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Washington, D.C. 20004

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December 20, 2023

Hon. Gina M. Raimondo
Secretary of Commerce
OMB Control No. 0648-0593
Department of Commerce
1401 Constitution Ave. NW
Washington, DC 20230

Hon. Shalanda D. Young
Director
OMB Control No. 0648-0593
Office of Management and Budget
725 17th St. NW
Washington, DC 20503

Dear Madam Secretary and Madam Director:

RE: Department of Commerce/NOAA Notice Titled "Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; National Marine Fisheries Service (NMFS) Observer Programs' Information That Can Be Gathered Only Through Questions," OMB Control No. 0648-0593, 88 *Fed. Reg.* 87753 (December 19, 2023)

This letter presents comments of the National Federation of Independent Business (NFIB)¹ on the Department of Commerce request cited above to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act (PRA)² to have employees or contractors of the National Marine Fisheries Service (NMFS) collect information on, among other things, fishermen, their vessels, and their catch. The request seeks approval to collect information as part of the Department's intrusive program to insert NMFS personnel or contractors aboard fishing vessels and in fish processing plants.³ Because the Department's request is internally inconsistent and failed to disclose properly the uses for the information it proposes to collect, NFIB asks that the Department withdraw its request or, if the Department does not withdraw it, that OMB disapprove the request.

¹ NFIB is an incorporated nonprofit association representing small and independent businesses. NFIB protects and advances the ability of Americans to own, operate, and grow their businesses and ensures that the governments of the United States and the fifty States hear the voice of small business as they formulate public policies. Many American small businesses participate in the fishing industry.

² See 44 U.S.C. 3507.

³ See 16 U.S.C. 1853(b)(8). The U.S. Supreme Court has under consideration challenges to aspects of the program. See *Loper Bright Enterprises v. Raimondo*, No. 22-451, *cert. granted* (May 1, 2023); *Relentless, Inc. v. Department of Commerce*, No. 22-1219, *cert. granted* (October 13, 2023).

The Paperwork Reduction Act requires an agency seeking OMB approval of an information collection request to disclose in the *Federal Register* "the proposed use of the information."⁴ Toward that end, the Department says in its *Federal Register* notice:

*The information collected will be used to: (1) Monitor catch and bycatch in federally managed commercial fisheries; (2) understand the population status and trends of fish stocks and protected species, as well as the interactions between them; (3) determine the quantity and distribution of net benefits derived from living marine resources; (4) predict the biological, ecological, and economic impacts of existing management action and proposed management options; and (5) ensure that the observer programs can safely and efficiently collect the information required for the previous four uses.*⁵

None of the five uses disclosed by the Department involves use of the collected information for law enforcement. But elsewhere in the *Federal Register* notice, the Department mentions:

*The third change is the West Coast Groundfish Observer Program (WCGOP) would like to start collecting the names of crew members within their observer logbooks. The data will be recorded on paper, scanned in, and stored according to vessel name. This information will only be accessed if there is an enforcement issue.*⁶

Thus, the Department admits that it plans to collect the names of the crew members on fishing vessels for use if there is an "enforcement issue." But the Department failed to list "law enforcement" in the *Federal Register* as a sixth use for the information it proposes to collect. The request is thus internally inconsistent and fails to make proper disclosure of the uses to which the Department will put the collected information.

Lest there be any doubt, NFIB believes the Department should not operate a spy-on-the-crew enforcement program aboard fishing vessels. But if the Department nevertheless intends to use for law enforcement purposes the information collected by NMFS personnel or contractors aboard fishing vessels, the Department must properly disclose under the Paperwork Reduction Act that sixth use for the collected information, and the Department has failed to do so.

Sincerely,



David S. Addington
Executive Vice President and General Counsel

⁴ 44 U.S.C. 3507(a)(1)(D)(ii)(III).

⁵ 88 *Fed. Reg.* 87753, col. 3.

⁶ 88 *Fed. Reg.* at 87754, col. 1.