

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 03/10/2009

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

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 03/10/2009

ACTION REQUESTED: Revision of a currently approved collection
TYPE OF REVIEW REQUESTED: Regular
ICR REFERENCE NUMBER: 200903-0648-004
AGENCY ICR TRACKING NUMBER:
TITLE: Pacific Whiting Vessel License
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change
OMB CONTROL NUMBER: 0648-0583

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: 01/31/2012

DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	0	0	0
New	44	42	26,419
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	44	42	26,419
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
Pacific Whiting Vessel License Application	NA	Pacific Whiting Vessel License Application	
Pacific Whiting Vessel License revision to information			50 CFR 660

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.

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

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
PACIFIC WHITING VESSEL LICENSE
OMB CONTROL NO. 0648-xxxx**

INTRODUCTION

This statement is a request from National Marine Fisheries Service (NMFS), Sustainable Fisheries Division (SFD) and Northwest Regional Office (NWR) to the Office of Management and Budget (OMB) for a new information collection to determine vessel eligibility to participate in the Pacific Coast Whiting Fishery off Washington, Oregon and California. In the future, the NWR may merge this collection with the existing collection OMB Control Number 0648-0203.

The groundfish fishery in the Exclusive Economic Zone (EEZ), offshore waters between 3 and 200 nautical miles (nm), off the coasts of Washington, Oregon, and California (WOC) is managed under the Pacific Coast Groundfish Fishery Management Plan (FMP). The Pacific Coast Groundfish FMP was prepared by the Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (subsequently amended and renamed the [Magnuson-Stevens Fishery Conservation and Management Act](#) and also amended in 2006). The FMP has been in effect since 1982.

Under current regulations, catcher vessels participating in the shore-based and Mothership sectors, or vessels participating in the catcher/processor sectors, must be registered to a groundfish limited entry permit. The limited entry permit program has been in place since 1994 and allows appropriately registered vessels to participate in groundfish fisheries targeting any of the 90+ species in the Pacific Coast Groundfish FMP. The proposed regulations would require vessels that wish to participate in the non-tribal Whiting fishery to qualify for an additional Whiting entry limitation program within the overall groundfish limited entry program.

The [American Fisheries Act](#) (AFA) of 1998 was designed to strengthen United States (U.S.) ownership standards that had been exploited under the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 (Public Law No. 100-239), and to rationalize the Bering Sea and Aleutian Islands (BSAI) walleye Pollock fishery (Pollock) while protecting non-AFA participants in other fisheries. Management measures required by the AFA include: (1) regulations that limit access into the fishing and processing sectors of the BSAI Pollock fishery and that allocate Pollock to such sectors, (2) regulations governing catch measurement and monitoring in the BSAI Pollock fishery, (3) governing the formation and operation of fishery cooperatives in the BSAI Pollock fishery, and (4) regulations to protect other fisheries from spillover effects from the AFA.

The AFA requires the Council to develop conservation and management measures to protect fisheries under its jurisdiction and the participants in those fisheries from adverse impacts caused by the AFA, or by any fishery cooperatives in the directed Pollock fishery. Protection measures can be divided into two basic categories: (1) the protection of persons/companies that harvest fish and are not part of the BSAI Pollock fleet as defined by the AFA; and (2) the protection of non-AFA fish processors. To address the concern of AFA impacts on the Pacific coast groundfish fishery, the Council voted to establish a control date of September 16, 1999. They also voted to initiate the development of recommendations to restrict AFA-qualified vessels from

participating in the fishery if, during a qualifying period between January 1, 1994, and September 16, 1999, the vessel: (1) did not harvest at least 50 metric tons (mt) of Pacific Whiting in the Mothership sector; (2) did not land at least 50 mt of Pacific Whiting in the shorebased sector; or (3) did not land groundfish shore-based in the Pacific Coast groundfish fishery (not including fish landed in the Pacific Whiting fishery) (64 FR 66158). The control date provided notice to AFA-permitted vessels that might seek to participate in the Pacific Coast groundfish fisheries that current requirements for accessing the fisheries may change.

In 2006, changes in the Pacific Whiting fishery occurred which led to Council concerns about increased participation by both AFA-permitted and non-AFA permitted vessels in the Pacific Whiting fishery. A significant increase in the Whiting ex-vessel price attracted several new vessels to the fishery, including some AFA-permitted vessels. Since the Alaska Pollock fishery was rationalized, some vessels found they could engage in fishing for Pacific Whiting off the West Coast in the spring and early summer and then travel to Alaska to take their shares of Pollock later in the summer when Alaskan fishing conditions were more favorable.

In September 2006, the Council recommended that NMFS take emergency action to prevent new entry into the Pacific Whiting fishery in 2007. The basis for the Council's recommendation was conservation concerns that could arise from an accelerated race for fish due to new entry of AFA-permitted vessels to the fishery. Members of the Council expressed concern that a race for fish could result in excessive harvest of Whiting early in the season, greater bycatch of overfished rockfish and higher levels of incidental catch of endangered and threatened salmon in the early season. The Council also noted its concern that new entry of AFA-permitted vessels could result in early achievement of the U.S. directed harvest Whiting quotas, leaving West Coast-based vessels facing no fishing or very limited fishing while the AFA-permitted vessels could return to the rationalized Alaska Pollock fisheries, in which they also had an interest. The Council's proposal would only have prohibited AFA-permitted vessels from entry into the Pacific Whiting fishery in 2007, and only if they did not have a history of involvement in the fishery prior to 2006. Other non-AFA vessels could still have entered the fishery.

In a letter dated January 11, 2007, the Northwest Regional Administrator denied the Council's request for an emergency rule. The letter noted that the Council action was intended to address actual or potential harm to West Coast fisheries from the AFA; however, the earlier closure of the Whiting shore-based fishery in 2006 (compared to 2005) was due to new participation by both AFA-permitted vessels and non-AFA vessels.

The Regional Administrator noted that the guidelines for the use of emergency rules call for use of notice-and-comment procedures when there are controversial actions with serious economic effects, except under extraordinary circumstances.

At its March 2007 meeting, the Council voted to request that NMFS enact an emergency rule for the 2007 non-tribal season to prohibit participation in the 2007 non-tribal Pacific Whiting fishery by all vessels without sector specific history in the fishery prior to January 1, 2007 (72 FR 27759). New information was presented that supported the potential for a race for fish, including: 1) the price for Whiting continued to increase to unprecedented levels; 2) U.S. optimum yield (OY) of Whiting was reduced by 10% for the 2007 season compared to 2006; 3) higher than projected canary rockfish bycatch rates in the non-Whiting fishery, required that the Council place more severe constraints on the limited entry non-Whiting trawl fishery which

provide incentive for these vessels to move to the Whiting sector; 4) Alaska Pollock quota was reduced.

The NMFS implemented the Council's request for emergency action on May 14, 2007, prohibiting participation in the 2007 Whiting fishery by any vessel that had no history of participation within a specific sector of the non-tribal Whiting fishery during the period between December 31, 1996 and January 1, 2007 (72 FR 27759, May 17, 2007). This action remains in effect until May 13, 2008. Emergency actions may be in place for as long as 180 days, and may be extended for a subsequent 180 days, but not longer.

A. JUSTIFICATION

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

In September 2007, the Pacific Fishery Management Council (PFMC) approved Amendment 15 to the Pacific Groundfish Fishery Management Plan which provided that only vessels with a history of significant participation in the various sectors of the Whiting fishery would be eligible to continue to participate in the fishery. Consistent with Council's decision, NMFS will publish proposed regulations, to be codified at 50 C.F.R. 660, which would establish the following criteria to qualify vessels for future participation in the non-tribal Whiting fishery. NMFS anticipates publishing the final rule in 2008 and vessel owners will be requested to submit an application for a Pacific Whiting vessel license before January 1, 2009. The Pacific Whiting vessel license will be effective in 2009.

Specifically, the regulations would limit participation in the non-tribal Pacific Whiting fishery to those vessels that met the following qualification criteria: (A) for catcher/processor vessels, the qualifying criteria for a Pacific Whiting vessel license is evidence of having caught and processed any amount of Whiting during the primary catcher/processor season in any one calendar year during the period January 1, 1997 through January 1, 2007; (B) for Mothership at-sea processing vessels, the qualifying criteria for a Pacific Whiting vessel license is evidence of having received and processed any amount of Whiting during the primary Mothership season in any one calendar year during the period January 1, 1997 through January 1, 2007; (C) for catcher vessels delivering Whiting to at-sea Mothership processing vessels, the qualifying criteria for a Pacific Whiting vessel license is evidence of having delivered any amount of Whiting to a Mothership processor during the primary Mothership season in any one calendar year during the period January 1, 1997 through January 1, 2007; and (D) for catcher vessels delivering Whiting to shore-based processing plants, the qualifying criteria for a Pacific Whiting vessel license is evidence of having made at least one Whiting landing with midwater gear and that the weight of Whiting exceeded 50 percent of the total weight of the landing during the primary shore-based season in any one calendar year during the period January 1, 1994 through January 1, 2007.

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

NMFS would request owners of any vessel (catcher vessel, Mothership, catcher processor) that has significantly participated in any of the sectors of the non-tribal Pacific Whiting during the

qualifying years to submit an application to qualify for a Pacific Whiting vessel license. Application notices would be mailed to vessel owners after the final rule is approved. The deadline for submitting an application would be December 31, 2008. The vessel license would be required to participate in the 2009 Whiting fishery. A valid Pacific Coast groundfish limited entry permit and Pacific Whiting vessel license would be required for any catcher vessel delivering to a shoreside processor or Motherships and for catcher processor vessels to continue to participate in the Whiting fishery. For Motherships, only the sector license would be required to continue to participate in the Pacific Whiting fishery. The privilege would be permanently assigned to the vessel and issued to the vessel owner(s). The license would not be transferable to another vessel. There would be no requirement that the vessel owner renew the license on a periodic basis. The Sustainable Fisheries Division (SFD) estimates about 120 vessels may apply to participate in the various sectors of the Pacific Whiting fishery. The application for the license would be a one-time collection.

In Section A of the application, the applicant would indicate which sector or sectors the vessel may have met the qualifying criteria. NMFS will use this information to batch applications by sectors. In Section B, the respondent would be required to provide the following information: (1) vessel name and United States Coast Guard (USCG) documentation number; (2) Pacific Coast Groundfish limited entry permit number; (3) vessel owner name, business address, telephone number, fax number and email address; (4) the sector(s) that the vessel may qualify for as having significant participation; (5) the year and number of pounds in which the vessel landed or processed Whiting and met the minimum landing requirement and (6) documentation (i.e., state fish tickets) that substantiates the date and the amounts of Whiting landed/received/processed by the applicant vessel.

In Section B, the vessel information indicates which vessel may be qualified for the license and, if qualified, would appear on the license. The permit number identifies whether the vessel is currently registered in the groundfish limited entry fishery and would assist NMFS in generating permit histories. The vessel owner name, business address, telephone number, fax number and email address would identify the individual or entity that is making the application and the entity or individual that would be issued the license and incur the legal responsibilities given in regulation. Further, the license holder information would provide current contact information for NMFS if they must contact them about their application. The signature of the authorized representative would certify that the application information is correct and true. An authorized representative of the vessel owner must sign, date and obtain notarization of the application. Notarization would verify the identity of the authorized representative signing the application. The date of the signature is required because the regulations provide a deadline for submitting the application.

In Section C, the applicant would be required to indicate one year among the qualifying years specified for the various vessel sectors (1994-2006 and 1997-2006) in which the vessel met the harvesting and/or processing qualification criteria (see Question 1, paragraph 2, above). The applicant would provide the total amount of Whiting actually caught or processed by the vessel for that year. This information is necessary to determine whether the vessel is qualified for the license. Although NMFS has access to state fisheries landing data for vessels delivering to shoreside facilities, other documentation will be needed to substantiate processing or deliveries of Whiting for at-sea vessels. The landing data is required, as there may be errors in state landing data and moreover, it is necessary that the applicant make a formal representation to

NMFS asserting that the vessel qualifies for this privilege. NMFS would need to determine whether the Whiting were harvested or processed illegally or if the claimed landed or processed Whiting was associated with an applicant vessel. Also, NMFS would require documentation to verify the pounds landed or processed for the one year indicated for a sector given in their application. The documentation may include state fish tickets or vessel processing records and would be reviewed for: (1) authenticity; (2) a listing of the vessel either landing or processing Whiting; (3) indication that Whiting was either landed or received on a date during the year indicated in the application and (4) the cumulative amounts of Whiting caught or processed in a given year.

NMFS would review the application and documentation to determine if the vessel meets the minimum landing requirement for a particular sector in one of the qualifying years. In Section A of the application form, the applicant is asked to check those vessel sectors it feels the vessel may qualify for and if they qualify for a sector, the sector would be identified on the license. NMFS would use this information to batch applications by sectors. If the application is approved, NMFS would issue a vessel license including the name and documentation number of the vessel, vessel owner name and address, an effective date of the privilege, and provide which sector(s) the vessel is qualified for. The qualifying vessel is permanently registered to the license and NMFS would not require periodic renewals of the license.

After a vessel license is issued, a registered vessel may be sold to other owners or the ownership group may change over time (i.e., death of an owner). NMFS would require vessel owners to provide notification in writing of such changes in ownership so it can maintain current license records on vessels/vessel owners possessing this privilege and reissue an updated license. In addition, NMFS must be able to accurately associate the legal responsibility for the privilege with a particular individual and/or entity. Specifically, the changes to a license that must be reported to NMFS are: change in owners of the registered vessel; the vessel owner business address/phone information; or a change in the vessel name. As appropriate, NMFS would require: the new vessel owner name, address, phone, and fax, or new vessel name. NMFS may require the USCG vessel documentation or abstract of title or other documentation to verify the change in ownership.

The frequency of requests to change of vessel owner and change in vessel name would be dependent on the number of times these actions occur. We estimate that the number of requests to change vessel name and/or owner name and address information would be about 4 per year. We have not prepared a form for revisions to the license because of the anticipated numbers of such changes are few. SFD would require the vessel owner to submit a letter to NMFS notifying it of this change.

A list of vessels which are qualified to participate in the Pacific Whiting fishery would be available to the public on the NWR web site: <http://www.nwr.noaa.gov>.

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

The application to qualify for the license would be made available on the Northwest Region permits website (<http://www.nwr.noaa.gov/Permits/Index.cfm>); however, the applicant would be

required to submit the original copy of the application with the authorized representative's signature and the signature and stamp of a notary. The vessel owner would be required to submit a request for changes to the vessel license in a written letter.

4. Describe efforts to identify duplication.

There are no alternate sources for this information or duplicative requirements. The Pacific Coast Groundfish Limited Entry Permit program identifies trawl vessels which may participate in the limited entry Whiting and/or groundfish fisheries. However, the groundfish limited entry program does not currently collect information that specifically identifies which sector a Whiting vessel is registered or is qualified to participate in.

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

Most of the respondents would be small businesses. Only the minimum amount of information would be required to meet the objectives of identifying qualified Whiting vessels are requested of the applicants. The overall number of individuals and/or business entities involved in this collection is relatively small and therefore, separate methods have not been developed. The request for information to support the qualification of a particular vessel is one-time in nature. Subsequent modifications are dependent on changes in the vessel name, vessel owner, vessel owner address/telephone number. These changes are anticipated to be relatively few in a given year.

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

If the collection is not conducted, NMFS would not be able to determine which vessel owners want this privilege and to effectively determine which vessels meet the qualification requirements. If NMFS does not collect the information, it would be unable to limit the number of vessels participating in various sectors of the Whiting fishery. Under the current management regime, it is possible that other vessels which have not historically participated in the fishery would seek to participate in the fishery which would accelerate the race for fish and increase bycatch of overfished species and incidental catch of threatened and endangered salmon. Because this is a one-time collection, the collection could not be collected less frequently.

If NMFS does not require owners of licensed vessels to update information including changes to the name of the vessel, vessel owner name and address/phone, NMFS would be unable to effectively track which vessel and vessel owner are currently assigned to the vessel license.

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

There are no special circumstances that would require the collection to be conducted in a manner inconsistent with OMB guidelines.

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

A proposed rule, RIN 0648-AW08, will be published, soliciting public comments on the required information collection.

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

Not applicable.

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

The applicants for a vessel license are expected to provide fish tickets or other records that substantiate their participation in the Whiting fishery during qualifying years. These records are considered confidential under National Oceanic and Atmospheric Administration (NOAA) Administrative Order 216-100, Confidentiality of Fishery Statistics, and are subject to confidentiality protection of Section 402 of the Magnuson-Stevens Act.

Further, SFD would handle such records as consistent with COMMERCE/NOAA-19, Permits and Registrations for United States Federally Regulated Fisheries, published in the Federal Register on April 17, 2008 (73 FR 20914), and effective on June 11, 2008 (73 FR 33065).

A Privacy Act Statement is included on the application form.

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

There are no questions of a sensitive nature included in the information collection.

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

An estimated annualized number of respondents (120 total/3 years = 40), will submit an initial application each with a burden of one hour. An estimated four requests for revision of the license, each with a burden of 30 minutes will be submitted: $(40 \times 1 \text{ hr.}) + (4 \times 0.5 \text{ hr.}) = 42$ hours (see Table 1).

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).

Each application and request for revision will cost \$0.42 to mail: $44 \times \$0.42 = \18.48 (\$19). Each application will require the application to be notarized and will cost \$10 per application: $40 \times \$10 = \400 . Revisions will not require notarization. The processing fee per application is estimated to be \$650: $40 \times \$650 = \$26,000$. $\$26,000 + \$400 + \$19 = \$26,419$ (see Table 2).

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

The cost to NMFS, SFD is incurred through the planning, preparation of regulations and review, data base programming, review, processing and issuance of the applications for the Whiting vessel qualification license and to review, process and any subsequent request to revise/update license information and the subsequent reissuance of the license.

The administrative costs incurred for the review, processing and license issuance for the initial applications would be covered by a one time application fee. The fee for the issuance of vessel license is estimated to be approximately \$650 per license. Subsequent requests to change the vessel name, vessel owner name and/or address are considered to be nominal.

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

This is a new collection implemented by regulation. The regulations will require a new license for Whiting vessels.

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

The names of vessels that qualify on historical participation in the fishery may be published in a Federal Register Notice and/or would be posted on the NMFS NWR website.

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

Not applicable.

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

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.

Table 1- Annual Burden Hours (Annualized over 3 yrs)	No. of Respondents	Frequency of Response	Total Annual Responses	Average Time per Response	Total Hours	Labor Cost @ \$17.02/hr**
Pacific Whiting Vessel License (one time, annualized)	40	1	40	1 hour	40	\$681.00
Request to Revise Pacific Whiting License (estimated yearly)	4	1	4	30 minutes	2 hours	\$34.00
Totals	44		44		42 hours*	\$715.00

Note*: The above estimate is based on annualization over 3 years. The application for vessel qualification is a one-time application. It is estimated that 120 applicants would submit an application.

**** Source:** Estimate is from U.S. Census Bureau Non employer statistics, 2001, as a proxy for respondent annual income).

Table 2 – Estimated Annual Cost Burden to Respondents	Cost Item	Cost
	Mailing: \$0.42 per application/revision x 44	\$ 19.00
	Notary: \$10 per application x 40	\$ 400.00
	Initial Application Processing Fee: 40 x \$650	\$26,000.00
Total		\$26,419.00

 <p>PACIFIC WHITING VESSEL LICENSE APPLICATION</p> <p>WEST COAST GROUND FISH</p>	<p>UNITED STATES DEPARTMENT OF COMMERCE National Oceanic and Atmospheric Administration National Marine Fisheries Service, Northwest Region <i>Fisheries Permits Office</i> 7600 Sand Point Way NE, Bldg. 1 Seattle, WA 98115-0070</p> <p>Phone: (206) 526-4353 Fax: (206) 526-4461 www.nwr.noaa.gov</p>	
--	--	---

INSTRUCTIONS

Please complete one application for each vessel you wish to qualify for a Pacific Whiting Vessel License.

SECTION A – Sector Qualification: Designate which sector(s) the vessel qualifies for in the Pacific Whiting fishery.

SECTION B - Vessel Information/Vessel Owner Information/Certification: Provide the vessel name and vessel official number (USCG documentation number). If the vessel is registered to Pacific Coast Groundfish Limited Entry Permit, please give the permit number. Please provide the vessel owner name (as registered with USCG), the vessel owner business address (street or P.O. Box), city, state, and zip code, and business phone number and fax number.

An authorized representative of the vessel owner must sign and date the application in the presence of a notary. The notary must notarize the document. If the applicant fails to sign, date and have the document notarized, NMFS will consider the application to be incomplete and will not review it.

SECTION C - Years of Participation and Number of Pounds Landed or Processed by Vessel: In this section, there are listings for the four different whiting vessel sectors and the corresponding qualifying years of participation in the whiting fishery for each sector. The applicant must indicate ONE year that the vessel named in Section A met the qualifying criteria and list the total amount of whiting was landed or processed in the year given for that sector. If the vessel qualifies for more than one vessel sector, provide the year and the landed/processed amount for that year for each applicable sector. Whiting harvested or processed by a vessel that has since been totally lost or decommissioned will not be considered for this license. Whiting harvested or processed illegally or landed illegally will not be considered for this license. Catch and/or processing history associated with a vessel purchased by through the Pacific Coast groundfish capacity reduction program (68 FR 62435-62440 – November 4, 2003) will not be considered in meeting the qualification criteria.

SUPPLEMENTAL DOCUMENTATION: The applicant must provide documentation that verifies the amount of whiting either landed or processed for the year given in Section C. This documentation must provide a date of landing or processing, indicate the vessel that landed or processed the whiting, and clearly show that whiting was landed or processed species and the amount of whiting in pounds for the given date. If the supplemental documentation is not provided as specified above, NMFS will consider the application to be incomplete and will not review it.

DEADLINE: Your application must be received at the address given above **no later than December 31, 2008**. Any application received after December 31, 2008 will not be processed by NMFS and returned to the applicant.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service, Northwest Region
Fisheries Permits Office
 7600 Sand Point Way NE, Bldg. 1
 Seattle, WA 98115-0070



Phone: (206) 526-4353 Fax: (206) 526-4461 www.nwr.noaa.gov

SECTION A – SECTOR QUALIFICATION
 Indicate which sector(s) the vessel qualifies for. Check all that apply.

- Catcher Vessel - Shoreside
- Catcher Vessel – Mothership
- Mothership
- Catcher Processor

SECTION B – VESSEL INFORMATION/VESSEL OWNER CERTIFICATON

Permit Number (if applicable) GF	Vessel Name	USCG Doc or State Registration Number
Current Vessel Owner Name(s) <i>(Last, First, Middle Name or Business Name)</i> <i>Business Name</i>		
<i>Last</i>	<i>First</i>	<i>Middle Name</i>
Business Mailing Address <i>(Street or PO Box)</i>		Business Phone ()
		Business Fax <i>(optional)</i> ()
City	State	Zip Code
Business Email <i>(optional)</i>		
The remainder of Section B must be completed by a notary to certify that the individual(s) signing this form have satisfactorily identified themselves.		
<i>Under penalties of perjury, I hereby declare that I, the undersigned, completed this application, and the information contained herein is true, correct, and complete to the best of my knowledge and belief.</i>		
Signature of Applicant or Authorized Representative (See Note 1)		Date
Printed Name of Applicant or Authorized Representative <i>(NOTE: If form completed by a representative, attach authorization.)</i>		
Notary Public Signature	<input type="checkbox"/> ATTEST	Affix Notary Stamp or Seal Here
Date Commission Expires		

 <p>PACIFIC WHITING VESSEL LICENSE APPLICATION</p> <p>WEST COAST GROUND FISH</p>	<p>UNITED STATES DEPARTMENT OF COMMERCE National Oceanic and Atmospheric Administration National Marine Fisheries Service, Northwest Region Fisheries Permits Office 7600 Sand Point Way NE, Bldg. 1 Seattle, WA 98115-0070</p> <p>Phone: (206) 526-4353 Fax: (206) 526-4461 www.nwr.noaa.gov</p>	
--	---	---

Section C – Years of Participation and Pounds Landed or Processed

For all applicable vessel sectors, provide for the vessel named in Section A, the year the whiting deliveries or processing occurred and the total amount of whiting delivered or processed in that year. You must submit records to verify the amount(s) of whiting landed and/or processed for the qualifying year indicated below.

Catcher Vessels Delivering to Shoreside Facilities Sector (Qualifying Years January 1, 1994- January 1, 2007)

Provide one qualifying year that the vessel in Section A made at least one landing of whiting with midwater gear and that the weight of whiting exceeded 50 percent of the total weight of the landing: _____
Provide the total amount of whiting (in pounds) delivered by the vessel for the year given above: _____

Catcher Vessels Delivering to Mothership Sector (Qualifying Years January 1, 1997 – January 1, 2007)

Provide one year that the vessel named in Section A delivered any amount of whiting: _____
Provide the total amount of whiting delivered (in pounds) by the vessel for the year given above: _____

Mothership Sector (Qualifying Years January 1, 1997 – January 1, 2007)

Provide one year that the vessel named in Section A received and processed any amount of whiting: _____
Provide the total amount of whiting (in pounds) received and processed for the year given above: _____

Catcher Processor Sector (Qualifying Years January 1, 1997 – January 1, 2007)

Provide one year that the vessel named in Section A caught and processed any amount of whiting: _____
Provide the total amount of whiting (in pounds) caught and processed for the year given above: _____

NOTE: Attach documentation that verifies the amount of whiting delivered, received, or processed for the year stipulated.

DEADLINE: Your application must be received at the address given above **no later than December 31, 2008**. Any application received after December 31, 2008 will not be processed by NMFS and returned to the applicant.

WARNING STATEMENT: A false statement on this form is punishable by permit sanctions (revocation, suspension, or modification) under 15 CFR 904, a civil penalty of up to \$100,000 under 16 USC 1858, and as a federal crime under 18 USC 1001.

PRA STATEMENT: Public reporting burden for this collection of information is estimated to average 1.0 hour per response, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to NOAA/National Marine Fisheries Service, Northwest Region, Attn: Assistant Regional Administrator, Sustainable Fisheries Division, 7600 Sand Point Way NE, Seattle, WA 98115. 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.

Sustainable Fisheries Privacy Act Statement: This information is collected under the authority of the Magnuson-Stevens Fishery Conservation and Management Act.

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

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

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

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

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

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

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

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

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

(4) assess and specify—

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

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

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

109-479

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

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

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

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

109-479

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

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

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

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

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

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

(A) minimize bycatch; and

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

16 U.S.C. 1853
MSA § 303

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

109-479

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

109-479

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

109-479

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

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

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

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

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

(B) the operator of any such vessel; or

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

109-479

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

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

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

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

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

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

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

109-479

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

109-479

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

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

16 U.S.C. 1853
MSA § 303

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

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

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

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

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

109-479

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

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

97-453, 104-297

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

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

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

¹⁵ So in original.

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

16 U.S.C. 1853 note

EFFECTIVE DATES; APPLICATION TO CERTAIN SPECIES.—The amendment made by subsection (a)(10)¹⁶—

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

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

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

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

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

109-479

SEC. 303A. LIMITED ACCESS PRIVILEGE PROGRAMS.

16 U.S.C. 1853a

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

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

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

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

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

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

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

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

(c) REQUIREMENTS FOR LIMITED ACCESS PRIVILEGES.—

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

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

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

(C) promote—

(i) fishing safety;

(ii) fishery conservation and management; and

(iii) social and economic benefits;

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

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

(F) specify the goals of the program;

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

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

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

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

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

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

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

(3) FISHING COMMUNITIES.—

(A) IN GENERAL.—

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

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

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

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

(4) REGIONAL FISHERY ASSOCIATIONS.—

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

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

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

¹⁷ So in original.

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

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

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

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

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

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

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

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

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

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

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

(6) PROGRAM INITIATION.—

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

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

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

(D) NEW ENGLAND AND GULF REFERENDUM.—

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

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

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

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

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

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

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

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

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

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

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

16 U.S.C. 1853a
MSA § 303A

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

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

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

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

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

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

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

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

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

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

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

(g) LIMITED ACCESS PRIVILEGE ASSISTED PURCHASE PROGRAM.—

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

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

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

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

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

(i) TRANSITION RULES.—

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

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

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

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

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

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

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

16 U.S.C. 1853a note

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

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

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

SEC. 304. ACTION BY THE SECRETARY

16 U.S.C. 1854

104-297

(a) REVIEW OF PLANS.—

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

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

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

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

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

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

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

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

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

(B) the nature of such inconsistencies; and

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

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

104-297

SEC. 402. INFORMATION COLLECTION

16 U.S.C. 1881a

109-479

(a) COLLECTION PROGRAMS.—

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

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

109-479

(b) CONFIDENTIALITY OF INFORMATION.—

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

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

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

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

(D) when required by court order;

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

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

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

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

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

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

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

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

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

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

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

(c) RESTRICTION ON USE OF CERTAIN INFORMATION.—

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

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

16 U.S.C. 1881a-1881b
MSA §§ 402-403

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

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

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

(e) **RESOURCE ASSESSMENTS.**—

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

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

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

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

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

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

104-297

SEC. 403. OBSERVERS

16 U.S.C. 1881b

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

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

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

AMERICAN FISHERIES ACT

TITLE II - FISHERIES

Subtitle I - Fishery Endorsements

Sec. 201. Short Title.

This title may be cited as the American Fisheries Act .

Sec. 202. Standard for Fishery Endorsements.

(a) **Standard.** Section 12102(c) of title 46, United States Code, is amended to read as follows

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

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

(A) shall include

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

(B) shall not include the right to simply participate in the activities under subparagraph (A), or the use by a mortgagee under paragraph (4) of loan covenants approved by the Secretary.

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

(4)(A)3 An individual or entity that is otherwise eligible to own a vessel with a fishery endorsement shall be ineligible by reason of an instrument or evidence of indebtedness, secured by a mortgage of the vessel to a trustee eligible to own a vessel with a fishery endorsement that is issued, assigned, transferred or held in trust for a person not eligible to own a vessel with a fishery endorsement, unless the Secretary determines that the issuance, assignment, transfer, or trust arrangement does not result in an impermissible transfer of control of the vessel and that the trustee

- (i) is organized as a corporation, and is doing business, under the laws of the United States or of a State;
- (ii) is authorized under those laws to exercise corporate trust powers;
- (iii) is subject to supervision or examination by an official of the United States Government or a State;
- (iv) has a combined capital and surplus (as stated in its most recent published report of condition) of at least \$3,000,000; and
- (v) meets any other requirements prescribed by the Secretary.

(B) A vessel with a fishery endorsement may be operated by a trustee only with the approval of the Secretary.

(C) A right under a mortgage of a vessel with a fishery endorsement may be issued, assigned, or transferred to a person not eligible to be a mortgagee of that vessel under section 31322(a)(4) of this title only with the approval of the Secretary.

(D) The issuance, assignment, or transfer of an instrument or evidence of indebtedness contrary to this paragraph is avoidable by the Secretary.

(5) The requirements of this subsection shall not apply to a vessel when it is engaged in fisheries in the exclusive economic zone under the authority of the Western Pacific Fishery Management Council established under section 302(a) (1)(H) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)(H)) or to a purse seine vessel when it is engaged in tuna fishing in the Pacific Ocean outside the exclusive economic zone of the United States or pursuant to the South Pacific Regional Fisheries Treaty, provided that the owner of the vessel continues to comply with the eligibility requirements for a fishery endorsement under the federal law that was in effect on October 1, 1998. A fishery endorsement issued by the Secretary pursuant to this paragraph shall be valid for engaging only in fisheries in the exclusive economic zone under the authority of such Council, in such tuna fishing in the Pacific Ocean, or pursuant to such Treaty.

(6) A vessel greater than 165 feet in registered length, of more than 750 gross registered tons, or that has an engine or engines capable of producing a total of more than 3,000 shaft horsepower is not eligible for a fishery endorsement under section 12108 of this title unless

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

- (ii) the vessel is not placed under foreign registry after the date of the enactment of the American Fisheries Act; and
- (iii) in the event of the invalidation of the fishery endorsement after the date of the enactment of the American Fisheries Act, application is made for a new fishery endorsement within fifteen (15) business days of such invalidation; or

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

(b) **Preferred Mortgage.** Section 31322(a) of title 46, United States Code, is amended

- (1) by striking and at the end of paragraph (2);
- (2) by striking the period at the end of paragraph (3)(B) and inserting in lieu thereof a semicolon and ; and

- (3) by inserting at the end the following new paragraph:
- (4) with respect to a vessel with a fishery endorsement that is 100 feet or greater in registered length, has as the mortgagee
 - (A) a person eligible to own a vessel with a fishery endorsement under section 12102(c) of this title;
 - (B) a state or federally chartered financial institution that satisfies the controlling interest criteria of section 2(b) of the Shipping Act, 1916 (46 U.S.C. 802(b)); or
 - (C) a person that complies with the provisions of section 12102(c)(4) of this title.

Sec. 203. Enforcement of Standard.

- (a) **Effective Date.** The amendments made by section 202 shall take effect on October 1, 2001.
- (b) **Regulations.** Final regulations to implement this subtitle shall be published in the Federal Register by April 1, 2000. Letter rulings and other interim interpretations about the effect of this subtitle and amendments made by this subtitle on specific vessels may not be issued prior to the publication of such final regulations. The regulations to implement this subtitle shall prohibit impermissible transfers of ownership or control, specify any transactions which require prior approval of an implementing agency, identify transactions which do not require prior agency approval, and to the extent practicable, minimize disruptions to the commercial fishing industry, to the traditional financing arrangements of such industry, and to the opportunity to form fishery cooperatives.
- (c) **Vessels Measuring 100 Feet and Greater.** (1) The Administrator of the Maritime Administration shall administer section 12102(c) of title 46, United States Code, as amended by this subtitle, with respect to vessels 100 feet or greater in registered length. The owner of each such vessel shall file a statement of citizenship setting forth all relevant facts regarding vessel ownership and control with the Administrator of the Maritime Administration on an annual basis to demonstrate compliance with such section. Regulations to implement this subsection shall conform to the extent practicable with the regulations establishing the form of citizenship affidavit set forth in part 355 of title 46, Code of Federal Regulations, as in effect on September 25, 1997, except that the form of the statement under this paragraph shall be written in a manner to allow the owner of each such vessel to satisfy any annual renewal requirements for a certificate of documentation for such vessel and to comply with this subsection and section 12102(c) of title 46, United States Code, as amended by this Act, and shall not be required to be notarized.
 - (2) After October 1, 2001, transfers of ownership and control of vessels subject to section 12102(c) of title 46, United States Code, as amended by this Act, which are 100 feet or greater in registered length, shall be rigorously scrutinized for violations of such section, with particular attention given to leases, charters, mortgages, financing, and similar arrangements, to the control of persons not eligible to own a vessel with a fishery endorsement under section 12102(c) of title 46, United States Code, as amended by this Act, over the management, sales, financing, or other operations of an entity, and to contracts involving the purchase over extended periods of time of all, or substantially all, of the living marine resources harvested by a fishing vessel.
- (d) **Vessels Measuring Less Than 100 Feet.** The Secretary of Transportation shall establish such requirements as are reasonable and necessary to demonstrate compliance with section 12102(c) of title 46, United States Code, as amended by this Act, with respect to vessels measuring less than 100 feet in registered length, and shall seek to minimize the administrative burden on individuals who own and operate such vessels.
- (e) **Endorsements Revoked.** The Secretary of Transportation shall revoke the fishery endorsement of any vessel subject to section 12102(c) of title 46, United States Code, as amended by this Act, whose owner does not comply with such section.
- (f) **Penalty.** Section 12122 of title 46, United States Code, is amended by inserting at the end the following new subsection:
 - (c) In addition to penalties under subsections (a) and (b), the owner of a documented vessel for which a fishery endorsement has been issued is liable to the United States Government for a civil penalty of up to \$100,000 for each day in which such vessel has engaged in fishing (as such term is defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)) within the exclusive economic zone of the United States, if the owner or the representative or agent of the owner knowingly falsified or concealed a material fact, or knowingly made a false statement or representation with respect to the eligibility of the vessel under section 12102(c) of this title in applying for or applying to renew such fishery endorsement.
- (g) **Certain Vessels.** The vessels EXCELLENCE (United States official number 967502), GOLDEN ALASKA (United States official number 651041), OCEAN PHOENIX (United States official number 296779), NORTHERN TRAVELER (United States official number 635986), and NORTHERN VOYAGER (United States official number 637398) (or a replacement vessel for the NORTHERN VOYAGER that complies with paragraphs (2), (5), and (6) of section 208(g) of this Act) shall be exempt from section 12102(c), as amended by this Act, until such time after October 1, 2001 as more than 50 percent of the interest owned and controlled in the vessel changes, provided that the vessel maintains eligibility for a fishery endorsement under the federal law that was in effect the day before the date of the enactment of this Act, and unless, in the case of the NORTHERN TRAVELER or the NORTHERN VOYAGER (or such replacement), the vessel is used in any fishery under the authority of a regional fishery management council other than the New England Fishery Management Council or Mid-Atlantic Fishery Management Council established, respectively, under subparagraphs (A) and (B) of section 302(a)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1) (A) and (B)), or in the case of the EXCELLENCE, GOLDEN ALASKA, or OCEAN PHOENIX, the vessel is used to harvest any fish.

Sec. 204. Repeal of Ownership Savings Clause.

- (a) **Repeal.** Section 7(b) of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 (Public Law 100-239; 46 U.S.C. 12102 note) is hereby repealed.
- (b) **Effective Date.** Subsection (a) shall take effect on October 1, 2001.

Subtitle II Bering Sea Pollock Fishery

Sec. 205. Definitions.

As used in this subtitle—

- (1) the term Bering Sea and Aleutian Islands Management Area has the same meaning as the meaning given for such term in part 679.2 of title 50, Code of Federal Regulations, as in effect on October 1, 1998.
- (2) the term catcher/processor means a vessel that is used for harvesting fish and processing that fish;
- (3) the term catcher vessel means a vessel that is used for harvesting fish and that does not process pollock onboard:

- (4) the term directed pollock fishery means the fishery for the directed fishing allowances allocated under paragraphs (1), (2), and (3) of section 206(b).
- (5) the term harvest means to commercially engage in the catching, taking, or harvesting of fish or any activity that can reasonably be expected to result in the catching, taking, or harvesting of fish;
- (6) the term inshore component means the following categories that process groundfish harvested in the Bering Sea and Aleutian Islands Management Area:
- (A) shoreside processors, including those eligible under section 208(f); and
- (B) vessels less than 125 feet in length overall that process less than 126 metric tons per week in round-weight equivalents of an aggregate amount of pollock and Pacific cod;
- (7) the term Magnuson-Stevens Act means the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.);
- (8) the term mothership means a vessel that receives and processes fish from other vessels in the exclusive economic zone of the United States and is not used for, or equipped to be used for, harvesting fish;
- (9) the term North Pacific Council means the North Pacific Fishery Management Council established under section 302 (a)(1)(G) of the Magnuson-Stevens Act (16 U.S.C. 1852(a)(1)(G));
- (10) the term offshore component means all vessels not included in the definition of inshore component that process groundfish harvested in the Bering Sea and Aleutian Islands Management Area.
- (11) the term Secretary means the Secretary of Commerce; and
- (12) the term shoreside processor means any person or vessel that receives unprocessed fish, except catcher/processors, motherships, buying stations, restaurants, or persons receiving fish for personal consumption or bait.

Sec. 206. Allocations.

- (a) **Pollock Community Development Quota.** Effective January 1, 1999, 10 percent of the total allowable catch of pollock in the Bering Sea and Aleutian Islands Management Area shall be allocated as a directed fishing allowance to the western Alaska community development quota program established under section 505(i) of the Magnuson-Stevens Act (16 U.S.C. 1855(i)).
- (b) **Inshore/Offshore.** Effective January 1, 1999, the remainder of the pollock total allowable catch in the Bering Sea and Aleutian Islands Management Area, after the subtraction of the allocation under subsection (a) and the subtraction of allowances for the incidental catch of pollock by vessels harvesting other groundfish species (including under the western Alaska community development quota program) shall be allocated as directed fishing allowances as follows
- (1) 50 percent to catcher vessels harvesting pollock for processing by the inshore component;
- (2) 40 percent to catcher/processors and catcher vessels harvesting pollock for processing by catcher/processors in the offshore component; and
- (3) 10 percent to catcher vessels harvesting pollock for processing by motherships in the offshore component.

Sec. 207. Buyout.

- (a) **Federal Loan.** Under the authority of sections 1111 and 1112 of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f and 1279g) and notwithstanding the requirements of section 312 of the Magnuson-Stevens Act (16 U.S.C. 1861a), the Secretary shall, subject to the availability of appropriations for the cost of the direct loan, provide up to \$75,000,000 through a direct loan obligation for the payments required under subsection (d).
- (b) **Inshore Fee System.** Notwithstanding the requirements of section 304(d) or 312 of the Magnuson-Stevens Act (16 U.S.C. 1854(d) and 1861a), the Secretary shall establish a fee for the repayment of such loan obligations which
- (1) shall be six-tenths (0.6) of one cent for each pound round-weight of all pollock harvested from the directed fishing allowance under section 206(b)(1); and
- (2) shall begin with such pollock harvested on or after January 1, 2000, and continue without interruption until such loan obligation is fully repaid; and
- (3) shall be collected in accordance with section 312(d)(2)(C) of the Magnuson-Stevens Act (16 U.S.C. 1861a(d)(2)(C) and in accordance with such other conditions as the Secretary establishes.
- (c) **Federal Appropriation.** Under the authority of section 312(c)(1)(B) of the Magnuson-Stevens Act (16 U.S.C. 1861a (c)(1)(B)), there are authorized to be appropriated \$20,000,000 for the payments required under subsection (d).
- (d) **Payments.** Subject to the availability of appropriations for the cost of the direct loan under subsection (a) and funds under subsection (c), the Secretary shall pay by not later than December 31, 1998
- (1) up to \$90,000,000 to the owner or owners of the catcher/processors listed in paragraphs (1) through (9) of section 209, in such manner as the owner or owners, with the concurrence of the Secretary, agree, except that
- (A) the portion of such payment with respect to the catcher/processor listed in paragraph (1) of section 209 shall be made only after the owner submits a written certification acceptable to the Secretary that neither the owner nor a purchaser from the owner intends to use such catcher/processor outside the exclusive economic zone of the United States to harvest any stock of fish (as such term is defined in section 3 of the Magnuson-Stevens Act (16 U.S.C. 1802)) that occurs within the exclusive economic zone of the United States; and
- (B) the portion of such payment with respect to the catcher/processors listed in paragraphs (2) through (9) of section 209 shall be made only after the owner or owners of such catcher/processors submit a written certification acceptable to the Secretary that such catcher/processors will be scrapped by December 31, 2000 and will not, before that date, be used to harvest or process any fish; and
- (2)(A) if a contract has been filed under section 210(a) by the catcher/processors listed in section 208(e), \$5,000,000 to the owner or owners of the catcher/processors listed in paragraphs (10) through (14) of such section in such manner as the owner or owners, with the concurrence of the Secretary, agree; or
- (B) if such a contract has not been filed by such date, \$5,000,000 to the owners of the catcher vessels eligible under section 208(b) and the catcher/processors eligible under paragraphs (1) through (20) of section 208(e), divided based on the amount of the harvest of pollock in the directed pollock fishery by each such vessel in 1997 in such manner as the Secretary deems appropriate, except that any such payments shall be

reduced by any obligation to the federal government that has not been satisfied by such owner or owners of any such vessels.

(e) **Penalty.** If the catcher/processor under paragraph (1) of section 209 is used outside the exclusive economic zone of the United States to harvest any stock of fish that occurs within the exclusive economic zone of the United States while the owner who received the payment under subsection (d)(1)(A) has an ownership interest in such vessel, or if the catcher/processors listed in paragraphs (2) through (9) of section 209 are determined by the Secretary not to have been scrapped by December 31, 2000 or to have been used in a manner inconsistent with subsection (d)(1)(B), the Secretary may suspend any or all of the federal permits which allow any vessels owned in whole or in part by the owner or owners who received payments under subsection (d)(1) to harvest or process fish within the exclusive economic zone of the United States until such time as the obligations of such owner or owners under subsection (d)(1) have been fulfilled to the satisfaction of the Secretary.

(f) **Program Defined; Maturity.** For the purposes of section 1111 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f), the fishing capacity reduction program in this subtitle shall be within the meaning of the term program as defined and used in such section. Notwithstanding section 1111(b)(4) of such Act (46 U.S.C. App. 1279f(b)(4)), the debt obligation under subsection (a) of this section may have a maturity not to exceed 30 years.

(g) **Fishery Capacity Reduction Regulations.** The Secretary of Commerce shall by not later than October 15, 1998 publish proposed regulations to implement subsections (b), (c), (d) and (e) of section 312 of the Magnuson-Stevens Act (16 U.S.C. 1861a) and sections 1111 and 1112 of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f and 1279g).

Sec. 208. Eligible Vessels and Processors.

(a) **Catcher Vessels Onshore.** Effective January 1, 2000, only catcher vessels which are

(1) determined by the Secretary

(A) to have delivered at least 250 metric tons of pollock; or

(B) to be less than 60 feet in length overall and to have delivered at least 40 metric tons of pollock, for processing by the inshore component in the directed pollock fishery in any one of the years 1996 or 1997, or between January 1, 1998 and September 1, 1998;

(2) eligible to harvest pollock in the directed pollock fishery under the license limitation program recommended by the North Pacific Council and approved by the Secretary; and

(3) not listed in subsection (b), shall be eligible to harvest the directed fishing allowance under section 206(b)(1) pursuant to a federal fishing permit.

(b) **Catcher Vessels to Catcher/Processors.** Effective January 1, 1999, only the following catcher vessels shall be eligible to harvest the directed fishing allowance under section 206(b)(2) pursuant to a federal fishing permit:

(1) AMERICAN CHALLENGER (United States official number 633219);

(2) FORUM STAR (United States official number 925863);

(3) MUIR MILACH (United States official number 611524);

(4) NEAHKAHNIE (United States official number 599534);

(5) OCEAN HARVESTER (United States official number 549892);

(6) SEA STORM (United States official number 628959);

(7) TRACY ANNE (United States official number 904859); and

(8) any catcher vessel

(A) determined by the Secretary to have delivered at least 250 metric tons and at least 75 percent of the pollock it harvested in the directed pollock fishery in 1997 to catcher/processors for processing by the offshore component; and

(B) eligible to harvest pollock in the directed pollock fishery under the license limitation program recommended by the North Pacific Council and approved by the Secretary.

(c) **Catchers Vessels to Motherships.** Effective January 1, 2000, only the following catcher vessels shall be eligible to harvest the directed fishing allowance under section 206(b)(3) pursuant to a federal fishing permit:

(1) ALEUTIAN CHALLENGER (United States official number 603820);

(2) ALYESKA (United States official number 560237);

(3) AMBER DAWN (United States official number 529425);

(4) AMERICAN BEAUTY (United States official number 613847);

(5) CALIFORNIA HORIZON (United States official number 590758);

(6) MAR-GUN (United States official number 525608);

(7) MARGARET LYN (United States official number 615563);

(8) MARK I (United States official number 509552);

(9) MISTY DAWN (United States official number 926647);

- (10) NORDIC FURY (United States official number 542651);
- (11) OCEAN LEADER (United States official number 561518);
- (12) OCEANIC (United States official number 602279);
- (13) PACIFIC ALLIANCE (United States official number 612084);
- (14) PACIFIC CHALLENGER (United States official number 618937);
- (15) PACIFIC FURY (United States official number 561934);
- (16) PAPADO II (United States official number 536161);
- (17) TRAVELER (United States official number 929356);
- (18) VESTERAALEN (United States official number 611642);
- (19) WESTERN DAWN (United States official number 524423);
- (20) any vessel

(A) determined by the Secretary to have delivered at least 250 metric tons of pollock for processing by motherships in the offshore component of the directed pollock fishery in any one of the years 1996 or 1997, or between January 1, 1998 and September 1, 1998;

(B) eligible to harvest pollock in the directed pollock fishery under the license limitation program recommended by the North Pacific Council and approved by the Secretary; and

(C) not listed in subsection (b).

(d) **Motherships.** Effective January 1, 2000, only the following motherships shall be eligible to process the directed fishing allowance under section 206(b)(3) pursuant to a federal fishing permit:

- (1) EXCELLENCE (United States official number 967502);
- (2) GOLDEN ALASKA (United States official number 651041);
- (3) OCEAN PHOENIX (United States official number 296779).

(e) **Catcher/Processors.** Effective January 1, 1999, only the following catcher/processers shall be eligible to harvest the directed fishing allowance under section 206(b)(2) pursuant to a federal fishing permit:

- (1) AMERICAN DYNASTY (United States official number 951307);
- (2) KATIE ANN (United States official number 518441);
- (3) AMERICAN TRIUMPH (United States official number 646737);
- (4) NORTHERN EAGLE (United States official number 506694);
- (5) NORTHERN HAWK (United States official number 643771);
- (6) NORTHERN JAEGER (United States official number 521069);
- (7) OCEAN ROVER (United States official number 552100);
- (8) ALASKA OCEAN (United States official number 637856);
- (9) ENDURANCE (United States official number 592206);
- (10) AMERICAN ENTERPRISE (United States official number 594803);
- (11) ISLAND ENTERPRISE (United States official number 610290);
- (12) KODIAK ENTERPRISE (United States official number 579450);
- (13) SEATTLE ENTERPRISE (United States official number 904767);
- (14) US ENTERPRISE (United States official number 921112);
- (15) ARCTIC STORM (United States official number 903511);
- (16) ARCTIC FJORD (United States official number 940866);
- (17) NORTHERN GLACIER (United States official number 663457);
- (18) PACIFIC GLACIER (United States official number 933627);
- (19) HIGHLAND LIGHT (United States official number 577044);

(20) STARBOUND (United States official number 944658); and

(21) any catcher/processor not listed in this subsection and determined by the Secretary to have harvested more than 2,000 metric tons of the pollock in the 1997 directed pollock fishery and determined to be eligible to harvest pollock in the directed pollock fishery under the license limitation program recommended by the North Pacific Council and approved by the Secretary, except that catcher/processers eligible under this paragraph shall be prohibited from harvesting in the aggregate a total of more than one-half (0.5) of a percent of the pollock apportioned for the directed pollock fishery under section 206(b)(2).

Notwithstanding section 213(a), failure to satisfy the requirements of section 4(a) of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 (Public Law 100-239; 46 U.S.C. 12108 note) shall not make a catcher/processor listed under this subsection ineligible for a fishery endorsement.

(f) **Shoreside Processors.** (1) Effective January 1, 2000 and except as provided in paragraph (2), the catcher vessels eligible under subsection (a) may deliver pollock harvested from the directed fishing allowance under section 206(b)(1) only to

(A) shoreside processors (including vessels in a single geographic location in Alaska State waters) determined by the Secretary to have processed more than 2,000 metric tons round-weight of pollock in the inshore component of the directed pollock fishery during each of 1996 and 1997; and

(B) shoreside processors determined by the Secretary to have processed pollock in the inshore component of the directed pollock fishery in 1996 and 1997, but to have processed less than 2,000 metric tons round-weight of such pollock in each year, except that effective January 1, 2000, each such shoreside processor may not process more than 2,000 metric tons round-weight from such directed fishing allowance in any year;

(2) Upon recommendation by the North Pacific Council, the Secretary may approve measures to allow catcher vessels eligible under subsection (a) to deliver pollock harvested from the directed fishing allowance under section 206(b)(1) to shoreside processors not eligible under paragraph (1) if the total allowable catch for pollock in the Bering Sea and Aleutian Islands Management Area increases by more than 10 percent above the total allowable catch in such fishery in 1997, or in the event of the actual total loss or constructive total loss of a shoreside processor eligible under paragraph (1)(A).

(g) **Replacement Vessels.** In the event of the actual total loss or constructive total loss of a vessel eligible under subsections (a), (b), (c), (d), or (e), the owner of such vessel may replace such vessel with a vessel which shall be eligible in the same manner under that subsection as the eligible vessel, provided that

(1) such loss was caused by an act of God, an act of war, a collision, an act or omission of a party other than the owner or agent of the vessel, or any other event not caused by the willful misconduct of the owner or agent;

(2) the replacement vessel was built in the United States and if ever rebuilt, was rebuilt in the United States;

(3) the fishery endorsement for the replacement vessel is issued within 36 months of the end of the last year in which the eligible vessel harvested or processed pollock in the directed pollock fishery;

(4) if the eligible vessel is greater than 165 feet in registered length, of more than 750 gross registered tons (as measured under chapter 145 of title 46) or 1,900 gross registered tons as measured under chapter 143 of that title, or has engines capable of producing more than 3,000 shaft horsepower, the replacement vessel is of the same or lesser registered length, gross registered tons, and shaft horsepower;

(5) if the eligible vessel is less than 165 feet in registered length, of fewer than 750 gross registered tons, and has engines incapable of producing less than 3,000 shaft horsepower, the replacement vessel is less than each of such thresholds and does not exceed by more than 10 percent the registered length, gross registered tons or shaft horsepower of the eligible vessel; and

(6) the replacement vessel otherwise qualifies under federal law for a fishery endorsement, including under section 12102(c) of title 46, United States Code, as amended by this Act.

(h) **Eligibility During Implementation.** In the event the Secretary is unable to make a final determination about the eligibility of a vessel under subsection (b)(8) or subsection (e)(21) before January 1, 1999, or a vessel or shoreside processor under subsection (a), subsection (c)(21), or subsection (f) before January 1, 2000, such vessel or shoreside processor, upon the filing of an application for eligibility, shall be eligible to participate in the directed pollock fishery pending final determination by the Secretary with respect to such vessel or shoreside processor.

(i) **Eligibility Not a Right.** Eligibility under this section shall not be construed

(1) to confer any right of compensation, monetary or otherwise, to the owner of any catcher vessel, catcher/processor, mothership, or shoreside processor if such eligibility is revoked or limited in any way, including through the revocation or limitation of a fishery endorsement or any federal permit or license;

(2) to create any right, title, or interest in or to any fish in any fishery, or

(3) to waive any provision of law otherwise applicable to such catcher vessel, catcher/processor, mothership, or shoreside processor.

Sec. 209. List of Ineligible Vessels.

Effective December 31, 1998, the following vessels shall be permanently ineligible for fishery endorsements, and any claims (including relating to catch history) associated with such vessels that could qualify any owners of such vessels for any present or future limited access system permit in any fishery within the exclusive economic zone of the United States (including a vessel moratorium permit or license limitation program permit in fisheries under the authority of the North Pacific Council) are hereby extinguished:

(1) AMERICAN EMPRESS (United States official number 942347);

(2) PACIFIC SCOUT (United States official number 934772);

(3) PACIFIC EMPLOYER (United States official number 942592);

(4) PACIFIC NAVIGATOR (United States official number 592204);

(5) VICTORIA ANN (United States official number 592207);

(6) ELIZABETH ANN (United States official number 534721);

(7) CHRISTINA ANN (United States official number 653045);

(8) REBECCA ANN (United States official number 592205);

(9) BROWNS POINT (United States official number 587440).

Sec. 210. Fishery Cooperative Limitations.

(a) **Public Notice.** (1) Any contract implementing a fishery cooperative under section 1 of the Act of June 25, 1934 (15 U.S.C. 521) in the directed pollock fishery and any material modifications to any such contract shall be filed not less than 30 days prior to the start of fishing under the contract with the North Pacific Council and with the Secretary, together with a copy of a letter from a party to the contract requesting a business review letter on the fishery cooperative from the Department of Justice and any response to such request. Notwithstanding section 402 of the Magnuson-Stevens Act (16 U.S.C. 1881a) or any other provision of law, but taking into account the interest of parties to any such contract in protecting the confidentiality of proprietary information, the North Pacific Council and Secretary shall

(A) make available to the public such information about the contract, contract modifications, or fishery cooperative the North Pacific Council and Secretary deem appropriate, which at a minimum shall include a list of the parties to the contract, a list of the vessels involved, and the amount of pollock and other fish to be harvested by each party to such contract; and

(B) make available to the public in such manner as the North Pacific Council and Secretary deem appropriate information about the harvest by vessels under a fishery cooperative of all species (including by catch) in the directed pollock fishery on a vessel-by-vessel basis.

(b) Catcher Vessels Onshore

(1) *Catcher Vessel Cooperatives.* Effective January 1, 2000, upon the filing of a contract implementing a fishery cooperative under subsection (a) which

(A) is signed by the owners of 80 percent or more of the qualified catcher vessels that delivered pollock for processing by a shoreside processor in the directed pollock fishery in the year prior to the year in which the fishery cooperative will be in effect; and

(B) specifies, except as provided in paragraph (6), that such catcher vessels will deliver pollock in the directed pollock fishery only to such shoreside processor during the year in which the fishery cooperative will be in effect and that such shoreside processor has agreed to process such pollock, the Secretary shall allow only such catcher vessels (and catcher vessels whose owners voluntarily participate pursuant to paragraph (2)) to harvest the aggregate percentage of the directed fishing allowance under section 206(b)(1) in the year in which the fishery cooperative will be in effect that is equivalent to the aggregate total amount of pollock harvested by such catcher vessels (and by such catcher vessels whose owners voluntarily participate pursuant to paragraph (2)) in the directed pollock fishery for processing by the inshore component during 1995, 1996, and 1997 relative to the aggregate total amount of pollock harvested in the directed pollock fishery for processing by the inshore component during such years and shall prevent such catcher vessels (and catcher vessels whose owners voluntarily participate pursuant to paragraph (2)) from harvesting in aggregate in excess of such percentage of such directed fishing allowance.

(2) *Voluntary Participation.* Any contract implementing a fishery cooperative under paragraph (1) must allow the owners of other qualified catcher vessels to enter into such contract after it is filed and before the calendar year in which fishing will begin under the same terms and conditions as the owners of the qualified catcher vessels who entered into such contract upon filing.

(3) *Qualified Catcher Vessel.* For the purposes of this subsection, a catcher vessel shall be considered a qualified catcher vessel if, during the year prior to the year in which the fishery cooperative will be in effect, it delivered more pollock to the shoreside processor to which it will deliver pollock under the fishery cooperative in paragraph (1) than to any other shoreside processor.

(4) *Consideration of Certain Vessels.* Any contract implementing a fishery cooperative under paragraph (1) which has been entered into by the owner of a qualified catcher vessel eligible under section 208(a) that harvested pollock for processing by catcher/processors or motherships in the directed pollock fishery during 1995, 1996, and 1997 shall, to the extent practicable, provide fair and equitable terms and conditions for the owner of such qualified catcher vessel.

(5) *Open Access.* A catcher vessel eligible under section 208(a) the catch history of which has not been attributed to a fishery cooperative under paragraph (1) may be used to deliver pollock harvested by such vessel from the directed fishing allowance under section 206(b)(1) (other than pollock reserved under paragraph (1) for a fishery cooperative) to any of the shoreside processors eligible under section 208(f). A catcher vessel eligible under section 208(a) the catch history of which has been attributed to a fishery cooperative under paragraph (1) during any calendar year may not harvest any pollock apportioned under section 206(b)(1) in such calendar year other than the pollock reserved under paragraph (1) for such fishery cooperative.

(6) *Transfer of Cooperative Harvest.* A contract implementing a fishery cooperative under paragraph (1) may, notwithstanding the other provisions of this subsection, provide for up to 10 percent of the pollock harvested under such cooperative to be processed by a shoreside processor eligible under section 208(f) other than the shoreside processor to which pollock will be delivered under paragraph (1).

(c) **Catcher Vessels to Catcher/Processors.** Effective January 1, 1999, not less than 8.5 percent of the directed fishing allowance under section 206(b)(2) shall be available for harvest only by the catcher vessels eligible under section 208(b). The owners of such catcher vessels may participate in a fishery cooperative with the owners of the catcher/processors eligible under paragraphs (1) through (20) of the section 208(e). The owners of such catcher vessels may participate in a fishery cooperative that will be in effect during 1999 only if the contract implementing such cooperative establishes penalties to prevent such vessels from exceeding in 1999 the traditional levels harvested by such vessels in all other fisheries in the exclusive economic zone of the United States.

(d) Catcher Vessels to Motherships

(1) *Processing.* Effective January 1, 2000, the authority in section 1 of the Act of June 25, 1934 (48 STAT. 1213 and 1214; 15 U.S.C. 521 et seq.) shall extend to processing by motherships eligible under section 208(d) solely for the purposes of forming or participating in a fishery cooperative in the directed pollock fishery upon the filing of a contract to implement a fishery cooperative under subsection (a) which has been entered into by the owners of 80 percent or more of the catcher vessels eligible under section 208(c) for the duration of such contract, provided that such owners agree to the terms of the fishery cooperative involving processing by the motherships.

(2) *Voluntary Participation.* Any contract implementing a fishery cooperative described in paragraph (1) must allow the owners of any other catcher vessels eligible under section 208(c) to enter such contract after it is filed and before the calendar year in which fishing will begin under the same terms and conditions as the owners of the catcher vessels who entered into such contract upon filing.

(e) Excessive Shares.

(1) *Harvesting.* No particular individual, corporation, or other entity may harvest, through a fishery cooperative or otherwise, a total of more than 17.5 percent of the pollock available to be harvested in the directed pollock fishery.

(2) *Processing.* Under the authority of section 301(a)(4) of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(4)), the North Pacific Council is

directed to recommend for approval by the Secretary conservation and management measures to prevent any particular individual or entity from processing an excessive share of the pollock available to be harvested in the directed pollock fishery. In the event the North Pacific Council recommends and the Secretary approves an excessive processing share that is lower than 17.5 percent, any individual or entity that previously processed a percentage greater than such share shall be allowed to continue to process such percentage, except that their percentage may not exceed 17.5 percent (excluding pollock processed by catcher/processors that was harvested in the directed pollock fishery by catcher vessels eligible under section 208(b)) and shall be reduced if their percentage decreases, until their percentage is below such share. In recommending the excessive processing share, the Northern Pacific Council shall consider the need of catcher vessels in the directed pollock fishery to have competitive buyers for the pollock harvested by such vessels.

(3) *Review by Maritime Administration.* At the request of the North Pacific Council or the Secretary, any individual or entity believed by such Council or the Secretary to have exceeded the percentage in either paragraph (1) or (2) shall submit such information to the Administrator of the Maritime Administration as the Administrator deems appropriate to allow the Administrator to determine whether such individual or entity has exceeded either such percentage. The Administrator shall make a finding as soon as practicable upon such request and shall submit such finding to the North Pacific Council and the Secretary. For the purposes of this subsection, any entity in which 10 percent or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity.

(f) **Landing Tax Jurisdiction.** Any contract filed under subsection (a) shall include a contract clause under which the parties to the contract agree to make payments to the State of Alaska for any pollock harvested in the directed pollock fishery which is not landed in the State of Alaska, in amounts which would otherwise accrue had the pollock been landed in the State of Alaska subject to any landing taxes established under Alaska law. Failure to include such a contract clause or for such amounts to be paid shall result in a revocation of the authority to form fishery cooperatives under section 1 of the Act of June 25, 1934 (15 U.S.C. 521 et seq.).

(g) **Penalties.** The violation of any of the requirements of this subtitle or any regulation or permit issued pursuant to this subtitle shall be considered the commission of an act prohibited by section 307 of the Magnuson-Stevens Act (16 U.S.C. 1857), and sections 308, 309, 310, and 311 of such Act (16 U.S.C. 1858, 1859, 1860, and 1861) shall apply to any such violation in the same manner as to the commission of an act prohibited by section 307 of such Act (16 U.S.C. 1857). In addition to the civil penalties and permit sanctions applicable to prohibited acts under section 308 of such Act (16 U.S.C. 1858), any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have violated a requirement of this section shall be subject to the forfeiture to the Secretary of Commerce of any fish harvested or processed during the commission of such act.

Sec. 211. Protections for Other Fisheries; Conservation Measures.

(a) **General.** The North Pacific Council shall recommend for approval by the Secretary such conservation and management measures as it determines necessary to protect other fisheries under its jurisdiction and the participants in those fisheries, including processors, from adverse impacts caused by this Act or fishery cooperatives in the directed pollock fishery.

(b) Catcher/Processor Restrictions.

(1) *General.* The restrictions in this subsection shall take effect on January 1, 1999 and shall remain in effect thereafter except that they may be superseded (with the exception of paragraph (4)) by conservation and management measures recommended after the date of the enactment of this Act by the North Pacific Council and approved by the Secretary in accordance with the Magnuson-Stevens Act.

(2) *Bering Sea Fishing.* The catcher/processors eligible under paragraphs (1) through (20) of section 208(e) are hereby prohibited from, in the aggregate

(A) exceeding the percentage of the harvest available in the offshore component of any Bering Sea and Aleutian Islands groundfish fishery (other than the pollock fishery) that is equivalent to the total harvest by such catcher/processors and the catcher/processors listed in section 209 in the fishery in 1995, 1996, and 1997 relative to the total amount available to be harvested by the offshore component in the fishery in 1995, 1996, and 1997;

(B) exceeding the percentage of the prohibited species available in the offshore component of any Bering Sea and Aleutian Islands groundfish fishery (other than the pollock fishery) that is equivalent to the total of the prohibited species harvested by such catcher/processors and the catcher/processors listed in section 209 in the fishery in 1995, 1996, and 1997 relative to the total amount of prohibited species available to be harvested by the offshore component in the fishery in 1995, 1996, and 1997.

(C) fishing for Atka mackerel in the eastern area of the Bering Sea and Aleutian Islands and from exceeding the following percentages of the directed harvest available in the Bering Sea and Aleutian Islands Atka mackerel fishery

(i) 11.5 percent in the central area; and

(ii) 20 percent in the western area.

(3) *Bering Sea Processing.* The catcher/processors eligible under paragraphs (1) through (20) of section 208(e) are hereby prohibited from

(A) processing any of the directed fishing allowances under paragraphs (1) or (3) of section 206(b); and

(B) processing any species of crab harvested in the Bering Sea and Aleutian Islands Management Area.

(4) *Gulf of Alaska.* The catcher/processors eligible under paragraphs (1) through (20) of section 208(e) are hereby prohibited from

(A) harvesting any fish in the Gulf of Alaska.

(B) processing any groundfish harvested from the portion of the exclusive economic zone off Alaska known as area 630 under the fishery management plan for Gulf of Alaska groundfish; or

(C) processing any pollock in the Gulf of Alaska (other than as by catch in non-pollock groundfish fisheries) or processing, in the aggregate, a total of more than 10 percent of the cod harvested from areas 610, 620, and 640 of the Gulf of Alaska under the fishery management plan for Gulf of Alaska groundfish.

(5) *Fisheries Other than North Pacific.* The catcher/processors eligible under paragraphs (1) through (20) of section 208 (e) and motherships eligible under section 208(d) are hereby prohibited from harvesting fish in any fishery under the authority of any regional fishery management council established under section 302(a) of the Magnuson-Stevens Act (16 U.S.C. 1852(a)) other than the North Pacific Council, except for the Pacific whiting fishery, and from processing fish in any fishery under the authority of any such regional fishery management council other than the North Pacific Council, except in the Pacific whiting fishery, unless the catcher/processor or mothership is authorized to harvest or process fish under a fishery management plan recommended by the regional fishery management council of jurisdiction and approved by the Secretary.

(6) *Observers and Scales.* The catcher/processors eligible under paragraphs (1) through (20) of section 208(e) shall

(A) have two observers onboard at all times while groundfish is being harvested, processed, or received from another vessel in any fishery under the authority of the North Pacific Council; and

(B) weight its catch on a scale onboard approved by the National Marine Fisheries Service while harvesting groundfish in fisheries under the authority of the North Pacific Council.

This paragraph shall take effect on January 1, 1999 for catcher/processors eligible under paragraphs (1) through (20) of section 208(e) that will harvest pollock allocated under section 206(a) in 1999, and shall take effect on January 1, 2000 for all other catcher/processors eligible under such paragraphs of section 208(e).

(c) Catcher Vessel and Shoreside Processor Restrictions.

(1) *Required Council Recommendations.* By not later than July 1, 1999, the North Pacific Council shall recommend for approval by the Secretary conservation and management measures to

(A) prevent the catcher vessels eligible under subsections (a), (b), and (c) of section 208 from exceeding in the aggregate the traditional harvest levels of such vessels in other fisheries under the authority of the North Pacific Council as a result of fishery cooperatives in the directed pollock fisheries; and

(B) protect processors not eligible to participate in the directed pollock fishery from adverse effects as a result of this Act or fishery cooperatives in the directed pollock fishery.

If the North Pacific Council does not recommend such conservation and management measures by such date, or if the Secretary determines that such conservation and management measures recommended by the North Pacific Council are not adequate to fulfill the purposes of this paragraph, the Secretary may by regulation restrict or change the authority in section 210(b) to the extent the Secretary deems appropriate, including by preventing fishery cooperatives from being formed pursuant to such section and by providing greater flexibility with respect to the shoreside processor or shoreside processors to which catcher vessels in a fishery cooperative under section 210(b) may deliver pollock.

(2) Bering Sea Crab and Groundfish.

(A) Effective January 1, 2000, the owners of the motherships eligible under section 208(d) and the shoreside processors eligible under section 208(f) that receive pollock from the directed pollock fishery under a fishery cooperative are hereby prohibited from processing, in the aggregate for each calendar year, more than the percentage of the total catch of each species of crab in directed fisheries under the jurisdiction of the North Pacific Council than facilities operated by such owners processed of each such species in the aggregate, on average, in 1995, 1996, and 1997. For the purposes of this subparagraph, the term facilities means any processing plant, catcher/processor, mothership, floating processor, or any other operation that processes fish. Any entity in which 10 percent or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity for the purposes of this subparagraph.

(B) Under the authority of section 301(a)(4) of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(4)), the North Pacific Council is directed to recommend for approval by the Secretary conservation and management measures to prevent any particular individual or entity from harvesting or processing an excessive share of crab or of groundfish in fisheries in the Bering Sea and Aleutian Islands Management Area.

(C) The catcher vessels eligible under section 208(b) are hereby prohibited from participating in a directed fishery for any species of crab in the Bering Sea and Aleutian Islands Management Area unless the catcher vessel harvested crab in the directed fishery for that species of crab in such Area during 1997 and is eligible to harvest such crab in such directed fishery under the license limitation program recommended by the North Pacific Council and approved by the Secretary. The North Pacific Council is directed to recommend measures for approval by the Secretary to eliminate latent licenses under such program, and nothing in this subparagraph shall preclude the Council from recommending measures more restrictive than under this paragraph.

(3) Fisheries Other than North Pacific.

(A) By not later than July 1, 2000, the Pacific Fishery Management Council established under section 302(a)(1)(F) of the Magnuson-Stevens Act (16 U.S.C. 1852 (a)(1)(F)) shall recommended for approval by the Secretary conservation and management measures to protect fisheries under its jurisdiction and the participants in those fisheries from adverse impacts caused by this Act or by any fishery cooperatives in the directed pollock fishery.

(B) If the Pacific Council does not recommend such conservation and management measures by such date, or if the Secretary determines that such conservation and management measures recommended by the Pacific Council are not adequate to fulfill the purposes of this paragraph, the Secretary may by regulation implement adequate measures including, but not limited to, restrictions on vessels which harvest pollock under a fishery cooperative which will prevent such vessels from harvesting Pacific groundfish, and restrictions on the number of processors eligible to process Pacific groundfish.

(d) **By catch Information.** Notwithstanding section 402 of the Magnuson-Stevens Act (16 U.S.C. 1881a), the North Pacific Council may recommend and the Secretary may approve, under such terms and conditions as the North Pacific Council and Secretary deem appropriate, the public disclosure of any information from the groundfish fisheries under the authority of such Council that would be beneficial in the implementation of section 301(a)(9) or section 303(a)(11) of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(9) and 1853(a)(11)).

(e) **Community Development Loan Program.** Under the authority of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et seq.), and subject to the availability of appropriations, the Secretary is authorized to provide direct loan obligations to communities eligible to participate in the western Alaska community development quota program established under section 304(i) of the Magnuson-Stevens Act (16 U.S.C. 1855(i)) for the purposes of purchasing all or part of an ownership interest in vessels and shoreside processors eligible under subsections (a), (b), (c), (d), (e), or (f) of section 208. Notwithstanding the eligibility criteria in section 208(a) and section 208(c), the LISA MARIE (United States official number 1038717) shall be eligible under such sections in the same manner as other vessels eligible under such sections.

Sec. 212. Restriction on Federal Loans.

Section 302(b) of the Fisheries Financing Act (46 U.S.C. 1274 note) is amended

(1) by inserting (1) before Until October 1, 2001 ; and

(2) by inserting at the end the following new paragraph: (2) No loans may be provided or guaranteed by the Federal Government for the construction or rebuilding of a vessel intended for use as a fishing vessel (as defined in section 2101 of title 46, United States Code), if such vessel will be greater than 165 feet in registered length, of more than 750 gross registered tons (as measured under chapter 145 of title 46) or 1,900 gross registered tons as measured under chapter 143 of that title, or have an engine or engines capable of producing a total of more than 3,000 shaft horsepower, after such construction or rebuilding is completed. This prohibition shall not apply to vessels to be used in the menhaden fishery or in tuna purse seine fisheries outside the exclusive economic zone of the United States or the area of the South Pacific Regional fisheries Treaty.

Sec. 213. Duration.

- (a) **General.** Except as otherwise provided in this title, the provisions of this title shall take effect upon the date of the enactment of this Act. There are authorized to be appropriated \$6,700,000 per year to carry out the provisions of this Act through fiscal year 2004.
- (b) **Existing Authority.** Except for the measures required by this subtitle, nothing in this subtitle shall be construed to limit the authority of the North Pacific Council or the Secretary under the Magnuson-Stevens Act.
- (c) **Changes to Fishery Cooperative Limitations and Pollock CDQ Allocation.** The North Pacific Council may recommend and the Secretary may approve conservation and management measures in accordance with the Magnuson-Stevens Act
- (1) that supersede the provisions of this subtitle, except for section 206 and 208, for conservation purposes or to mitigate adverse effects in fisheries or on owners of fewer than three vessels in the directed pollock fishery caused by this title or fishery cooperatives in the directed pollock fishery, provided such measures take into account all factors affecting the fisheries and are imposed fairly and equitable to the extent practicable among and within the sectors in the directed pollock fishery.
- (2) that supersede the allocation in section 206(a) for any of the years 2002, 2003, and 2004, upon the finding by such Council that the western Alaska community development quota program for pollock has been adversely affected by the amendments in this subtitle; or
- (3) that supersede the criteria required in paragraph (1) of section 210(b) to be used by the Secretary to set the percentage allowed to be harvested by catcher vessels pursuant to a fishery cooperative under such paragraph.
- (d) **Report to Congress.** Not later than October 1, 2000, the North Pacific Council shall submit a report to the Secretary and to Congress on the implementation and effects of this Act, including the effects on fishery conservation and management, on by catch levels, on fishing communities, on business and employment practices of participants in any fishery cooperatives, on the western Alaska community development quota program, on any fisheries outside of the authority of the North Pacific Council, and such other matters as the North Pacific Council deems appropriate.
- (e) **Report on Fillet Production.** Not later than June 1, 2000, the General Accounting Office shall submit a report to the North Pacific Council, the Secretary, and the Congress on whether this Act has negatively affected the market for fillets and fillet blocks, including through the reduction in the supply of such fillets and fillet blocks. If the report determines that such market has been negatively affected, the North Pacific Council shall recommend measures for the Secretary's approval to mitigate any negative effects.
- (f) **Severability.** If any provision of this title, an amendment made by this title, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this title, the amendments made by this title, and the application of the provisions of such to any person or circumstance shall not be affected thereby.
- (g) **International Agreements.** In the event that any provision of section 12102(c) or section 31322(a) of title 46, United States Code, as amended by this Act, is determined to be inconsistent with an existing international agreement relating to foreign investment to which the United States is a party with respect to the owner or mortgagee on October 1, 2001 of a vessel with a fishery endorsement, such provision shall not apply to that owner or mortgagee with respect to such vessel to the extent of any such inconsistency. The provisions of section 12102(c) and section 31322(a) of title 46, United States Code, as amended by this Act, shall apply to all subsequent owners and mortgagees of such vessel, and shall apply, notwithstanding the preceding sentence, to the owner on October 1, 2001 of such vessel if any ownership interest in that owner is transferred to or otherwise acquired by a foreign individual or entity after such date.

H. R.2598

Title: A bill entitled: "The Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987".

Sponsor: Rep Lowry, Mike [WA-7] (introduced 6/4/1987)Cosponsors (3) **Related Bills:** H.R.2661, H.R.3387

Latest Major Action: 1/11/1988 Became Public Law No: 100-239.

SUMMARY AS OF:

12/21/1987--House agreed to Senate amendment with amendment. (There are 2 other summaries)

(House agreed to Senate amendment with an amendment)

Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 - Amends the Magnuson Fishery Conservation and Management Act to revise the definition of "vessel of the United States" to insert references to specific provisions of existing law and to include any vessel not equipped with propulsion machinery and used exclusively for pleasure.

Amends Federal law to revise the definition of "fisheries" to include processing, storing, and transporting (except in foreign commerce) in the navigable waters of the United States or in the exclusive economic zone, of currently-specified marine life and objects.

Requires a rebuilt vessel, in order to be issued a fishery license or an appropriately endorsed registry, to have been rebuilt in the United States.

Provides for exceptions to the requirement that vessels must be U.S. built or rebuilt in order to be issued a fishery license or registry. Requires any fishery license or registry issued to a foreign-built vessel to be endorsed to restrict the vessel from catching, taking, or harvesting.

Revises requirements regarding: (1) U.S. citizenship or permanent resident alien status for radio officers and other crew members of vessels in certain circumstances; (2) the percentage of the crew which is able to understand any order spoken by the officers; and (3) the percentage of the deck crew having merchant mariner's documents endorsed for a rating of at least able seaman. Allows not more than 25 percent of the unlicensed seamen on a fishing, fish processing, or fish tender vessel to be aliens allowed to be employed under the Immigration and Naturalization Act. Deems aliens employed on certain fishing-related vessels to be employed in the United States for purposes of specified provisions of the Immigration and Nationality Act relating to unlawful employment of aliens.

Authorizes vessels for which coastwise, Great Lakes, or fishery licenses, or appropriately endorsed registries, were issued before July 28, 1987, to continue in such trades for one year or until their documentation is renewed, whichever come later.

Declares that a vessel owned by a corporation is not eligible for a fishery license unless the controlling interest in the corporation is owned by individuals who are U.S. citizens. Exempts from such provision certain vessels licensed before July 28, 1987.

Directs the Secretary of Commerce to submit reports to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives concerning: (1) the potential impact on the development of the U.S. fishing industry of the transportation of fish products by vessels of the United States from foreign fish processing vessels to points in the United States; and (2) the trends in the development of fishery resources under the exclusive fishery management authority of the United States, including the effect of this Act on the U.S. fishing industry.

Authorizes the Secretary of the department in which the Coast Guard is operating to issue a certificate of documentation to each of eight named vessels.

MAJOR ACTIONS:

- 6/4/ 1987 Introduced in House
- 11/5/1987 Reported to House (Amended) by House Committee on Merchant Marine and Fisheries. Report No: 100-423.
- 11/9/1987 Passed/agreed to in House: Passed House (Amended) by Yea-Nay Vote: 351 - 40 (Record Vote No: 424).
- 12/17/1987 Passed/agreed to in Senate: Passed Senate with an amendment and an amendment to the Title by Voice Vote.
- 12/21/1987 Resolving differences -- House actions: House Concurred, in Senate Amendments, with Amendments by Voice Vote.
- 12/22/1987 Resolving differences -- Senate actions: Senate agreed to the House amendment to the Senate amendment by Voice Vote.
- 12/22/1987 Cleared for White House.

12/30/1987 Presented to President.
1/11/1988 Signed by President.
1/11/1988 Became Public Law No: 100-239.

ALL ACTIONS: (Floor Actions/Congressional Record Page References)

6/4/1987:
Referred to House Committee on Merchant Marine and Fisheries.

6/10/1987:
Executive Comment Requested from DOT, State, Commerce.

6/10/1987:
Referred to Subcommittee on Coast Guard and Navigation.

6/10/1987:
Referred to Subcommittee on Fisheries and Wildlife Conservation and the Environment.

6/10/1987:
Referred to Subcommittee on Merchant Marine.

7/28/1987:
Subcommittee on Merchant Marine Discharged.

7/28/1987:
Subcommittee on Coast Guard and Navigation Discharged.

7/28/1987:
Subcommittee on Fisheries and Wildlife Conservation and the Environment Discharged.

7/28/1987:
Committee Consideration and Mark-up Session Held.

7/28/1987:
Ordered to be Reported (Amended).

11/5/1987:
Reported to House (Amended) by House Committee on Merchant Marine and Fisheries. Report No: 100-423.

11/5/1987:
Placed on Union Calendar No: 273.

11/9/1987:
Called up by House Under Suspension of Rules.

11/9/1987:
Passed House (Amended) by Yea-Nay Vote: 351 - 40 (Record Vote No: 424).

11/17/1987:
Received in the Senate.

11/18/1987:
Read twice. Placed on Senate Legislative Calendar under General Orders. Calendar No. 440.

12/17/1987:
[S.AMDT.1364](#) Proposed by Senator Byrd for Senator Hollings.
To make an amendment in the nature of a substitute.

12/17/1987:
[S.AMDT.1365](#) Proposed by Senator Hecht for Senator Murkowski to Amendment SP 1364.
To amend the pending amendment in the nature of a substitute.

12/17/1987:
[S.AMDT.1364](#) Amendment SP 1364 agreed to in Senate by Voice Vote.

12/17/1987:
[S.AMDT.1365](#) Amendment SP 1365 agreed to in Senate by Voice Vote.

12/17/1987:
Measure laid before Senate by unanimous consent.

12/17/1987:
Passed Senate with an amendment and an amendment to the Title by Voice Vote.

12/18/1987:
Message on Senate action sent to the House.

12/21/1987:
House Concurred, in Senate Amendments , with Amendments by Voice Vote.

12/21/1987:
Message on House action received in Senate and held at desk: House amendment to Senate amendment.

12/22/1987:
Senate agreed to the House amendment to the Senate amendment by Voice Vote.

12/22/1987:
Cleared for White House.

12/30/1987:
Measure Signed in Senate.

12/30/1987:
Presented to President.

1/11/1988:
Signed by President.

1/11/1988:
Became Public Law No: 100-239.

TITLE(S): (*italics indicate a title for a portion of a bill*)

SHORT TITLE(S) AS INTRODUCED:

Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987

SHORT TITLE(S) AS REPORTED TO HOUSE:

Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987

SHORT TITLE(S) AS PASSED HOUSE:

Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987

SHORT TITLE(S) AS ENACTED:

Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987

OFFICIAL TITLE AS INTRODUCED:

A bill entitled: "The Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987".

COSPONSORS(3), ALPHABETICAL [followed by Cosponsors withdrawn]:

Rep Bonker, Don [WA-3] - 6/4/1987 Rep Miller, John R. [WA-1] - 6/4/1987

Rep Young, Don [AK-98] - 6/4/1987

COMMITTEE(S):

Committee/Subcommittee:

Activity:

House Merchant Marine and Fisheries

Referral, Markup, Reporting

Subcommittee on Coast

Referral, Discharged

Guard and Navigation

Subcommittee on Fisheries

Referral, Discharged

and Wildlife Conservation

and the Environment

Subcommittee on Merchant

Referral, Discharged

Marine

RELATED BILL DETAILS: (additional related bills may be identified in Status)

Bill:

Relationship:

H.R.2661

Related bill identified by CRS

H.R.3387

Related bill identified by CRS

AMENDMENT(S):

1. S.AMDT.1364 to H.R.2598 To make an amendment in the nature of a substitute.

Sponsor: Sen Hollings, Ernest F. [SC] (introduced 12/17/1987) **Cosponsors** (None)

Latest Major Action: 12/17/1987 Senate amendment agreed to. Status: Amendment SP 1364 agreed to in Senate by Voice Vote.

2. S.AMDT.1365 to H.R.2598 To amend the pending amendment in the nature of a substitute.

Sponsor: Sen Murkowski, Frank H. [AK] (introduced 12/17/1987) **Cosponsors** (None)

Latest Major Action: 12/17/1987 Senate amendment agreed to. Status: Amendment SP 1365 agreed to in Senate by Voice Vote.

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.

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking (NPR) served July 13, 1992 (published in the **Federal Register** on July 14, 1992, at 57 FR 31165), the Interstate Commerce Commission (Commission) proposed to expand the scope of its 49 CFR 1180.2(d)(2) class exemption. That exemption, as it existed in 1992 and as it continues to exist today, exempts from the otherwise applicable prior approval requirements the acquisition or continuance in control of a nonconnecting railroad or one of its lines where (i) the railroads would not connect with each other or any railroads in their corporate family, (ii) the acquisition or continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family, and (iii) the transaction does not involve a Class I railroad. In the NPR, the Commission proposed to expand the 49 CFR 1180.2(d)(2) exemption so that it would embrace any transaction that required approval and authorization under former 49 U.S.C. 11343, provided that the transaction did not involve (i) the merger or control of at least two Class I railroads, (ii) a reduction in the number of noncommonly-controlled railroads conducting operations between any two points, or (iii) a reduction from three to two in the number of noncommonly-controlled railroads serving any interchange point.

The ICC Termination Act of 1995, Public Law 104-88, 109 Stat. 803 (ICCTA), which was signed into law by President Clinton on December 29, 1995, abolished the Commission, established the Board, reenacted (with certain changes not presently of consequence) the relevant statutory provision, and transferred to the Board responsibility for the performance of functions respecting that statutory provision. See ICCTA section 101 (abolition of the Commission); new 49 U.S.C. 701(a), as enacted by ICCTA section 201(a) (establishment of the Board); new 49 U.S.C. 11323, as enacted by ICCTA section 102(a) (this is the post-1995 version, as respects railroads, of what had been 49 U.S.C. 11343); new 49 U.S.C. 702, as enacted by ICCTA section 201(a) (except as otherwise provided, the functions previously performed by the Commission shall henceforth be performed by the Board); ICCTA section 204(b)(1) (any proceeding pending before the Commission at the time of the enactment of ICCTA shall be transferred to the Board, insofar as that proceeding concerns functions transferred to the

Board). In accordance with the mandate of ICCTA section 204(b)(1), the Ex Parte No. 282 (Sub-No. 15) rulemaking proceeding, which had been instituted by the Commission in the 1992 NPR, was transferred to the Board.

We have decided to withdraw the rule proposed by the Commission in the 1992 NPR and to discontinue the Ex Parte No. 282 (Sub-No. 15) rulemaking proceeding. Our experience with the administration of cases handled under new 49 U.S.C. 11323 has led us to conclude that there is no pressing necessity for the expansion of the 49 CFR 1180.2(d)(2) class exemption. Any 49 U.S.C. 11323 transaction that is not embraced by any of the existing 49 CFR 1180.2(d) class exemptions but that would be embraced by the expanded 49 CFR 1180.2(d)(2) class exemption proposed by the Commission can be handled under the individualized exemption procedures now codified at 49 CFR part 1121, and appropriate determinations can be made on a case-by-case basis.

Small Entities

The Board certifies that the action taken in this proceeding will not have a significant economic impact on a substantial number of small entities.

Environmental and Energy Considerations

The action taken in this proceeding will not significantly affect either the quality of the human environment or the conservation of energy resources.

Board Releases Available Via the Internet

Decisions and notices of the Board, including this notice, are available on the Board's website at "WWW.STB.DOT.GOV."

Decided: November 17, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 99-30542 Filed 11-23-99; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 991118308-9308-01; I.D. 101899C]

RIN 0648-AN33

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Control Date

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

ACTION: Advance notice of proposed rulemaking; notice of control date for the Pacific Coast groundfish fishery; request for comments.

SUMMARY: This document announces a control date of September 16, 1999, after which vessels eligible for benefits under the American Fisheries Act (AFA) may be subject to restrictions on participation in the Pacific Coast groundfish fisheries. The intended effect of announcing this control date is to discourage speculative entry into the Pacific coast groundfish fisheries by AFA-qualified vessels while the Pacific Fishery Management Council (Council) develops recommendations to protect the Pacific Coast groundfish fisheries from adverse impacts caused by the AFA.

DATES: Comments may be submitted in writing by December 27, 1999.

ADDRESSES: Comments may be mailed to Jerry Mallet, Chairman, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: The Pacific Fishery Management Council at 503-326-6352; or Bill Robinson at 206-526-6140; or Svein Fougner at 562-980-4000.

SUPPLEMENTARY INFORMATION: The Pacific Fishery Management Council (Council) established under section 302(a)(1)(F) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)(F)) is considering recommendations for approval by NMFS of conservation and management measures to protect fisheries under its jurisdiction and the participants in those fisheries from adverse impacts caused by the AFA (Pub.L. 105-277, Div. C, Title II, October 21, 1998, 112 Stat. 2681-616; 16 U.S.C. 1851 note; 46 U.S.C. 101 note, 12102, 31322; 46 App. 1274 note), or by any

fishery cooperatives in the Alaska pollock fishery, as required by section 211(c)(3)(A) of the AFA. Pursuant to the AFA, the Council's recommendations are due to NMFS not later than July 1, 2000. The AFA at section 211(b)(5) also provides that catcher/processors and motherships eligible under the AFA are prohibited from harvesting or processing fish in any U.S. fishery outside Alaska, except the Pacific whiting fishery, unless harvesting or processing by those catcher-processor motherships is specifically authorized under a fishery management plan. Pacific whiting is a major component of the species aggregate in the Pacific Coast groundfish fisheries.

Conservation and management measures under consideration by the Council to offset adverse impacts of the AFA include possible restrictions on participation in the Pacific coast groundfish fisheries by vessels eligible for benefits under the AFA (AFA-qualified vessels). During its September 13-17, 1999, meeting in Portland, Oregon, the Council adopted September 16, 1999, as a control date to be used in placing restrictions on participation in the Pacific Coast groundfish fisheries by AFA-qualified vessels. In making this announcement, NMFS and the Council intend to prevent speculative entry into the fisheries after the control date by AFA-qualified vessels, while the Council develops and analyzes its recommendations. The control date applies to catcher vessels in the mothership and shore-based sectors of the Pacific whiting fishery, and to all other non-whiting groundfish fisheries in which catch is landed shoreside. The control date provides notice to AFA-qualified vessels that might seek to participate in the Pacific Coast groundfish fisheries that current requirements for accessing these fisheries may change. Vessels entering the fisheries after the control date may be subject to new restrictions that do not

currently exist, and they may not receive credit for fishing after the control date.

The Pacific Coast Groundfish Fishery Management Plan (FMP) was approved on January 4, 1982 (47 FR 43964, October 5, 1982), and has been amended 10 times. Implementing regulations for the FMP and its amendments are codified at 50 CFR part 660, Subpart G.

The AFA, enacted in 1998, reduced the harvest capacity in the Alaska pollock fishery by retiring nine Bering Sea catcher/processors. It also redistributed pollock allocations between the inshore and offshore sectors, and defined conditions for creating fishery cooperatives in the pollock fleet. Vessels that participate in such cooperatives are likely to have increased flexibility in arranging their fishing schedules and could consider entering additional fisheries.

At its September 13-17, 1999, meeting, the Council and its Groundfish Advisory Panel heard proposals from West Coast fishers and processors concerned that some AFA-qualified vessels with no previous or low levels of participation in the Pacific groundfish fishery will increase their fishing effort in the Pacific Coast groundfish fishery. A particular problem is posed if AFA-qualified vessels participating in pollock fishing cooperatives rearrange their pollock fishing schedules to allow them time to fish in non-pollock fisheries such as the Pacific Coast groundfish fishery. To participate in most limited entry groundfish fisheries vessels only need to purchase a general limited entry permit. No permit is required to participate in the open access fisheries. Because new permit holders and entrants into the open access fishery currently have access rights that are equal to those who have historically participated in the fishery, speculative entry may be encouraged. Additional effort could exacerbate existing management problems and erode the effectiveness of

future measures recommended by the Council.

The Council unanimously voted to establish a control date of September 16, 1999, and to initiate the development of recommendations to restrict AFA-qualified vessels from participating in the Pacific Coast groundfish fishery if, during a qualifying period between January 1, 1994, and September 16, 1999, the vessel: (1) did not harvest at least 50 metric tons (mt) of Pacific whiting in the mothership sector; (2) did not land at least 50 mt of Pacific whiting in the shore-based sector; or (3) did not land groundfish shoreside in the Pacific Coast groundfish fishery (not including fish landed in the Pacific whiting fishery).

Implementation of any management measures for the fishery will require amendment of the regulations implementing the FMP and may also require amendment of the FMP itself. Any action will require Council development of a regulatory proposal with public input and a supporting analysis, NMFS approval, and publication of implementing regulations in the **Federal Register**. If catch history is used as basis for participation, it is likely that AFA-qualified vessel participation in the fishery after the control date will receive little or no credit. Fishers are not guaranteed future participation in the groundfish fishery, regardless of their date of entry or level of participation in the fishery.

This advance notice of proposed rulemaking has been determined to be not significant for purposes of Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*; Pub. L. 105-277, Div. C, Title II, October 21, 1988.

Dated: November 18, 1999.

William Fox,

*Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

[FR Doc. 99-30657 Filed 11-23-99; 8:45 am]

BILLING CODE 3510-22-F

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: May 3, 2007.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 07-2385 Filed 5-16-07; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 070510101-7101-01]

RIN 0648-AV57

Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; a Temporary Rule

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

ACTION: Temporary rule; emergency action; request for comments.

SUMMARY: NMFS publishes a temporary rule to prohibit any vessel from participating in either the mothership, catcher-processor or shoreside delivery sector of the directed Pacific whiting (whiting) fishery off the West Coast in 2007 if it does not have a history of sector-specific participation in the whiting fishery between January 1, 1997, and January 1, 2007. This rule is intended to prevent serious conservation and management problems that could be caused by new entrants in 2007 and to maintain the status quo while the Pacific Fishery Management Council (Council) addresses the issue of increased effort in the whiting fishery through an amendment to the Pacific Groundfish Fishery Management Plan (FMP) for the long term.

DATES: The amendments in this rule are effective May 14, 2007 through November 13, 2007, except for amendments to §§ 660.333 and 660.335, which are effective May 14, 2007.

Comments must be received by June 18, 2007.

ADDRESSES: Comments on the management measures and the related environmental assessment (EA) may be sent to Frank Lockhart, Assistant Regional Administrator for Sustainable Fisheries, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070, fax: 206-526-6376.

Comments may be submitted via e-mail at Whiting.emergencyrule2007@noaa.gov or at the Federal e-Rulemaking Portal: <http://www.Regulations.gov>.

Copies of the FONSI and its supporting EA and other documents cited in this document are available from Frank Lockhart at the address Assistant Regional Administrator for Sustainable Fisheries, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070. Information presented by the Council for this temporary rule is available for public review during business hours at the office of the Council at 7700 NE Ambassador Place, Portland, OR 97220, phone: 503-820-2280. Copies of additional reports or testimony referenced in this document may also be obtained from the Council.

FOR FURTHER INFORMATION: Frank Lockhart (Northwest Region, NMFS), phone: 206-526-6142; fax: 206-526-6736) and e-mail: Frank.Lockhart@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

The temporary rule also is accessible via the Internet at the Office of the **Federal Register's** Web site at <http://www.gpoaccess.gov/fr/index.html>. Background information and documents, including the EA, are available at the Council's Web site at <http://pcouncil.org>.

Background

The whiting fishery off the West Coast is managed under the Groundfish FMP prepared by the Council and approved by the Secretary of Commerce under the Magnuson-Stevens Act. The Council has adopted a formal process through which, every two years, it establishes allowable catches and associated fishery conservation and management measures for most of the groundfish fishery sectors for a biennial management cycle. The whiting fishery is managed somewhat differently because there is an annual stock assessment on which the Council bases an annual determination of the U.S. optimum yield (OY) and the sub-quotas of the U.S. OY. Beginning in 1997, the Council makes annual allocations of the U.S. OY available to each of three directed fishing sectors: Mothership, catcher-processor, and shoreside delivery. Further, the directed whiting fishery has a distinct seasonal structure, with the primary season start dates for each of the three commercial sectors being the same since 1997. The primary seasons for the non-tribal catcher/processor and

mothership sectors begins May 15. The shoreside primary season in most of the Eureka statistical area (between 42° north latitude (N. lat.) and 40°30' N. lat.) begins on April 1, and the fishery south of 40°30' N. lat. begins April 15. The Pacific whiting shoreside fishery north of 42° N. lat. begins on June 15. No more than five percent of the shore-based sector allocation may be taken in the early season fishery off California before the primary season north of 42° N. lat. opens on June 15. This is intended to ensure an opportunity for all sectors of the shoreside industry to have fair opportunity to engage in the fishery when fish are available to them without excessive risk that any one area will receive disproportionately large opportunities. It also supports efforts to minimize bycatch of rockfish and salmon.

The current management regime with specific sector allocations and differences in area and sector season start dates was first implemented for the 1997 fishery (**Federal Register:** May 20, 1997 (Volume 62, Number 97)). At that time, the benefits of the sector allocations were to: Reduce the uncertainty of the amounts available for each sector, make the fishery easier to monitor, and eliminate the "first-come-first-serve" derby style incentives in the fishery associated with the "no-action" alternative as separate allocations encourage each sector to operate at a more leisurely and safe pace. By reducing the race for fish, separate sector allocations would provide greater incentives for vessels to move to other fishing grounds if necessary to lower bycatch levels, particularly of yellowtail rockfish and salmon. In addition, with separate allocations, each sector would have greater accountability and opportunity to minimize bycatch while providing each sector the flexibility of starting at different times without losing any competitive advantage. It also supported efforts to minimize bycatch of rockfish and salmon.

Since 1997, when sector specific allocations were made, the fishery has been fairly stable except for a few recent instances where additional rules had to be put in place to protect overfished species (2004) and endangered salmon (2005). As in many fisheries, when the fishery is stable, most of the participants know each other and have a shared interest in maintaining a stable situation. In this instance, cooperation includes a common interest in ensuring that bycatch is limited because excessive bycatch could close the fishery before the whiting quota is reached. Therefore, there is frequent sharing of information to ensure that

areas of high bycatch rates are known and avoided. This communication happens throughout the season but is especially crucial early in the season when the target species (whiting) and the sensitive bycatch species (overfished rockfish and salmon) are highly mobile. This communication allows fishing to be prosecuted in areas with high probability of large whiting catches with low bycatch. In turn, this has provided the directed whiting fishery with a long period to pursue the fishery and kept whiting vessels from engaging in other groundfish fishing sectors that were under severe economic stress. These are all benefits related to the enhanced communication among fishermen within a stable fishery.

In addition, keeping shoreside processing facilities open for longer periods also has helped maintain employment opportunities for many who otherwise would have been displaced by the severe cutbacks the Council had made in other groundfish fishery sectors to prevent overfishing and achieve rebuilding of overfished rockfish stocks. There is a further benefit to whiting fishers and processors, as the quality of the whiting is much better later in the season because the fish had regained weight lost during the spawning season. Finally, by shifting whiting fishing to later in the season, and through other industry voluntary actions and communications, the industry was able to reduce its likelihood of high bycatch of overfished rockfish and salmon.

In 2006, however, there was several shifts in fishery conditions that led to Council concern about the potential for major disruptions in the whiting fishery and related non-whiting groundfish fisheries. There was a significant increase in the ex-vessel price for whiting. This attracted several new vessels to the whiting shoreside fishery in 2006. Second, as rationalization of the Alaska pollock fishery was achieved, some vessels, including some American Fisheries Act-qualified vessels (AFA vessels), found they could engage in fishing for whiting off the West Coast in the spring and early summer and then shift to Alaska to take their shares of pollock later in the summer when Alaskan fishing conditions were more favorable. Among the new entries to the whiting fishery were several AFA vessels. The entry of new vessels to the whiting fishery resulted in achievement of the whiting harvest limits earlier in the year in 2006 than in 2005 and an earlier closure than anticipated of the shoreside sector, adversely affecting processors as well as fishers. The Council understood that

there was the prospect of additional entry of AFA vessels in 2007, as well as perhaps additional other vessels in the groundfish fishery.

The Council originally considered the issue of limiting new vessel entry to the whiting fishery in September 2006. At that time, the Council recommended that NMFS implement an emergency rule to prevent new entry of certain, but not all, vessels into the whiting fishery for the 2007 season, as well as prohibit certain vessels that participated in the 2006 season. The Council stated its belief that the conservation problems that would arise from an accelerated "race for fish" if certain AFA vessels were allowed to remain in the fishery, or if additional AFA vessels were allowed to enter the fishery. The prospect of more participation was alarming to the Council, which was concerned that additional vessels would result in an accelerated "race for fish," with increased harvest rates for whiting. Increased harvest rates, especially if the new vessels are of larger capacity or piloted by masters unfamiliar with the fishery, could lead to greater (and potentially disastrous) bycatch of overfished species of rockfish. In addition, the Council was advised by current whiting fishery participants that this accelerated race for fish would likely lead to higher levels of fishing earlier in the season by the at-sea portion (i.e., motherhips and catcher/processors) of the fishery; such an occurrence could result in higher bycatch of endangered or threatened salmon as bycatch rates are documented to be higher in the spring. The Council concluded that serious conservation and management problems would result from this accelerated "race for fish" caused by new entry of AFA vessels to the fishery. The Council also noted a concern was that new entry of AFA vessels could result in early achievement of the U.S. directed harvest quotas, leaving West Coast-based vessels facing no fishing or very limited fishing while the AFA vessels could return to the rationalized pollock fisheries in which they had an interest. However, the Council proposal would have prohibited only certain AFA vessels from entry to the fishery for the first time in 2007, and would have removed from the fishery only AFA vessels that had participated for the first time in 2006. The Council's recommendation would not have prevented additional non-AFA vessels from entering the fishery.

In a letter dated January 11, 2007, the Northwest Regional Administrator (RA), NMFS, notified the Council that he denied its request for an emergency rule. He noted that the Council's action

was intended to address actual or potential harm to West Coast fishers from the AFA, but that the evidence they presented to indicate harm (i.e., an earlier closure of the whiting fishery in 2006 than in 2005) was due to new participation by both AFA vessels and non-AFA vessels. While acknowledging that new market conditions were likely to attract additional vessels, he pointed out that the proposed action would have denied new entry to a selected category of vessels (i.e., AFA vessels) but not all vessels. The RA noted that the guidelines for the use of emergency rules call for use of notice-and-comment procedures when there are controversial actions with serious economic effects, especially when the decision is largely related to allocation and not conservation. Further, the Council's remedy would not have fully addressed the valid conservation concerns raised by the Council. Therefore, the proposal, as with other allocation decisions, would more appropriately be handled through the Council's full rulemaking process even if there were valid conservation concerns.

The RA subsequently advised the Council on February 13, 2007, that if it were to submit a proposal that dealt more fully with the issue of conservation risks and management problems due to potential new entry of any new vessels into the directed whiting fishery, NMFS would review that proposal on its own merits. NMFS would continue to be concerned if the request based the proposed action on the AFA rather than on the Magnuson-Stevens Act.

The Council discussed the issue at its meeting March 9, 2007, including the history of the issue, its earlier action, NMFS' rejection and indication of a possible remedy, and alternatives available to the Council. There were four new pieces of information presented at the Council meeting that exacerbated their concern about an increased race for fish. First, the price for whiting continues to increase to unprecedented levels. Ex-vessel prices increased from \$77 per ton in 2004 to \$137 per ton in 2006—nearly doubling since 2004 and increasing by more than 22 percent in 2006 from the 2005 price. Industry projections for 2007 are that prices will continue to increase to more than \$176 per ton. Second, the U.S. Optimum Yield (OY) for whiting in 2007 is 10 percent lower than the OY in 2006. Third, because of higher than projected rockfish bycatch rates, the Council took action in March 2007 that placed new and more severe constraints on non-whiting groundfish fishing. This reduces the fishing opportunities for

these non-whiting sectors. Fourth, the OY for Alaska pollock is reduced for 2007.

All of these recent and unanticipated changes in conditions increase the likelihood of an accelerated race for fish: The first by making entry more potentially lucrative for additional vessels; the second by constraining supply of whiting for harvest and leading to more pressure among vessels to quickly capture the limited whiting quota; and the third and fourth by increasing the relative attractiveness of whiting compared to other fishing opportunities. Faced with this new information, the Council adopted and submitted its new request that NMFS promulgate an emergency rule that would prohibit any vessel from operating in the mothership, catcher-processor, or shoreside delivery sector of the whiting fishery in 2007 if it did not have a history of sector-specific participation prior to January 1, 2007. The Council also committed to completing an amendment to its Groundfish FMP to resolve issues associated with AFA vessels for the long term, consistent with the Magnuson-Stevens Act, the AFA, and other applicable law. This could lead to an additional program under consideration of an individual fishermen's quota system as early as 2010.

NMFS agrees that if this rule is not implemented, an accelerated "race for fish" is likely to cause serious conservation and management problems, including excessive bycatch of overfished rockfish, excessive catch of endangered and threatened salmon, and severe disruption of other groundfish fishery sectors. This rule will help maintain stability in the whiting fishery and other groundfish fishing sectors in 2007 while the Council completes its FMP amendment to resolve groundfish and whiting fishing fleet capacity issues for the long term. This rule also provides that parties who invested in 2006 and early 2007 by purchasing groundfish trawl limited entry permits for aggregation and use on a single vessel in the whiting fishery in 2007 are exempted from the prohibition against subsequently disaggregating such permits. This will mitigate financial harm to such parties who invested in good faith without knowing that this emergency rule could be implemented. The rule also contains provisions to allow a person who transferred a permit to a "prohibited" vessel (a vessel not eligible to participate in the fishery) can reverse that action and return the permit to the previous vessel or transfer it to a vessel that is eligible. Normally, a permit can

only be transferred once a year. This person was not aware of the prospect of an emergency rule when he transferred the permit. Fairness justifies this exception to the regulation.

For purposes of implementing the Council request, which is for control of entry on a sector-by-sector basis, NMFS is using 1997 as the base year. That is the first year in which the three sectors began being considered for separate sub-quotas and management controls. State landings data, observer records, and NORPAC industry reports will be the sole evidence to demonstrate eligibility based on historic sector-specific participation.

Public Comments and Issues

At the Council meeting, the Council took comment on the issue prior to taking action. There were numerous expressions of support for the action as well as some comments opposed to the action. In addition, the Northwest Region and the Council have received written comments since the Council action was taken. At the meeting, fishers who commented were divided; some opposed the action while most testifying before the Council supported it. While most of those testifying stated their belief that allowing new entrants would cause a conservation problem, there was some testimony that a problem would not occur. Some argued that leaving the fishery open to new entry could result in a high probability of intensive fishing early in the season leading to conservation problems (especially with respect to bycatch), while others argued that the catch limit on whiting provided assurance that there would not be any threat to whiting, and that the limits on bycatch provided protection to overfished rockfish. There was agreement that there is an allocation issue that the Council needs to resolve. Some urged the Council to address this for the longer term through Amendment 15 without an emergency rule, while others supported an emergency rule to allow the fishery to proceed as it has in recent years (i.e., in a stable manner) without new entry while the Council develops Amendment 15. A spokesperson for the recreational sector supported the emergency rule as it could reduce the risk of excessive bycatch of salmon and rockfish, which in turn would reduce the risk of further constraints on recreational fishing for groundfish. A West Coast processing industry member also spoke in favor of the emergency rule.

The West Coast state officials voting at the meeting all supported the emergency rule. The California state official made the motion for the

emergency rule, expressing concern about the increased risk of excessive bycatch and noting restrictive actions the Council has taken toward other groundfish fishery sectors to prevent bycatch problems. NMFS believes it is likely that increased capacity in the whiting fishery could exacerbate such problems. It was noted that the whiting limit for 2007 is lower than in 2006, and thus there is a greater risk that new participation would lead to more intensive competition and problems. California also pointed out the risk of management problems if the whiting fishery were to close earlier than normal and whiting fishers were to place more pressure on other groundfish fishery sectors, thereby exacerbating problems in those sectors as well as coastal communities. Oregon's representative on the Council was strongly in favor of the emergency rule as the state was concerned that additional entry would result in intensive early fishing, with high risk of excessive rockfish and salmon bycatch. Further, an early closure of the fishery would have severe adverse impacts on coastal processors in Oregon and elsewhere. It is notable that Washington's representative had opposed the proposed emergency in September 2006 but was now convinced that 2007 presented different and unforeseen conditions. Washington noted that the Council's proposal would not force out any person who had participated in 2006. Washington supported action as reducing the risk of adverse impacts on rockfish (especially noting concern about canary rockfish) and salmon. The Washington representative also noted that this would be a one-year action; it will be incumbent on the Council to address the capacity issue for the long-term in a timely manner.

The Pacific Whiting Conservation Cooperative (Cooperative) recommended that the Council request the emergency rule. The Cooperative subsequently submitted written comments (see below).

A processor who has recently invested in shoreside facilities has written NMFS in favor of keeping the fishery open, which in this context means to not freeze new entry to the shoreside processing sector.

A company that invested in 2006 by purchasing limited entry permits and combining them on a single vessel with the intent of entering the fishery in 2007 objected to the emergency rule proposal. In this company's view, there is no "emergency" pursuant to NMFS' guidelines for the use of emergency authority, especially for the entry of additional processing capacity or a

catcher/processor vessel. They noted that NMFS disapproved the Council's September 2006 proposal, and the reasons for that disapproval would apply in this instance as well. They noted that the Council could have used its normal decision processes to establish additional measures to manage the whiting fishery and had chosen not to do so; in their view, nothing has changed so significantly as to warrant emergency regulations. They also noted that the permits acquired to allow their vessel to qualify under the limited entry program were from active vessels, so their prospective new entry would only replace existing capacity rather than add to the capacity of the fleet. Their letter identifies the specific analyses that they maintain would be needed to satisfy Magnuson-Stevens Act requirement for management regulations and asserts that such analyses would show that the "best scientific information available" does not support an emergency rule.

Subsequent Public Comments on the Emergency Rule Proposal

At the Council meeting, following the vote on the proposed emergency action, the NMFS representative invited written public comment on the prospective action while the Council prepared the actual submission for NMFS consideration, requesting that they be submitted within two weeks. NMFS wanted to be sure it had as complete an understanding as possible on the range of issues and concerns that various parties would have on this matter. During this period, the following comments were received:

The Pacific Whiting Conservation Cooperative wrote reiterating its support for emergency action. It noted that the voluntary industry arrangement that results in the slow pace of fishing early in the season and that includes collaboration and communication to avoid bycatch would likely end if there were new entry to the fishery. It indicated that there would be a "race for fish" leading to all the problems discussed by the Council when it agreed to request emergency action.

The State of Oregon submitted supplemental comments, reiterating its concerns about the risk of excessive bycatch of rockfish as well as the economic disruption to the West Coast whiting fishing fleet and to West Coast processors and their employees if there were early closure of the whiting fishery for any reason.

One party suggested that the emergency rule request be approved only with respect to the entry of new harvesting vessels. This would mean that additional mothership operations

could enter the fishery in 2007. This party suggested that it would be beneficial to other whiting fishers to increase the number of potential buyers of fish.

Two sets of comments were received from representatives of the mothership sector. They favored the proposed action, with special emphasis on ensuring that eligibility for participation is on a sector-specific basis, and that eligibility in 2007 be based on sector-specific participation beginning in 1997.

Responses to Comments

Because the conservation concerns raised by the Council in 2006 still exist and because, unlike their 2006 request, the Council's proposed remedy fully addresses those concerns by encompassing all vessels that could potentially enter the whiting fishery absent this rule, NMFS believes that the available information demonstrates that emergency action is warranted. This conclusion is further supported by the new information received in late 2006 and early 2007. These conditions may pose an unacceptably high risk that there would be serious conservation and management problems if no action is taken. The Council has been responsive to NMFS' objections to the prior request for emergency action and has taken the broader action required to address the problem in the short term, and has committed to action to resolve the whiting fishery capacity issue in the long-term through an amendment to the Groundfish FMP. NMFS notes that the emergency rule would be in effect for at most one year, and that the rule contains provisions intended to minimize financial harm to those who may have invested to participate in the fishery in 2007 not knowing they would be precluded from utilizing the investment in the fishery. NMFS notes further the critical need to ensure that bycatch limits on overfished rockfish not be exceeded so that the stocks can rebuild in accordance with the approved rebuilding plans.

NMFS agrees with the Council that the risks of serious economic disruptions in the event of excessive catch of rockfish are very high if there were no control to stop entry into the whiting fishery at least for 2007. NMFS also agrees that the risk of loss of industry cooperation in the fishing year would pose serious risks of loss of control over bycatch. With respect to the potential to allow new mothership operations, NMFS concludes that this would not fully address the risks of an accelerated "race for fish," with consequent risk of early fishing and in turn excessive bycatch. Again, the

cooperation of industry is vital to ensuring a stable fishery with minimal bycatch. NMFS determined that applying the prohibition on new entry only to the catcher sectors would not address the problem; the entry of additional at-sea processors could also lead to an accelerated race for fish as more parties compete for the available sector allocation, with a higher likelihood of a breakdown in communication and cooperation leading to excessive risk of heavy early season fishing with high bycatch and fishery disruptions. NMFS agrees that the Council intended that eligibility be determined on a sector-specific basis, and has determined that 1997 should be used as the initial year for qualification of participation in the fishery on a sector-specific basis. This was the first year in which management of the domestic whiting fishery was managed on a sector-specific basis.

Evaluation of Emergency Rule Request Against Agency Guidelines

NMFS has considered the Council's request and the information on which the request is based. NMFS considered also the information in the Council's final environmental impact statement (FEIS) for its biennial harvest limits and conservation and management measures. This includes extensive information on the status of stocks and the economic status of the fisheries and the dependency of communities which are dependent on those fisheries. NMFS has evaluated the proposal against its guidelines for the use of emergency rules, published at 62 FR 44421 (August 21, 1997), which sets forth criteria that must be met to warrant emergency rules. Each of the criteria is discussed below.

1. The Situation Results From Recent, Unforeseen Events or Recently Discovered Circumstances

Two years ago, it could not have been foreseen that Pacific whiting would be a much more important component of the West Coast groundfish fisheries as well as a potential target of Alaska fishers. As noted earlier, in 2005 and 2006, ex-vessel prices for whiting increased dramatically, and the industry projection is that prices will continue to rise in 2007. The U.S. OY for whiting in 2007 is down 10 percent from the 2006 level, so the supply of whiting for the U.S. industry will lead to increased competition even without new entry. The Council acted in March 2007 to further restrict non-whiting fishing due to higher than anticipated rockfish bycatch rates; this puts new pressure on those other sectors and makes whiting relatively more attractive, and could

promote shifting of effort to whiting if no action were taken to prevent it. Finally, while the OY for Alaska pollock is reduced and rationalization of the Alaska pollock fishery allows many vessels that normally fish in Alaska to set their own schedules for catching a share of the harvest. The pollock fishery would be available later in the year, if desired; these vessels (many of which have or could obtain West Coast trawl limited entry permits) could choose to fish for Pacific whiting early in the year and, when the whiting quota is reached, shift operations to Alaska to fish for pollock. These vessels have the capability (i.e., equipment and gear) to fish for whiting with little or no added cost. Taken together, these new and unforeseen conditions support a high likelihood of new entry to the whiting fishery in 2007 if no action were taken. This would result in unacceptably high risk of conservation and management problems.

2. The Situation Presents Serious Conservation or Management Problems in the Fishery

As noted, the whiting stock is thoroughly monitored and assessed annually, and the results are generally accepted as presenting an accurate assessment of the stock. The U.S. and Canada have agreed to a Treaty for joint management of the stock and for sharing the harvestable surplus. Given the Council's relatively conservative harvest strategy for whiting, there is little reason for serious conservation concern about the current and future condition of the Pacific whiting stock.

However, it is also generally true that the more participants in a fishery managed under quotas, the greater the likelihood that conservation will become a concern, and especially in the case where the fishery is still subject to new entry. Quite simply, new entry encourages more intensive fishing as soon as a fishery is open as participants fear they will not catch a fair share of the available fish if they do not fish early. In turn there is greater pressure to fish hard with possibly less regard for minimizing waste or bycatch. This is especially true in the whiting fishery, in which industry cooperation has been a vital element in controlling the pace of the fishery and in sharing information so that participants would avoid areas of high bycatch and thus help each other extend the season as long as possible. As noted above, this cooperation would be less likely to continue if new entrants were allowed into the fishery without limit. A breakdown in cooperation and communication would be likely to result in an accelerated race for fish and

the consequent unacceptably high risk of excessive bycatch and fishery disruptions. If fishing is conducted more intensely, there is likely to be less care to avoid bycatch and more likelihood of "disaster" tows with extremely high bycatch levels. This would be especially true if the new entrants were high capacity vessels with a need to fill up fast to cover costs, or if the vessel were captained by a person not familiar with the fishery and unable to adjust to high bycatch rates. This could lead to early closure of the whiting fishery if bycatch limits are reached; it is important to note that if a bycatch limit is reached, even if only by one sector, fishing by all sectors of the whiting fishery must cease. For perspective, in early June 2004 a vessel in the mothership sector had a single tow of fish estimated to contain 3.9 mt of canary, which is equal to 83 percent of the 2007 whiting fishery bycatch limit for non-tribal whiting fisheries. An accelerated race for fish could well result in closure of the whiting fishery before the annual quota of whiting is reached, resulting in serious loss of income and employment both to fishers and to processing facilities. Accelerated fishing for Pacific whiting in the spring is also likely to result in incidental catches of salmon in excess of the incidental take allowances under biological opinions issued under the ESA. Also, as pointed out above, the yield per fish is greater later in the season than earlier, so pressure to fish early is likely to result in less usable and less valuable product.

In summary, allowing new entry to the whiting fishery in 2007 is likely to result in serious conservation and management problems.

The situation can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.

The benefit of immediate action is that it provides for greater stability in the 2007 Pacific whiting fishery while the Council completes action on the amendment to manage the fishery over the long term, possibly including conservation and management measures to deal with AFA impacts as well as the impacts of otherwise unlimited entry into the whiting fishery. The Council can use its established planning process and the Secretary can use notice and comment rulemaking procedures for implementing the long-term strategy and measures. There is little cost as only new entry would be prohibited; any

vessels that participated prior between January 1, 1997, and December 31, 2006, inclusive, would be eligible to participate in 2007. It can be argued that the fishery is already overcapitalized, but at least there would not be further overcapacity due to additional new entry to the fishery for short-term gain at the expense of those with a long-standing interest in the fishery.

It is known that at least one party invested in 2006 by buying limited entry permits and aggregating them for application of a single permit on a single vessel intended to participate in the whiting fishery in 2007. There may be other such situations. The regulations for the limited entry permit program currently do not allow a permit established through aggregation of multiple permits to be subsequently disaggregated. However, to alleviate financial harm to any who in good faith made investments as described, the emergency rule provides for an exception from the prohibition against disaggregation of permits. The investor(s) may then be able to recapture at least a portion of the investment that might otherwise be lost. In addition, one party is known to have tried to register a permit for use on a "prohibited" vessel; the rule includes a provision allowing such parties to register their permits for alternate, eligible vessels in such cases.

As noted above, NMFS has established that 1997 is the initial year for which sector participation will be considered in determining eligibility for a particular sector of the whiting fishery in 2007. State landings data, Pacific Fishery Information Network (PacFIN) data, observer data, and NORPAC industry reports as appropriate to the sector, will be the sole evidence to demonstrate the sector-specific eligibility of vessels.

Classification

The Assistant Administrator finds good cause under 5 U.S.C. 553(b)(B) to waive the requirement for prior notice and opportunity for public comment, as such procedures are impracticable and contrary to the public interest.

The season for the primary West Coast Pacific whiting fishery opened April 15 south of 42° N. latitude (lat.) and opens May 15 south of 42° N. lat. The normal seasonal pattern of the fishery (and the pattern that the Council believes is necessary to prevent adverse impacts on fish stocks as well as on established fisheries) is to have relatively little fishing early in the season with expanded fishing later in the year, and with the fishery extending through the summer. This has been achieved in

recent years, at least in part, because of voluntary action by an industry group that has worked hard to ensure that the season will last well into the summer or fall as long as the whiting quota allows it. This allows less fishing when there are high bycatch rates for rockfish and salmon, and more fishing when bycatch rates are lower.

As noted above, there were several new pieces of information supporting the expectation of additional entry to the fleet in 2007. First, the price for whiting continues to increase to unprecedented levels, ex-vessel prices have increased from \$77 per ton in 2004 to \$137 per ton in 2006—nearly doubling since 2004, and increasing by over 22% compared to 2005. Industry projections for 2007 are that prices will continue to increase to over \$176 per ton. Second, the U.S. Optimum Yield of whiting was reduced by 10% for the 2007 season compared to 2006. Third, because of higher than projected rockfish bycatch rates, the Council took action in March that placed more severe constraints on non-whiting groundfish fishing. Fourth, the quota for Alaskan pollock was reduced this year. All of these recent changes increase the chance of an accelerated race for fish: The first by making entry more lucrative for additional vessels, the second by constraining supply of whiting and leading to more pressure among vessels to quickly capture the more limited supply of whiting, and the third and fourth by increasing the relative attractiveness of entering the whiting fishery this year.

Without this emergency rule, new entry is likely early in the season; if this happens, the voluntary limitation of early season fishing will likely cease to be effective, resulting in more intensive early season fishing and higher bycatch levels. It also would likely result in early achievement either of a bycatch limit (causing early closure of the whiting fishery) or of the whiting catch quota (also causing early closure of the whiting fishery). Fishers from Alaska could return to Alaska; West Coast-based vessels would not have that alternative and would either be idled or would add to pressure in the severely constrained other sectors of the groundfish fishery. In the worst case, the whiting fishery would catch so much in excess of its rockfish bycatch limits that the Council would be forced to impose even more limits on the other groundfish fishery sectors to keep total bycatch within the total limits. The emergency rule maintains the status quo in the fishery at least through 2007, while the Council develops a long-term management program to achieve

stability for the future. Providing opportunity for prior notice and public comments on the Council's requested action for 2007 would delay the rule to the extent that the benefits of the rule would be nullified and the protection of the resources intended by the rule would not be provided.

The proposed action will have beneficial effects on current participants in the Pacific whiting fishery and on participants in other groundfish fisheries. Without this action, it is fairly certain that there would be additional entry into the fishery, meaning greater competition for the available harvest (the U.S. whiting OY is reduced by 10% from the 2006 harvest level) and a greater likelihood of an "accelerated race for fish." This would be expected to result in early closure of the directed whiting fishery, which in turn could lead to idle capacity (for those who do not have the ability to shift to other fisheries or other groundfish sectors) or excess capacity shifting to other groundfish fisheries. Such a shift would exacerbate the economic difficulty being experienced in those non-whiting sectors due to severe constraints on fishing levels and areas available for fishing. In one possible scenario, the no action alternative would result in rockfish bycatch limits for the groundfish fisheries being exceeded in the whiting fishery at levels that would require additional reductions in other groundfish fishing sectors targeting healthy groundfish stocks.

Therefore, NMFS has concluded it is impracticable and contrary to the public interest to provide an opportunity for prior notice and public comment under 5 U.S.C. 553(b)(B). For the same reasons as discussed above, the Assistant Administrator also finds that good cause exists under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness of this rule. As previously discussed, this rule is necessary to prevent the conservation and management problems that would arise from additional entry to the Pacific whiting fishery in 2007. Without this rule, there will be new entry, and current stability in the fishery, with low bycatch of rockfish and salmon, will likely dissolve. This would pose an unacceptable risk of excessive bycatch of overfished rockfish and of salmon as well as an unacceptable risk of severe management problems in the economically stressed groundfish fishery.

This temporary rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

An environmental assessment was prepared for this action under the National Environmental Policy Act and a Finding of No Significant Impact was signed on May 4, 2007.

This temporary rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing.

Dated: May 11, 2007.

William T. Hogarth,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 660.306, paragraph(f)(6) is added to read as follows:

§ 660.306 Prohibitions.

* * * * *

(f) * * *

(6) Fish for or land whiting, or process whiting at sea, while participating in a specific sector (as defined at § 660.373(a)), from May 14, 2007 and through November 13, 2007 with a vessel that has no history of participation within that specific sector of the whiting fishery in the period after December 31, 1996, and prior to January 1, 2007, as specified in § 660.373(j).

■ 3. In § 660.333, paragraph (f) is added to read as follows:

§ 660.333 Limited entry fishery—eligibility and registration.

* * * * *

(f) *Limited entry permits indivisible.*

Notwithstanding paragraph (d), a trawl-endorsed limited entry permit that was created between December 31, 2006, and May 14, 2007 by aggregating multiple limited entry permits under § 660.335(b) may be disaggregated back into the initially combined component permits.

■ 4. In § 660.335, paragraph (f)(3) is added to read as follows:

§ 660.335 Limited entry permits—renewal, combination, stacking, change of permit ownership, and transfer.

* * * * *

(f) * * *

(3) Any transfer of a trawl-endorsed limited entry permit that occurred between December 31, 2006, and May 14, 2007 may be rescinded by the permit

owner without counting against that permit owner's once per calendar year restriction on frequency of permit transfers for the 2007 calendar year.

* * * * *

■ 5. In § 660.373, paragraph (j) is added to read as follows:

§ 660.373 Pacific whiting (whiting) fishery management.

* * * * *

(j) *2007 Pacific whiting fishery.* (1) In general, a person may fish for or land whiting or process whiting at sea in a sector of the whiting fishery (as defined at § 660.373(a)) between May 17, 2007 and November 13, 2007 only with a vessel that has history of participation in that sector of the whiting fishery in the period after December 31, 1996, and prior to January 1, 2007. Specifically:

(i) To harvest whiting in the shore-based sector between May 17, 2007 and November 13, 2007, a vessel must have harvested for delivery to a shore-based processor at least 4000 lbs (1.81 mt) of whiting in a single trip during the

primary season (as defined at § 660.373(b)) in the period after December 31, 1996, and prior to January 1, 2007. State fish ticket data collected by the states and maintained by Pacific States Marine Fisheries Commission's Pacific Fishery Information System is the sole evidence to demonstrate participation in this sector.

(ii) To harvest whiting in the mothership sector between May 17, 2007 and November 13, 2007, a vessel must have harvested whiting for delivery to motherships in the period after December 31, 1996, and prior to January 1, 2007. Observer data collected by the Northwest Fisheries Science Center and by North Pacific Groundfish Observer Program as organized under the Alaska Fisheries Science Center's NORPAC database is the sole evidence to demonstrate participation in this sector.

(iii) To process whiting in the mothership sector between May 17, 2007 and November 13, 2007, a vessel must have processed at sea, but not

harvested, whiting in the period after December 31, 1996, and prior to January 1, 2007. Observer data collected by the Northwest Fisheries Science Center and by North Pacific Groundfish Observer Program as organized under the Alaska Fisheries Science Center's NORPAC database is the sole evidence to demonstrate participation in this sector.

(iv) To harvest and process whiting in the catcher-processor sector between May 17, 2007 and November 13, 2007, a vessel must have harvested and processed whiting in the period after December 31, 1996, and prior to January 1, 2007. Observer data collected by Northwest Fisheries Science Center and by North Pacific Groundfish Observer Program as organized under the Alaska Fisheries Science Center's NORPAC database is the sole evidence to demonstrate participation in this sector.

(2) [Reserved]

[FR Doc. 07-2417 Filed 5-14-07; 8:58 am]

BILLING CODE 3510-22-P

update their own individual information on the internet at <http://www.beaconregistration.noaa.gov>. User ID and user password are set-up with initial Web registration or with a first visit to the Web site.

CONTESTING RECORD PROCEDURES:

Individual beacon owners have access to their database file and have the ability to update or correct information. Other issues are addressed by the system manager who can be contacted at the above address.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained provides information to NOAA by either the website or mail. Existing registrations can be updated according to the above processes, by a phone call from the beacon owner, or by rescue coordination center controllers when updated information is collected while processing a case.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: April 11, 2003.

Brenda Dolan,

Department of Commerce, Freedom of Information/Privacy Act Officer.

[FR Doc. E8-8241 Filed 4-16-08; 8:45 am]

BILLING CODE 3510-HR-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

[Docket No. 080404520-8522-01]

Privacy Act of 1974; System of Records

AGENCY: Department of Commerce.

ACTION: Notice of a new Privacy Act System of Records: COMMERCE/NOAA-19, Permits and Registrations for United States Federally Regulated Fisheries.

SUMMARY: This notice announces the Department of Commerce's (Department's) proposal for a new system of records under the Privacy Act. NOAA's National Marine Fisheries Service (NMFS) is creating a new system of records for permits and non-permit registrations for use with a variety of fisheries management programs. Information will be collected from individuals under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, the High Seas Fishing Compliance Act, the American Fisheries Act, the Tuna Conventions Act of 1950, the Atlantic Coastal Fisheries Cooperative

Management Act, the Atlantic Tunas Convention Authorization Act, the Northern Pacific Halibut Act, the Antarctic Marine Living Resources Convention Act, International Fisheries Regulations regarding U.S. Vessels Fishing in Colombian Treaty Waters, and the Marine Mammal Protection Act. This new record system is necessary to identify participants in the fisheries and to evaluate the qualifications of the applicants.

DATES: To be considered, written comments must be submitted on or before May 19, 2008. Unless comments are received, the new system of records will become effective as proposed on the date of publication of a subsequent notice in the **Federal Register**.

ADDRESSES: Comments may be mailed to: Ted Hawes, Team Leader, Northeast Permits Team, NOAA's National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Ted Hawes, Team Leader, Northeast Permits Team, NOAA's National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930.

SUPPLEMENTARY INFORMATION: NMFS is creating a new system of records for permit and non-permit registrations for use with a variety of fisheries management programs. NMFS requires the use of permits or registrations by participants in U.S. federally regulated fisheries. Information collections would be requested from individuals under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, the High Seas Fishing Compliance Act, the American Fisheries Act, the Atlantic Coastal Fisheries Cooperative Management Act, the Tuna Conventions Act of 1950, the Atlantic Tunas Convention Authorization Act, the Northern Pacific Halibut Act, the Antarctic Marine Living Resources Convention Act, and the Marine Mammal Protection Act. The collection of information is necessary to identify participants in these fisheries and to evaluate the qualifications of the applicants. NMFS would collect information from individuals in order to issue, renew, or transfer fishing permits or to make non-permit registrations. The authority for the mandatory collection of the Tax Identification Number (Employer Identification Number or Social Security Number) is the Debt Collection Improvement Act, 31 U.S.C. 7701.

COMMERCE/NOAA-19

SYSTEM NAME:

Permits and Registrations for United States Federally Regulated Fisheries.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATIONS:

NMFS Northeast Region, One Blackburn Drive, Gloucester, MA 01930 (includes Atlantic Highly Migratory Species (HMS) Tuna Dealer permits).

NMFS Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701 (includes Atlantic HMS International Trade Permit, shark and swordfish vessel permits, shark and swordfish dealer permits).

NMFS Northwest Region, Sustainable Fisheries Division, 7600 Sand Point Way NE., Bldg. #1, Seattle, WA 98115.

NMFS Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

NMFS Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, La Jolla, CA 92037 (Pacific Highly Migratory Species database only).

NMFS Pacific Islands Region, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814.

NMFS Alaska Region, 709 West Ninth Street, Juneau, AK 99802-1668.

NMFS Office of Science and Technology, 1315 East West Highway, 12th Floor, Silver Spring, MD 20910 (National Saltwater Angler Registry, High Seas Fishing Compliance Act, and Antarctic Marine Living Resources harvesting permit data).

NMFS Office of Sustainable Fisheries, P.O. Drawer 1207, Pascagoula, MS 39567 (Antarctic Marine Living Resources import permit data).

NMFS Office of Sustainable Fisheries, 1315 East West Highway, Room 13130, Silver Spring, MD 20910 (Atlantic HMS Tuna vessel permits, HMS Angling Permit, HMS Charter/headboat permits database).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Owners or holders of a permit or registration as recognized by NMFS, owner agents, vessel owners and/or operators. Individuals who apply for any permit, permit exception, permit exemption or regulation exemption, registration, dedicated access privilege or fishing quota share either initially, annually, or by transfer. Applicants seeking permission to fish in a manner that would otherwise be prohibited in order to conduct experimental fishing. Owners of processing facilities and/or fish dealers. Permit qualifiers (persons whose incomes are used for permit

qualification). Allocation assignees under a Southeast Region individual fishing quota.

CATEGORIES OF RECORDS IN THE SYSTEM:

THIS INFORMATION IS COLLECTED AND/OR MAINTAINED BY ALL REGIONS AND DIVISIONS:

Current permit number, permit status information, type of application, name of applicant and of other individuals on application (vessel owner(s), owner's agent, operator, dealer, corporation members), and position in company (if applicable), corporation name, date of incorporation and articles of incorporation (if applicable), date of birth, address, telephone numbers (business, cell and/or fax), U.S. Coast Guard Certificate of Documentation number or state vessel registration number and date of expiration, Vessel Monitoring System (VMS) activation certification, vessel name, vessel function, vessel characteristics (length, breadth, external markings, hull or superstructure color), gross and net tonnage, type of construction, fuel capacity and type, horsepower (engine, pump), type of product storage. The Tax Identification Number (TIN) (Employer Identification Number (EIN) or Social Security Number (SSN)) is required for all permits, under the authority of the Debt Collection Improvement Act (DCIA), 31 U.S.C. 7701. The primary purpose for requesting the TIN is for the collection and reporting on any delinquent amounts arising out of such person's relationship with the government pursuant to the DCIA.

It is required in subsection (c)(1) that each person doing business with NMFS is to furnish their taxpayer identifying number. For purposes of administering the various NMFS fisheries permit and registration programs, a person shall be considered to be doing business with a federal agency including but not limited to if the person is an applicant for, or recipient of, a federal license, permit, right-of-way, grant, or benefit payment administered by the agency or insurance administered by the agency pursuant to subsection (c)(2)(B) of the DCIA.

ADDITIONAL INFORMATION IS COLLECTED AND/OR MAINTAINED BY INDIVIDUAL REGIONS AND DIVISIONS:

Northeast Region

For transferable permits: Hair and eye color, height and weight, ID-sized photograph, medical records for resolution of permit dispute, enforcement actions, court and legal documents, and permit sanction notices filed by General Counsel, credit card and/or checking account numbers, cancelled checks, tax returns, internal

permit number specific to each limited entry permit, baseline specifications on limited entry permit, country, captain's license, State and Federal Dealer Numbers (if applicable), coast on which dealer does business, processing sector, facilities where fish received, vessel landing receipts and records, dealer purchase receipts, bills of sale, type of vessel registration, NMFS unique vessel ID, year vessel built, hailing port, hailing port state, principal port, principal state, vessel operations type (catching and/or processing: For at-sea processing permit), fish hold capacity, passenger capacity, VMS status, crew size, fishery type, fishery management plan and category, maximum days at sea, quota allocation and shares, regional fishery management organization, species or species code, type of gear, gear code and rank, buoy and trap/pot color, number of tags assigned to vessel, number of traps, dredge size and number.

Southeast Region

Fee payment information, business e-mail address, Web site, gender, hair and eye color, height and weight, ID-sized photograph, Dunn and Bradstreet Corporation Number, NMFS internal identification number, county, country, marriage certificate, divorce decree, death certificate, trust documents, probated will, enforcement actions, court and legal documents, and permit sanction notices filed by General Counsel, name of vessel permit applicant if not owner, and relationship to owner, type of vessel ownership, captain's license, original permit, permit payment information, name of permit transferor and number of permit before transfer, permit and vessel sale price (for permit transfers), date of permit transfer signature, notarized sale and lease agreement with lease start and end dates if applicable, income or license qualifier for certain fisheries, Income Qualification Affidavit for income qualified fisheries, U.S. importer number, State and Federal Dealer Numbers (if applicable), plant name and operator, hull identification number, hailing port and hailing port state, year vessel built, location where vessel built, fish hold capacity, live well capacity, radio call sign, vessel communication types and numbers, crew size, passenger capacity, fishery type, quota shares, vessel landing receipts and records, bills of sale, processing facility where fish are received, gear type, species/gear endorsements, buoy/trap color code, number of traps, trap tag number series, trap dimensions, trap mesh size, designated fishing zone, aquaculture reports, site description, material

deposited and harvested, value of material, Highly Migratory Species workshop certificate, informational telephone calls recorded with member of public's knowledge, for customer service evaluation and constituent statement records.

Atlantic Highly Migratory Species

Business e-mail, Web site, Dunn and Bradstreet Corporation Number, percent/rank of ownership interest, lease start/end date, income or license qualifier for certain fisheries, U.S. Importer Number (dealers), State and Federal Dealer Numbers (if applicable), processing facility where fish are received, type of vessel registration, hull identification number, passenger capacity, crew size, hailing port, hailing port state, principal port, principal port state, fish hold capacity, year vessel built, fishery type, species or species code, type of fishing gear, gear code.

Northwest Region

Fee payment information, business e-mail address, NMFS internal identification number, ownership rank if applicable, permit payment information, credit card and/or checking account numbers, canceled checks, tax returns, divorce decree, marriage certificate, city and state where married, death certificate, probated will, trust documents, medical records for emergency transfer of certain permits only, enforcement actions, court and legal documents, and permit sanction notices filed by General Counsel, name of permit transferor and number of permit before transfer, period of permit lease, permit price, location where vessel built, fishery type, quota shares, species and gear endorsements, gear code, amount of landed fish or processed fish product, operation as mother ship with start and end date.

Southwest Region

Business e-mail address, applicant's name and relationship to owner or owner manager if not owner or operator, country, Dunn and Bradstreet Corporation Number, other federal, state and commercial licenses held by operator, name of permit transferor and number of permit before transfer, type of vessel (commercial fishing, charter), vessel photograph, hull identification number, hailing port, hailing port state, principal port, principal port state, year vessel built, where vessel built, maximum vessel speed, fish hold capacity, processing equipment, passenger capacity, crew size, international radio call sign, Vessel Monitoring System (VMS) status, dolphin safety gear on board, previous

vessel flag, previous vessel name and effective dates, species/gear endorsements, fishery type, type of fishing gear, gear code, fishing status (active or inactive), intent to make intentional purse seine sets on marine mammals, date, location, and provider of most recent tuna purse seine marine mammal skipper workshop.

Pacific Islands Region

Photograph identification, citizenship, credit card and/or checking account numbers, cancelled checks, owner of checking account from which permit fees paid, enforcement actions, court and legal documents, and permit sanction notices filed by General Counsel, name of permit transferor and number of permit before transfer, International Maritime Organization number, NMFS vessel identification number, international radio call sign, year vessel built, location where vessel built, fishery type, percent of ownership interest, ownership and catch history as basis for exemption eligibility, days at sea allocations, quota shares, vessel landing receipts and records, dealer purchase receipts, bills of sale.

Alaska Region

Business e-mail address, country, NMFS internal identification number, citizenship, reference names, owner beneficiary, death certificate, marriage certificate, divorce decree, trust documents, probated will, medical information for emergency transfer of certain permits only, enforcement actions, court and legal documents, and permit sanction notices filed by General Counsel, credit card and/or bank account numbers, canceled checks, tax returns, name of Alaska Native tribe, community of residence, fishery community organization, community governing body contact person, nonprofit name, community represented by nonprofit, cooperative representative, percent of ownership interest, permit restrictions, quota type, names of other quota holders if affiliated with any cooperative member receiving quota against cap, names and relationship of permit transferor and transferee, transfer eligibility certificate, sector and region before transfer, relationship of transferor and transferee, reason for transfer, broker's name and fee, lien information (if applicable), quota transfer costs, permit financing source, permit fee, sale/lease agreement, period of lease, agreement to return shares (if applicable), for crab rationalization: affidavit that right of first refusal contracts were signed, number of units and pounds of fish transferred, applicable dealer license numbers,

processing plant name and identification, operation type and operator, type of vessel registration, State of Alaska registration number, NMFS vessel identification number, hull identification number, hailing port and hailing port state, numbers of existing permits if applicable to current application, documentation of loss or destruction of a vessel, list of vessels in a vessel cooperative, vessel operations type in terms of catching and/or processing, species/gear endorsements for fisheries requiring vessel monitoring systems, fishery type, species or species code, fishery management plan, days at sea allocations, quota shares, type of fishing gear, gear code, vessel landing receipts and records, bills of sale, delivery receipts, dealer purchase receipts, processing sector and facility where fish are received, statement from processor that there is a market for rockfish received from applicant for entry level harvester permit.

High Seas Fishing Compliance Act

Citizenship, internal identification number, percent/rank of ownership interest, hull identification number, vessel photograph, type of vessel registration, year vessel built, where vessel built, fish hold capacity, hailing port, hailing port state, crew size, international radio call sign, previous vessel flag, previous vessel name, fishery type, fishery management plan, regional fishery management organization, type of fishing gear, gear code.

Antarctic Marine Living Resources

Nationality, type of vessel (commercial fishing, charter), where vessel built, year vessel built, fish hold capacity, International Maritime Organization number (if issued), vessel communication types and serial numbers, details of tamper-proof VMS elements, ice classification, processing equipment, international radio call sign, foreign vessel flag, previous vessel flag, previous vessel name, permit number of supporting foreign vessel, crew size, species code, type of fishing gear, information on the known and anticipated impacts of bottom trawling gear on vulnerable marine ecosystems, and the products to be derived from an anticipated catch of krill.

National Saltwater Angler Registry Program

Name, TIN, address, telephone number, designation as owner or operator of for-hire vessel, vessel name and registration/documentation number and a statement of the region(s) in which the registrant fishes.

AUTHORITIES FOR MAINTENANCE OF THE SYSTEM:

Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq. (Magnuson-Stevens Act); High Seas Fishing Compliance Act of 1995, 16 U.S.C. 5501 et seq; International Fisheries Regulations: Vessels of the United States Fishing in Colombian Treaty Waters: 50 CFR 300.120; the American Fisheries Act, Title II, Public Law No. 105-277; the Atlantic Coastal Fisheries Cooperative Management Act of 1993, 16 U.S.C. 5101-5108, as amended 1996; the Tuna Conventions Act of 1950, 16 U.S.C. 951-961; the Atlantic Tunas Convention Authorization Act, 16 U.S.C., Chapter 16A; the Northern Pacific Halibut Act of 1982, 16 U.S.C. 773 et seq. (Halibut Act), the Antarctic Marine Living Resources Convention Act of 1984, 16 U.S.C. 2431-2444; the Marine Mammal Protection Act, 16 U.S.C. 1361; and the Debt Collection Improvement Act, 31 U.S.C. 7701.

PURPOSE(S):

This information will allow NMFS to identify owners and holders of permits and non-permit registrations, identify vessel owners and operators, evaluate requests by applicants and current participants, or agency actions, related to the issuance, renewal, transfer, revocation, suspension or modification of a permit or registration.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records may be disclosed as follows.

1. In the event that a system of records maintained by the Department to carry out its functions indicates a violation or potential violation of law or contract, whether civil, criminal or regulatory in nature and whether arising by general statute or particular program statute or contract, rule, regulation, or order issued pursuant thereto, or the necessity to protect an interest of the Department, the relevant records in the system of records may be referred to the appropriate agency, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute or contract, rule, regulation, or order issued pursuant thereto, or protecting the interest of the Department.

2. A record from this system of records may be disclosed in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing

counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed to a Member of Congress submitting a request involving an individual when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed to the Department of Justice in connection with determining whether the Freedom of Information Act (5 U.S.C. 552) requires disclosure thereof.

5. A record in this system will be disclosed to the Department of Treasury for the purpose of reporting and recouping delinquent debts owed the United States pursuant to the Debt Collection Improvement Act of 1996.

6. A record in this system may be disclosed to the Department of Homeland Security for the purpose of determining the admissibility of certain seafood imports into the United States.

7. A record in this system of records may be disclosed to a contractor of the Department having need for the information in the performance of the contract but not operating a system of records within the meaning of 5 U.S.C. 552a(m).

8. A record in this system of records may be disclosed to approved persons at the state or interstate level within the applicable Marine Fisheries Commission for the purpose of co-managing a fishery or for making determinations about eligibility for permits when state data are all or part of the basis for the permits.

9. A record in this system of records may be disclosed to the applicable Fishery Management Council (Council) staff and contractors tasked with the development of analyses to support Council decisions about Fishery Management Programs.

10. A record in this system of records may be disclosed to the applicable NMFS Observer Program for purpose of identifying current permit owners and vessels and making a random assignment of observers to vessels in a given fishing season.

11. A record in this system of records may be disclosed to the applicable Regional or International Fisheries Management Body for the purpose of identifying current permit owners and vessels pursuant to applicable statutes or regulations and/or conservation and management measures adopted by a Regional or International Fisheries Management Body, such as: the Food and Agriculture Organization of the United Nations, Commission for the Conservation of Antarctic Marine Living

Resources, Inter-American Tropical Tuna Commission, International Pacific Halibut Commission, and International Commission for the Conservation of Atlantic Tunas.

12. A record in this system of records may be disclosed to appropriate agencies, entities, and persons when: (1) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure to consumer reporting agencies pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) and the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computerized database; CDs; paper records stored in file folders in locked metal cabinets and/or locked rooms.

RETRIEVABILITY:

Records are organized and retrieved by NMFS internal identification number, name of entity, permit number, vessel name or identification number, or plant name. Records can be accessed by any file element or any combination thereof.

SAFEGUARDS:

The system of records is stored in a building with doors that are locked during and after business hours. Visitors to the facility must register with security guards and must be accompanied by federal personnel at all times. Records are stored in a locked room and/or a locked file cabinet. Electronic records containing Privacy Act information are protected by a user identification/password. The user identification/

password is issued to individuals as authorized by authorized personnel.

All electronic information disseminated by NOAA adheres to the standards set out in Appendix III, Security of Automated Information Resources, OMB Circular A-130; the Computer Security Act (15 U.S.C. 278g-3 and 278g-4); and the Government Information Security Reform Act, Public Law 106-398; and follows NIST SP 800-18, Guide for Developing Security Plans for Federal Information Systems; NIST SP 800-26, Security Self-Assessment Guide for Information Technology Systems; and NIST SP 800-53, Recommended Security Controls for Federal Information Systems.

RETENTION AND DISPOSAL:

All records are retained and disposed of in accordance with National Archive and Records Administration regulations (36 CFR Chapter XII, Subchapter B—Records Management); Departmental directives and comprehensive records schedules; NOAA Administrative Order 205-01; and the NMFS Records Disposition Schedule, Chapter 1500.

SYSTEM MANAGER(S) AND ADDRESSES:

Division Chief, Fisheries Statistics Office, NMFS Northeast Region, NMFS Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

Assistant Regional Administrator for Operations, Management, and Information Services, NMFS Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701.

Permit Team Leader, NMFS Northwest Region, Sustainable Fisheries Division, 7600 Sand Point Way NE., Bldg. #1, Seattle, WA 98115.

Assistant Regional Administrator and Tuna Dolphin Policy Analyst, NMFS Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

Information/Permit Specialist, Sustainable Fisheries Division, NMFS Pacific Islands Region, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814.

Regional Administrator, NMFS Alaska Region, 709 West Ninth Street, Juneau, AK 99801.

High Seas Fishing Compliance Act: Fishery Management Specialist, Office of International Affairs (F/IA), NMFS, 1315 East-West Highway, Room 12604, Silver Spring, MD 20910.

AMLR harvesting permits: Foreign Affairs Specialist for International Science, NMFS Office of Science and Technology, 1315 East-West Highway, Room 12350, Silver Spring, MD 20910.

AMLR dealer permits: Import Control Officer, NMFS Office of Sustainable

Fisheries, P.O. Drawer 1207, Pascagoula, MS 39567.

National Saltwater Angler Registry: Fish Biologist, Office of Science and Technology, Fisheries Statistics Division NMFS, 1315 East-West Highway, Room 12423, Silver Spring, MD 20910.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the national or regional Privacy Act Officer:

Privacy Act Officer, NOAA, 1315 East-West Highway, Room 10641, Silver Spring, MD 20910.

Privacy Act Officer, NMFS, 1315 East-West Highway, Room 13706, Silver Spring, MD 20910.

Privacy Act Officer, NMFS Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

Privacy Act Officer, NMFS Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701.

Privacy Act Officer, NMFS Northwest Region, 7600 Sand Point Way NE., Bldg. #1, Seattle, WA 98115.

Privacy Act Officer, NMFS Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

Privacy Act Officer, NMFS Pacific Islands Region, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814.

Privacy Act Officer, NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK 99801.

Written requests must be signed by the requesting individual. Requestor must make the request in writing and provide his/her name, address, and date of the request and record sought. All such requests must comply with the inquiry provisions of the Department's Privacy Act rules which appear at 15 CFR part 4, Appendix A.

RECORD ACCESS PROCEDURES:

Requests for access to records maintained in this system of records should be addressed to the same address given in the Notification section above. **Note:** Complete records for jointly owned permits are made accessible to each owner upon his/her request.

CONTESTING RECORD PROCEDURES:

The Department's rules for access, for contesting contents, and appealing initial determinations by the individual concerned are provided for in 15 CFR part 4, Appendix A.

RECORD SOURCE CATEGORIES:

Information in this system will be collected from individuals applying for a permit or registration or from an entity supplying related documentation regarding an application, permit, or registration.

EXEMPTION CLAIMS FOR SYSTEM:

None.

Dated: April 11, 2008.

Brenda Dolan,

Department of Commerce, Freedom of Information/Privacy Act Officer.

[FR Doc. E8-8257 Filed 4-16-08; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XH25

Taking and Importing Marine Mammals; Navy Training and Research, Development, Testing, and Evaluation Activities Conducted Within the Southern California Range Complex

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

ACTION: Notice; receipt of application for letter of authorization; request for comments and information.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) for authorization to take marine mammals incidental to military readiness training events and research, development, testing and evaluation (RDT&E) to be conducted in the Southern California Range Complex (SOCAL) for the period beginning January 2009 and ending January 2014. Pursuant to the implementing regulations of the Marine Mammal Protection Act (MMPA), NMFS is announcing our receipt of the Navy's request for the development and implementation of regulations governing the incidental taking of marine mammals and inviting information, suggestions, and comments on the Navy's application and request.

DATES: Comments and information must be received no later than May 19, 2008.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225. The mailbox address for

providing email comments is PR1.050107L@noaa.gov. NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, Office of Protected Resources, NMFS, (301) 713-2289, ext. 166.

SUPPLEMENTARY INFORMATION:

Availability

A copy of the Navy's application may be obtained by writing to the address specified above (See **ADDRESSES**), telephoning the contact listed above (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. The Navy's Draft Environmental Impact Statement (DEIS) for SOCAL was made available to the public on April 4, 2008, and may be viewed at <http://www.socalrangecomplexeis.com/>. Because NMFS is participating as a cooperating agency in the development of the Navy's DEIS for SOCAL, NMFS staff will be present at the associated public meetings and prepared to discuss NMFS' participation in the development of the EIS as well as the MMPA process for the issuance of incidental take authorizations. The dates and times of the public meetings may be viewed at: <http://www.socalrangecomplexeis.com/>.

Background

In the case of military readiness activities, sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) if certain findings are made and regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined "negligible impact" in 50 CFR 216.103 as: an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely