

**SUPPORTING STATEMENT  
ALASKA NOTIFICATION OF INTENT  
TO PROCESS ALEUTIAN ISLANDS PACIFIC COD  
OMB CONTROL NO. 0648-XXXX**

This is a resubmission, with the final rule, of a request is for a temporary new information collection due to an associated rule **[RIN 0648-BF54]**. This collection will be merged into OMB Control No. 0648-0213 after approval. NMFS made three changes to the regulatory text from the proposed rule. Two of these changes are in response to comments received on the proposed rule, and one change is made to address administration of this final rule in 2016.

First, this final rule modifies § 679.20(a)(7)(viii)(E)(4) in response to Comment 8. The words “prior to” are changed to “on or before” to reflect the Council’s intent. See the response to **Comment 8** for the complete justification for this change.

Second, this final rule modifies § 679.20(a)(7)(viii)(D) and (E) to specify that the City Manager of Adak and the City Administrator of Atka are the individuals responsible for notifying NMFS of their city’s intent to process Pacific cod in the upcoming year. See the response to **Comment 5** for the complete justification for this change.

Third, this final rule modifies § 679.20(a)(7)(viii) to include a **separate notification deadline for 2016 for the City Manager of Adak or the City Administrator of Atka to notify NMFS of the intent to process Aleutian Islands Pacific cod in 2017**. This final rule requires that the official notification of intent to process for 2017 be postmarked and emailed no later than October 31.

This change is required to ensure that NMFS provides an opportunity for the City of Adak and the City of Atka to notify NMFS of their intent to process after this final rule has published. Because this final rule will publish and become effective after October 31, 2016, the City of Adak and the City of Atka could not provide timely notification to NMFS of their intent to process in 2017 without this change in the notification deadline. This change enables the cities of Adak and Atka, and vessels delivering to Aleutian Island shoreplants, to receive the benefits of this final rule in 2017 that would otherwise be foregone without this change. NMFS is providing 15 days after the publication of this rule for the City of Adak or the City of Atka to notify NMFS so that the cities have adequate time after the publication of this final rule to prepare and submit their official notification of intent.

Please see A8 for applicable public comments and NOAA responses.

**INTRODUCTION**

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.

The National Marine Fisheries Service (NMFS), Alaska Region manages: 1) the crab fisheries in the Exclusive Economic Zone (EEZ) waters off the coast of Alaska under the Fishery Management Plan for Bering Sea and Aleutian Islands Crab; 2) groundfish under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area; and 3) groundfish under the Fishery Management Plan for Groundfish of the Gulf of Alaska. The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under the authority of the [Northern Pacific Halibut Act of 1982](#). The IPHC promulgates regulations governing the halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea.

## **A. JUSTIFICATION**

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

This action contains new requirements for a maximum of two communities that would be required to provide notice to NMFS of their intent to process Aleutian Islands Pacific cod. Harvesting and delivery requirements apply only if specific notification requirements are met, and only during a portion of the year. This action establishes harvesting and delivery requirements in the BSAI Pacific cod fishery to prioritize the delivery of a portion of the Aleutian Islands Pacific cod total allowable catch (TAC) to shoreside processors located on land west of 170 W. longitude in the Aleutian Islands.

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

#### **a. Notification of Intent to Process Non-Community Development Quota (CDQ) Directed Aleutian Islands Pacific Cod [NEW]**

Notification must be timely and complete in the form of a letter or memo to NMFS signed by the City Manager of Adak and City Administrator of Atka whose shoreplant is intending to process Aleutian Islands Pacific cod.

Notification must be submitted by certified mail through the United States Postal Service to:

NMFS Alaska Region  
Attn: Regional Administrator  
P. O. Box 21668  
Juneau, AK 99802

Certified mail will provide the community with proof of postmark date and receipt by NMFS. Additionally, the Regional Administrator will send a signed and dated letter confirming receipt of the city's letter stating their intent to process Aleutian Islands Pacific cod.

The City Manager of Adak or the City Administrator of Atka may also submit an electronic copy of the letter of intent via email to [nmfs.akr.inseason@noaa.gov](mailto:nmfs.akr.inseason@noaa.gov) to ensure that timely notification has been received by NMFS prior to November 1. Email notification is optional and in addition to notification via U.S. Postal Service; it does not replace the U.S. Postal Service notification requirement.

**Deadline:** notification must be received (not postmarked) by NMFS on or before **November 1** of the fishing year preceding the fishing year in which prior to the calendar year in which the Aleutian Islands city intends to process Aleutian Islands Pacific cod. Notifications received on or after November 1 will not be accepted.

**Notification of intent to process Aleutian Island Pacific cod**

- Date
- Name of city
- Statement of intent to process Aleutian Island Pacific cod
- Calendar year during which the city intends to process Aleutian Island Pacific cod
- Signature of and contact information for the City Manager

<b>Notify Intent to Process Pcod, Respondent</b>	
<b>Number of respondents</b>	<b>2</b>
<b>Total annual responses</b>	<b>2</b>
Frequency of response = 1	
<b>Total burden hours</b>	<b>1 hr</b>
Time per response = 30 minutes	
<b>Total personnel cost (\$37/hr x 1 )</b>	<b>\$37</b>
<b>Total miscellaneous cost (3.40)</b>	<b>\$4</b>
Certified mail, 2016 rates = 3.30	
Photocopy cost (0.05 x 2 = 0.10)	

<b>Notify Intent to Process Pcod, Federal Government</b>	
<b>Total annual responses</b>	<b>2</b>
<b>Total burden hours</b>	<b>2 hr</b>
Time per response =1 hr	
<b>Total personnel cost (\$37/hr x 2)</b>	<b>\$74</b>
<b>Total miscellaneous cost</b>	<b>\$1</b>
Postage (.45 x 2 = 0.90)	

It is anticipated that the information collected will be disseminated to the public or used to support publicly disseminated information. The Council will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with National Oceanic and Atmospheric Administration (NOAA) standards for confidentiality, privacy, and electronic information. See response to Question 10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Prior to dissemination, the information will be subjected to quality control measures and a pre-dissemination review pursuant to [Section 515 of Public Law 106-554](#).

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

Instructions are available on the NMFS Alaska Region web page at <https://alaskafisheries.noaa.gov/fisheries/rr-forms>. There is no form; rather a letter is created by the respondent and sent to NMFS by certified mail.

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

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

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

This information collection does not impose a significant impact on small entities. The two processors impacted by this action are not small businesses.

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

If this action were not conducted, the additional opportunities provided for harvesters to deliver Aleutian Islands Pacific cod to Aleutian Islands shoreplants would not exist. The action is intended to provide benefits to harvesters delivering to Aleutian Islands shoreplants, the shoreplants, and the communities where those shoreplants are located. Because of their remote location and limited economic alternatives, Aleutian Islands communities rely on harvesting and processing of the nearby fishery resources to support and sustain their communities. This action is intended to be directly responsive to National Standard 8 of the Magnuson-Stevens Act that states conservation and management measures shall take into account the importance of fishery resources to fishing communities in order to provide for the sustained participation of such communities, and to the extent practicable, minimize adverse economic impacts on such communities (16 U.S.C. 1851(a)(8)).

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

No special circumstances exist.

**8. Provide 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 Number 0648-BF54) published in the Federal Register on August 1, 2016 (81 FR 50444). Please see applicable comments and responses below.

*Comment 5:* The proposed rule grants *de facto* fishery management authority to municipal officials, by requiring them to provide notice to NMFS of the Aleutian Islands shoreplants intent to process Pacific cod in the upcoming year. NMFS is surrendering the determination of whether a shore plant is prepared to process Pacific cod to a community representative who is not a regulated participant in the fishery. This is granting too much power to one individual. The city manager could use this authority to undermine certain businesses or to grant favors. Additionally, Atka does not have a city manager.

*Response 5:* The Council specified that the City of Adak or the City of Atka should be the entity to provide official notification to NMFS of the community's intent to process Pacific cod, but it did not specify who from Adak or Atka should provide such notification (Section 2.7.2.4 of the Analysis). The Analysis describes that if the notification requirement is implemented, NMFS could specify the person representing the city who should provide the notification.

The commenter notes that the City of Atka does not have a city manager. Technically, that is accurate: Atka has a city administrator. Title 29 of the Alaska Statutes explains the distinctions between a city manager and a city administrator. In the manager form of municipality, the city manager is the chief executive. In a strong-mayor form of municipality, the mayor is the chief executive and the city administrator can exercise powers or duties only as delegated by the mayor and city council. In either case, the role of the manager or administrator is to represent the interests of the city, city council, and mayor. The language in the final rule has been changed to reflect that the city administrator is the person responsible for providing notification to NMFS for Atka.

This type of designation is not unprecedented. For example, in an action to create Community Quota Entities (CQE) for the Halibut and Sablefish Individual Fishing Quota Program (Amendment 66 to the Gulf of Alaska FMP, 69 FR 23681, April 30, 2004), NMFS specified which governing body would be responsible for proposing a potential CQE to NMFS, depending on the governance structure of the particular community. For communities incorporated as municipalities, the governing body identified was the city council. In communities represented by tribal governments, the governing body was the non-profit entity. In similar fashion, and as described in the proposed rule for this action, NMFS determined that the city manager or administrator would be the appropriate person responsible for submitting the required notification to NMFS.

While ownership and management of fish processing facilities may change, it is likely that there will always be someone performing the role of city manager or administrator for Adak and Atka. As elected or appointed officials, these representatives are bound by oath of office to uphold the wishes of their constituents. Currently, both the City of Adak and the City of Atka execute, in good faith, waivers for the delivery requirement for Western Aleutian Islands golden king crab when sufficient processing capacity does not exist in those communities. These cities issue the waiver knowing that it is not in the communities' best interests to strand the crab resource. The notification requirement under Amendment 113 is similar, and it is not clear how the requirement to notify NMFS of the communities' intent to process Pacific cod grants too much power to the city manager or administrator. NMFS expects that the city manager or administrator will be in communication with the shoreplant manager and local fishing fleet prior to the notification deadline to ensure that the shoreplant will be able to accept deliveries of Pacific cod once the set-aside goes into effect. If, for some reason, the shoreplant does not operate as anticipated, the 1,000 mt minimum processing performance measure would not be met by February 28 and the set-aside would be lifted.

NMFS does not consider the notification requirement to be a *de facto* grant of fishery management authority to the city manager or administrator. The Council and NMFS have established the fishery management policy with regard to Aleutian Islands Pacific cod. The intent of the Council and NMFS with Amendment 113 and this final rule is to have an Aleutian Islands CV Harvest Set-Aside in place for Aleutian Islands fishing communities, and the harvesters and shoreplants that are part of those communities, to utilize. Recognizing that there may be years when Aleutian Islands shoreplants may not be operational, the notification provision was a fishery management decision by the Council and NMFS to provide for an orderly start to the fishing year and as a way to prevent the set-aside from becoming effective if neither city intends to process in the upcoming fishing year. The city manager or administrator is the person from whom NMFS will expect to receive notification of the city's intent to process Pacific cod and to whom NMFS will confirm that notification has been received. Under this final rule, the city manager or administrator is providing information to NMFS on anticipated processing activities based on knowledge gained from Aleutian Islands shoreplants in their communities. City managers and administrators are not delegated any authority to open or close fisheries, assess catch amounts, or take other actions provided in regulation. Notification is not to be confused with an active role in administering regulations. NMFS is ultimately responsible for taking any management actions once a notification has been received.

*Comment 6:* If this rule is implemented, NMFS will notify Adak or Atka city managers if they have not received their notifications of intent to process. This seems at odds with other programs that have notification dates, such as submission of annual cooperative notifications to NMFS. There is no regulatory language that provides for NMFS to notify the entity or person that it has not received cooperative information regarding the next year's intent to process.

*Response 6:* The commenter is referring to the regulatory language at (a)(7)(viii)(D)(3) which explains how NMFS will provide confirmation to the City Manager of the City of Adak or the City Administrator of the City of Atka if their notification of intent to process Aleutian Islands Pacific cod has been received or not. This confirmation is to let the city know that the set-aside

will or will not be in effect for the upcoming year. Similarly, NMFS will publish a notice in the Federal Register to inform the public whether the set-aside will be in effect. NMFS will not offer these cities additional time to provide notification if it was not received by the deadline and according to the requirements stated in regulations.

*Comment 8:* The proposed regulatory language for the minimum Aleutian Islands shoreplant landing requirement at § 679.20(a)(7)(viii)(E)(4) states that “if less than 1,000 mt of the Aleutian Islands Catcher Vessel Harvest Set-Aside is landed at Aleutian Islands shoreplants *prior to* February 28, then paragraphs (a)(7)(viii)(E)(1) for the Bering Sea Trawl CV A-season Sector Limitation and (2) for the Aleutian Islands CV Harvest Set-Aside will not apply for the remainder of the fishing year.” However, the preamble to the proposed rule and the Council motion clearly state that this performance measure must be met “by” February 28. This change in the proposed regulatory language from the Council’s motion would give Aleutian Islands shoreplants one less day to fulfill the minimum delivery requirements. This one-day difference is not insignificant to Aleutian Islands shoreplants. An average of 178 mt of Pacific cod was landed at Adak on February 28 from 2002 through 2009. Landings on February 28 represent a substantial portion of the proposed 1,000-mt minimum landing requirement performance measure. The commenters request that the proposed regulatory language at § 679.20(a)(7)(viii)(E)(4) be changed so that landings made “on or before” February 28 will count toward the performance measure threshold.

*Response 8:* NMFS agrees. The Council motion, the preamble to the proposed rule, the Analysis, the FMP amendment text, and the notice of availability for the FMP amendment all state that 1,000 mt must be landed “by,” not “prior to,” February 28. The proposed regulatory language was inadvertently written in a way that contradicts the Council’s intent for this performance measure. Inclusion of February 28 in the minimum landings period is important and necessary. As noted in Section 2.7.2.5 of the Analysis, Aleutian Islands Pacific cod tend to aggregate in late February to early March, and these aggregations are optimal for efficient trawl fishing. NMFS has changed § 679.20(a)(7)(viii)(E)(4) to clarify that landings made “on or before” February 28, rather than “prior to” February 28, will be used to determine whether the minimum landings requirement has been met.

*Comment 9:* As a longtime, small boat, Aleutian Islands fisherman, it is vital to my longline operation and to other small and entry level vessel owners to have a stable shoreside processing facility in the Aleutian Islands. Amendment 113 will create numerous opportunities for small boats and the community of Adak.

*Response 9:* NMFS acknowledges the support for this action.

*Comment 10:* We support solutions that optimize and create sustainable social, economic, and conservation outcomes. Amendment 113 and this final rule will help the economic sustainability of Adak and Atka and will help the aspirations of the Aleut people to repopulate some of the

islands of the western Aleutians. Amendment 113 and this final rule may also improve the conservation and ecosystem sustainability of the area. Giving the local inhabitants a larger financial stake in the sustainability of the local ecosystem is an important step in a long process leading to better conservation. We firmly believe that where local, and particularly Alaska Natives, have more control over resource extraction, the conservation outcome is likely to be better.

*Response 10:* NMFS acknowledges the comment and the support for Amendment 113 and this final rule.

*Comment 12:* There is an error in the fourth row of Table 4 in the preamble of the proposed rule. The fourth row in Table 4 refers to the “BSAI non-CDQ TAC.” This row should have read “BS non-CDQ TAC.”

*Response 12:* NMFS agrees that the fourth row in Table 4 of the proposed rule preamble should have read “BS non-CDQ TAC.” The amount of Pacific cod proposed for the BS non-CDQ TAC in the fourth row of Table 4 was accurate. This final rule modifies the final 2016 and 2017 harvest specifications to add a supplemental table, Table 8a, that provides the 2017 catch limits for Pacific cod under Amendment 113 and this final rule. NMFS will publish a notice in the Federal Register in December 2016 if there will be any changes to these amounts. NMFS will also publish a notice in the Federal Register to inform the public if the Aleutian Islands CV Harvest Set-Aside and Bering Sea Trawl Catcher Vessel Sector Limitation will be in effect in 2017. Table 8a displays the correct name of the allocation and the correct amount. No changes to the regulatory text are necessary in response to this comment.

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

No special circumstances exist.

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

The information collected is confidential under section 402(b) of the Magnuson-Stevens Act as amended in 2006 (16 U.S.C. 1801, *et seq.*). It is also confidential under [NOAA Administrative Order 216-100](#), which sets forth procedures to protect confidentiality of fishery statistics.

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

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



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

Estimated total unique respondents: 2. Estimated total responses: 2. Estimated total burden: 1 hr. Estimated total personnel costs (average wage equivalent to a GS-7 employee in Alaska, including COLA, at \$37/hour): \$37.

**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 Question 12 above).**

Total estimated miscellaneous costs: \$4.

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

The estimated total responses: 2. The estimated total burden: 2 hours. The estimated total personnel cost: \$ 47. Total estimated miscellaneous cost: \$ 1.

**15. Explain the reasons for any program changes or adjustments.**

**Program Changes**

Notify of Intent to Process Pacific Cod [NEW]

- an increase of 2 respondents and responses, 2 instead of 0
- an increase of 1 hr burden, 1 instead of 0 hr
- an increase of \$37 personnel costs, \$37 instead of 0
- an increase of \$4 miscellaneous costs, \$4 instead of 0

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

No plans exist for publishing the results of the information collection.

**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.**

The Notification of Intent to Process Aleutian Islands Pacific cod is not a form; rather it is a letter created by the respondent. The OMB Control No. and expiration date will be on the instructions.

**18. Explain each exception to the certification statement.**

Not Applicable.

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

This collection does not employ statistical methods.