

**SUPPORTING STATEMENT
ALASKA TRAWL LIMITED ACCESS YELLOWFIN SOLE
LICENSE ENDORSEMENT
OMB CONTROL NO. 0648-xxxx**

INTRODUCTION

This action is a request for approval of a new information collection under a proposed rule to limit access to the Bering Sea and Aleutian Islands (BSAI) Trawl Limited Access Sector (TLAS) yellowfin sole directed fishery by vessels delivering to motherships (0648-BH02).

National Marine Fisheries Service (NMFS), Alaska Region, manages the groundfish fisheries in the exclusive economic zone of the BSAI Management Area and the groundfish fisheries of the Gulf of Alaska under fishery management plans (FMPs) for the respective areas. The North Pacific Fishery Management Council prepared, and NMFS approved, the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* Regulations implementing the FMPs appear at 50 CFR parts [679](#) and [680](#).

This action would implement Amendment 116 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area. Amendment 116 would limit access to the BSAI TLAS yellowfin sole directed fishery by vessels delivering to motherships. A mothership is a vessel that is not used to harvest fish but only receives fish caught by other vessels for processing.

The proposed rule would 1) establish eligibility criteria based on historical participation in the fishery; 2) issue an endorsement to groundfish License Limitation Program (LLP) licenses that meet the eligibility criteria; and 3) authorize delivery of BSAI TLAS yellowfin sole to motherships by only those vessels designated on a groundfish LLP license that is assigned a BSAI TLAS yellowfin sole directed fishery endorsement. This action is necessary to provide benefits to historic participants in the BSAI TLAS yellowfin sole fishery, mitigate the risk that a “race for fish” could develop, and help to maintain the consistently low rates of halibut bycatch in the BSAI TLAS yellowfin sole directed fishery.

The current information requirements for the LLP are authorized under OMB Control No. 0648-0334. The new information collection described in this supporting statement will be collected only once, at the time the new LLP endorsements are issued, and the information will be collected from only a few respondents. Therefore, rather than amend OMB Control No. 0648-0334 twice in a short period to add the one-time requirements and then remove them, NMFS is requesting approval of a new information collection.

A. JUSTIFICATION

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

If approved, Amendment 116 would require that a vessel be assigned an LLP license with a BSAI TLAS yellowfin sole directed fishery endorsement for that vessel to be used to harvest

yellowfin sole in the BSAI TLAS yellowfin sole directed fishery and deliver that catch to a mothership. An LLP license would be eligible for such an endorsement if it is credited with at least one legal trip target landing in the BSAI TLAS yellowfin sole directed fishery made to a mothership in any one year from 2008 through 2015.

NMFS has created an official record with all relevant information necessary to assign eligible trip target landings to specific BSAI groundfish LLP licenses. Prior to modifying any groundfish LLP licenses with the addition of a BSAI TLAS yellowfin sole directed fishery endorsement, NMFS would notify via mail all Bering Sea¹ trawl gear groundfish LLP license holders whether NMFS data indicate that their LLP license(s) would receive a BSAI TLAS yellowfin sole directed fishery endorsement. NMFS' official record indicates that eight groundfish LLP licenses would be eligible to receive BSAI TLAS yellowfin sole directed fishery endorsements.

If this proposed rule is approved and implemented as a final rule, NMFS would mail a notification of eligibility for a BSAI TLAS yellowfin sole directed fishery endorsement to the holder of each groundfish LLP license with a Bering Sea trawl gear designation, using the address on record at the time the notification is sent. NMFS would issue a revised groundfish LLP license with a BSAI TLAS yellowfin sole directed fishery endorsement to holders of those LLP licenses that have been determined to be eligible for the endorsement and are credited with the qualified landings made by that vessel.

a. LLP endorsement for vessels with more than one eligible LLP license

if more than one groundfish LLP license is assigned to a vessel that made at least one legal trip target landing in the BSAI TLAS yellowfin sole directed fishery during the qualifying period, the vessel owner would need to specify only one groundfish LLP license to receive credit with those landing(s) to be eligible for the BSAI TLAS yellowfin sole directed fishery endorsement. This provision would ensure that in cases where more than one groundfish LLP license was assigned to a vessel when a BSAI TLAS trip target landing was made, only one license assigned to that vessel would be credited with the landing. Because NMFS, and in many cases vessel owners and operators, did not specify how specific landings should be assigned to multiple groundfish LLP licenses assigned to a vessel at the time a landing was made, this provision would resolve any disputes that may arise about the assignment of specific landings by crediting only one LLP license used on that vessel when a landing was made.

NMFS' official record indicates that five vessels had two groundfish LLP license numbers assigned to the vessel during the qualifying period.

Where more than one LLP license was assigned to a vessel that made qualifying landings during the qualifying period, NMFS would send a notification of eligibility to the holders of each of those eligible groundfish LLP licenses, but would not issue a revised LLP license with a BSAI TLAS yellowfin sole directed fishery endorsement until the vessel owner notifies NMFS which groundfish LLP license is selected to be credited with the qualifying landings made by that

¹ The yellowfin sole fishery only occurs in the Bering Sea (not in the Aleutian Islands). However, this fishery is part of the BSAI TLAS fisheries, so it retains the designation "BSAI" as part of its name. NMFS will only send letters to the LLP license holders who have Bering Sea trawl endorsements, because the fishery occurs only in the Bering Sea.

vessel. In addition, while such groundfish LLP licenses are eligible to receive an endorsement, none of those identified licenses would receive an endorsement or be able to deliver BSAI TLAS yellowfin sole to a mothership until the vessel owner notifies NMFS which groundfish LLP license is to receive the endorsement and the endorsement is actually added to that groundfish LLP license.

The owner of the vessel to which a pair of groundfish LLP licenses was assigned must notify NMFS in writing to stipulate which groundfish LLP license is to be credited with the qualifying landings for the new endorsement. The written request must include the following information:

- Name and mailing address of the person submitting the request,
- Name of vessel owner, if an authorized agent is submitting the request on behalf of a vessel owner,
- Vessel name,
- The groundfish LLP license number of the license that the vessel owner requests be credited with qualifying landings for purposes of assigning a BSAI TLAS yellowfin sole directed fishery endorsement, and
- Signature of the vessel owner or authorized agent.

The request may be submitted to NMFS by mail, fax, or hand delivery.

b. Administrative appeals

NMFS data would comprise the official record that is used to assign BSAI TLAS yellowfin sole directed fishery endorsements. NMFS would notify holders of groundfish LLP licenses determined by NMFS to not be eligible for a BSAI TLAS yellowfin sole directed fishery endorsement that the groundfish LLP license was determined to be ineligible based on the official record. NMFS would provide a single 30-day evidentiary period from the date that notification is sent for a groundfish LLP license holder to submit any information or evidence to demonstrate that the information contained in the official record is inconsistent with his or her records.

If NMFS determines that the additional information or evidence proves that the groundfish LLP license holder's claims are correct, NMFS would act in accordance with that information or evidence. However, if, after the 30-day evidentiary period, NMFS determines that the additional information or evidence does not prove that the groundfish LLP license holder's claims were correct, NMFS would deny the claim. NMFS would notify the applicant that the additional information or evidence did not meet the burden of proof to overcome the official record through an initial administrative determination (IAD).

NMFS' IAD would indicate the deficiencies and discrepancies in the information or the evidence submitted in support of the claim. NMFS' IAD would indicate which claims could not be approved based on the available information or evidence, and provide information on how an applicant could appeal an IAD. Administrative appeals must be submitted to the National Appeals Office, which operates out of NMFS headquarters in Silver Spring, MD. The procedure for appealing an IAD through the National Appeals Office is at 15 CFR part 906 (79 FR 7056,

February 6, 2014). See also <http://www.nmfs.noaa.gov/mb/appeals/mb7.htm>.

A person who appeals an IAD would be eligible to participate in the BSAI TLAS yellowfin sole directed fishery using the disputed groundfish LLP license with the claimed endorsements listed on the groundfish LLP license until final action by NMFS on the appeal. NMFS would reissue as interim groundfish LLP licenses any groundfish LLP licenses pending final action on the appeal by NMFS.

Once final action on the appeal has been taken in favor of the appellant, NMFS would reissue the groundfish LLP license as a final non-interim groundfish LLP license. NMFS would prohibit the transfer of an interim groundfish LLP license until the appeal is resolved. Transfer restrictions would be imposed on interim groundfish LLP licenses to ensure that a person would not receive a groundfish LLP license by transfer and have the endorsement modified through an appeal process that was initiated and conducted by the previous groundfish LLP license holder—a process that a transferee could not control and which could substantially affect the value and utility of that groundfish LLP license.

The requirements for submitting an administrative appeal are in regulation at 15 CFR part 906. Any person submitting an administrative appeal must submit a written petition of appeal to the National Appeals Office. The petition shall include a copy of the IAD the person wishes to appeal. In the petition, the person shall state how the IAD directly and adversely affects him or her, why he or she believes the IAD is inconsistent with the law and regulations governing the IAD, and whether he or she requests a hearing or prefers that an appellate officer make a decision based on the National Appeals Office case record and without a hearing. The petition may include additional documentation in support of the appeal. In the petition, a person shall state whether the person has a representative, and if so, the name, address, and telephone number for the representative. In the petition, the person also shall identify the address of record.

If a person requests a hearing, the written request must include a concise statement raising genuine and substantial issues of a material fact or law that cannot be resolved based on the documentary evidence.

The petition must be transmitted via facsimile. The facsimile number is 301-713-2384. If the person filing the petition does not have access to a fax machine, he or she may file the petition by mail or commercial carrier addressed to Chief, National Appeals Office, 1315 East-West Hwy., Silver Spring, MD 20910.

A petition must be filed within 45 days after the date the IAD is issued unless a shorter or longer filing timeframe is explicitly specified in the regulations governing the initial administrative determination. A person may not request an extension of time to file a petition to appeal.

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

Some of the information collected will be disseminated to the public. Specifically, NMFS proposes to list those groundfish LLP licenses that the official record currently indicates are eligible to receive a BSAI TLAS yellowfin sole directed fishery endorsement in Tables 52 and 53 to 50 CFR part 679 to facilitate the ability of the public to review their catch records and determine if additional groundfish LLP licenses may be eligible to receive the endorsement.

In addition, for vessels designated on multiple groundfish LLP licenses eligible for the endorsement, the choice of which license will be assigned the new endorsement will be provided on the NMFS Alaska Region website along with all of the other information about all groundfish LLP licenses that is routinely made public. This information includes the groundfish LLP license number, name and address of licensee, vessel operational type, vessel maximum length overall, whether the license is transferable or not, endorsements on the license, and persons or entities with an interest in the license.

Personally identifiable information and confidential business information submitted in an administrative appeal are not released to the public. Final administrative appeal decisions with redactions are posted on the NMFS National Appeals Office website (<http://www.nmfs.noaa.gov/mb/appeals/decisionsbyissuancedate.htm>).

Public dissemination of these data is governed by NOAA's information quality guidelines, which were issued on October 30, 2014 (http://www.cio.noaa.gov/services_programs/IQ_Guidelines_103014.html). The information that will be disseminated to the public generally falls under NOAA's information quality category "original data" which is data in their most basic useful form. This information is not synthesized, summarized, or analyzed. Therefore, peer review is not required for information provided to the public.

NMFS Alaska Region and the National Appeals Office will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. See response 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.

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 information about the choice of which groundfish LLP license to assign the new endorsement to will be provided by a signed letter submitted to NMFS. The written request may be submitted to NMFS by mail, fax, or hand delivery.

If an administrative appeal is filed, the documents will be submitted by facsimile to NMFS.

This information collection does not require the submission of forms or applications.

4. Describe efforts to identify duplication.

This information collection is a one-time selection of which groundfish LLP license to assign a new endorsement to and any administrative appeals that may be associated with eligibility for the new endorsement. Because this is a new program, no duplication of this information collection exists in other fishery management programs.

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

This information collection may impact small entities. However, the information requirements for this new program are very minimal. NMFS minimizes the burden on small entities by reviewing the official catch record, identifying those groundfish LLP licenses that may be eligible for the new endorsement, and specifically identifying affected groundfish LLP licenses in the proposed rule. NMFS also provides three opportunities to challenge its official record (comments on the proposed rule, the 30-day evidentiary period for disputes, and an administrative appeals process). For vessels designated on multiple eligible groundfish LLP licenses, the selection of which license will be assigned the new endorsement must be done by a signed letter to NMFS. The written request may be submitted to NMFS by mail, fax, or hand delivery.

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

NMFS would be unable to implement the requirement to limit access to the BSAI TLAS yellowfin sole directed fishery by vessels that deliver to motherships unless NMFS is able to collect from the licensee their selection of which groundfish LLP license will be assigned the new endorsement. NMFS must provide an opportunity for an administrative appeal to individuals and entities who disagree with administrative determinations made by NMFS. However, NMFS must collect information from the appellants about the basis of their administrative appeal to provide the legal review provided by an administrative appeal.

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 06478-BH02, will be published coincident with this submission.

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

No payment or gift to respondents is provided under this proposed rule.

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

Information about which groundfish LLP licenses are eligible for the new BSAI TLAS yellowfin sole directed fishery endorsement is provided in the proposed rule and will be published as Tables 52 and 53 to 50 CFR part 679. In addition, for vessels designated on multiple groundfish LLP licenses eligible for the endorsement, the choice of which license will be assigned the new endorsement will be provided on the NMFS Alaska Region website along with all of the other information about groundfish LLP licenses that is routinely made public. This information includes the groundfish LLP license number, name and address of licensee, vessel operational type, vessel maximum length overall, whether the license is transferable or not, endorsements on the license, and persons or entities with an interest in the license.

Personally identifiable information and confidential business information submitted in an administrative appeal is not released to the public. Final administrative appeal decisions with redactions are posted on the NMFS National Appeals Office website (<http://www.nmfs.noaa.gov/mb/appeals/decisionsbyissuancedate.htm>).

Information about the groundfish LLP license and associated endorsements is part of a system of records: <http://www.osec.doc.gov/opog/PrivacyAct/SORNs/noaa-19.html>

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.

This collection of information will only occur once; therefore, the amounts below are all one-time burdens and costs for the respondents.

NMFS expects five respondents for the selection of the groundfish LLP license for the new endorsement, and no more than one respondent for the administrative appeal.

NMFS expects that the requirement to submit to NMFS a letter selecting the groundfish LLP license for the new endorsement will take each respondent two hours to prepare and submit. NMFS projects that an administrative appeal will take four hours to prepare and submit.

	Component of the Information Collection		
	LLP endorsement for vessels with more than one eligible LLP	Administrative appeal	Total
# of respondents	5	1	6
# responses per respondent	1	1	6
# burden hours per response	2	4	
total burden hours	10 hours	4 hours	14 hours
estimated cost per burden hour for the respondent	\$37.00	\$37.00	
total labor cost	\$ 370	\$148 (round to \$150)	\$520

The total number of unique respondents for this information collection is six. The total projected burden hours are 14 hours.

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).

Submission of the five one-page letters to NMFS indicating the selection of the groundfish LLP license to be assigned the new endorsement is \$2.00 each for paper, envelope, and postage, for a total of \$10.00.

The estimated total cost of submitting an administrative appeal to NMFS is \$500 (4 hours of attorney time at \$125 per hour).

As this collection of information will only occur once, these are all one-time costs. The total costs to the respondents are \$510.

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

As this collection of information will only occur once, the costs below are all one-time costs.

Cost of processing the letter, assigning the appropriate endorsement, mailing out the revised groundfish LLP license with the new endorsement, updating the AKR data bases, and filing the documents that were submitted: 1 hour at \$98.90/hour (hourly salary of Restricted Access Management [RAM] director as of November 2017. RAM director will process these five letters).

Cost of processing an administrative appeal is estimated to take 4 hours at \$125/hour for a total of \$500.

The Federal government will incur additional costs related to this proposed rule (e.g., preparation of the proposed and final rules and FMP amendments, updating documents if proposed amendment and regulations are approved, website maintenance, reports to the North Pacific Fishery Management Council, revisions to computer programs to add the new groundfish LLP endorsement, review of the catch history to establish eligible LLP licenses, preparation and mailing of the letters with the revised groundfish LLP licenses). However, the total costs to the Federal government of processing the information submitted as a result of the information collection requirements will not exceed \$600.

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

This is a new program, so all projected burden hours and costs are new.

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

Information about groundfish licenses are provided to the public on the NMFS Alaska Region website (<https://alaskafisheries.noaa.gov/permits-licenses>).

Final administrative appeal decisions with redactions are posted on the NMFS National Appeals Office website (<http://www.nmfs.noaa.gov/mb/appeals/decisionsbyissuancedate.htm>).

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.

NMFS is not seeking approval to not display the expiration date for OMB approval of the information collection.

18. Explain each exception to the certification statement.

There are no exceptions to the certification statement.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.

sbibb

11/12/17; 11/18/17

tbuck

bmansfield 2/6/18

GAberle 11/17/2017, 4/27/2018

SBrabson 11/27/17

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