

SUPPORTING STATEMENT
U.S. Department of Commerce
National Oceanic & Atmospheric Administration
Alaska Pacific Cod Trawl Mothership Endorsement Administrative Appeals
OMB Control No. 0648-0786

INTRODUCTION

This is a resubmission, with the final rule, of a request for approval of a new collection of information under a rule to implement Amendment 120 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and Amendment 108 to the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska (0648-BJ02).

National Marine Fisheries Service (NMFS), Alaska Region, manages the groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) Management Area and the groundfish fisheries of the Gulf of Alaska under fishery management plans 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 fishery management plans appear at 50 CFR parts [679](#) and [680](#).

Amendment 120 will limit the number of catcher/processors (C/Ps) eligible to operate as motherships¹ receiving and processing Pacific cod from catcher vessels (CVs) directed fishing in the BSAI non-Community Development Quota Program (CDQ) Pacific cod trawl fishery.

Amendments 120 and 108 will prohibit replaced Amendment 80 C/Ps from receiving and processing Pacific cod harvested and delivered by CVs directed fishing for Pacific cod in the BSAI and Gulf of Alaska (GOA).

The rule will 1) establish eligibility criteria, based on historical participation, for a new endorsement to groundfish License Limitation Program (LLP) licenses for a C/P to operate as a mothership in the BSAI directed, non-CDQ Pacific cod trawl CV fishery; 2) issue the new endorsement to those groundfish LLP licenses that meet the eligibility criteria; 3) authorize receipt and processing of Pacific cod deliveries from directed fishing in the BSAI non-CDQ Pacific cod trawl CV fishery by only those C/Ps designated on a groundfish LLP license with the new BSAI Pacific cod trawl mothership endorsement;² and 4) prohibit Amendment 80 sector C/Ps not designated on an Amendment 80 quota share (QS) permit and an Amendment 80 LLP license or not designated on an Amendment 80 LLP/QS license from receiving and processing Pacific cod harvested from directed fishing in the Pacific cod fisheries in the BSAI and GOA.

This action will not preclude an Amendment 80 or a non-Amendment 80 vessel from participating as a C/P and processing its own catch in the BSAI directed, non-CDQ Pacific cod

¹ The term “mothership” is defined at § 679.2.

² In the rule, the term “BSAI Pacific cod trawl mothership endorsement” means an endorsement on a groundfish LLP license that will allow the C/P designated on that groundfish LLP license to operate as a mothership and receive and process catch of Pacific cod in the BSAI directed, non-CDQ Pacific cod trawl CV fishery.

trawl CV fishery.³ Additionally, it will not preclude a true mothership, other at-sea processor, or shoreside processor from receiving and processing Pacific cod harvested by a CV using trawl gear in the BSAI directed, non-CDQ fishery.

This action is necessary to prevent increased participation by C/Ps operating as motherships from reducing the benefits the fishery provides to long term, consistent participants in the BSAI directed, non-CDQ Pacific cod CV trawl fishery; help stabilize the fishing season duration in that fishery; and prevent the expanded use of replaced Amendment 80 C/Ps as motherships.

The current collection-of information requirements for the LLP are authorized under OMB Control No. 0648-0334. The information collection described in this supporting statement will be collected only once, at the time the new LLP endorsement is issued, if a groundfish LLP license holder chooses to amend or challenge the information in the official record. Rather than amend OMB Control No. 0648-0334 twice in a short period to add this one-time collection and then remove it, NMFS is requesting approval of a new collection of information.

A. JUSTIFICATION

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

This collection of information is necessary to provide a groundfish LLP license holder the opportunity to challenge NMFS' determination of eligibility for the new BSAI Pacific cod trawl mothership endorsement.

Under this action, a C/P acting as a mothership receiving deliveries of BSAI non-CDQ Pacific cod from CVs directed fishing with trawl gear will be required to be designated on a groundfish LLP license with a BSAI Pacific cod trawl mothership endorsement. C/Ps that are not designated on groundfish LLP licenses with this endorsement will be prohibited from participating in the BSAI directed, non-CDQ Pacific cod trawl fishery as a mothership.

NMFS will issue a BSAI Pacific cod trawl mothership endorsement to a groundfish LLP license with Bering Sea or Aleutian Islands area and C/P operation endorsements if 1) the groundfish LLP license had an Amendment 80 C/P designated on it, and the groundfish LLP license is credited with receiving and processing at least one qualifying landing, defined for purposes of this rule as one legal trip target⁴ landing in the BSAI directed, non-CDQ Pacific cod trawl CV fishery, in each year from 2015 through 2017; or 2) the groundfish LLP license had a non-Amendment 80 C/P designated on it, and the groundfish LLP license is credited with receiving and processing at least one qualifying landing as defined above in each year from 2015 through 2017.

NMFS has created an official record with all relevant information necessary to assign eligible trip target landings to specific BSAI groundfish LLP licenses. Based on NMFS' official record,

³ In the rule, “BSAI directed, non-CDQ Pacific cod trawl CV fishery” is defined as the fishery in which CVs are directed fishing (defined at § 679.2) for BSAI non-CDQ Pacific cod allocated to the CV trawl sector, as specified at § 679.20(a)(7)(ii)(A).

⁴ The rule defines the term “trip target” as a groundfish species that is retained in an amount greater than the retained amount of any other groundfish species for that trip.

two groundfish LLP licenses can be credited with qualifying landings and will be eligible to receive the BSAI Pacific cod trawl mothership endorsement. One is an Amendment 80 groundfish LLP license and one is an American Fisheries Act (non-Amendment 80) groundfish LLP license. NMFS will issue a notification of eligibility and a revised groundfish LLP license with a BSAI Pacific cod trawl mothership endorsement to the holders of these two groundfish LLP licenses, using the address on record at the time the notification is sent. The Regulatory Impact Review prepared for this action identified no operational costs of the endorsement. No additional collection-of-information requirements are required for these license holders to receive the endorsement.

The rule will add a new table, Table 57, to 50 CFR 679 listing the two eligible groundfish LLP licenses to facilitate the public's ability to review their catch records and determine if additional groundfish LLP licenses may be eligible to receive the new endorsement. Additional groundfish LLP licenses may qualify for this endorsement through the administrative adjudicative process at 50 CFR 679.4(k)(15)(v). This process and its associated collection-of-information are described below.

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.

Administrative Appeals

NMFS will issue to the holder of a groundfish LLP license with Bering Sea or Aleutian Islands area and C/P operation endorsements, and that is **not listed** in Table 57 to 50 CFR 679, a notice informing that holder that the groundfish LLP license is not eligible to be credited with a qualifying legal trip target landing or receive a BSAI Pacific cod trawl mothership endorsement based on the official record. This notice will be issued using the address on record at the time the notification is sent and will inform the license holder of the timing and process through which he or she can provide additional information or evidence to amend or challenge the information in the official record.

NMFS data will comprise the official record that is used to assign BSAI Pacific cod trawl mothership endorsements. NMFS will 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.

A groundfish LLP license holder who submits claims that are inconsistent with the official record will have the burden of proving that the submitted claims are correct. NMFS will not accept claims that are inconsistent with the official record, unless they are supported by clear, written documentation. NMFS will evaluate all additional information or evidence submitted within the 30-day evidentiary period. If NMFS determines that the additional information or evidence proves that the groundfish LLP license holder's claims are correct, NMFS will amend the official record 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 will deny the claim. NMFS will 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).

The IAD will indicate the deficiencies with the information or evidence submitted. The IAD will also indicate which claims cannot be approved based on the available information or evidence. A person who receives an IAD may appeal pursuant to 15 CFR part 906.

During the pendency of an administrative adjudication leading to a final agency action, a license holder who was issued a license the previous year will be eligible for a non-transferable interim license pending the resolution of his or her claim pursuant to the license renewal provisions of 5 U.S.C. 558. The non-transferable, interim license will authorize the license holder to operate as a mothership and receive and process Pacific cod in the BSAI directed, non-CDQ Pacific cod trawl CV fishery. This license will be effective until final agency action on the appeal.

If final agency action on the appeal is taken in favor of the appellant, that person will receive a transferable license with the BSAI Pacific cod trawl mothership endorsement. If the appeal is not granted, the license holder will receive a transferrable license without the endorsement.

Administrative appeals must be submitted to the National Appeals Office, which is a division of NMFS Office of Management and Budget within NOAA and operates out of NMFS headquarters in Silver Spring, MD. The NAO adjudicates appeals by providing due process and consistency to NMFS administrative decisions. The procedure for appealing an IAD through the NAO is at 15 CFR part 906 (79 FR 7056, February 6, 2014). See also <https://www.fisheries.noaa.gov/national/rules-and-regulations/appeals>.

Any person submitting an administrative appeal must submit a written petition of appeal to the NAO. 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 NAO case record 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.

The 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 will be disseminated to the public. NMFS proposes to list those groundfish LLP license that the official record currently indicates are eligible to receive a BSAI Pacific cod trawl mothership endorsement in Table 57 to 50 CFR 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.

Information about groundfish LLP licenses that is routinely made public includes the groundfish LLP license number, name and address of licensee, vessel operational type, vessel maximum length overall, whether the license is transferable, 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 NAO 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 NAO 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. 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.

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 process to submit an administrative appeal associated with eligibility for the new BSAI Pacific cod trawl mothership 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 rule directly regulates C/Ps in the Amendment 80 fleet and the American Fisheries Act fleet that will act as a mothership in the directed Pacific cod fishery in the BSAI and GOA. NMFS has determined that by ownership, cooperative, or contractual affiliations none of the directly regulated entities are small entities. Thus, there are no adverse impacts on directly regulated small entities.

The information requirements for this collection of information are minimal. NMFS minimizes the burden on the directly regulated entities by reviewing the official catch record, identifying those groundfish LLP licenses that may be eligible for the new endorsement, and identifying the eligible groundfish LLP licenses in the proposed and final rules. 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.

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

NMFS must provide an opportunity for an administrative appeal to individuals and entities who disagree with administrative determinations made by NMFS. To provide the legal review provided by an administrative appeal, NMFS must collect information from the appellants about the basis of their 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.

NMFS Alaska Region published a proposed rule (RIN 06478-BJ02) in the *Federal Register* on September 27, 2019 (84 FR 51092). The comment period ended on October 28, 2019. No comments were received on the information collection requirements in this request.

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 rule.

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

Information about groundfish LLP licenses that is routinely made public includes the groundfish LLP license number, name and address of licensee, vessel operational type, vessel maximum length overall, whether the license is transferable, 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 <https://www.fisheries.noaa.gov/national/rules-and-regulations/appeals>.

The System of Records Notice that covers information about the groundfish LLP license and associated endorsements is [COMMERCE/NOAA19, Permits and Registrations for United States Federally Regulated Fisheries](#). A notice was published in the Federal Register on August 7, 2015 (80 FR 47457), and became effective September 15, 2015 (80 FR 55327)

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 no more than one respondent for the administrative appeal.

NMFS projects that an administrative appeal will take four hours to prepare and submit.

Administrative Appeal	
Number of respondents	1
Number of responses per respondent	1
Burden hours per response	4
Total burden hours	4 hours
Estimated cost per burden hour for the respondent	\$37.00
Total labor cost	\$148

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).

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, this is a one-time cost.

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.

The 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 rule (e.g., preparation of the proposed and final rules and FMP amendments, updating documents, 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 requirement 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.

Final administrative appeal decisions with redactions are posted on the NMFS National Appeals Office website (<https://www.fisheries.noaa.gov/national/rules-and-regulations/appeals>).

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.