

compliant with the guidelines in ANSI/EIA Standard-748 (current version at time of award)), the Contractor shall apply the system to the contract and shall be prepared to demonstrate to the ACO that the EVMS complies with the EVMS guidelines referenced in paragraph (a) of this clause.

(c) Agencies may conduct Integrated Baseline Reviews (IBR). If a pre-award IBR has not been conducted, such a review shall be scheduled as early as practicable after contract award, but not later than 180 days after award. The Contracting Officer may also require an IBR at (1) exercise of significant options or (2) incorporation of major modifications. Such reviews will normally be scheduled before award of the contract action.

(d) Unless a waiver is granted by the ACO or Federal department or agency, Contractor proposed EVMS changes require approval of the ACO or Federal department or agency, prior to implementation. The ACO or Federal department or agency, shall advise the Contractor of the acceptability of such changes within 30 calendar days after receipt of the notice of proposed changes from the Contractor. If the advance approval requirements are waived by the ACO or Federal department or agency, the Contractor shall disclose EVMS changes to the ACO or Federal department or agency at least 14 calendar days prior to the effective date of implementation.

(e) The Contractor agrees to provide access to all pertinent records and data requested by the Contracting Officer or a duly authorized representative. Access is to permit Government surveillance to ensure that the EVMS conforms, and continues to conform, with the performance criteria referenced in paragraph (a) of this clause.

(f) The Contractor shall require the subcontractors specified below to comply with the requirements of this clause: *[Insert list of applicable subcontractors.]*

(End of clause)

[FR Doc. 05-6864 Filed 4-7-05; 8:45 am]

BILLING CODE 6820-EP-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 600

[Docket No. 041029298-5084-02; I.D. 052004A]

RIN 0648-AS38

#### Magnuson-Stevens Act Provisions; Fishing Capacity Reduction Program; Pacific Coast Groundfish Fishery; California, Washington, and Oregon Fisheries for Coastal Dungeness Crab and Pink Shrimp; Industry Fee System for Fishing Capacity Reduction Loan

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** NMFS re-proposes regulations to implement an industry fee system for repaying a \$35,662,471 Federal loan. The loan financed most of the cost of a fishing capacity reduction program in the Pacific Coast groundfish fishery. The industry fee system imposes fees on the value of future groundfish landed in the trawl portion (excluding whiting catcher-processors) of the Pacific Coast groundfish fishery. It also imposes fees on coastal Dungeness crab and pink shrimp landed in the California, Washington, and Oregon fisheries for coastal Dungeness crab and pink shrimp. This action's intent is to implement the industry fee system.

**DATES:** Written comments on this proposed rule must be received by May 9, 2005.

**ADDRESSES:** You may submit comments by any of the following methods:

- E-mail: [0648-AS38@noaa.gov](mailto:0648-AS38@noaa.gov). Include in the subject line the following identifier: Pacific Coast Groundfish Buyback RIN 0648-AS38. E-mail comments, with or without attachments, are limited to 5 megabytes.

- Federal e-Rulemaking Portal: <http://www.regulations.gov>.

- Mail: Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3282.

- Fax: (301) 713-1306.

Comments involving the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule should be submitted in writing to Michael L. Grable, at the above address, and to David Rostker, Office of Management and Budget (OMB), by e-mail at

[David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov) or by fax to 202-395-7285.

Copies of the Environmental Assessment, Regulatory Impact Review (EA/RIR) and Initial Regulatory Flexibility Analysis (IRFA) for the fee collection system may be obtained from Michael L. Grable, at the above address.

**FOR FURTHER INFORMATION CONTACT:**

Michael L. Grable, (301) 713-2390.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 312(b)-(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(b) through (e)) (Magnuson-Stevens Act) generally authorized fishing capacity reduction programs. In particular, section 312(d) of the Magnuson-Stevens Act authorized industry fee systems for repaying fishing capacity reduction loans which finance program costs.

Subpart L of 50 CFR part 600 contains the framework regulations (framework regulations) generally implementing sections 312(b)-(e) of the Magnuson-Stevens Act.

Sections 1111 and 1112 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1279f and 1279g), generally authorized fishing capacity reduction loans.

Section 212 of Division B, Title II, of Public Law 108-7 (section 212) specifically authorized a \$46 million program (groundfish program) for that portion of the limited entry trawl fishery under the Pacific Coast Groundfish Fishery Management Plan whose permits, excluding those registered to whiting catcher-processors, were endorsed for trawl gear operation (reduction fishery). Section 212 also authorized a fee system for repaying the reduction loan partially financing the groundfish program's cost. The fee system includes both the reduction fishery and the fisheries for California, Washington, and Oregon coastal Dungeness crab and pink shrimp (fee-share fisheries). Section 501(c) of Division N, Title V, of Public Law 108-7 (section 501(c)) appropriated \$10 million to partially fund the groundfish program's cost. Public Law 107-206 authorized a reduction loan with a ceiling of \$36 million to finance the groundfish program's cost.

Section 212 required NMFS to implement the groundfish program by a public notice in the **Federal Register**. NMFS published the groundfish program's initial public notice on May 28, 2003 (68 FR 31653) and final notice on July 18, 2003 (68 FR 42613). Background information on the groundfish program are published in these notices.

The groundfish program's maximum cost was \$46 million, of which \$10 million was funded by an appropriation and \$36 million by a reduction loan. Voluntary participants in the groundfish program relinquished, among other things, their fishing permits in the reduction fishery, their fishing permits or licenses in the fee-share fisheries, their fish catch histories in both the reduction and fee-share fisheries, and their vessels' worldwide fishing privileges. These relinquishments were in return for reduction payments whose amounts the participants' reduction bids determined.

On July 18, 2003, NMFS invited reduction bids from the reduction fishery's permit holders. The bidding period opened on August 4, 2003, and closed on August 29, 2003. NMFS scored each bid's amount against the bidder's past ex-vessel revenues and, in a reverse auction, accepted the bids whose amounts were the lowest percentages of the revenues. This created reduction contracts whose performance was subject only to a successful referendum about the fee system required to repay the reduction loan.

Bid offers totaled \$59,786,471. NMFS accepted bids totaling \$45,662,471. The next lowest scoring bid would have exceeded the groundfish program's maximum cost. The accepted bids involved 91 fishing vessels as well as 239 fishing permits and licenses (91 in the reduction fishery, 121 in the fee-share fisheries, and 27 other Federal permits).

In accordance with the section 212 formula, NMFS allocated portions of the \$35,662,471 reduction loan amount to the reduction fishery and to each of the six fee share fisheries, as follows:

1. Reduction fishery, \$28,428,719; and
2. Fee-share fisheries:
  - a. California coastal Dungeness crab fishery, \$2,334,334;
  - b. California pink shrimp fishery, \$674,202;
  - c. Oregon coastal Dungeness crab fishery, \$1,367,545;
  - d. Oregon pink shrimp fishery, \$2,228,845;
  - e. Washington coastal Dungeness crab fishery, \$369,426; and
  - f. Washington pink shrimp fishery, \$259,400.

Each of these portions became reduction loan subamounts repayable by fees from each of the seven subamount fisheries involved.

NMFS next held a referendum on the fee system. The reduction contracts would have become void unless the majority of votes cast in the referendum approved the fee system. On September

30, 2003, NMFS mailed ballots to referendum voters in the reduction fishery and in each of the six fee-share fisheries. The voting period opened on October 15, 2003, and closed on October 29, 2003. NMFS received 1,105 responsive votes. In accordance with the section 212 formula, NMFS weighted the votes from each of the seven fisheries. Over 85 percent of the weighted votes approved the fee system. This successful referendum result removed the only condition precedent to reduction contract performance.

On November 4, 2003, NMFS published another **Federal Register** document (68 FR 62435) advising the public that NMFS would, beginning on December 4, 2003, tender the groundfish program's reduction payments to the 91 accepted bidders. On December 4, 2003, NMFS required all accepted bidders to permanently stop all further fishing with the reduction vessels and permits. Subsequently, NMFS:

1. Disbursed \$45,662,471 in reduction payments to 91 accepted bidders;
2. Revoked the relinquished Federal permits;
3. Advised California, Oregon, and Washington about the relinquished state permits or licenses;
4. Arranged with the National Vessel Documentation Center for revocation of the reduction vessels' fishery trade endorsements; and
5. Notified the U.S. Maritime Administration to restrict placement of the reduction vessels under foreign registry or their operation under the authority of foreign countries.

On November 16, 2004, NMFS published a **Federal Register** document (69 FR 67100) proposing regulations to implement an industry fee system for repaying the reduction loan (proposed fee regulations).

Due to the extensive changes requested by the public on the original proposed fee regulations, NMFS modified and is now re-proposing the fee system.

## II. Summary of Comments and Responses

*Comment 1:* One comment stated that the term "reduction fishery" as defined in the proposed fee regulations may be ambiguous. This comment noted that the reduction fishery fleet may fish, under both a limited entry trip limit and an open access trip limit, for all groundfish species. The comment asked if the fee applies to all reduction fishery landings regardless of whether the landed fish were caught under the limited entry trip limit or the open access trip limit.

*Response:* The fee applies to all groundfish species in the reduction fishery regardless of the nature of the trip limits under which the species were caught.

Under the proposed fee regulations' definition of "reduction fishery", the reduction fishery species are "all species in... the limited entry trawl fishery under the Federal Pacific Coast Groundfish Fishery Management Plan that is conducted under permits, excluding those registered to whiting catcher-processors, which are endorsed for trawl gear operation."

The fee must be paid for all species which are:

1. Reduction fishery species;
2. Caught under permits which are endorsed for trawl gear operation (except permits registered to whiting catcher-processors); and,
3. Caught by limited access permit holders, regardless of whether species are caught under limited access or open access permits.

*Comment 2:* One comment concerned the proposed fee regulations' failure to exercise a section 212 option under which the States of California, Oregon, and Washington would have "collected" the fees. The proposed fee regulations partly based this on some of the states' authority to "collect" these fees expiring in a few years while fee collection itself will continue for 30 years. The commenter believed this was insufficient justification for not exercising this option because state statutory provisions are commonly extended beyond their "sunset" period if the provisions are still being used.

*Response:* NMFS continues to believe that exercising the statutory option for the states to "collect" the fees is not feasible. NMFS reached this conclusion because, among other reasons:

1. The state systems sometimes:
  - a. Assess and collect fees based on pounds rather than on dollars,
  - b. Do not assess or collect fees at the point of fish sale, and/or
  - c. Involve quarterly fee disbursements;
2. One state's legislation regarding this option authorizes participation of a state agency different from the one administering the existing state system (and might require amendment);
3. One state's legislation regarding this option expires in less than two years;
4. All states indicated that the funding and staffing required for this option during the reduction loan's 30-year term would be problematic for them; and
5. The states' collection systems are dissimilar and, without significant modification, might not promote

efficient and uniform groundfish program fee collection.

*Comment 3:* One comment stated that interest should not have accrued on reduction loan principal between the time of the loan's disbursement and the industry fee system's implementation because the fish sellers had no opportunity to pay the fee during this interim. The commenter stated that NMFS' Financial Services Division had verbally advised him that the interest would not accrue during this interim period.

*Response:* The Financial Services Division neither advised nor had the authority to advise this commenter that the interest would not accrue during this interim period.

*Comment 4:* One comment suggested that NMFS use the state vessel identification number as the identifier to track vessels delivering fee fish to ensure the proper fees are being collected.

*Response:* NMFS does not now propose any particular means of identifying or tracking vessels delivering fee fish. NMFS will use whatever available vessel identifiers best allow, in the circumstances involved, NMFS to match fish sellers with fish buyers and, where necessary, audit fee payments, collection, deposits, and disbursements.

*Comment 5:* One comment requested NMFS to annually notify all fish sellers and fish buyers of the fee rate applicable to the reduction fishery and to each of the fee-share fisheries during the succeeding year.

*Response:* NMFS does not believe annual notifications are necessary. Instead, in accordance with the framework regulations' section 600.1013(d), NMFS will, at least 30 days before the effective date of any fee or of any fee rate change, publish a **Federal Register** document establishing the date from and after which the fee or fee rate change is effective. NMFS will at the same time and by U.S. mail also individually notify each affected fish seller and fish buyer of whom NMFS has notice.

*Comment 6:* One comment questioned the requirement for each fish buyer to maintain a segregated account for the sole purpose of depositing and disbursing collected fee revenue.

*Response:* Because the groundfish program will involve many smaller fish buyers and because the amount of fees each collects will often be relatively smaller than in other fishing capacity reduction programs, NMFS has modified the proposed rule to remove the requirement to maintain a segregated account, as long as they

maintain separate subaccounts for these fees within operating accounts which may also be used for other purposes. The subaccounts must include provision to separately account for fees collected as a result of fish bought from the reduction fishery and/or from each of the fee-share fisheries. NMFS now proposes to require all groundfish program fish buyers to establish and maintain accounting policies which will allow NMFS, where necessary, to accurately audit their fee collection, deposit, and disbursement activities.

*Comment 7:* One comment stated that the requirement for collected fee revenue to be deposited weekly would be burdensome and instead suggested monthly deposits as an alternative.

*Response:* Because the fee amounts which groundfish program fish buyers collect will often be relatively smaller than in other fishing capacity reduction programs, NMFS agrees with this comment and now proposes monthly, rather than weekly, fee deposits.

*Comment 8:* One comment requested that fish buyers be permitted to disburse collected fees to NMFS up to 14 days after the end of each month rather than being required to do so on the last business day of each month.

*Response:* Because so many smaller fee collections will be involved, NMFS agrees with this comment and now proposes to permit disbursement up to 14 days after the end of each month rather than on the last business day of each month. Moreover, to further reduce the fee disbursement burden on small fish buyers, NMFS now also proposes not to require any disbursement to NMFS of deposited fees until either the deposited fees total at least \$100 or the 14<sup>th</sup> day after the end of the calendar year in which the fees were deposited, whichever comes first.

*Comment 9:* One comment stated that annual reporting is not needed, since monthly settlement sheets are required that provide the same information.

*Response:* NMFS agrees with this comment and now proposes to dispense with annual reporting. NMFS, however, will monitor this and if subsequent experience demonstrates a need to revise this requirement, NMFS shall do so.

*Comment 10:* To prevent delays in NMFS' internal mail system, one comment requested that NMFS establish a separate post office box for receiving fee deposits and reports.

*Response:* This is unnecessary because the proposed fee regulations require fish buyers to send collected fees and reports to a special lockbox which NMFS will establish for this sole purpose. A separate lockbox will

prevent these remittances from being intermixed with any other materials.

### III. Proposed Regulations

NMFS has completed the groundfish program except for the implementation of a fee system, which this action proposes to implement.

The terms defined in section 600.1000 of the framework regulations apply to the groundfish program except for the definitions for "borrower" and "fee fish." The definition for these two terms have been refined to account for fee share fisheries. The proposed refined definitions are found in section 600.1102. If this rule is adopted, the new definitions would, for purposes of the groundfish program, supersede the definition for these terms found in section 600.1000.

Section 600.1013 of the framework regulations govern the payment and collection of fees under a fee system for any program.

Under section 600.1013, the first ex-vessel buyers (fish buyers) of post-reduction fish subject to a fee system (fee fish) must withhold the fee from the trip proceeds which the fish buyers would otherwise have paid to the parties (fish sellers) who harvested and first sold the fee fish to the fish buyers. Fish buyers calculate the fee to be collected by multiplying the applicable fee rate times the fee fish's full delivery value. Delivery value is the fee fish's full fair market value, including all in-kind compensation or other goods or services exchanged in lieu of cash.

Fish buyers collect the fee when they withhold it from trip proceeds, and fish sellers pay the fee when the fish buyers withhold it. Fee payment and fee collection is mandatory, and there are substantial penalties for failing to pay and collect fees in accordance with the applicable regulations.

The framework regulations' section 600.1014 governs fish buyers' depositing and disbursing to NMFS the fees which they have collected for any program as well as their keeping records of, and reporting about, collected fees. Paragraph (j) of section 600.1014 also provides that regulations implementing specific program may vary the section 600.1014 provisions if NMFS believes this is necessary to accommodate the circumstances of, and practices in, a specific reduction fishery.

Under section 600.1014(a)-(d), fish buyers must, no less frequently than at the end of each business week, deposit collected fees in segregated and Federally insured accounts until, no less frequently than on the last business day of each month, they disburse all collected fees in the accounts to a

lockbox which NMFS has specified for this purpose. Settlement sheets must accompany these disbursements. Fish buyers must maintain specified fee collection records for at least three years and send NMFS annual reports of fee collection and disbursement activities.

After evaluating comments received in response to the proposed fee regulations, however, NMFS now proposes in the instance of the groundfish program to depart from some of the section 600.1014 provisions, chiefly:

1. Segregated bank accounts will not be required for depositing collected fees;
2. Collected fee deposits will be monthly rather than weekly;
3. Fish buyers may disburse deposited fees up to 14 days after the end of each month rather than having to do so on the last business day of each month;
4. Fish buyers do not have to disburse deposited fees at all until either their total reaches \$100 or the 14<sup>th</sup> day after the end of each calendar year, whichever comes first; and
5. Fish buyers do not have to submit annual fee collection, deposit, and disbursement reports.

Accordingly, the proposed fee regulations now restate, for the groundfish program, the entirety of the framework regulations' at section 600.1014(a)-(d). NMFS also proposes that section 600.1014(e) of the framework regulations no longer applies to the groundfish program.

Additionally, NMFS proposes that sections 600.1014(f)-(j) will continue to apply, in their entirety, to the groundfish program.

All parties interested in this proposed action should carefully read the following framework regulations sections, whose detailed provisions, as this action proposes to modify them, apply to the fee system for repaying the groundfish program's reduction loan:

1. § 600.1012;
2. § 600.1013;
3. § 600.1014;
4. § 600.1015;
5. § 600.1016; and
6. Applicable portions of § 600.1017.

Section 212 provides an option for NMFS to enter into agreements with California, Washington, and Oregon regarding groundfish program fees in the fee-share fisheries. While this would not involve actual fee collection (because both section 312(d) of the Magnuson-Stevens Act and the framework regulations require fish buyers to collect the fee), it would allow fish buyers to use existing state systems for post-collection fee administration.

After all three states enacted legislation which would have allowed

them to function in this capacity, NMFS evaluated the feasibility of exercising the section 212 option. As previously noted, however, NMFS concluded that exercising this option was not feasible. NMFS reached this conclusion because, among other reasons:

1. The state systems sometimes:
  - a. Assess and collect fees based on pounds rather than on dollars,
  - b. Do not assess or collect fees at the point of fish sale, and/or
  - c. Involve quarterly fee disbursements;
2. One state's legislation regarding this option authorizes participation of a state agency different from the one administering the existing state system (and might require amendment);
3. One state's legislation regarding this option expires in less than two years;
4. All states indicated that the funding and staffing required for this option during the reduction loan's 30-year term would be problematic for them; and
5. The states' collection systems are dissimilar and, without significant modification, might not promote efficient and uniform groundfish program fee collection.

Accordingly, NMFS decided that the section 212 option is not feasible at this time and will not propose to exercise this option.

NMFS intends to enter into landing and permit data sharing agreements with the States of California, Oregon, and Washington in order for NMFS to receive landing and permit information. This will allow NMFS to ensure full groundfish program fee payment, collection, deposit, and disbursement under the framework rule provisions.

NMFS proposes, in accordance with the framework regulations' section 600.1013(d), to establish the initial fee applicable to the reduction fishery and to each fee-share fishery. After NMFS has adopted a final rule, NMFS will separately mail notification to each individual fish seller and fish buyer affected of whom NMFS then has notice. Until implementation of the final rule, fish sellers and fish buyers do not have to either pay or collect the groundfish program fee. Upon implementation of the final rule, the initial fee rate for the reduction fishery and for each of the fee-share fisheries would be:

1. Reduction fishery, 5 percent; and
2. Fee share fisheries:
  - a. California coastal Dungeness crab, 1.24 percent,
  - b. California pink shrimp, 5 percent,
  - c. Oregon coastal Dungeness crab, 0.55 percent,
  - d. Oregon pink shrimp, 3.75 percent,

e. Washington coastal Dungeness crab, 0.16 percent, and

f. Washington pink shrimp, 1.50 percent.

The rates are percentages of delivery value. See section 600.1000 of the framework regulations for the definition of "delivery value" and for the definition of other terms relevant to the proposed fee regulation.

Each disbursement of the \$35,662,471 principal amount of the reduction loan began accruing interest as of the date of each such disbursement. The interest rate is a fixed 6.97 percent, and will not change during the term of the reduction loan.

### Classification

The Assistant Administrator for Fisheries, NMFS, determined that this proposed rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

In compliance with the National Environmental Policy Act, NMFS prepared an EA for the final notice implementing the groundfish program. The EA discussed the impact of the groundfish program on the natural and human environment and resulted in a finding of no significant impact. The EA considered the implementation of this fee collection system, among other alternatives. Therefore, this proposed action has received a categorical exclusion from additional analysis. NMFS will provide a copy of the EA upon request (see **ADDRESSES**).

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. NMFS prepared an RIR for the final notice implementing the groundfish program. NMFS will provide a copy of the RIR upon request (see **ADDRESSES**).

NMFS prepared an IRFA as required by section 603 of the Regulatory Flexibility Act, that describes the impact this proposed rule, if adopted, would have on small entities. NMFS will provide a copy of the IRFA upon request (see **ADDRESSES**). A summary of the IRFA follows:

#### *1. Description of Reasons for Action and Statement of Objective and Legal Basis*

Section 212 authorized a \$46 million fishing capacity reduction program for reduction fishery. Section 212 also authorized a fee system for repaying the reduction loan partially financing the groundfish program's cost. The fee system includes both the reduction fishery and the fee share fisheries.

Section 501(c) appropriated \$10 million to partially fund the groundfish program's cost. Public Law 107-206

authorized a reduction loan for financing up to \$36 million of the groundfish program's cost. Pursuant to section 212, NMFS implemented the groundfish program, except for a fee system, on July 18, 2003 (68 FR 42613). This action now proposes a fee system for the groundfish program.

### 2. Description of Small Entities to Which the Rule Applies

The Small Business Administration (SBA) has defined any fish harvesting businesses that is independently owned and operated, not dominant in its field of operation, and with annual receipts of \$3.5 million or less, as a small entity. In addition, processors with 500 or fewer employees involved in related industries such as canned and cured fish and seafood or prepared fresh fish and seafood are also considered small entities. According to the SBA's definition of a small entity, virtually all of the groundfish program's approximate 1,800 fish sellers are small entities. This includes 172 fish sellers in the reduction fishery and over 1,600 fish sellers in the six fee-share fisheries. Most of the groundfish program's fish buyers also are small entities.

### 3. Description of Recordkeeping and Compliance Costs

Please see collection-of-information requirements listed hereafter.

### 4. Duplication or Conflict with Other Federal Rules

This rule does not duplicate or conflict with any Federal rules.

### 5. Description of Significant Alternatives Considered

NMFS considered three alternatives to the proposed action. The first alternative was the status quo. Under this alternative, there would be no fee system and the fish sellers and fish buyers would not have to pay and collect a fee. This alternative was, however, contrary to the groundfish program's statutory authority and was rejected.

The second alternative was the statutorily mandated industry fee system without state involvement. Under this alternative, the fish buyers of fee fish would withhold the fee from the trip proceeds. Fish buyers would calculate the fee to be collected by multiplying the applicable fee rate times the fee fish's full delivery value. This is the preferred alternative because the groundfish program's statutory authority mandates fee payment and collection.

The third alternative was the statutorily mandated industry fee system with state involvement. This

alternative is the same as described in the second alternative except that the States of California, Oregon, and Washington would, in conjunction with their own state tax and fee systems, assume some of the fish buyers' fee deposit and disbursement responsibilities. This alternative would have reduced compliance costs to individual businesses, both fish buyers and sellers. However, this alternative was not chosen because some states:

1. Assess and collect the state taxes and fees based on pounds rather than on dollars,
2. Do not assess or collect their taxes or fees at the point of fish sale, and
3. Involve quarterly fee disbursements.

In addition, one state's legislative authority to participate in this alternative collection authorizes participation of a state agency different than the one administering the existing state system and another state's legislative authority to participate in this alternative expires in less than two years (even though fee collection continues for 30 years).

Furthermore, all states indicated that state funding and staffing under this alternative for the reduction loan's 30-year term would be problematic for them.

Finally, the states' collection systems are dissimilar and, without significant modification, might not promote efficient and uniform groundfish program fee collection.

### 6. Steps the Agency Has Taken to Mitigate Negative Effects of the Action

NMFS has changed aspects of the framework regulations' fee deposit and disbursement requirements to reduce the impact on small entity fish buyers. NMFS proposes to require monthly fee deposits as opposed to the weekly deposits previously required. NMFS also will allow a 14 day grace period from the end of each month for fish buyers to disburse deposit fee principal to NMFS. If the deposit fee principal totals less than \$100, the fish buyers need not disburse the deposit fee principal until it totals \$100 or more, or until the 14<sup>th</sup> day after the end of the calendar year in which the fees were deposited, whichever comes first. Furthermore, NMFS proposes to eliminate annual reporting requirements.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). OMB has approved these information collections under OMB control number 0648-0376. NMFS estimates that the public reporting

burden for these requirements will average:

Two hours for submitting a monthly fish buyer settlement sheet; and

Two hours for making a fish buyer/fish seller report when one party fails to either pay or collect the fee.

These response estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection.

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to both NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, and no person is subject to a penalty for failure to comply with, an information collection subject to the requirements of the PRA unless that information collection displays a currently valid OMB control number.

NMFS has determined that this proposed rule will not significantly affect the coastal zone of any state with an approved coastal zone management program. This determination was submitted for review by the States of Washington, Oregon, and California.

### List of Subjects in 50 CFR Part 600

Fisheries, Fishing capacity reduction, Fishing permits, Fishing vessels, Intergovernmental relations, Loan programs business, Reporting and recordkeeping requirements.

Dated: April 5, 2005.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons in the preamble, the National Marine Fisheries Service proposes to amend 50 CFR part 600 as follows:

### PART 600—MAGNUSON-STEVENS ACT PROVISIONS

1. An authority citation for part 600 subpart M is added to read as follows:

**Authority:** 5 U.S.C. 561, 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 1861a(b) through (e), 46 App. U.S.C. 1279f and 1279g, section 144(d) of Division B of Pub. L. 106-554, section 2201 of Pub. L. 107-20, section 205 of Pub. L. 107-117, Pub. L. 107-206, and Pub. L. 108-7.

2. In § 600.1102 the section heading is revised and text is added to read as follows:

#### § 600.1102 Pacific Coast Groundfish Fee.

(a) *Purpose.* This section implements the fee for repaying the reduction loan financing the Pacific Coast Groundfish

Program authorized by section 212 of Division B, Title II, of Public Law 108-7 and implemented by a final notification in the **Federal Register** (July 18, 2003; 68 FR 42613).

(b) *Definitions.* Unless otherwise defined in this section, the terms defined in § 600.1000 expressly apply to this section. The following terms have the following meanings for the purpose of this section:

*Borrower* means, individually and collectively, each post-reduction fishing permit holder and/or fishing vessel owner fishing in the reduction fishery, in any or all of the fee share fisheries, or in both the reduction fishery and any or all of the fee share fisheries.

*Deposit fee principal* means all collected fee revenue that a fish buyer has deposited in the account required by paragraph (j)(1) of this section.

*Fee fish* means all fish legally harvested from the reduction fishery during the period in which any portion of the reduction fishery's subamount is outstanding and all fish harvested from each of the fee share fisheries during the period in which any portion of each fee share fishery's subamount is outstanding.

*Fee-share fisheries* means the California, Washington, and Oregon fisheries for coastal Dungeness crab and pink shrimp.

*Fee-share fishery subaccount* means each of the six subaccounts of the groundfish program fund subaccount in which each of the six fee-share fishery subamounts are accounted for.

*Reduction fishery subaccount* means the subaccount of the groundfish program fund subaccount in which the reduction fishery subamount is accounted for.

*Subamount* means each portion of the reduction loan's original principal amount which is allocated to the reduction fishery and to each of the fee share fisheries.

(c) *Reduction fishery.* The reduction fishery for the groundfish program includes all species in, and that portion of, the limited entry trawl fishery under the Federal Pacific Coast Groundfish Fishery Management Plan that is conducted under permits, excluding those registered to whiting catcher-processors, which are endorsed for trawl gear operation.

(d) *Reduction loan amount.* The reduction loan's original principal amount is \$35,662,471.

(e) *Subamounts.* The subamounts of the reduction loan amount are:

- (1) Reduction fishery, \$28,428,719; and
- (2) Fee-share fisheries:

(i) California coastal Dungeness crab fee-share fishery, \$2,334,334,

(ii) California pink shrimp fee-share fishery, \$674,202,

(iii) Oregon coastal Dungeness crab fee-share fishery, \$1,367,545,

(iv) Oregon pink shrimp fee-share fishery, \$2,228,845,

(v) Washington coastal Dungeness crab fee-share fishery, \$369,426, and

(vi) Washington pink shrimp fee-share fishery, \$259,400.

(f) *Interest accrual inception.* Interest began accruing on each portion of the reduction loan amount on and from the date each such portion was disbursed.

(g) *Interest rate.* The reduction loan's interest rate is 6.97 percent. This is a fixed rate of interest for the full term of the reduction loan's life.

(h) *Repayment term.* For the purpose of determining fee rates, the reduction loan's repayment term shall be 30 years from March 1, 2004, but each fee shall continue for as long as necessary to fully repay each subamount.

(i) *Reduction loan repayment.* The borrower shall repay the reduction loan in accordance with § 600.1012.

(j) *Fee payment and collection.* (1) Fish sellers in the reduction fishery and in each of the fee-share fisheries shall pay the fee applicable to each such fishery's subamount in accordance with § 600.1013.

(2) Fish buyers in the reduction fishery and in each of the fee-share fisheries shall collect the fee applicable to each such fishery in accordance with § 600.1013.

(k) *Fee collection, deposits, disbursements, records, and reports.* Fish buyers in the reduction fishery and in each of the fee share fisheries shall deposit and disburse, as well as keep records for and submit reports about, the fees applicable to each such fishery in accordance with § 600.1014, except that:

(1) *Deposit accounts.* Each fish buyer that this section requires to collect a fee shall maintain an account at a federally insured financial institution for the purpose of depositing collected fee revenue and disbursing the deposit fee principal directly to NMFS in accordance with paragraph (k)(3) of this section. The fish buyer may use this account for other operational purposes as well, but the fish buyer shall ensure that the account separately accounts for all deposit fee principal collected from the reduction fishery and from each of the six fee-share fisheries. The fish buyer shall separately account for all fee collections as follows:

(i) All fee collections from the reduction fishery shall be accounted for in a reduction fishery subaccount,

(ii) All fee collections from the California pink shrimp fee-share fishery shall be accounted for in a California shrimp fee-share fishery subaccount,

(iii) All fee collections from the California coastal Dungeness crab fishery shall be accounted for in a California crab fee-share fishery subaccount,

(iv) All fee collections from the Oregon pink shrimp fee-share fishery shall be accounted for in an Oregon shrimp fee-share fishery subaccount,

(v) All fee collections from the Oregon coastal Dungeness crab fee-share fishery shall be accounted for in an Oregon crab fee-share fishery subaccount,

(vi) All fee collections from the Washington pink shrimp fee-share fishery shall be accounted for in a Washington shrimp fee-share fishery subaccount, and

(vii) All fee collections from the Washington coastal Dungeness crab fishery shall be accounted for in a Washington crab fee-share fishery subaccount;

(2) *Fee collection deposits.* Each fish buyer, no less frequently than at the end of each month, shall deposit, in the deposit account established under paragraph (k)(1) of this section, all collected fee revenue not previously deposited that the fish buyer collects through a date not more than two calendar days before the date of deposit. The deposit fee principal may not be pledged, assigned, or used for any purpose other than aggregating collected fee revenue for disbursement to the fund in accordance with paragraph (k)(3) of this section. The fish buyer is entitled, at any time, to withdraw interest (if any) on the deposit fee principal, but never the deposit fee principal itself, for the fish buyer's own use and purposes;

(3) *Deposit fee principal disbursement.* Not later than the 14<sup>th</sup> calendar day after the last calendar day of each month, or more frequently if the amount in the account exceeds the account limit for insurance purposes, the fish buyer shall disburse to NMFS the full deposit fee principal then in the deposit account, provided that the deposit fee principal then totals \$100 or more. If the deposit fee principal then totals less than \$100, the fish buyer need not disburse the deposit fee principal until either the next month during which the deposit fee principal then totals \$100 or more, or not later than the 14<sup>th</sup> calendar day after the last calendar day of any year in which the deposit fee principal has not since the last required disbursement totaled \$100 or more, whichever comes first. The fish buyer shall disburse deposit fee principal by check made payable to the

groundfish program fund subaccount. The fish buyer shall mail each such check to the groundfish program fund subaccount lockbox that NMFS establishes for the receipt of groundfish program disbursements. Each disbursement shall be accompanied by the fish buyer's settlement sheet completed in the manner and form which NMFS specifies. NMFS will, before fee payment and collection begins, specify the groundfish program fund subaccount lockbox and the manner and form of settlement sheet. NMFS will do this by means of the notification in § 600.1013(d). NMFS' settlement sheet instructions will include provisions for the fish buyer to specify the amount of each disbursement which was disbursed from the reduction fishery subaccount and/or from each of the six fee-share fishery subaccounts;

(4) *Records maintenance.* Each fish buyer shall maintain, in a secure and orderly manner for a period of at least three years from the date of each transaction involved, at least the following information:

(i) For all deliveries of fee fish that the fish buyer buys from each fish seller include:

- (A) The date of delivery,
  - (B) The fish seller's identity,
  - (C) The weight, number, or volume of each species of fee fish delivered,
  - (D) Information sufficient to specifically identify the fishing vessel which delivered the fee fish,
  - (E) The delivery value of each species of fee fish,
  - (F) The net delivery value of each species of fee fish,
  - (G) The identity of the payor to whom the net delivery value is paid, if different than the fish seller,
  - (H) The date the net delivery value was paid,
  - (I) The total fee amount collected as a result of all fee fish, and
  - (J) The total fee amount collected as a result of all fee fish from the reduction fishery and/or all fee fish from each of the six fee-share fisheries; and
- (ii) For all collected fee deposits to, and disbursements of deposit fee principle from, the deposit account include:
- (A) The date of each deposit,

(B) The total amount deposited,

(C) The total amount deposited in the reduction fishery subaccount and/or in each of the six fee-share fishery subaccounts,

(D) The date of each disbursement to the Fund's lockbox,

(E) The total amount disbursed,

(F) The total amount disbursed from the reduction fishery subaccount and/or from each of the six fee-share fishery subaccounts, and

(G) The dates and amounts of disbursements to the fish buyer, or other parties, of interest earned on deposits; and

(5) *Annual report.* No fish buyer needs to submit an annual report about fee fish collection activities unless, during the course of an audit under § 600.1014(g), NMFS requires a fish buyer to submit such a report or reports.

(l) *Other provisions.* The reduction loan is, in all other respects, subject to the provisions of § 600.1012 through applicable portions of § 600.1017, except § 600.1014(e).

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