining a limited access scallop or multispecies permit, or an Atlantic herring permit, all vessel owners must allow NMFS, the USCG, and their authorized officers or designees access to the vessel's DAS data, if applicable, and location data obtained from its VMS unit, if required, at the time of or after its transmission to the vendor or receiver, as the case may be.

(g) *Tampering.* Tampering with a VMS, a VMS unit, or a VMS signal, is prohibited. Tampering includes any activity that is likely to affect the unit's ability to operate properly, signal, or accuracy of computing the vessel's position fix. [61 FR 34968, July 3, 1996, as amended at 62 FR 14646, Mar. 27, 1997; 63 FR 58329, Oct. 30, 1998; 64 FR 54745, Oct. 7, 1999; 65 FR 77466, Dec. 11, 2000; 69 FR 22946, Apr. 27, 2004; 69 FR 67796, Nov. 19, 2004; 70 FR 21941, Apr. 28, 2005; 70 FR 48867, Aug. 22, 2005; 70 FR 76426, Dec. 27, 2005; 71 FR 33224, June 8, 2006; 72 FR 11274, Mar. 12, 2007]

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

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

- (b) Content of Guidelines.--The guidelines under subsection (a) shall--
- (1) apply to the sharing by Federal agencies of, and access to, information disseminated by Federal agencies; and
  - (2) require that each Federal agency to which the guidelines apply--

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

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

- (C) report periodically to the Director--

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

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

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

104-297

**SEC. 402. INFORMATION COLLECTION**

16 U.S.C. 1881a

109-479

(a) COLLECTION PROGRAMS.—

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

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

109-479

(b) CONFIDENTIALITY OF INFORMATION.—

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

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

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

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

(D) when required by court order;

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) **RESOURCE ASSESSMENTS.**—

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

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

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

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

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

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

**104-297**

**SEC. 403. OBSERVERS**

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

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

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

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

# 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.

5 CFR 1320.9

§ 1320.9 Agency certifications for proposed collections of information.

As part of the agency submission to OMB of a proposed collection of information, the agency (through the head of the agency, the Senior Official, or their designee) shall certify (and provide a record supporting such certification) that the proposed collection of information --

(a) is necessary for the proper performance of the functions of the agency, including that the information to be collected will have practical utility;

(b) is not unnecessarily duplicative of information otherwise reasonably accessible to the agency;

(c) reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601(6)), the use of such techniques as:

(1) establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond;

(2) the clarification, consolidation, or simplification of compliance and reporting requirements; or

(3) an exemption from coverage of the collection of information, or any part thereof;

(d) is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond;

(e) is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond;

(f) indicates for each recordkeeping requirement the length of time persons are required to maintain the records specified;

(g) informs potential respondents of the information called for under § 1320.8(b)(3);

(h) has been developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected, including the processing of the information in a manner which shall enhance, where appropriate, the utility of the information to agencies and the public;

(i) uses effective and efficient statistical survey methodology appropriate to the purpose for which the information is to be collected; and

(j) to the maximum extent practicable, uses appropriate information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public.

**HISTORY:** [53 FR 16623, May 10, 1988; 60 FR 44978, 44990, Aug. 29, 1995]

**AUTHORITY:** AUTHORITY NOTE APPLICABLE TO ENTIRE PART:  
31 U.S.C. Sec. 1111 and 44 U.S.C. Chs. 21, 25, 27, 29, 31, 35.

**NOTES:** NOTES APPLICABLE TO ENTIRE TITLE:

Title 5 of the United States Code was revised and enacted into positive law by Public Law 89-554, Sept. 6, 1966. New citations for obsolete references to sections of 5 U.S.C. appearing in this title may be found in a redesignation table under title 5, Government Organization and Employees, United States Code.