

**JUSTIFICATION FOR CHANGE
AMERICAN FISHERIES ACT (AFA) REPORTS
OMB CONTROL NO. 0648-0401**

This information collection is revised by adding to the Cooperative Contract the obligation for the American Fisheries Act (AFA) cooperative members to ensure full payment of cost recovery fees established by an associated rule (RIN 0648-BE05). This requirement is intended to encourage and facilitate coordination among AFA cooperative members for the timely and complete payment of fees.

The Magnuson-Stevens Fishery Conservation and Management Act 16 U.S.C. 1801 et seq. (Magnuson-Stevens Act) authorizes the North Pacific Fishery Management Council (Council) to prepare and amend fishery management plans for any fishery in waters under its jurisdiction. National Marine Fisheries Service (NMFS), Alaska Region manages fisheries in the Exclusive Economic Zone (EEZ) waters off the coast of Alaska under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area and Fishery Management Plan for Groundfish of the Gulf of Alaska. Implementing regulations are located at 50 CFR part 679.

The Magnuson-Stevens Act both authorizes and requires the collection of cost recovery fees for Limited Access Privilege (LAP) programs and CDQ programs. Magnuson-Stevens Act cost recovery fees may not exceed three percent of the ex-vessel value, and must recover costs associated with the management, data collection, and enforcement of these programs that are directly incurred by government agencies tasked with overseeing these fisheries.

There will be no change to burden or cost.

Comments and responses received on the proposed rule (RIN 0648-BE05) that pertain to the AFA collection are listed below.

Comment	Response
<p><u>Comment 12:</u> Imposing cost recovery on vessel owners who voluntarily end a race for fish (i.e. AFA CP sector) creates a disincentive to rationalize through private cooperation.</p>	<p><u>NMFS Response:</u> Benefits associated with granting sole access to a defined percentage of the BS pollock TAC to the CP vessel owners listed in the AFA are many. Ending the “race for fish” created substantial economic benefits to those individuals and increased the costs of management of that fleet that is borne by tax payers. The AFA CP vessel owners are only being required to reimburse government agencies for the additional costs of managing the CP cooperative member vessels in the BS Pollock fishery. If the cost recovery fee increases costs to a point that they outweigh the benefits derived from the AFA program, the CP sector has the right to disband their cooperative and return to the less efficient race for fish and not be subject to the cost recovery fee. Additionally, section 303A of the Magnuson-Stevens Act requires that in establishing a limited access privilege program, a Council shall (2) provide, under section 304(d)</p>

Comment	Response
	(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.” Therefore, NMFS is mandated under the Magnuson-Stevens Act to develop cost recovery fee programs for limited access programs.
<p><u>Comment 13:</u> If the Pacific whiting CP sector [in the western region] was not a LAP program prior to 2011, then why is the pollock CP sector [in Alaska] a LAP program? NMFS should identify any material differences in management of the pollock CP sector today and the whiting CP sector before 2011.</p>	<p><u>NMFS Response:</u> NMFS’ authority to implement a cost recovery fee is based on the decision that all persons allowed to harvest BSAI pollock from the directed pollock fishery are participants in a LAP. As stated previously, section 304(d)(2)(A) of the Magnuson-Stevens Act authorizes and requires the Secretary to collect a cost recovery fee for limited access privilege programs. By definition under section 3 of the Magnuson-Stevens Act, limited access privilege programs include individual fishing quota programs. By definition under the Magnuson-Stevens Act, the AFA Program, Aleutian Islands Pollock Program, and Amendment 80 Program are individual fishing quota programs, because: 1) NMFS issues permits as part of a limited access system established under each of these programs; 2) these permits allow the harvest of a quantity of specific fisheries representing a portion of the TAC of the fisheries managed under each of these programs; and 3) these permits are received or held for exclusive use by specific persons as defined for each of these programs.</p>
<p><u>Comment 14:</u> The pollock directed fishing allowance (DFA) is not an IFQ. It does not meet the Magnuson-Stevens Act’s definition of IFQ, because it is not a permit. It is a harvest limit to be used with a permit.</p>	<p><u>NMFS Response:</u> NMFS disagrees. The Magnuson-Stevens defines an IFQ as, “a Federal permit under a limited access system to harvest a quantity of fish, expressed by a unit or units representing a percentage of the TAC of a fishery that may be received or held for exclusive use by a person.” The AFA DFA is a percentage of the pollock TAC, expressed in units, that is allocated to each of the AFA sectors. The AFA DFA is published annually in table 3 of the harvest specifications. Without publication of the AFA DFA in the harvest specifications, members of the AFA cannot harvest pollock. It is the publication of table 3 in the harvest specifications that provides the AFA with the amount they are permitted to catch that year.</p>
<p><u>Comment 15:</u> The pollock DFA was not created “under a limited access system,” and could not have been created under such a system during the moratorium on IFQs.</p>	<p><u>NMFS Response:</u> NMFS disagrees. According to the Magnuson-Stevens Act, the term “limited access system” means a system that limits participation in a fishery to those satisfying certain eligibility criteria or requirements contained in a fishery management plan or associated regulations. The AFA sectors are limited to participants who represent the vessels listed in section 208. In order for the vessels to be listed in section 208, they had to meet historical participation requirements that limited participation in the fishery. In addition, although the AFA Program was mandated through Congress, the AFA Program is administered through the FMP and amendments to the AFA Program are done</p>

Comment	Response
<p><u>Comment 16:</u> The OPCC-PCC agreement is not a “person.”</p>	<p>through the FMP amendment process.</p> <p><u>NMFS Response:</u> NMFS agrees. The agreement between OPCC/HSCC and PCC is not the “person” for cost recovery. Federal regulations at §679.2 define a person as “any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other non-individual entity (whether or not organized, or existing under the laws of any state), and any Federal, state, local, or foreign government or any entity of any such aforementioned governments.” The PCC and OPCC/HSCC are a “person” under NMFS’ definition because of their association through their cooperative agreement. If the agreement hadn’t been developed, the membership of the PCC and the OPCC/HSCC would each be considered a person based on their affiliation.</p> <p>For the purposes of cost recovery, NMFS defines the association between PCC and OPCC/HSCC as the person. Therefore, they are required to submit one fee which covers both cooperatives just as they submit one salmon avoidance report and one cooperative report representing both of the PCC and OPCC/HSCC.</p>
<p><u>Comment 17:</u> The “person” does not hold the “permit.” The pollock DFA, if it is a permit, is allocated to CP vessels – the steel- rather than to a contract between OPCC and PCC.</p>	<p><u>NMFS Response:</u> NMFS disagrees. The “person” who receives the exclusive harvest privilege for the purposes of cost recovery is the PCC and OPCC/HSCC. They are a person, because of their joint agreement (see response to Comment 16 for more information). Section 206(b) of the AFA allocated the DFA “to the catcher/processors and catcher vessels that harvest pollock for processing.” Because the specific text of the AFA suggests that a percentage of the TAC go to each of the sectors, the allocation is to the sector and not to the specific vessels. Once the sector receives their allocation, it is up to the members of that sector to divide the allocation among sector members. The actual sector members are then provided with a privilege to harvest pollock for processing using one of the vessels listed in section 208.</p>
<p><u>Comment 18:</u> The pollock DFA does not allow any person “to harvest a quantity of fish” for that person’s “exclusive use.”</p>	<p><u>NMFS Response:</u> NMFS agrees that the directed fishing allowance does not allow any person to harvest a quantity of fish for that person’s exclusive use. It does, however, provide annually a percentage of the BS pollock fishery allocation for exclusive use by named AFA catcher/processors and catcher vessels that deliver to catcher/processors.</p>
<p><u>Comment 21:</u> Revise references to “the cooperative representing the listed AFA catcher/processor and high seas catcher vessels that deliver to them,” or similar language. There is no single cooperative representing CP’s and CV’s. There is one cooperative for CPs (PCC) and another for CVs delivering to CPs (OPCC/HSCC). The two cooperatives are parties to the agreement between them.</p>	<p><u>NMFS response:</u> NMFS acknowledges this comment and has made edits in the regulations, where necessary, to reflect that there are two cooperatives – one for CPs and another for CVs delivering to CPs.</p>

Comment	Response
<p><u>Comment 22:</u> The definition of “AFA fee liability” at 50 C.F.R. § 679.2 should be revised to mean “the amount of money ... owed to NMFS by an AFA cooperative or the Cooperative Agreement between Offshore Pollock Catchers Cooperative and Pollock Conservation Cooperative”</p>	<p><u>NMFS Response:</u> NMFS acknowledges this comment and disagrees with the suggested edits. NMFS is requiring the PCC and OPCC/HSCC cooperatives to submit information on the representative responsible for submitting the entire cost recovery fee for those cooperative. This is stated in section 1.10.3.1 of the RIR/IRFA for this action and is already captured in the regulations. Only one representative is necessary as the cooperatives are considered one person based on their association through their cooperative agreement.</p>
<p><u>Comment 23:</u> § 679.66(a)(ii) – which identifies the person responsible for paying the cost recovery fee – should be revised to read “the person designated as the representative of the Cooperative Agreement between Offshore Pollock Catchers Cooperative and Pollock Conservation Cooperative.”</p>	<p><u>NMFS Response:</u> NMFS acknowledges this comment and disagrees with the suggested edit. As stated in response to comment 22, the PCC and OPCC/HSCC cooperatives are responsible for submitting information on the representative that is responsible for submitting the entire cost recovery fee for these two cooperatives. The current regulations already capture that information.</p>
<p><u>Comment 24:</u> In §§ 679.66(c)(2), 679.66(c)(2)(iii)(B), 679.66(c)(3)(i), and 679.66(c)(5)(iii), the references to a cooperative of listed AFA CPs and CVs delivering to CPs should be revised to read “the Cooperative Agreement between Offshore Pollock Catchers Cooperative and Pollock Conservation Cooperative” or, where appropriate, to the representative of that agreement.</p>	<p><u>NMFS Response:</u> NMFS disagrees. NMFS has edited the referenced sections to show that there are two distinct cooperatives. However, NMFS disagrees that the reference to the two cooperatives should be removed and replaced with the Cooperative Agreement between Offshore Pollock Catchers Cooperative and Pollock Conservation Cooperative. The PCC and OPCC/HSCC are a “person” under NMFS’ definition because of their association through their cooperative agreement. Therefore, it would not be appropriate for NMFS to calculate a fee liability for the agreement instead of the person covered by the agreement.</p>
<p><u>Comment 25:</u> The heading of § 679.66(d)(3) should read “Cooperative Agreement between Offshore Pollock Catchers Cooperative and Pollock Conservation Cooperative underpayment.”</p>	<p><u>NMFS Response:</u> NMFS disagrees. As mentioned previously, the PCC and HSCC/OPCC are a person because of their association through their cooperative agreement. Therefore, it is not necessary to specify the agreement in section § 679.66(d)(3). Because the cooperatives will be required to submit one payment to cover their cost recovery fees, it is appropriate to refer to the underpayment in this section as the joint cooperative underpayment.</p>
<p><u>Comment 26:</u> § 679.66(d)(3)(i) should read: “The [] listed AFA catcher/processors and high seas catcher vessels that deliver to them will not receive any [directed] Bering Sea pollock allocation until the [] representative [of the Cooperative Agreement between Offshore Pollock Catchers Cooperative and Pollock Conservation Cooperative] submits full payment of [the agreement’s] AFA fee liability”</p>	<p><u>NMFS Response:</u> NMFS disagrees with the suggested edit. However, NMFS has made an edit to the language at § 679.66(d)(3)(i) to refer to “cooperatives” instead of the single “cooperative”. This more accurately reflects that NMFS will not be provide an allocation until the cooperative representative identified to NMFS by the PCC and HSCC/OPCC submits full payment of all outstanding cost recovery fees.</p>
<p><u>Comment 27:</u> § 679.66(d)(3)(ii) should read: “If the [representative of the Cooperative Agreement between Offshore Pollock Catchers Cooperative and Pollock</p>	<p><u>NMFS Response:</u> NMFS disagrees. As has been stated previously, the cooperative agreement is not the person. However, NMFS has made a minor edit to the regulations in section §</p>

Comment	Response
<p>Conservation Cooperative] pays only a portion of [the agreement’s] AFA fee liability, then the Regional Administrator may release a portion of the [directed] Bering Sea pollock allocation to [listed AFA catcher/processers and high seas catcher vessels that deliver to them] equal to the portion of the fee liability paid.”</p>	<p>679.66(d)(3)(ii). Instead of saying “If the cooperative representing....” NMFS has changed the regulations to say, “If the cooperative representative representing...” This edit more accurately describes that there is one representative for the PCC and HSCC/OPCC that represents both cooperatives in matters related to cost recovery.</p>
<p><u>Comment 28:</u> § 679.66(d)(4) should read: “If an AFA cooperative representative [or the representative of the Cooperative Agreement between Offshore Pollock Catchers Cooperative and Pollock Conservation Cooperative] fails to submit full payment for the AFA fee liability ... the Regional Administrator may ... send an IAD to the AFA cooperative representative [or the representative of the agreement] stating that the cooperative’s [or agreement’s] estimated fee liability ... is the AFA fee liability due from the AFA cooperative representative [or the representative of the agreement].</p>	<p><u>NMFS Response:</u> NMFS disagrees. As stated previously in the responses to comments 16 and 17, the PCC and OPCC/HSCC are required to submit to NMFS information on one representative for both cooperatives for cost recovery purposes. Therefore, it would be correct to stat that “If an AFA cooperative representative [which for purposes of cost recovery means the person identified as the representative of both cooperatives] fails to submit full payment...”</p>
<p><u>Comment 29:</u> § 679.66(d)(5) should read: “If an AFA cooperative representative [or the representative of the Cooperative Agreement between Offshore Pollock Catchers Cooperative and Pollock Conservation Cooperative] fails to submit full payment of AFA fee liability ... no [directed] Bering Sea pollock allocation will be provided to that AFA cooperative [or to listed AFA catcher/processers and high seas catcher vessels that deliver to them] for the following calendar year”</p>	<p><u>NMFS Response:</u> NMFS disagrees. As stated in the response to the previous comment, it is appropriate to refer to “an AFA cooperative representative”.</p>
<p><u>Comment 30:</u> § 679.66(d)(6) should read: “Upon final agency action determining that an AFA cooperative representative [or the representative of the Cooperative Agreement between Offshore Pollock Catchers Cooperative and Pollock Conservation Cooperative] has not paid that cooperative’s [or the agreement’s] AFA fee liability, the Regional Administrator may continue to prohibit issuance of a directed Bering Sea pollock allocation for that cooperative [or the listed AFA catcher/processers and high seas catcher vessels that deliver to them] for any subsequent calendar year”</p>	<p><u>NMFS Response:</u> NMFS disagrees. As stated in the previous two comments, it is appropriate to refer to “an AFA cooperative representative.”</p>
<p><u>Comment 31:</u> References to “an AFA cooperative,” “an AFA cooperative representative,” and “cooperative” in §679.66(c)(4) and (5)(i), 679.66(e) and 679.66(f) should also include references to “the Cooperative Agreement between Offshore Pollock Catchers Cooperative and Pollock Conservation Cooperative” or, where appropriate, the agreement’s representative.</p>	<p><u>NMFS Response:</u> NMFS disagrees that “an AFA cooperative representative” for reasons explained in the response to comments 28, 29, and 30. However, NMFS agrees that in section § 679.66(5) the text should refer to the plural “cooperatives” as opposed to the singular “cooperative.” NMFS has made the edit.</p>

Comment	Response
<p><u>Comment 32:</u> In § 679.66(g), the reference to the account drawn on to pay the “CDQ fee liability” should refer to the “AFA fee liability.”</p>	<p><u>NMFS Response:</u> NMFS agrees and has made the edit.</p>
<p><u>Comment 33:</u> The regulations should somewhere clarify that “the person designated as the representative of” the Cooperative Agreement between Offshore Pollock Catchers Cooperative and Pollock Conservation Cooperative is a representative of that agreement solely for purposes of payment of cost recovery fees.</p>	<p><u>NMFS Response:</u> NMFS disagrees. As stated previous in response to comment 16, the “person” for cost recovery is not the agreement. It is the affiliation through that agreement that declares the OPCC/HSCC and PCC as the person, jointly. Both the preamble to the proposed rule, the RIR, the implementing regulations, and this final rule clarify that the “person” is both cooperatives together. Just as both cooperatives come together to submit their cooperative report, both cooperatives come together through their agreement to form one “person” and to submit one cost recovery fee. The person responsible for submitting the fee is the designated representative.</p>