

## **Review of Cooperative Reporting Requirements Discussion Paper December 2013**

### **I. Introduction**

In the last decade or more, the Council has developed several cooperative programs as options in larger catch share programs. As part of those cooperative programs, the Council required that cooperatives submit an annual written report detailing the use of cooperative quota (CQ). These reports are intended to be a resource for the Council to track the effectiveness of the cooperative and their ability to meet the Council's goals. Additionally, they are a tool for the cooperatives to provide feedback on the programs. Regulation provides a framework for the minimum required information for most of the reports, while the Council has the flexibility to augment this framework with additional information requests that may be pertinent to current issues in the fishery. At this time, regulations require annual written reports for each of the following Limited Access Privilege Programs (LAPP): American Fisheries Act (AFA), Amendment 80, and Central Gulf of Alaska (GOA) Rockfish Program. In addition, as part of Amendment 91, AFA sector representatives are required to provide an overview of their Chinook salmon bycatch reduction efforts under individual incentive program agreements (IPA). AFA representatives from the Inter-cooperative Agreement (ICA) for chum bycatch avoidance are required to provide a report on bycatch avoidance, which was part of Amendment 84. The Bearing Sea and Aleutian Island (BSAI) crab program is a new addition to the cooperative reporting process and will be presented on for the first time during the December 2013 Council meeting. In total, for the 2012 fishing year, there were 22 written reports provided to the Council for review and posted online for the public.

In general, cooperative reports are presented by cooperative managers during the April Council meeting. Regulations do not require cooperative managers to present cooperative reports to the Council; however, they are encouraged and have been common practice from many cooperative representatives in the past. During the April 2013 meeting, the Council heard presentations from most cooperative representatives. Although the Council was not required to take action on these reports, a broad discussion arose after the presentations and during staff tasking. Concerns were expressed on the variability of information being reported by the cooperative representatives both in written form and in their presentations. The Council determined that an up-to-date synopsis of current mandatory and voluntary elements of the reports would benefit reporting parties, the Council members, and the public. The Council requested staff to provide a discussion paper on the cooperative reports, as well as any annual stakeholder report in a comprehensive and structured way so that these reports may be used as effectively as possible. Specifically, the Council was interested in the regulatory requirements for cooperative reports, a summary of what is usually provided in the reports, and a discussion on applicability of the Paperwork Reduction Act (PRA) to Council requests for additional information.

In light of these requests, this paper is intended to be a resource that enables the Council to maximize the utility generated from the annual stakeholder-reporting process. In order to meet this objective, the paper includes a table summarizing current regulatory reporting requirements, PRA authorized information collections, and information the Council requested be voluntarily provided (see table below). The discussion paper provides a description of each cooperative or stakeholder program that is expected to submit an annual report. The discussion paper also addresses the applicability of the PRA to mandatory and voluntary information requests. The final section provides a few considerations for improving the cooperative report process.

Cooperative Program and OMB Number	Required Information and OMB Approved Voluntary Information	Voluntary requested information not submitted for OMB approval	Deadline	Recipient
<p>AFA OMB 0648-0401</p>	<p><i>Established in 50 CFR §679.61(f) as well as Section 210(a)(1)(B) of the AFA:</i></p> <ul style="list-style-type: none"> <li>▪ Allocation of pollock and sideboard species to cooperative</li> <li>▪ Sub-allocations of pollock and sideboard species on a vessel-by-vessel basis</li> <li>▪ Retained and discarded catch on an area-by-area and vessel-by-vessel basis</li> <li>▪ Method used to monitor fisheries</li> <li>▪ Actions taken by cooperative against members that exceed catch or bycatch</li> <li>▪ The total weight of pollock landed outside the State of Alaska on a vessel-by-vessel basis</li> <li>▪ Number of salmon taken by species and season</li> <li>▪ Each vessel's number of appearances on the weekly "dirty 20" lists for non-Chinook salmon</li> </ul>	<ul style="list-style-type: none"> <li>▪ Voluntary oral presentation at April Council meeting</li> <li>▪ Catch of Pacific cod by week and over time (in 2004)</li> <li>▪ AFA exempt vessel activity in the GOA</li> <li>▪ Inter-temporal harvest information</li> </ul>	<ul style="list-style-type: none"> <li>▪ April 1<sup>st</sup> of each year</li> </ul>	<p>NPFMC</p>
<p>AFA OMB 0648-0401</p>	<p><i>Non-Chinook Intercooperative Agreement (ICA) Annual Report</i> 50 CFR 679.21(g)(4)</p> <ul style="list-style-type: none"> <li>▪ An estimate of the number of non-Chinook salmon avoided as demonstrated by the movement of fishing effort away from Chum salmon Savings Areas</li> <li>▪ The results of the compliance audit required at § 679.21(g)(2)(v)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Voluntary oral presentation at April Council meeting</li> </ul>	<ul style="list-style-type: none"> <li>▪ April 1<sup>st</sup> of each year</li> </ul>	<p>NPFMC</p>
<p>AFA OMB 0648-0401</p>	<p><i>Chinook Salmon Incentive Plan Agreement (IPA) Annual Report</i> 50 CFR 679.21(f)(13)</p> <ul style="list-style-type: none"> <li>• Incentive measures in effect in the previous year</li> <li>• How incentive measures affected individual vessels</li> <li>• How incentive measures affected salmon savings beyond current levels</li> <li>• IPA amendments approved by NMFS since the last annual report and the reasons for amendments</li> <li>• Sub-allocation to each participating vessel</li> <li>• Number of Chinook PSC and amount of pollock (mt) at the start of each fishing season</li> <li>• Number of Chinook PSC and amount of pollock (mt) caught at the end of each season</li> <li>• Inseason transfers among entities of Chinook salmon PSC or pollock among AFA cooperatives</li> <li>• Transfers among IPA vessels</li> <li>• Amount of pollock (mt) transferred</li> </ul>	<ul style="list-style-type: none"> <li>▪ Voluntary oral presentation at April Council meeting</li> </ul>	<ul style="list-style-type: none"> <li>▪ April 1<sup>st</sup> of each year</li> </ul>	<p>NPFMC</p>
<p>Central GOA Rockfish OMB 0648-0545</p>	<p><i>Established in 50 CFR 679.5(r)(6)(i):</i></p> <ul style="list-style-type: none"> <li>▪ Cooperative's quota and sideboard limit</li> <li>▪ Cooperative's retained and discard catch of CQ and sideboard limit by statistical area and vessel-by-vessel basis</li> <li>▪ Method used by cooperative to monitor fisheries</li> <li>▪ Actions taken by cooperative in response to members that exceeded their catch allowance</li> </ul>	<ul style="list-style-type: none"> <li>▪ Voluntary oral presentation at April Council meeting</li> <li>▪ Inter-temporal harvest information</li> </ul>	<ul style="list-style-type: none"> <li>▪ December 15<sup>th</sup> of each year</li> </ul>	<p>NMFS</p>

<p><b>Amendment 80</b> <b>OMB 0648-0565</b></p>	<ul style="list-style-type: none"> <li>▪ <i>Established in 50 CFR 679.5(s)(6)(i):</i></li> <li>▪ Actual retained and discarded catch of CQ and GOA sideboard limit by area and by vessel</li> <li>▪ Method used to monitor fisheries</li> <li>▪ Actions taken by co-ops against members that exceed assigned CQ</li> <li>▪ The percent of groundfish retained by the cooperative relative to aggregate groundfish retained by all Amendment 80 co-ops</li> <li>▪ Results from a third party audit on cooperatives annual groundfish retention</li> </ul> <p><i>From Final Action on Amendment 105 Flatfish Specifications Flexibility in April 2013:</i></p> <ul style="list-style-type: none"> <li>▪ By Dec 1<sup>st</sup>, annually :</li> <li>▪ Flatfish exchanges</li> <li>▪ Co-op transfers</li> <li>▪ Actual harvest</li> </ul>	<ul style="list-style-type: none"> <li>▪ Voluntary oral presentation at April Council meeting</li> <li>▪ Catch information from the Northern Bristol Bay Trawl Area</li> <li>▪ A retrospective indication of Amendment 80 catch capacity</li> <li>▪ Inter-temporal harvest information</li> </ul>	<ul style="list-style-type: none"> <li>▪ March 1<sup>st</sup> of each year</li> </ul>	<p>NMFS</p>
<p><b>BSAI Crab</b> <b>OMB 0648-0678</b></p>	<p><i>Voluntarily submitted information under approved OMB information collection</i></p> <ul style="list-style-type: none"> <li>▪ Increase availability of QS for transfer to active participants and crew members</li> <li>▪ Decrease high QS lease rates</li> <li>▪ Improve low crew compensation</li> </ul>	<ul style="list-style-type: none"> <li>▪ Voluntary oral presentation at December Council meeting</li> </ul>	<ul style="list-style-type: none"> <li>▪ October of each year</li> </ul>	<p>NPFMC</p>

## II. Cooperative Reports

This following section provides a detailed description of each program's reporting process and current requirements. Included in the description is a summary of the catch share program, the regulatory requirements associated with the annual report, information on the Council's voluntary non-regulatory information requests throughout the history of the program<sup>1</sup>, and a summary of what has been included in past reports.

As an introductory matter, it is important to note that the AFA program was developed under special legislation that includes specific authority for the Council to request and receive detailed cooperative information through regulations. While both the Amendment 80 and the Central GOA rockfish programs have regulations requiring the submission of annual cooperative reports, the regulations require those reports to be submitted to the Regional Administrator. Section 402(b) of the MSA governs the release of data contained in these reports. The Council can request Amendment 80 and Central GOA Rockfish cooperatives to voluntarily provide the Council with information consistent with what they are required to provide to NMFS. In past reporting, cooperatives have generally provided NMFS and the Council with similar reports.

### a. American Fisheries Act

In 1998 Congress established the AFA specifically for the pollock fishery in the BSAI management area. Among other things, the AFA encouraged domestic enterprise in Alaskan fisheries and established provisions for the creation of fishery cooperatives in three sectors: at sea catcher/ processor, mothership, and inshore vessels. While vessels can choose not to participate in a cooperative and instead participate in a limited access fishery, the cooperatives are given exclusive allocation of pollock based on their members' historical catch.

In the 2012 season, there were nine active AFA cooperatives. In addition there is a catcher vessel inter-cooperative representing the seven shore-based groups along with the sideboard interests of the Mothership Fleet Cooperative and the High Seas Catcher Cooperative. While specific vessels have shifted membership over the years, these cooperatives were all created at the onset of the program.

From a Council perspective, these cooperatives are a valuable management tool. Overharvesting of pollock and exceeding bycatch limits becomes a concern of the entire cooperative. In order to avoid violations, members have the incentive to share information and strategy with their fellow vessels that may aid them in achieving the Council's goals. For AFA, this is specifically advantageous for reducing salmon prohibited species catch (PSC).

Reporting requirements for AFA cooperatives were established when the Act was first implemented. The objective was to provide the Council, Secretary of Commerce, and the public with the information necessary to assess the effectiveness of the program. The cooperative reports help to fulfill section 210(a)(1)(B) of the AFA which stipulates that while "*taking into account the interest of parties to any such contract in protecting the confidentiality of proprietary information,*" it is the Council and the Secretary's responsibility to, "*(A) make available to the public such information about the contract, contract modifications, or fishery cooperative the North Pacific Council and Secretary deem appropriate, which at a minimum shall include a list of the parties to the contract, a list of the vessels involved, and the amount of pollock and other fish to be harvested by each party to such contract; and (B) make available to the public in such manner as the North Pacific Council and Secretary deem appropriate information*

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<sup>1</sup> These lists are as comprehensive as Council staff was able to glean from past documentation and personal communication. It is very possible additional informal requests were made over the years that are not included here.

*about the harvest by vessels under a fishery cooperative of all species (including bycatch) in the directed pollock fishery on a vessel-by-vessel basis.”*

These requirements are expanded in regulation<sup>2</sup>. Based on 50 CFR 679.61(f) the cooperatives are expected to report to the Council office by April 1<sup>st</sup> each year and include at a minimum:

- (1) The cooperative’s allocated catch of pollock and sideboard species, and any sub-allocations of pollock and sideboard species made by the cooperative to individual vessels on a vessel-by-vessel basis;
- (2) The cooperative’s actual retained and discarded catch of pollock, sideboard species, and PSC on an area-by-area and vessel-by-vessel basis;
- (3) A description of the method used by the cooperative to monitor fisheries in which cooperative vessels participated;
- (4) A description of any actions taken by the cooperative in response to any vessels that exceed their allowed catch and bycatch in pollock and all sideboard fisheries;
- (5) The total weight of pollock landed outside the State of Alaska on a vessel-by-vessel basis; and
- (6) The number of salmon taken by species and season, and list each vessel's number of appearances on the weekly “dirty 20” lists for non-Chinook salmon

In the original regulation, AFA annual reports required the submission of a preliminary report by December 1 of that fishing year, while the final report was not submitted until February of the following year. The purpose of this preliminary report deadline was to inform groundfish harvest specifications before the start of the upcoming fishing year. Requiring the final report before this time would place a large burden on the cooperatives as the pollock season closed November 1 so they would only have one month to compile data. In practice, the groundfish harvest specifications did not rely on the preliminary cooperative annual reports as much as NMFS had predicted. Thus, in June 2010 a Regulatory Impact Review (RIR) was presented to the Council evaluating the effects of removing this preliminary reporting requirement. In March of 2011, this change passed through as a final rule, dropping the preliminary reporting requirement and the moving deadline for the single cooperative report to April 1 of each year.

In 2012, eight cooperative reports<sup>3</sup> and one intercooperative report were filed:

- Pollock Conservation Cooperative (Catcher/ processors vessels) and High Seas Catchers Cooperative (Catcher vessels that deliver to the catcher/ processors)
- Mothership Fleet Cooperative
- Akutan Catch Vessel Cooperative
- Northern Victor Fleet Cooperative

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<sup>2</sup> These regulations superseded a letter from the Council to the cooperatives on October 21, 1999 and follow-up letter in November 1, 1999 that both provided advanced notice for what the Council expected in the annual reports.

<sup>3</sup> The Pollock Conservation Cooperative and High Seas Catchers submitted a combined cooperative report.

- Peter Pan Fleet Cooperative
- Unalaska Fleet Cooperative
- UniSea Fleet Cooperative
- Westward Fleet Cooperative#
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There is certainly variation in the content and depth of each report. All reports include some information that is above what the requirements stipulate. Some reports fail to include particular elements of the regulations. The structure tended to include:

- An introduction that explains who the cooperative represents
- Cooperative membership
- Member CQ % and initial allocation
- In-season management structure of the cooperative
- Transfers and harvest amount in the BS pollock-directed fishery
- Bycatch and Salmon PSC in the BS pollock-directed fishery
- Catch monitoring
- Sideboards in the BSAI and in the GOA (allocation, harvest and bycatch)
- Penalties/ civil actions

Elements of the regulations that were omitted by some reports include:

- Initial allocation and transfer of sideboard species
- Discarded catch of pollock and sideboard species
- Area-by-area harvest information
- Total weight of pollock landed outside the State of Alaska<sup>4</sup>

Elements of the regulations that have been interpreted in different ways:

- The regulation asks for harvests of pollock, sideboard species and PSC presented, “on an area-by-area and vessel-by-vessel basis”. Some cooperatives present this information first on an area-by-area basis for their full fleet and then a vessel-by-vessel basis. While other cooperatives present this harvest information for one vessel, area, and species at a time.
- Reports must specify the number of salmon taken by species and season. Some reports understand this to mean A and B season while some cooperatives report the whole fishing season.

Since the regulations were first enacted near the onset of the program, there have been small changes to the reporting requirements as well as informal/ implied requests for additional information that have manifested through the Council process.

- *Winter Pacific cod Fishery*

At the June 2000 meeting, three non-AFA vessels came to the Council with concerns that the newly implemented Act was having unintended effects on their operations by expanding effort in the Bering Sea Pacific cod fishery. This topic was followed by the Council with varying levels of intensity for several years with a strong push for the AFA and non-AFA Pacific cod sectors to reach a mutual agreement outside of Council regulatory action. In response, the 2004 catcher vessel inter-cooperative report

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<sup>4</sup> It's possible that this requirement is omitted because the cooperative did not land pollock outside of Alaska, but this is not clear in all reports.

included information on AFA non-exempt vessels harvesting Pacific cod by week and over time<sup>5</sup>. This information was provided to illustrate that the high frequency of non-exempt vessels fishing Pacific cod in early 2000 was an anomaly in a four-year trend and the temporal dissemination of their effort should mitigate localized depletion concerns.

- *Salmon PSC*

Following particularly high levels of salmon PSC in 2005, the Council began to focus on bycatch avoidance and management within the AFA cooperatives. The AFA cooperatives voluntarily began managing bycatch under the ICA in 2002 to avoid triggering regulatory closures, and eventually this led to Amendment 84 (2007) to exempt vessels from the regulatory closures for participation in the ICA bycatch management. In 2007, annual ICA reports became required under the provisions of Amendment 84 of the BSAI Groundfish Fishery Management Plan (FMP). The final rule for Amendment 84 additionally required PSC reporting in the annual cooperatives reports. While initial regulations called for a significant amount of salmon PSC reporting within the annual cooperative reports, there has been some effort to mitigate duplicate requests for information. Thus the majority of the PSC reporting responsibilities have fallen to the ICA and the IPA reports (as of 2011). Currently, the number of salmon taken by species and season and the number of times a vessel's appeared on the weekly "dirty 20" lists for non-Chinook salmon are still required in the cooperative reports. Further requirements of the ICA and IPA reports will be discussed in a later section.

- *AFA GOA Sideboard Exempt Vessels Activity*

In February of 2012, the Council expressed concern for the possibility that AFA catcher vessels with GOA sideboard exemptions may lease their predetermined BS pollock allocation to another vessel and take advantage of the GOA fisheries beyond their historical catch. As there was no regulation preventing this from happening, the Council suggested that cooperatives voluntarily demonstrate the magnitude of this issue within their annual reports. This recommendation was acknowledged in the 2012 inter-cooperative report with a description of the relevant provisions laid out in the catcher vessel inter-cooperative agreement. The report also presented a table of GOA Pollock harvest by exempt vessel for the season.

Cooperatives routinely volunteer additional information. For example, the Pollock Conservation Cooperative/ High Seas Catchers Cooperative joint report presented their ratio of groundfish discard to groundfish retained for the past thirteen years. Furthermore the entire catcher vessel inter-cooperative report is a voluntary submission, providing the Council with a snapshot of how the catcher vessels operate relative to each other. This document, as well as some of the individual reports, appends annual inter-cooperative agreements and agreements on voluntary salmon area closures.

## **b. ICA/IPA**

Bering Sea salmon PSC management programs require separate reporting requirements annually to the Council. For non-Chinook salmon a report is required from the representative of the non-Chinook bycatch reduction ICA. This reporting requirement is a result of Amendment 84 (implemented by exempted fishing permit in 2006 B season and by regulation in 2007) to the BSAI Groundfish FMP to exempt all AFA pollock vessels to the Chum salmon savings area closure, when closed by regulation or by reaching a specified PSC limit, for participation in the ICA rolling hot spot program. Prior to Amendment 91, the Amendment 84 exemption also covered the Chinook salmon savings area when triggered. All references to Chinook salmon in the ICA and associated regulations were removed upon

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<sup>5</sup> The Council staff suspects this inclusion resulted from an informal Council request, but no evidence confirmed this fact. This inclusion of this information may have simply resulted from the cooperatives' desire to address the concern that the sideboards were strict enough.

implementation of Amendment 91. For Chinook salmon, separate reports are required from the representatives of each sector's incentive program agreement (IPA). There are three IPAs, a Shoreside Catcher Vessel (CV) program, a Mothership program and a combined Catcher Processor/Community Development (CDQ) program. These IPAs were created in conjunction with the Amendment 91 Bering Sea Chinook Salmon PSC management program implemented in 2011. An IPA must be approved by NMFS in order for a sector to operate under the sector proportion of the 60,000 annual PSC Chinook salmon cap.

The Council received annual reports from the ICA and IPAs most recently in April 2013. At that time, the Council moved to request a comprehensive report from staff to update the Chinook salmon adult equivalence (AEQ) analysis, provide additional information on Chinook salmon stock status off Alaska and some additional analyses of bycatch performance under Amendment 91. The Council also requested that the IPA representatives provide an additional report on ideas for incorporating chum salmon into existing IPAs as well as a description of incentive measures currently contained in each program for Chinook salmon. These reports were reviewed by the Council in October 2013. At that time, the Council moved for further consideration of modifications to both chum and Chinook salmon PSC management in the Bering Sea<sup>6</sup>. The Council will be addressing potential changes to the whole program, which could include modifying ICA and IPA management as well as the reporting requirements for the programs. Any discussion of modifying reporting requirements or timing for Bering Sea salmon management is best addressed in conjunction with the separate consideration of this specific issue. This will next be considered by the Council in either April or June of 2014.

### **c. Crab Program**

In 2005 the BSAI Crab rationalization program was implemented. Based on participation in the industry within a set of qualifying years, the program issued quota share (QS) to vessel owners and captains, as well as processor quota share (PQS) to processors in all fisheries except the Norton Sound Red king crab and the Pribilof Islands golden king crab. This process also allowed for the voluntary formation of cooperatives.

The program was initiated as a reaction to several problematic aspects of the previous, derby-style fishery. Safety was a primary concern as the sector became famous for its high levels of mortality and injury amidst a competitive market. In addition, the rationalized program was an effort to address:

- Resource conservation, utilization, and management problems;
- Bycatch and its' associated mortalities, and potential landing deadloss;
- Excess harvesting and processing capacity, as well as low economic returns
- Lack of economic stability for harvesters, processors and coastal communities

While past Council analyses have shown improvement in many of these areas post-rationalization, the program's 5-year review brought about a discussion of the unanticipated consequences of the program. Critics have focused on the high lease rates for individual fishing quota (IFQ), transfer of quota among non-active participants, and a decline in crew compensation as a fraction of the gross vessel revenue. These concerns prompted the presentation of two analyses to the Council in the February 2013 meetings. The first analysis was an initial review of a Regulatory Impact Review/ Initial Regulatory Flexibility Act (RIR/IRFA) evaluating the Council's management options for promoting active participation among lease holders. Presented at the same time was a discussion paper that considered addressing lease rates, crew compensation, and active participation through flexible cooperative management. This analysis suggested the utility of an annual cooperative report. After hearing these presentations from Council staff

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<sup>6</sup> Council motion on Bering Sea Salmon Bycatch from October 2013:  
<http://www.alaskafisheries.noaa.gov/npfmc/PDFdocuments/bycatch/BSsalmonBycMotion1013.pdf>



as well as public testimony from the cooperatives, the Council chose no immediate regulatory action. Instead the Council chose to send a letter to each of the cooperatives requesting that they voluntarily describe measures they are taking to:

- Ensure QS transfers to active participant and crew members
- Address high lease rates
- Address low crew compensation rates

The letter calls for any additional information or data the cooperatives wish to provide demonstrating the effectiveness of the current measures and the level of participation in cooperative established measures. It informs the BSAI crab cooperatives that these reports will help determine if the Council will take regulatory action in the future.

The reports were initially due in October 2013, but were rescheduled until the December 2013 meeting. The intention was to make this reporting process an annual event.

As described in more detail in section III of this discussion paper, the request for new information from crab cooperatives required clearance from the Office of Management and Budget (OMB). The information collection request <sup>7</sup> was approved by OMB on July 11, 2013 and has a valid OMB control number until September of 2016.

#### **d. Amendment 80 Cooperatives**

Implemented in 2008, the Amendment 80 Program is a limited access privilege program (LAPP) that allocates a portion of the BSAI total allowable catch (TAC) for Atka mackerel, Aleutian Islands Pacific ocean perch, and three flatfish species (yellowfin sole, rock sole, and flathead sole), along with an allocation of PSC quota for halibut and crab to the Amendment 80 sector. As part of this LAPP program, regulations require each cooperative that is issued CQ to submit an annual report detailing the use of the CQ to the Regional Administrator. The purpose of the cooperative reports is to monitor important activities of the cooperatives to determine progress in meeting the goals of the Amendment 80 program. The annual report for fishing activities under the CQ permit issued for the prior calendar year must be received by March 1 of each year. Regulations for Amendment 80 cooperative report requirement are located at § 679.5(s). Prior to February 2013, information required in the Amendment 80 cooperative report had to include at a minimum:

- (1) The cooperatives actual retained and discarded catch of CQ and GOA sideboard limited fisheries (if applicable) by statistical area and on a vessel-by-vessel basis;
- (2) A description of the method used by the cooperative to monitor fisheries in which cooperative vessels participated; and
- (3) A description of any actions taken by the cooperative against specific members in response to a member that exceeded the amount of CQ that the member was assigned to catch for the Amendment 80 cooperative.

In February 2013, NMFS implemented a regulatory amendment that removed the groundfish retention standard (GRS) in the BSAI. The GRS required a minimum level of groundfish retention of Amendment 80 vessels and cooperatives. As part of the regulatory amendment, each Amendment 80 cooperative is required to calculate and relate in its annual cooperative report its annual aggregate groundfish retention rate using the methodology initially established in regulation at § 679.27(j)(3). The additional reporting

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<sup>7</sup> See Appendix for this information collection request.

requirement was intended to provide information on the groundfish retention rates achieved by the Amendment 80 fleet. In addition, each Amendment 80 cooperative must have a third party audit the cooperative's groundfish retention calculations and include these findings as part of the annual Amendment 80 cooperative report. Provided is the specific language from regulations related to the amendment on the groundfish retention standard:

- For each Amendment 80 cooperative, a third party must audit the Amendment 80 cooperative's annual groundfish retention calculations and the Amendment 80 cooperative must include the findings of the third party audit in its Amendment 80 annual cooperative report.

In April 2013, the Council adopted a preferred alternative for a proposed amendment that would allocate the acceptable biological catch (ABC) reserve for flathead sole, rock sole, and/or yellowfin sole, among the Amendment 80 cooperatives and CDQ groups. As part of this action, the Council requested that Amendment 80 cooperatives provide draft annual reports to the Council no later than December 1<sup>st</sup>, each year to include information on their use of ABC reserve exchanges and quota share transfers, actual harvest, and annual changes in catch capacity (for example, measured by a change in the number of harvesting platforms). The Council requested December drafts of the annual reports so that the current year's information could inform the Council's decision, during the harvest specifications process, as to whether to establish a buffer reducing the amount of the ABC reserve available to be exchanged by eligible entities.

In 2012, the Alaska Seafood Cooperative (AKSC) and Alaska Groundfish Cooperative (AGC) submitted the required cooperative report to the Regional Administrator. All required Amendment 80 cooperative reports included the required information.

Additionally, since the release of cooperative information submitted to the Regional Administrator is governed by section 402(b) of the MSA, each of the cooperatives voluntarily provided a written cooperative report to the Council that was made available at the April 2013 meeting. In addition, the representative for the AKSC provided a voluntary oral presentation to the Council, while the AGC elected to not provide an oral presentation.

Since cooperative reports provided to the Council are voluntary, the depth of this information varied across the two reports.<sup>8</sup> In general, both cooperative reports included information on cooperative membership, management, catch monitoring, GOA sideboard management, 2012 groundfish catch, 2012 prohibited species catch (PSC) for halibut, crab, Chinook, and non-Chinook salmon, and information on retention compliance standard and the associated third party audit results. One cooperative report also provided an overview of findings and future issues to include information on harvest flexibility of Amendment 80 flatfish species, reducing halibut mortality, community outreach, and a list of potential regulatory changes that would benefit the cooperative.

As to Council requests for voluntary information, only one could be found. During the April 2010 meeting, the Council requested that Amendment 80 cooperative reports voluntarily include catch information from the Northern Bristol Bay Trawl Area (NBBTA). The purpose of this request was to monitor an agreement between certain northern Bristol Bay halibut fishermen and the Best Use Cooperative that yellowfin sole trawl vessels voluntarily avoid fishing in the southwest portion of the NBBTA, as well as an area southwest of the Nushagak Peninsula, to avoid conflicts with local halibut fishermen.

**e. Central GOA Rockfish Program**

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<sup>8</sup> Information provided in these voluntary reports is not verified for accuracy by the NMFS.

In 2007, the Central GOA Pilot Rockfish Program was implemented. The program was intended to enhance resource conservation and improve economic efficiency for harvesters and processor who participated in the program. Allocations of the primary rockfish species (Pacific ocean perch, northern rockfish, and pelagic rockfish) and important incidental catch species (i.e., sablefish, Pacific cod, shortraker and rougheye rockfish, and thornyhead rockfish) are divided between the catcher vessel sector and the catcher processor sector. In addition, each sector is allocated halibut PSC limits based on historic catch of halibut in the target rockfish fisheries. As part of reauthorization of the Magnuson-Stevens Act in 2007, the Pilot Program was extended until December 31, 2011. During that period, the Council completed action on Amendment 88 to the GOA Fishery Management Plan that revised the Rockfish Program and the amendment was implemented in 2012.

As part of the Central GOA Rockfish Program, each rockfish cooperative was required to submit to the Regional Administrator an annual rockfish cooperative report detailing the use of the cooperative's CQ by December 15 of each year. Information required in the cooperative report had to include at a minimum:

- (1) The cooperative's CQ, sideboard limit (if applicable), and any rockfish sideboard fishery harvests made by the rockfish cooperative vessels on a vessel-by-vessel basis;
- (2) The cooperative's actual retained and discarded catch of CQ, and sideboard limit (if applicable) by statistical area and on a vessel-by-vessel basis;
- (3) A description of the method used by the cooperative to monitor fisheries in which cooperative vessels participated; and
- (4) A description of any actions taken by the cooperative in response to any members that exceeded their catch as allowed under the rockfish cooperative agreement.

The purpose of the cooperative report is to use the information to enforce the use cap provisions, to track primary rockfish species quota share use, and dissuade eligible rockfish harvesters from forming cooperative agreements that would frustrate the goal of the use caps. The Council included use caps to limit the degree of consolidation that could occur in the Central GOA rockfish fisheries.

Under the new Rockfish Program in 2012, seven inshore cooperatives provided reports to the Regional Administrator. These seven inshore cooperatives were:

- Global Rockfish Cooperative
- International Seafoods of Alaska, Inc. Rockfish Cooperative
- North Pacific Rockfish Cooperative
- Ocean Beauty Seafoods Inc. Rockfish Cooperative
- Pacific Rockfish Cooperative
- Star of Kodiak Rockfish Cooperative
- Western Alaska Fisheries Rockfish Cooperative

In addition to the inshore cooperatives, there were also two offshore cooperatives during the 2012 fishing season that provided cooperative reports:

- Gulf of Alaska Best Use Cooperative
- Offshore Rockfish Cooperative

Each of the cooperatives provided a written report to the Regional Administrator on December 15 with all required information. In addition, since the release of these reports is governed by section 402(b) of the MSA, the cooperatives voluntarily provided the Council a cooperative report. These voluntary reports were made available at the April 2013 Council meeting. During the April 2013 Council meeting, the inshore cooperative representative provided a voluntary presentation to the Council and the representative

of the Best Use Cooperative also provided a voluntary presentation to the Council. There was not presentation provided by the Offshore Rockfish Cooperative.

All Central GOA rockfish cooperative reports that were voluntarily provided to the Council included the following information:

- Cooperative membership
- Cooperative management
- Catch monitoring
- Cooperative performance
  - Allocations
  - Transfers
  - Harvest
  - Whether use caps were exceeded (inshore cooperatives only)
    - Vessel level
    - Cooperative level
    - Processor level
  - Retained and discarded catch of cooperative quota
  - Sideboard limits and sideboard fishery harvests
  - Cooperative prohibited species catch
    - Halibut
    - Chinook salmon (inshore cooperatives only)
    - Other prohibited species catch (inshore cooperatives only)
- Penalties/Civil Actions

**f. Freezer Longline Conservation Cooperative**

The Freezer Longline Conservation Cooperative (FLCC) was incorporated on February 26, 2004. Since 2006, most of the holders of LLP licenses endorsed to target Pacific cod in the BS and AI with hook-and-line gear have voluntarily been members of the cooperative. In June 2010, the remaining LLP holders joined the cooperative. The cooperative apportions the sector's share of the available Pacific cod TAC among its members to eliminate the race for fish that arises under limited access management.

Unlike other Council developed cooperative programs, the FLCC cooperative is unique in that it was developed without Council involvement. As a result, an annual cooperative report by the FLCC was never requested from the Council. Despite the unique way the FLCC was developed, a cooperative report from FLCC could assist the Council in measuring the progress of the cooperative in addressing the Council's conservation goals, reducing overcapacity, increasing safety, and reducing bycatch and discards.

**g. Other Industry Generated Annual Reports**

This section provides a brief summary of the annual reporting requirements for the CDQ groups, and any Community Quota Entity (CQE) groups.

**Community Development Quota Program**

The Western Alaska CDQ Program is an economic development program associated with federally managed fisheries in the Bering Sea and Aleutian Islands (BSAI). The purpose of the program is to provide these 65 western Alaska communities the opportunity to participate and invest in BSAI fisheries, support economic development in western Alaska, to alleviate poverty and provide economic and social benefits for residents of western Alaska, and to achieve sustainable and diversified local economies in western Alaska.

Section 305(i)(1) of the MSA allocates a portion of the annual catch limit for each directed fishery of the Bering Sea and Aleutian Islands management area among six entities representing 65 western Alaska villages. The six entities (“CDQ groups”) and the villages associated with each of those entities are specifically named in section 305(i)(1)(D) of the MSA. The CDQ groups include the Aleutian Pribilof Island Community Development Association (APICDA), the Bristol Bay Economic Development Corporation (BBEDC), the Central Bering Sea Fishermen’s Association (CBSFA), the Coastal Villages Region Fund (CVRF), the Norton Sound Economic Development Corporation (NSED), and the Yukon Delta Fisheries Development Association (YDFDA). The CDQ groups are nonprofit corporations whose board of directors and staff manage and administer CDQ allocations, investments, and economic development projects. CDQ groups use the revenue derived from the harvest of their fisheries allocations to fund economic development activities and provide employment opportunities.

Section 305(i)(1) of the MSA was amended on July 11, 2006, by the Coast Guard and Maritime Transportation Act (Coast Guard Act) (Public Law 109-241). The Coast Guard Act revised all of the existing language in section 305(i)(1) with new language. The new requirements addressed all aspects of management and oversight of the CDQ Program including the purpose of the CDQ Program; allocations of groundfish, halibut, and crab to the program and among the CDQ groups; management of the CDQ fisheries with respect to non-CDQ fisheries; eligible communities; eligibility criteria; limits on allowable investments; the creation of a CDQ administrative panel; compliance with State reporting requirements; a decennial review and allocation adjustment process; and other features of program administration and oversight by the State and NMFS. These amendments were intended to address a variety of oversight and management issues associated with the CDQ Program, including conferring a higher level of self-governance to CDQ groups through the creation of a CDQ “administrative panel.”

In September 2006, the CDQ groups formed the Western Alaska Community Development Association (WACDA) as the CDQ administrative panel. WACDA is a nonprofit corporation organized to represent the CDQ groups and comply with the requirements of the MSA that it:

- consist of 6 members with each CDQ group selecting one member of the panel;
- act only by unanimous vote of all 6 members of the panel;
- administer those aspects of the program not otherwise addressed in the MSA either through private contractual arrangement or through recommendations to the North Pacific Council, the Secretary, or the State of Alaska, as the case may be; and
- coordinate and facilitate activities of the entities under the program.

The groundfish and halibut CDQ fisheries are managed by NMFS and the CDQ crab fisheries are managed by NMFS and the State of Alaska. Federal reporting requirements for management of these fisheries are incorporated into generally applicable reporting requirements for the groundfish, halibut, and crab fisheries. These include observer coverage requirements, equipment and operational requirements, permitting requirements, the use of observer data to manage allocations, and logbook and landing reports.

The MSA addresses annual reporting requirements for the CDQ Program. Section 305(i)(1)(E) requires that each CDQ group submit an annual “Statement of Compliance” “that summarizes the purposes for which it made investment ...during the preceding year.” The CDQ groups submit statements of compliance each year, NMFS acknowledges receipt of those statements, and posts them on the Alaska region website at <http://alaskafisheries.noaa.gov/cdq/msa.htm>.

Under the MSA, NMFS has the authority to require reports from CDQ groups but only if those reports are necessary for the effective implementation of those provisions of section 305(i)(1) for which NMFS is responsible for administering.<sup>9</sup> Section 305(i)(1)(F)(ii) requires each CDQ group to

“ . . . comply with State of Alaska law requiring annual reports to the entity’s member villages summarizing financial operations for the previous calendar year, including general and administrative costs and compensation levels of the top 5 highest paid personnel.”

Although the State of Alaska does not have such a law, WACDA prepares an annual report on the CDQ Program. These annual reports have been completed for 2007 – 2011 and are available on WACDA’s website ([www.wacda.org](http://www.wacda.org)). In addition, WACDA approved a panel rule requiring *Annual Reports to CDQ Villages by CDQ Group* that was in effect from 2008 to 2012. That panel rule has since expired. However, each of the CDQ groups has prepared publically available annual reports prepared primarily for residents of the member communities. These annual reports are available on the websites for the individual CDQ groups.

### **Community Quota Entity Program**

To provide long-term opportunities for smaller Alaska communities to access the halibut and sablefish resources the Council developed the CQE Program. The program allows a distinct set of remote coastal communities in the GOA that met historic participation criteria in the halibut and sablefish fisheries to purchase and hold catcher vessel halibut QS in halibut Areas 2C, 3A, and 3B, and catcher vessel sablefish QS in the GOA. The communities are eligible to participate in the CQE Program once they are represented by a NMFS-approved non-profit entity called a CQE. This program structure creates a permanent asset for the community to use. The structure promotes community access to generate participation in, and fishery revenues from, the commercial halibut and sablefish fisheries.

As part of the CQE program, a CQE must submit an annual report for each calendar year it holds any of the following: community charter halibut permits, halibut and sablefish individual fishing quota (IFQ) and quota shares, and community Pacific cod endorsed non-trawl groundfish LLP licenses. The CQE reports are submitted to the Regional Administrator by January 31 and can be released to the Council in a manner that is consistent with section 402(b) of the Magnuson-Stevens Act and applicable agency regulations and policies. Each CQE must report the following information:

- The eligible community or communities, represented by the CQE, any new communities, and any withdrawn communities
- Any changes in the bylaws of the CQE, board of directors, or other key management personnel
- Copies of minutes and other relevant decision making documents from all CQE board meetings held during the prior calendar year

In addition, each CQE must report business operations and detailed fishing activity for the charter halibut permit, IFQ, and LLP licenses for each eligible community represented by the CQE.

The purpose of the CQE report is to track the progress of the CQEs and assess whether the CQE issuance of the fishing privileges is meeting the overall goal of the CQE Program.

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<sup>9</sup> NOAA GC examined the authority of the CDQ Panel, as well as NMFS, to develop regulations to implement various statutory provisions of section 305(i)(1) in a legal memorandum dated June 1, 2007 and located at <http://alaskafisheries.noaa.gov/cdq/msa/legalop0607.pdf>

### III. Applicability of the Paperwork Reduction Act

The PRA, enacted in 1980, was, among other things, designed to “ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government” and to “improve the quality and use of Federal information to strengthen decision making, accountability, and openness in Government and society.”<sup>10</sup> Much of the information contained in this section is from an April 7, 2010 memorandum by OMB that summarizes the information collection process under the PRA. See the Appendix for a copy of this memorandum.

Before requiring or requesting information from the public, the PRA requires Federal agencies (1) to seek public comment on proposed collections and (2) to submit proposed collections for review and approval by the OMB. OMB reviews agency information collection requests for approval or disapproval. When OMB approves an information collection, it assigns an OMB control number that the agency must display on the information collection.<sup>11</sup>

To obtain the public’s input on an agency request to collect information, the PRA generally requires the agency to publish a 60-day notice in the Federal Register soliciting public comment on the request. After the 60-day comment period has closed and the agency has considered the comments submitted, the agency submits the collection request to OMB and publishes a second Federal Register notice to announce the start of OMB review. This second notice informs the public about how to submit comments to OMB and informs the public that OMB may act on the agency’s request only after the 30-day comment period has closed.

According to the OMB memorandum, OMB review helps agencies “strike a balance” between collecting information needed to fulfill an agency’s statutory mission and guarding against “unnecessary or duplicative information that imposes unjustified costs on the American public.” See Appendix. Therefore, OMB evaluates a collection request to determine whether the information has practical utility<sup>12</sup>, minimizes the Federal information collection burden, with emphasis on those individuals and entities most adversely affected, and maximizes the practical utility of and public benefit from the information collected.<sup>13</sup> Under the PRA, OMB may approve a collection for up to three years at one time.<sup>14</sup> To extend the expiration date of a collection, an agency must provide the public with an opportunity to comment on the continuation of the collection, with the two notices described above, and resubmit the information collection request.<sup>15</sup>

The recently requested BSAI crab cooperative reports are a good example of the applicability of the PRA in the Council process. In February 2013, the Council passed a motion requesting that each cooperative in the BSAI Crab Rationalization Program voluntarily provide an annual report to the Council. During Council deliberation on the motion, NOAA General Counsel (GC) expressed a concern that the Council’s motion may be a collection of information subject to the requirements of the PRA. Upon further examination, NMFS and NOAA GC determined that the Council’s request was a collection of information subject to the review and approval requirements of the PRA. A letter was sent from NMFS to

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<sup>10</sup> 44 U.S.C. § 3501.

<sup>11</sup> Since cooperative reports are not a form, they are not required to display an OMB control number; however, each set of reports has an OMB number assigned to it.

<sup>12</sup> 44 U.S.C. § 3508.

<sup>13</sup> 44 U.S.C. § 3504.

<sup>14</sup> 44 U.S.C. § 3507(g). Some approvals are for shorter periods of time.

<sup>15</sup> Agencies may also discontinue collections at any time by submitting a short request to OMB.

the Council dated March 29, 2013 providing additional explanation on the applicability of the PRA to the Council generated information request to crab cooperatives (see Appendix for a copy of this letter).

The letter from NMFS explained that the PRA applies to agency collections of information using identical questions posed to, or reporting or recordkeeping requirements imposed on ten or more persons. PRA regulations at 5 CFR 1320.3(h) define “information” as “any statement or estimate of fact or opinion, regardless of form or format, and whether oral or maintained on paper, electronic or other media.” PRA regulations at 5 CFR 1320(c) define a “collection of information” as “...soliciting...the disclosure to an agency... of information...for an agency by means of identical questions posed to, or identical reporting, recordkeeping or disclosure requirements imposed on, ten or more persons, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.” “Collection of information” includes “any requirement or request for persons to obtain, maintain, retain, report, or publicly disclose information.” *Id.*

Given these provisions, the Council’s motion requesting each crab cooperative to voluntarily submit to the Council statements or estimates of fact or opinion concerning various measures taken by the cooperative constitutes a collection of information under the PRA. The Department of Commerce and NOAA have long considered Councils to be “agencies” for purposes of the PRA. The Council is requesting the same information from each cooperative and the fact that the Council’s request for this information is voluntary does not exempt it from the requirements of the PRA. Although there may be less than ten crab cooperatives during a given year, 5 CFR 1320.3(c)(4) states that “ten or more persons” refers to “the persons to whom a collection of information is addressed by the agency within any 12-month period, and to any independent entities to which the initial addressee may reasonable be expected to transmit the collection of information during that period...” Furthermore, regulations at 5 CFR 1320(c)(4)(ii) state that if a collection of information is addressed to all or a substantial majority of an industry, the collection is presumed to be addressed to ten or more persons. While the Council’s motion is directed to the crab cooperatives, the crab cooperatives include a substantial majority of crab harvests as members and cooperative managers will have to turn to their members to obtain the information requested by the Council. Therefore, the agency determined that the Council’s request for annual voluntary reports from the crab cooperatives is a collection of information under the PRA and triggers OMB review and approval.

The explanation provided in the March 29, 2013 letter also applies to information requests of Amendment 80, AFA, and Central GOA Rockfish cooperatives. While developing these cooperative programs, the Council included regulatory requirements for cooperatives to submit annual cooperative reports and NMFS simultaneously submitted PRA information collect requests for review and approval by the OMB during the development and Secretarial review of the regulations implementing these cooperative programs (see Appendix for an example of the Crab Program information collection request). During the past presentations of cooperative reports or other relevant actions in Council meetings, it has been common practice for Council members to ask for additional or modified information to be voluntarily included in future cooperative reports. These requests for additional information have, in most cases, not been submitted to OMB for review and approval. Based on the guidance from the March 29, 2013, letter to the Council, this was an oversight in many instances and staff is examining these previous requests to see if additional work is needed. As for new voluntary information requests, a PRA information request will be submitted to OMB for review and approval before the next cooperative report is due to the Council. Preparing the PRA submission will require additional work by staff to provide responses to the information required in the request to OMB approval, including rationale for the information collection, identification of respondents, and estimated costs for responding in both time and money. One suggestion to help facilitate preparation of the paperwork necessary for the PRA submission is for the Council to include all requests for additional or modified voluntary information into a motion that the Council can



approve. Council deliberations over the motion could provide the needed rationale and justification for the new information requests which staff can then use in preparing the documents needed for OMB review and approval.

In summary, the PRA should not discourage the Council from making requests for voluntary cooperative information to be included in future cooperative reports. Rather, this guidance advises the Council to pursue voluntary information requests in a more deliberative manner, providing clear explanation of the objective of the new information. Additionally, Council and NMFS staff will be required to track these Council information requests and submit the necessary PRA paperwork to OMB.

#### **IV. Considerations for Improving Cooperative Report Process**

As the Council looks to the future of cooperative reports, there are few changes the Council might want to consider. One change discussed at the April 2013 Council meeting was the timing of cooperative presentations. Currently the cooperative reports are presented to the Council during the April meeting. Council members previously indicated that there might be some utility in moving the presentations to the June meeting. As noted in Table 1, currently the Amendment 80 reports are required to be submitted to the agency by March 1, Central GOA Rockfish cooperative reports are due December 15, and AFA cooperative reports are due April 1. Given that Amendment 80 and AFA cooperative reports are submitted within days of the April Council meeting, shifting the presentation of the cooperative reports to the June meeting would provide more time for the Council and public to review those reports. The one potential drawback of shifting the presentations to the June meeting is that this is a travel meeting, which could make it more difficult for cooperative managers to attend and present their report to the Council.

As noted above, one suggestion to help facilitate preparation of the paperwork necessary for the PRA submission is for the Council to request additional and modified voluntary information into a motion that the Council could approve. Staff anticipates that the Council deliberation over the motion will provide the needed rational and justification for the new information requests which staff can then use in preparing the documents needed for OMB review and approval.

With a variety of reports being produced by the AFA fleet, the Council may wish to consolidate the reporting of all salmon PSC. The two salmon PSC elements currently in the annual cooperative reports are also included in the ICA report. While the “dirty 20” list is reported by vessel in both reports, the primary implication of shifting all salmon-related data to the ICA report would be the units of reporting for salmon by species and season. Furthermore, it is anticipated that any changes considered in PSC management for ICA and IPAs as requested by the Council for review in 2014 will impact the reporting requirements, thus the cooperative reports will likely be modified in conjunction with that pending action with minimal effort.

Finally, as noted in the PRA section, staff role in tracking Council information requests could increase. To facilitate the increased tracking of Council information requests, Council staff could increase its coordination of the numerous cooperatives reports that are routinely presented to the Council. Staff would track Council information requests on its website as a resource, and at each round of cooperative reporting, staff would provide the Council an introduction that includes an overview of what is currently required for the cooperative reports, a summary of what the cooperative programs are voluntarily providing in their annual reports, a reminder of Council generated voluntary requests, and which cooperatives will be providing a voluntary oral presentation.

**List of Prepares**

Jon McCracken, NPFMC  
Sarah Marrinan, NPFMC  
Lauren Smoker, NOAA GCAK  
Mary Furuness, NMFS  
Seanbob Kelly, NMFS  
Sally Bibb, NMFS  
Peggy Murphy, NMFS

**Persons Consulted:**

Chris Oliver, NPFMC  
David Withererll, NPFMC  
Tom Meyer, NOAA GCAK  
Patsy Bearden, NMFS  
Rachel Baker, NMFS  
John Gruver, United Catcher Boats Association  
Jason Anderson, Alaska Seafood Cooperative

ITEM C-8(a)  
DECEMBER 2013

# NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 08/26/2013

Department of Commerce  
National Oceanic and Atmospheric Administration

FOR CERTIFYING OFFICIAL: Simon Szykman  
FOR CLEARANCE OFFICER: Jennifer Jessup

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 07/11/2013

ACTION REQUESTED: New collection (Request for a new OMB Control Number)

TYPE OF REVIEW REQUESTED: Regular

ICR REFERENCE NUMBER: 201306-0648-014

AGENCY ICR TRACKING NUMBER:

TITLE: Alaska Crab Rationalization Program Cooperative Report

LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved with change

OMB CONTROL NUMBER: 0648-0678

The agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

EXPIRATION DATE: 08/31/2016

DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	0	0	0
New	10	300	40
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	10	300	40
Change due to Agency Adjustment	0	0	0
Change due to PRA Violation	0	0	0

TERMS OF CLEARANCE:

OMB Authorizing Official: Dominic J. Mancini  
Acting Deputy Administrator,  
Office Of Information And Regulatory Affairs

List of ICs

IC Title	Form No.	Form Name	CFR Citation
Alaska Crab Rationalization Program Cooperative Report			50 CFR 680.5

**PAPERWORK REDUCTION ACT SUBMISSION**

ITEM C-8(a)  
DECEMBER 2013

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

1. Agency/Subagency originating request DOC/NOAA/NMFS	2. OMB control number <span style="float:right">b. <input checked="" type="checkbox"/> None</span> a. <u>0648</u> - _____
3. Type of information collection ( <i>check one</i> ) a. <input checked="" type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested ( <i>check one</i> ) a. <input checked="" type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated  5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  6. Requested expiration date a. <input checked="" type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: <u>  /  /  </u>
7. Title <u>Alaska Crab Rationalization Program Cooperative Report</u>	
8. Agency form number(s) ( <i>if applicable</i> )	
9. Keywords	
10. Abstract  The North Pacific Fishery Management Council requested that each Crab Rationalization Program cooperative, after developing and implementing the measures to stimulate acquisition of crab quota share by crew and other active participants and to stimulate equitable crew compensation, voluntarily provide an annual report summarizing the effectiveness of each measure and the estimated number of participants in each measure, supported by documentation.	
11. Affected public ( <i>Mark primary with "P" and all others that apply with "x"</i> ) a. <input type="checkbox"/> Individuals or households d. <input type="checkbox"/> Farms b. <input checked="" type="checkbox"/> Business or other for-profit e. <input type="checkbox"/> Federal Government c. <input type="checkbox"/> Not-for-profit institutions f. <input type="checkbox"/> State, Local or Tribal Government	12. Obligation to respond ( <i>check one</i> ) a. <input checked="" type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents <u>          10          </u> b. Total annual responses <u>          10          </u> 1. Percentage of these responses collected electronically <u>          0          </u> % c. Total annual hours requested <u>          100          </u> d. Current OMB inventory <u>          0          </u> e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden ( <i>in thousands of dollars</i> ) a. Total annualized capital/startup costs <u>          0          </u> b. Total annual costs (O&M) <u>          0          </u> c. Total annualized cost requested <u>          0          </u> d. Current OMB inventory <u>          0          </u> e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection ( <i>Mark primary with "P" and all others that apply with "X"</i> ) a. <input type="checkbox"/> Application for benefits e. <input checked="" type="checkbox"/> Program planning or management b. <input checked="" type="checkbox"/> Program evaluation f. <input type="checkbox"/> Research c. <input type="checkbox"/> General purpose statistics g. <input type="checkbox"/> Regulatory or compliance d. <input type="checkbox"/> Audit	16. Frequency of recordkeeping or reporting ( <i>check all that apply</i> ) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input checked="" type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input checked="" type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission)  Name: <u>Patsy A. Bearden</u> Phone: <u>(907) 586-7008</u>

## 19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

**NOTE:** The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
  - (i) Why the information is being collected;
  - (ii) Use of information;
  - (iii) Burden estimate;
  - (iv) Nature of response (voluntary, required for a benefit, mandatory);
  - (v) Nature and extent of confidentiality; and
  - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)	
Signature  signed by Emily Menashes (A)	Date 06/19/2013
Signature of NOAA Clearance Officer	
Signature	Date

## SUPPORTING STATEMENT

### CRAB RATIONALIZATION (CR) PROGRAM: CR COOPERATIVE ANNUAL REPORT

OMB CONTROL NO. 0648-XXXX

This request is for a new information collection.

#### INTRODUCTION

In January 2004, the U.S. Congress amended Section 313(j) of the [Magnuson-Stevens Fishery Conservation and Management Act](#) (Magnuson-Stevens Act) as amended in 2006 to mandate the Secretary of Commerce (Secretary) to implement the Crab Rationalization Program (CR Program) for the Bering Sea and Aleutian Islands Management Area (BSAI) crab fisheries. The CR Program allocates BSAI crab resources among harvesters, processors, and coastal communities. The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the Fishery Management Plan for BSAI King and Tanner Crabs (Crab FMP). The Crab FMP establishes criteria for the management of certain aspects of the BSAI crab fisheries by the State of Alaska Department of Fish and Game (ADF&G) and is implemented by regulations at [50 CFR part 680](#).

The National Marine Fisheries Service, Alaska Region (NMFS) implemented the CR Program to both maintain rigorous safeguards on use of fishing privileges for a public resource and to provide safeguards for program constituents. The CR Program components include quota share (QS) allocation, processor quota share (PQS) allocation, individual fishing quota (IFQ), individual processing quota (IPQ) issuance, quota transfers, use caps, crab harvesting cooperatives, protections for Gulf of Alaska groundfish fisheries, arbitration system, monitoring, economic data collection, and cost recovery fee collection.

Under the CR Program, NMFS issued QS to eligible harvesters based on their participation during a set of qualifying years in one or more of the nine CR Program fisheries. QS is an exclusive, revocable privilege allowing the holder to harvest a specific percentage of the annual total allowable catch (TAC) in a CR Program fishery. Each year, the QS holder's annual allocation, called IFQ, provides an exclusive harvesting privilege for a specific amount of raw crab pounds, in a specific crab fishery, in a given season. The size of each annual IFQ allocation is based on the amount of QS held by a person in relation to the total QS in a crab fishery.

#### A. JUSTIFICATION

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

In December 2011, NMFS presented a report to the Council detailing the performance of the CR Program during its first 5 years. Based on this 5-year report, the Council requested a discussion paper detailing measures that CR Program cooperatives could do to stimulate acquisition of QS



by crew and other active participants and to stimulate equitable crew compensation. NMFS presented the discussion paper to the Council at the February 2013 Council meeting.

**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. CR Cooperative Annual Report (on Effectiveness of QS Transfer to Active Participants and Crew Members)**

Upon receiving and reviewing the discussion paper, the Council passed a motion (purpose statement) requesting that each CR Program cooperative develop and implement procedures to adopt the following measures. An annual report is due at the October 2013 Council meeting to summarize the effectiveness of each measure and the estimated number of participants in each measure. Documentation to support the summary must also be submitted.

- ◆ Increase availability of QS for transfer to active participants and crew members. Create additional opportunities for persons active in the fisheries to have better access to quota.

Cooperatives could adopt a variety of different measures to promote quota ownership by members who are active. These measures could be loan assistance, buyer preferences, or rights of first offer to allow each cooperative the flexibility to address the issue in a way that it perceives to be the most appropriate for its circumstances. A small cooperative that has mostly active participants may appropriately establish internal financing of crew quota share purchases. A larger cooperative may better address active participation share acquisitions by granting a purchase preference to active participants.

A cooperative could report on the extent to which its members are active. Such a report could identify the number of QS holders in the cooperative, the amount of IFQ brought to the cooperative by those QS holders both active and inactive, the changes in the number of QS holders, and the amount of QS that is held by persons who are active. The report could also separately identify members who are active as crewmembers, as well as persons meeting a specified vessel ownership interest.

- ◆ Decrease high QS lease rates. The high lease rates in the fisheries are said to contribute greatly to the decline in revenues to persons who actively participate in the fisheries as vessel owners and crew. Lower lease rates could allow for more of the fisheries' revenues to be realized by vessel owners and crews.

A cooperative could implement a lease cap in its cooperative agreement. If a cooperative were to oversee all transactions to implement a cap on leases, that cooperative would need to monitor all transfers of shares to ensure that the cap is not exceeded. The limitation could be applied to any transfer or lease within a cooperative or between the cooperative and any other cooperative, verifying simply that no lease rate exceeded the specified cap. The cooperative could use a system of affirmations from its members to support its report.

The annual report (and supporting affirmations) to the Council would not specify any lease rates, but would state that lease rates were not in excess of the cap.

- ◆ Improve low crew compensation. To limit the effects of the leasing market and to protect crews from the financial impacts of high lease rates, the amount of any lease payment charged to crews could be limited or capped.

A cooperative could establish minimum crew pay standards which could define the minimum percentage of gross ex vessel revenues that a vessel may pay to its crewmembers. Such a limit could serve a purpose similar to a minimum wage law. Such a measure would be intended to more directly and comprehensively protect crew from further declines in the share of vessel revenues paid to crew that has occurred under the CR Program.

The more general goal of these measures may be to achieve equity and economic stability in the harvest sector. Cooperative implementation could be accomplished through requirements that a cooperative:

- 1) include in its cooperative agreement a provision that requires all vessels to compensate crews in excess of a specified percentage of the vessel's gross revenues,
- 2) verify compliance by review of each member vessel's gross revenues and total crew compensation

The annual report to the Council would not specify crew compensation amounts (due to confidentiality limitations), but would affirm that all the cooperative's vessels met the standard.

Since implementation of the program, crew compensation as a percentage of gross revenues has varied with the amount of harvests. Some participating crews have suggested that the consolidation of quota provides a benefit, even if payments for harvest of that added quota are at a lower percentage due to charges for lease payments. In other words, some crew may believe that the acceptable minimum share of vessel revenues paid to the crew should differ with the amount of harvests.

Reasonable compensation may differ across fisheries due to a variety of factors (such as crab prices, catch rates, working conditions, and risk). These differences are suggested by historical data from the fisheries. For example, the percentage of vessel gross revenues paid to crew in the Bristol Bay red king crab fishery has been lower than that percentage in the Bering Sea *C. opilio* fishery; however, daily pay in the red king crab fishery has exceeded daily pay in the *C. opilio* fishery. Any percentages should consider whether different percentages are appropriate for different fisheries. In addition, to the extent that harvests overlap across fisheries (such as *C. bairdi* harvests made in the Bristol Bay red king crab and Bering Sea *C. opilio* fisheries), it may be difficult (or inappropriate) to attempt to separate payments by fishery.

The voluntary annual report from each cooperative is to be provided to the Council at its October 2013 meeting.

The estimated time for report completion, including gathering and compiling information is based on discussion among Alaska Region staff, and an averaging of several different types of annual cooperative reports required under other Alaska programs, resulting in 30 hours:

- Rockfish cooperative report = 40 hr
- American Fishing Act cooperative report = 12 hr
- Amendment 80 cooperative report = 25 hr
- Community Quota Entity annual report = 40 hr

<b>CR Coop Annual Report, Respondent</b>	
<b>Number of respondents</b>	<b>10</b>
<b>Total annual responses</b>	<b>10</b>
Frequency of response = 1	
<b>Total burden hours</b>	<b>300 hr</b>
Time per response = 10 hr	
<b>Total personnel cost (\$25/hr)</b>	<b>\$7,500</b>
<b>Total miscellaneous cost (39.75)</b>	<b>\$40</b>
Postage cost (1.35 x 5 = 6.75)	
Fax (\$6 x 5 = 30)	
Photocopy cost (10 x 6 pp x 0.05 = 3.00)	

<b>CR Coop Annual report, Federal Government</b>	
<b>Total annual responses</b>	<b>0</b>
<b>Total burden hours</b>	<b>0</b>
<b>Total personnel cost</b>	<b>0</b>
<b>Total miscellaneous cost</b>	<b>0</b>

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.**

The CR Cooperative Annual Report may be submitted to the Council by courier, mail, or fax.

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

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.**

Cooperatives are not small businesses or small entities; thus this information collection does not impose a significant impact on small entities.

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

If the collection were not conducted or conducted less frequently, the information needed by the Council detailing measures that CR Program cooperatives could implement to stimulate acquisition of QS by crew and other active participants and to stimulate equitable crew compensation would not be available and the problems of acquisition and compensation would not be solved.

**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 Federal Register Notice published on April 12, 2013 (78 FR 21912) solicited public comments. No comments were received.

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

No payment or gift is provided under this program.

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

This information is voluntary, but in support of management of commercial fishing efforts under 50 CFR part 680, under section 402(a) of the Magnuson-Stevens Act (16 U.S.C. 1801, et seq.) and under 16 U.S.C. 1862(j). Responses to this information request are confidential under section 402(b) of the Magnuson-Stevens Act. They are 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 respondents: 10. Estimated total responses: 10. Estimated total burden: 300 hr.  
Estimated total personnel costs: \$7,500.

**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).**

Estimated total miscellaneous costs: \$40.

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

No costs or burden will occur to the Federal government.

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

This is a new program.

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

NMFS will not publish any results from this program.

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

Not Applicable.

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

Not Applicable.

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

This collection does not employ statistical methods.

**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration***National Marine Fisheries Service**P.O. Box 21668**Juneau, Alaska 99802-1668*

March 29, 2013

Eric Olson, Chairman  
Chris Oliver, Executive Director  
North Pacific Fishery Management Council  
605 W. Fourth Avenue, Suite 306  
Anchorage, Alaska 99501

Dear Chairman Olson and Mr. Oliver:

At its February 2013 meeting, the North Pacific Fishery Management Council (Council) considered a draft analysis examining active participation requirements for persons acquiring or holding vessel owner quota share in the BSAI crab fisheries (agenda item C-4(b)) and a discussion paper considering measures for BSAI crab cooperatives to address various crew issues (agenda item C-4(c)). As you know, the Council decided to take no further action on either of these agenda items. However, the Council passed a motion requesting that each cooperative in the Crab Rationalization program voluntarily provide an annual report to the Council that describes the measures the cooperative is taking "to facilitate the transfer of quota share to active participants and crew members" and "available measures which affect high lease rates and crew compensation." The motion also states that the reports should describe the "effectiveness of the measures implemented through the cooperatives, the estimated level of member participation in any voluntary measures, and include supporting information and data." According to the Council's February 2013 newsletter, these reports are to be provided to the Council at its October meeting.

During Council deliberation on the motion, NOAA General Counsel expressed a concern that the Council's motion may be a collection of information subject to the requirements of the Paperwork Reduction Act (PRA). She indicated that further research would be needed to make a definitive determination and that the agency would report back to the Council on our findings.

We have had an opportunity to examine the requirements of the PRA and its implementing regulations. Based on that review, and with guidance from NOAA General Counsel, we have determined that the motion passed by the Council and described above constitutes a collection of information subject to the review and approval requirements of the PRA. The following paragraphs provide additional explanation for our determination.



The PRA applies to (1) agency (2) collections of (3) information using identical questions posed to, or reporting or recordkeeping requirements imposed on, (4) ten or more persons. The Department of Commerce and NOAA have long considered councils to be “agencies” for purposes of the PRA. PRA regulations at 5 C.F.R. § 1320.3(h) define “information” as “any statement or estimate of fact or opinion, regardless of form or format, and whether oral or maintained on paper, electronic or other media.” PRA regulations at 5 C.F.R. § 1320.3(c) define a “collection of information” as “... soliciting ... the disclosure to an agency ... of information ... for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.” “Collection of information” includes “any requirement or request for persons to obtain, maintain, retain, report, or publicly disclose information.” *Id.* The Council’s motion requests each crab cooperative to voluntarily submit to the Council statements or estimates of fact or opinion concerning various measures taken by the cooperative and is an agency collection of information under the PRA. The fact that the Council’s request for this information is voluntary does not exempt it from the requirements of the PRA.

As to the last criterion, NOAA General Counsel noted during the February meeting that the Council’s motion may be exempt from the PRA because there are currently less than ten crab cooperatives.<sup>1</sup> Our additional research revealed that PRA regulations at 5 C.F.R. § 1320.3(c)(4) state that “ten or more persons” refers to “the persons to whom a collection of information is addressed by the agency within any 12-month period, and to any independent entities to which the initial addressee may reasonably be expected to transmit the collection of information during that period ....” Furthermore, regulations at 5 C.F.R. § 1320(c)(4)(ii) state that if a collection of information is addressed to all or a substantial majority of an industry, the collection is presumed to be addressed to ten or more persons. The Council’s motion is directed to the crab cooperatives, but these cooperatives will have to turn to their members to obtain the information requested by the Council. Also, NMFS currently issues over 99 percent of the individual fishing quota annually issued in all crab fisheries under the Crab Rationalization Program to these crab cooperatives.<sup>2</sup> Therefore, we have determined that the collection of information is addressed to ten or more persons, thus triggering the review and approval requirements of the PRA. I have attached a copy of a memorandum from the Administrator of the Office of Management and Budget (OMB), which provides a concise summary of the central requirements of the PRA that may assist the Council in the development of future information collections.

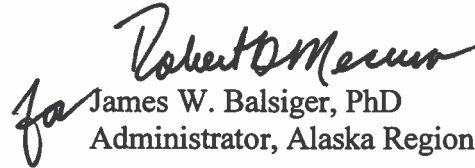
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<sup>1</sup> Crab cooperatives are “persons” under the PRA. Regulations at 5 C.F.R. § 1320.3(k) define “person” as “an individual, partnership, association, corporation ... business trust, or legal representative, an organized group of individuals, a State, territorial, tribal, or local government or branch thereof, or a political subdivision of a State, territory, tribal, or local government or a branch of a political subdivision.”

<sup>2</sup> Initial Review Draft of Provisions Defining Active Participation Requirements for the Acquisition and Use of Owner Shares, prepared for agenda item C-4(b) at the February 2013 Council meeting, at page 9.

Personnel within the NMFS Alaska Region Sustainable Fisheries Division have begun preparation of the documents needed to obtain OMB review and approval of this new annual report from crab cooperatives. We believe that review and approval of this collection of information can be completed prior to the Council's October 2013 meeting.

Sincerely,

  
James W. Balsiger, PhD  
Administrator, Alaska Region

Attachment: Office of Management and Budget Memorandum dated April 7, 2010

cc: Lisa Lindeman: NOAA General Counsel, Alaska Section  
cc: Leonard Herzog: Alaska King Crab Harvesters Cooperative  
cc: Sandra Toomey: Aleutian Gold Crab Cooperative  
cc: Trevor McCabe: Coastal Villages Crab Cooperative  
cc: Rob Rogers: Crab Producers and Harvesters LLC  
cc: Edward Poulsen: Dog Boat Cooperative  
cc: Tim Abena: Independent Crabber's Cooperative  
cc: Erling Jacobsen: Inter-Cooperative Exchange  
cc: Mary Mezich: R & B Cooperative  
cc: Christian Asay: Trident Affiliated Crab Harvesting Corporation  
cc: Mark Gleason: Alaska Bering Sea Crabbers  
cc: Ruth Christiansen: Alaska Bering Sea Crabbers





ADMINISTRATOR  
OFFICE OF  
INFORMATION AND  
REGULATORY  
AFFAIRS

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

April 7, 2010

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES,  
AND INDEPENDENT REGULATORY AGENCIES

FROM:

Cass R. Sunstein  
Administrator

Handwritten signature of Cass R. Sunstein in black ink.

SUBJECT:

Information Collection under the Paperwork Reduction Act

On January 21, 2009, the President issued a memorandum calling for the establishment of “a system of transparency, public participation, and collaboration.”<sup>1</sup> The memorandum required an Open Government Directive to be issued by the Director of the Office of Management and Budget (OMB), instructing “executive departments and agencies to take specific actions implementing the principles set forth in this memorandum.”

Implementing the President’s memorandum, OMB’s Open Government Directive requires a series of measures to promote the commitments to transparency, participation, and collaboration.<sup>2</sup> Section 4 of the Directive specifically instructs the Administrator of the Office of Information and Regulatory Affairs (OIRA) to “review existing OMB policies, such as Paperwork Reduction Act guidance and privacy guidance, to identify impediments to open government and to the use of new technologies and, where necessary, issue clarifying guidance and/or propose revisions to such policies, to promote greater openness in government.”

This Memorandum responds to that requirement by offering clarifying guidance with respect to the Paperwork Reduction Act of 1995 (PRA)<sup>3</sup> in order to specify its central requirements and to increase transparency and openness.

The PRA was designed, among other things, to “ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government” and to “improve the quality and use of Federal information to strengthen decisionmaking, accountability, and openness in Government and society.”<sup>4</sup> Federal agencies play a critical role in collecting and managing information in order to promote openness, reduce burdens on the public, increase program efficiency and

<sup>1</sup> Available at <http://www.gpoaccess.gov/presdocs/2009/DCPD200900010.pdf>.

<sup>2</sup> Available at [http://www.whitehouse.gov/omb/assets/memoranda\\_2010/m10-06.pdf](http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-06.pdf).

<sup>3</sup> 44 U.S.C. chapter 35; see 5 CFR Part 1320.

<sup>4</sup> 44 U.S.C. § 3501.

effectiveness, and improve the integrity, quality, and utility of information to all users within and outside the government.<sup>5</sup>

Before requiring or requesting information from the public, the PRA requires Federal agencies<sup>6</sup> (1) to seek public comment on proposed collections and (2) to submit proposed collections for review and approval by the Office of Management and Budget (OMB). OMB's Office of Information and Regulatory Affairs (OIRA) reviews agency information collection requests for approval or disapproval. When OMB approves an information collection, it assigns an OMB control number<sup>7</sup> that the agency must display on the information collection.<sup>8</sup> OMB has issued regulations and guidance to promote agency compliance with the PRA.<sup>9</sup>

#### What counts as "information" under the PRA?

OMB regulations define "information" as "any statement or estimate of fact or opinion, regardless of form or format, whether in numerical, graphic, or narrative form, and whether oral or maintained on paper, electronic or other media."<sup>10</sup> This category includes:

- (1) requests for information to be sent to the government, such as forms (e.g., the IRS 1040), written reports (e.g., grantee performance reports), and surveys (e.g., the Census);
- (2) recordkeeping requirements (e.g., OSHA requirements that employers maintain records of workplace accidents); and
- (3) third-party or public disclosures (e.g., nutrition labeling requirements for food).<sup>11</sup>

The PRA applies to collections of information using identical questions posed to, or reporting or recordkeeping requirements imposed on, "ten or more persons."<sup>12</sup> For the purpose of counting the number of respondents, agencies should consider the number of respondents within any 12 month period. If a collection of information is addressed to all or a substantial

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<sup>5</sup> 44 U.S.C. § 3506(b).

<sup>6</sup> With some exceptions, the PRA applies to "any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency." 44 U.S.C. § 3502(1).

<sup>7</sup> The OMB Control Number is two four-digit codes separated by a hyphen. The first four digits identify the sponsoring agency and bureau, and the second four digits identify the particular collection. The public can find OMB's inventory of currently approved collections, with OMB control numbers, online at <http://www.reginfo.gov>.

<sup>8</sup> The PRA prohibits agencies from penalizing or denying a benefit to (1) those who fail to respond to Federal collections of information that do not display valid OMB control numbers and (2) those who have not been informed that a response is not required unless the collection of information displays a valid control number. Litigants may raise these public protections at any time during an administrative process or judicial action. See 44 U.S.C. § 3512(b); *Center for Auto Safety v. NHTSA*, 244 F.3d 144 (D.C. Cir. 2001); *Saco River Cellular Inc. v. FCC*, 133 F.3d 25 (D.C. Cir. 1998).

<sup>9</sup> Please see OIRA's website: [http://www.whitehouse.gov/omb/inforeg\\_default/](http://www.whitehouse.gov/omb/inforeg_default/).

<sup>10</sup> 5 C.F.R. 1320.3(h).

<sup>11</sup> See 5 C.F.R. 1320.3(c).

<sup>12</sup> 44 U.S.C. § 3502(3)(A)(i). Under the PRA, "person" means "an individual, partnership, association, corporation, business trust, or legal representative, an organized group of individuals, a State, territorial, tribal, or local government or branch thereof, or a political subdivision of a State, territory, tribal, or local government or a branch of a political subdivision." 44 U.S.C. § 3502(10).

majority of an industry or sector in a 12 month period, that collection is presumed to be addressed to ten or more persons.<sup>13</sup>

The requirements of the PRA apply to voluntary collections as well as to mandatory collections and collections required to obtain a Federal benefit (e.g., a job, a grant, a contract).<sup>14</sup> In implementing program activities, agencies should be aware of the applicability of the PRA and address PRA compliance in sufficient time to solicit and respond to public comment.<sup>15</sup>

#### What does not count as information under the PRA?

OMB regulations specify a number of items that are generally not “information” under the PRA.<sup>16</sup> Important examples are

- affidavits, receipts, changes of address, or consents;
- tests of the aptitude, abilities, or knowledge of persons; and
- facts or opinions that are (1) submitted in response to general solicitations of public comments,<sup>17</sup> (2) addressed to a single person, (3) obtained or solicited at or in connection with public hearings or meetings, (4) obtained through direct observation by the agency (e.g., through visual inspection to determine how long it takes for people to complete a specific transaction), or (5) obtained from participants in clinical trials (which typically do not involve answers to “identical questions”).

It is worth emphasizing that facts or opinions obtained in connection with public meetings do not count as “information.” This “public meeting” exception allows agencies to engage with the public on the Internet so long as the engagement is the functional equivalent of a public meeting (i.e., not a survey). In addition, it is important to underline that general solicitations, such as *Federal Register* notices, do not trigger the PRA. It follows that agencies may offer the public opportunities to provide general comments on discussion topics through the Internet. More generally, agencies may use social media and web-based technologies in a variety of specific ways without triggering the PRA.<sup>18</sup>

#### What information collections do not require OMB approval?

By statute, the PRA does not apply to some types of information collections. OMB approval is not required for information collections during a Federal criminal investigation or prosecution, during a civil action to which the United States is a party, or during the conduct of intelligence activities.<sup>19</sup> Agency collections from “agencies, instrumentalities, or employees of

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<sup>13</sup> 5 C.F.R. 1320.3(c)(4)(ii).

<sup>14</sup> See 44 U.S.C. § 3502(3); 5 C.F.R. 1320.3(c).

<sup>15</sup> Given that the required public comment periods total 90 days, agencies should plan for at least 90 days plus time to respond to comments and questions that arise during OMB review.

<sup>16</sup> 5 C.F.R. 1320.3(h). Please see the Appendix for the regulatory text.

<sup>17</sup> Documents such as Advance Notices of Proposed Rulemaking, Requests for Comments, Requests for Information, and Notices of Proposed Rulemaking are generally not information collections.

<sup>18</sup> For additional information, see OIRA Memorandum on Social Media, Web-Based Interactive Technologies, and the Paperwork Reduction Act, available at [http://www.whitehouse.gov/omb/inforeg\\_default/](http://www.whitehouse.gov/omb/inforeg_default/).

<sup>19</sup> 44 U.S.C. § 3518(c). Please see the Appendix for the statutory exemptions.

the United States” in their official capacities are generally not subject to the PRA, unless those collections are for “general statistical purposes.”<sup>20</sup> It is worth emphasizing that agencies may ask for facts and opinions of Federal employees without triggering the PRA.

What are the public notice and comment requirements for information collection requests?

To obtain the public’s input on an agency’s proposal to collect information, the PRA generally requires the agency to publish a 60-day notice in the *Federal Register* soliciting public comment on the agency’s proposed collection. The notice must include a specific request that the public evaluate whether the proposed collection of information is necessary; evaluate the accuracy of the agency’s estimate of the burden that the collection would impose on respondents; comment on how to enhance the quality, utility, and clarity of the information to be collected; and comment on how to minimize the burden of the collection of information.<sup>21</sup>

After conclusion of the 60-day comment period and the agency’s internal consideration of the public’s comments, the agency submits the collection to OMB and publishes a second *Federal Register* notice to announce the start of OMB review.<sup>22</sup> This second notice informs the public about how to submit comments to OMB and informs the public that OMB may act on the agency’s request only after the 30-day comment period has closed.



When and how may the public notice and comment requirements be reduced?

Under certain circumstances, an agency head or designee may request that it be permitted to seek expedited, or “emergency,” OMB review of an information collection request. When expedited review is granted, the agency must take all practicable steps to consult with members of the public, but OMB may modify or, if necessary, waive the public comment requirements.<sup>23</sup> And when review is expedited, OMB acts promptly through a suitably streamlined process, consistent with the purposes of the PRA.

OMB may grant expedited review if: “(i) Public harm is reasonably likely to result if normal clearance procedures are followed; (ii) An unanticipated event has occurred; or (iii) The use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information or is reasonably likely to cause a statutory or court ordered deadline to be missed.”<sup>24</sup>

<sup>20</sup> 44 U.S.C. § 3502(3)(A).

<sup>21</sup> 44 U.S.C. § 3506(c)(2)(A). If a new information collection is associated with a proposed rule, OMB regulations require that only one notice be published. Agencies include this PRA notice in the preamble to the proposed rule and comments are directed to OMB. See 44 U.S.C. § 3506(c)(2)(B); 5 C.F.R. 1320.11.

<sup>22</sup> 44 U.S.C. § 3507(a)(1)(D).

<sup>23</sup> 5 CFR 1320.13(c) and (d).

<sup>24</sup> 44 U.S.C. § 3507(j); 5 C.F.R. 1320.13(a)(2).

As these situations arise, agencies should consult with OIRA to select an approach that permits them to comply with the PRA while meeting their other obligations.<sup>25</sup>

An agency may also request a “generic clearance” in situations in which (a) there is a need for multiple, similar low-burden collections that do not raise substantive or policy issues and (b) the specifics of each collection cannot be determined until shortly before the data are to be collected. Generic clearances have proved useful for customer satisfaction surveys, focus group testing, and website usability surveys. To obtain a generic clearance, agencies provide the public with opportunity for comment as required by the PRA and provide all information that would allow for meaningful comment, including a description of the need for the collection, the general nature of the collection, an estimate of the overall burden, and a description of the methodologies that will be used to collect the data. Once approval is granted for the overall collection, individual collections that fall within the generic clearance are reviewed on an expedited basis and are not generally required to undergo further public comment. Agencies are encouraged to consult with their OMB desk officers before developing a generic clearance to determine if it is appropriate.

#### What does OMB evaluate during its review of proposed collections?

A central goal of OMB review is to help agencies strike a balance between collecting information necessary to fulfill their statutory missions and guarding against unnecessary or duplicative information that imposes unjustified costs on the American public. In this regard, OIRA evaluates whether the collection of information by the agency:

- is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;<sup>26</sup>
- minimizes the Federal information collection burden, with particular emphasis on those individuals and entities most adversely affected; and
- maximizes the practical utility of and public benefit from information collected by or for the Federal Government.<sup>27</sup>

OIRA also reviews the extent to which the information collection is consistent with applicable laws, regulations, and policies related to privacy, confidentiality, security, information quality, and statistical standards. In addition, OMB coordinates efforts across Federal agencies in shared areas of interest and expertise.

Under the PRA, OMB may approve a collection for up to three years at one time.<sup>28</sup> To extend the expiration date of a collection, an agency must provide the public with an opportunity to comment on the continuation of the collection, with the two notices described above, and

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<sup>25</sup> This includes setting a schedule for when the agency will provide the public with opportunities for full notice and comment under the PRA.

<sup>26</sup> 44 U.S.C. § 3508.

<sup>27</sup> 44 U.S.C. § 3504.

<sup>28</sup> 44 U.S.C. § 3507(g). Some approvals are for shorter periods of time. In the case of “emergency” requests, OMB approvals are limited to six months. 44 U.S.C. § 3507(j)(2).

resubmit the information collection request.<sup>29</sup> The public may have access to an inventory of currently approved agency collections at <http://www.reginfo.gov/public/do/PRAMain>.<sup>30</sup>

**What resources are available to provide assistance?**

OIRA provides guidance on its website<sup>31</sup> and makes its staff available to assist agencies in determining whether their activities are information collections under the PRA. When questions arise about the applicability of the PRA, an agency's internal resources, coordinated by the agency's Chief Information Officer, are the best sources for guidance and assistance. By working together, for example, OMB and the agencies have been able to minimize the number of PRA violations and to bring agencies into compliance when PRA violations occur. Finally, the PRA requires OMB to report to Congress annually on the Federal Government's major activities under the Act. This report, the Information Collection Budget (ICB), is available on OIRA's website.

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<sup>29</sup> Agencies may also discontinue collections at any time by submitting a short request to OMB.

<sup>30</sup> To ensure that the public record is accurate, agencies must submit, and OMB must review, documentation of all proposed revisions to an active collection before those revisions may be implemented. If the agency is considering significant or substantive revisions to the collection, it must provide the public with an opportunity to comment on the proposed revisions, as it would with a new collection. For insignificant or non-substantive changes, the agency is not required to seek public comment.

<sup>31</sup> [http://www.whitehouse.gov/omb/inforeg\\_default/](http://www.whitehouse.gov/omb/inforeg_default/)

## Appendix

### Statutory Exemptions<sup>32</sup>

- (1) Except as provided in paragraph (2), this subchapter shall not apply to the collection of information--
- (A) during the conduct of a Federal criminal investigation or prosecution, or during the disposition of a particular criminal matter;
  - (B) during the conduct of--
    - (i) a civil action to which the United States or any official or agency thereof is a party; or
    - (ii) an administrative action or investigation involving an agency against specific individuals or entities;
  - (C) by compulsory process pursuant to the Antitrust Civil Process Act and section 13 of the Federal Trade Commission Improvements Act of 1980; or
  - (D) during the conduct of intelligence activities as defined in section 3.4(e) of Executive Order No. 12333, issued December 4, 1981, or successor orders, or during the conduct of cryptologic activities that are communications security activities.
- (2) This subchapter applies to the collection of information during the conduct of general investigations (other than information collected in an antitrust investigation to the extent provided in subparagraph (C) of paragraph (1)) undertaken with reference to a category of individuals or entities such as a class of licensees or an entire industry.

### OMB Regulations

OMB regulations specify categories of items that are generally not "information" under the PRA.<sup>33</sup> These categories include:

- (1) Affidavits, oaths, affirmations, certifications, receipts, changes of address, consents, or acknowledgments; provided that they entail no burden other than that necessary to identify the respondent, the date, the respondent's address, and the nature of the instrument (by contrast, a certification would likely involve the collection of "information" if an agency conducted or sponsored it as a substitute for a collection of information to collect evidence of, or to monitor, compliance with regulatory standards, because such a certification would generally entail burden in addition to that necessary to identify the respondent, the date, the respondent's address, and the nature of the instrument);
- (2) Samples of products or of any other physical objects;
- (3) Facts or opinions obtained through direct observation by an employee or agent of the sponsoring agency or through nonstandardized oral communication in connection with such direct observations;
- (4) Facts or opinions submitted in response to general solicitations of comments from the public, published in the *Federal Register* or other publications, regardless of the form or format thereof, provided that no person is required to supply specific information pertaining to the commenter, other than that necessary for self-identification, as a condition of the agency's full consideration of the comment;

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<sup>32</sup> 44 U.S.C. § 3518(c).

<sup>33</sup> 5. C.F.R. 1320.3(h).

- (5) Facts or opinions obtained initially or in follow-on requests, from individuals (including individuals in control groups) under treatment or clinical examination in connection with research on or prophylaxis to prevent a clinical disorder, direct treatment of that disorder, or the interpretation of biological analyses of body fluids, tissues, or other specimens, or the identification or classification of such specimens;**
- (6) A request for facts or opinions addressed to a single person;**
- (7) Examinations designed to test the aptitude, abilities, or knowledge of the persons tested and the collection of information for identification or classification in connection with such examinations;**
- (8) Facts or opinions obtained or solicited at or in connection with public hearings or meetings;**
- (9) Facts or opinions obtained or solicited through nonstandardized follow-up questions designed to clarify responses to approved collections of information; and**
- (10) Like items so designated by OMB.**