

of a violation shall be on the complainant.

(e) *Time limit on filing of complaints.* Any complaint filed pursuant to this subsection must be filed within one year of the date on which one of the following events occurs:

(1) A complainant enters into a retransmission consent agreement with a television broadcast station or multichannel video programming distributor that the complainant alleges to violate one or more of the rules contained in this subpart; or

(2) A television broadcast station or multichannel video programming distributor engages in retransmission consent negotiations with a complainant that the complainant alleges to violate one or more of the rules contained in this subpart, and such negotiation is unrelated to any existing contract between the complainant and the television broadcast station or multichannel video programming distributor; or

(3) The complainant has notified the television broadcast station or multichannel video programming distributor that it intends to file a complaint with the Commission based on a request to negotiate retransmission consent that has been denied, unreasonably delayed, or unacknowledged in violation of one or more of the rules contained in this subpart.

(f) *Termination of rules.* This section shall terminate at midnight on December 31, 2009.

[FR Doc. 05-13739 Filed 7-12-05; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 600

[Docket No. 041029298-5168-03; 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:** Final rule.

**SUMMARY:** NMFS establishes 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:** This final rule is effective August 12, 2005.

**ADDRESSES:** Copies of the Environmental Assessment, Regulatory Impact Review (EA/RIR) and Final Regulatory Flexibility Analysis (FRFA) for the fee collection system may be obtained from Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3282.

Written comments involving the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final 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.

**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, Magnuson-Stevens Act section 312(d) 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) generally implementing Magnuson-Stevens Act sections 312(b)-(e).

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).

The groundfish program's maximum cost was \$46 million, of which an appropriation funded \$10 million and a reduction loan financed \$36 million. 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 fishing 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.

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.

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 the groundfish program's industry fee system (proposal).

In response to public comment about the proposal, NMFS modified and published a second proposal on April 8, 2005, (**Federal Register** document (70 FR 17949)).

## II. Summary of Comments and Responses

NMFS received four comments from organizations representing west coast fishing interests.

*Comment 1:* One comment regretted the proposal's failure to exercise a section 212 option under which the States of California, Oregon, and Washington would have "collected" the fees.

*Response:* NMFS continues to believe, for the reasons given in its response to public comment on the first proposal (70 FR 17950), that exercising the statutory option for the states to "collect" the fees is not feasible.

*Comment 2:* Three commenters believed reduction loan interest should not have accrued during the interim between reduction loan disbursement and implementation of fee payment and collection. This comment generally reasserts previous comments in this regard.

*Response:* Absent express conditions to the contrary, interest on loan principal always accrues from the date on which lenders disburse loan principal to borrowers. The reduction loan is a loan under Title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1279f and 1279g). Title XI provides no authority for loans which are interest-free during any portion of their term. All direct Title XI loans are interest bearing for their full term.

All Title XI loans are subject to the Federal Credit Reform Act of 1990 (FCRA). The FCRA makes most Federal loan activities dependent on loan ceilings authorized in appropriation acts. Moreover, if the President's Office of Management and Budget estimates that any portion of a prospective loan ceiling cannot be collected, the FCRA requires appropriating the net present value of the uncollectible amount before the loan ceiling can be authorized. Under the FCRA, the uncollectible amount is the loan ceiling's "cost".

Loan ceilings with costs exceeding the appropriated cost are not authorized. Cost estimates involve all case inflows and cash outflows (including interest accruing on disbursed principal) over the terms of a ceiling's prospective loans. Because neither Title XI nor

Magnuson-Stevens Act section 312(b)-(e) authorizes reduction loans which are interest-free during any portion of their terms, all reduction loan cost calculations required for FCRA compliance were based on a principal amount which accrues interest from the day of disbursement. Even if NMFS had the authority to do so (which it does not), forgoing a year or more worth of reduction loan interest accrual would be inconsistent with the reduction loan's FCRA conditions and would require the appropriation of any increase in FCRA cost resulting from the accrued interest foregone.

The reduction loan is a direct loan and, under the FCRA, Congress does not appropriate any portion of a direct loan ceiling other than the ceiling's cost. Consequently, before NMFS could disburse the reduction loan, NMFS borrowed the reduction loan's principal amount (less the cost) from the U.S. Treasury. NMFS must, like any other borrower, pay to the Treasury the interest expense which accrued on the Treasury loan's unpaid principal from the day on which Treasury disbursed the principal to NMFS. No portion of the Treasury loan's principal is interest-free to NMFS for any portion of the loan's term any more than any portion of the reduction loan's principal is interest-free to the groundfish program's fee payers (i.e., fish sellers) for any portion of the reduction loan's term. This is true despite NMFS having been unable for a year or more to make payments on the Treasury's loan due to the fact that NMFS has had no fee revenue with which to do so. When fee payment and collection begins, NMFS will be required to pay the interest accrued on the Treasury's loan during the elapsed time since the loan's disbursement to NMFS, just as NMFS will require the fish sellers to pay the interest accrued on the reduction loan during the same elapsed time.

Moreover, during this elapsed time the fee payers have had the use of the funds which they would otherwise have paid as reduction loan fees (as well as the benefit of the capacity reduction harvest efficiencies achieved by having expended the reduction loan's principal). There is no equitable reason why fee payers should not pay the past time value of these funds once this action allows fee payment and collection to begin.

NMFS will reschedule the principal amount which the fish sellers otherwise would have amortized during this elapsed time as a balloon payment at the end of the reduction loan's term. Although rescheduling does not forego any accrued interest, it does allow

applying more initial fee revenues to principal reduction because no part of fee revenues up to the balloon payment will be applied to the rescheduled principal's reduction. NMFS will, of course, not capitalize the interest which accrued on the rescheduled principal.

Moreover, should the majority of fee payers in any fee paying fishery whose fee rate is not already at the maximum rate of 5 percent wish at any time to more quickly amortize the principal balloon payment applicable to that fishery's reduction loan subamount, NMFS is willing to establish the balloon payment as a separate principal amount to be amortized concurrently with the rest of the reduction loan principal. But the principal amount will be amortized over a much shorter term consistent with the level of fee-rate increase which the majority of fee payers were contemporaneously willing to pay in order to amortize this portion of the principal more quickly and, thus, decrease future interest accruals.

*Comment 3:* One commenter reasserted it's previously stated belief that NMFS' Financial Services Division had verbally advised the commenter that reduction loan interest would not accrue during the interim between reduction loan disbursement and implementation of fee payment and collection.

*Response:* As noted in NMFS' previous response to this commenter's first assertion, the Financial Services Division neither advised nor had the authority to advise anyone that interest would not accrue during this or any other portion of the reduction loan's term. NMFS' Financial Services Division is fully aware both that it had no authority to act as this commenter alleges and of the FCRA and other consequences of doing so.

*Comment 4:* One commenter believed that proposed section 600.1102(k)(1) was unclear and might require fish buyers to maintain up to seven different accounts for depositing collected fee revenues.

*Response:* Section 600.1102(k)(1) does not require maintaining up to seven different accounts for this purpose. Instead, this section requires fish buyers to maintain only a single account for the purpose of depositing collected fees, with separate paperwork (for accounting purposes) tracking each such single deposit for the reduction fishery and for each of the six fee-share fisheries from which the fish buyer expects to collect fee-share fishery fees.

*Comment 5:* One commenter assumed that the proposal section 600.1102(k)(3) meant something other than NMFS receiving the required deposits of

collected fees not later than the time stated.

*Response:* This assumption is wrong. NMFS must have received each fish seller's disbursement of collected fees not later than the 14th calendar day after the last day of each month. Each fee seller is responsible to take whatever action is required to accomplish this, and 2 weeks is not an unreasonably short time to do so. In addition to various U.S. postal and express delivery services, fish buyers will also be able to disburse collected fees to NMFS' lockbox by electronic wire transfer.

*Comment 6:* One commenter suggested replacing the term "settlement sheet" with the term "fee collection report" because the former term commonly refers to accountings which fish buyers provide to fish sellers, and this could cause potential confusion.

*Response:* NMFS agrees, and has replaced the term "settlement sheet" with the term "fee collection report".

*Comment 7:* One commenter recommended that fee payment and collection begin on September 1, 2005, because that is the beginning of a "bi-monthly cumulative period for trawl groundfish fishery and prior to the starting date of the crab fishery."

*Response:* NMFS believes there should be as little further delay in paying and collecting fees as possible. Accordingly, NMFS will publish the required fee notice as soon as practicable after publishing this final rule, and fee payment and collection will begin thirty days thereafter.

The terms defined in framework § 600.1000 apply to the groundfish program except for the definitions for "borrower," "deposit principal," "fee fish," and "reduction fishery". This action redefines the groundfish program meaning of these four framework terms. This action also creates four new terms which do not appear in the framework. The new groundfish program terms are: "fee-share fishery," "fee-share fishery subaccount," "reduction fishery subaccount," and "subamount".

Framework § 600.1012 governs reduction loan obligations in general and certain other reduction loan aspects in general. Framework § 600.1013 governs fish sellers' payment, and fish buyers' collection, of fees under fee systems in general. The framework contemplates each program involving only one reduction fishery. The groundfish program, however, involves both a reduction fishery and six fee-share fisheries. Consequently, for groundfish program purposes, this action revises the regulations only to the minimal extent required to

accommodate the difference between the groundfish program and the other programs which the framework contemplates.

Framework § 600.1014 governs fish buyers' fee collection deposits, disbursements, records, and reports in general. Like framework §§ 600.1012 and 600.1013, this action also revises the regulations to reflect the groundfish program's involvement of both a reduction fishery and six fee-share fisheries. This action, however, also and for groundfish program purposes, more extensively revises the regulations in order to adopt some of the commenters' suggestions about the manner in which fish buyers' deposit, disburse, account for, and report about the groundfish program's collected fees.

The following briefly summarizes the provisions of framework §§ 600.1013 and 600.1014.

Under framework § 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 (depending on whether the fee fish is from the reduction fishery or from one or more of the fee-share fisheries) 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 automatically 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.

Under framework § 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. Fee collection reports must accompany these disbursements. Fish buyers must maintain specified fee collection records for at least 3 years and send NMFS annual reports of fee collection and disbursement activities.

After evaluating comments received in response to the proposal, this action restates, for groundfish program purposes only, some of the framework

§ 600.1014 provisions, chiefly as follows:

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 14th 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, this final rule reiterates the applicability for the groundfish program of the entirety of framework § 600.1014(a)-(d) and the non-applicability of framework § 600.1014(e). The balance of framework § 600.1014, i.e., paragraphs(f)-(j), will continue to apply, in their entirety, to the groundfish program.

All parties interested in this final action should carefully read the following framework sections, whose detailed provisions, except as this action specifically revises 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.

You will not understand this action's full requirements unless you read this action in conjunction with reading at least the framework sections listed above.

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 Magnuson-Stevens Act section 312(d) and the framework 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. For the reasons NMFS stated in its previous responses to public comment about the proposal, however, NMFS concluded that exercising this option was not feasible.

This action also revises the grammar and/or organization of the proposal. None of these revisions intends to make any substantive changes to the proposal. NMFS, in accordance with framework § 600.1013(d), will establish the initial fee applicable to the reduction fishery and to each fee-share fishery. Immediately after publishing this action, NMFS will, in accordance with framework § 600.1013(d)(1), publish a notification in the **Federal Register** establishing the date from which the fee will be effective. NMFS will mail a copy of this notification, along with detailed fee payment and collection information and guidance, to each affected individual fish seller and fish buyer whom NMFS has contact information. Until the date on which the fee first becomes effective, fish sellers do not have to pay, and fish buyers do not have to collect, the groundfish program fee. The prospective fee rates are:

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 framework § 600.1000 for the definition of "delivery value" and for the definition of other terms relevant to this action.

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 final rule is consistent with the Magnuson-Stevens 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 final action has received a categorical exclusion from additional analysis. NMFS will

provide a copy of the EA upon request (see **ADDRESSES**).

This final 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 a FRFA, as required by section 604 of the Regulatory Flexibility Act, which describes the impact that the rule will have on small entities. NMFS will provide a copy of the FRFA upon request (see **ADDRESSES**). A summary of the FRFA 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 establishes 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 business 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 final 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 requirements 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 2 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 14th 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 final 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 fee collection report; 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 final 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: July 7, 2005.

**Rebecca Lent,**

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

■ For the reasons in the preamble, the National Marine Fisheries Service amends 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 of subpart L 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 principal* means all collected fee revenue that a fish buyer deposits in an account maintained at a federally insured financial institution for the purpose of aggregating collected fee revenue before sending the fee revenue to NMFS for repaying the reduction loan.

*Fee fish* means all fish 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 fishery* means each of the fisheries for coastal Dungeness crab and pink shrimp in each of the states of California, Oregon, and Washington.

*Fee-share fishery subaccount* means each of the six subaccounts established in the groundfish program's fund subaccount in which each of the six fee-share fishery subamounts are deposited.

*Reduction fishery* means 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.

*Reduction fishery subaccount* means the subaccount established in the groundfish program's fund subaccount in which the reduction fishery subamount is deposited.

*Subamount* means each portion of the reduction loan's original principal amount which is allocated either to the reduction fishery or to any one of the fee-share fisheries.

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

(d) *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.

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

(f) *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.

(g) *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.

(h) *Reduction loan.* The reduction loan shall be subject to the provisions of § 600.1012 of subpart L, except that:

(1) The borrower's obligation to repay the reduction loan shall be discharged by fish sellers in the reduction fishery and in each of the fee-share fisheries paying the fee applicable to each such

fishery's subamount in accordance with § 600.1013 of subpart L, and

(2) Fish buyers in the reduction fishery and in each of the fee-share fisheries shall be obligated to collect the fee applicable to each such fishery's subamount in accordance with § 600.1013 of this subpart.

(i) *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 of this subpart, 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 principal directly to NMFS in accordance with paragraph (i)(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 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 (i)(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 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 (i)(3) of this section. The fish buyer is entitled, at any time, to withdraw interest (if any) on the deposit principal, but never the deposit fee principal itself, for the fish buyer's own use and purposes;

(3) *Deposit principal disbursement.* Not later than the 14th 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 principal then in the deposit account, provided that the deposit principal then totals \$100 or more. If the deposit principal then totals less than \$100, the fish buyer need not disburse the deposit principal until either the next month during which the deposit principal then totals \$100 or more, or not later than the 14th calendar day after the last calendar day of any year in which the deposit principal has not since the last required disbursement totaled \$100 or more, whichever comes first. The fish buyer shall disburse deposit principal by check made payable to the groundfish program's fund subaccount. The fish buyer shall mail each such check to the groundfish program's fund subaccount lockbox that NMFS establishes for the receipt of groundfish program disbursements. Each disbursement shall be accompanied by the fish buyer's fee collection report completed in the manner and form which NMFS specifies. NMFS will, before fee payment and collection begins, specify the groundfish program's fund subaccount lockbox and the manner and form of fee collection report. NMFS will do this by means of the notification in § 600.1013(d) of subpart L. NMFS' fee collection report 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 3 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:

(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 principal 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.

(j) 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).

[FR Doc. 05-13692 Filed 7-12-05; 8:45 am]

BILLING CODE 3510-22-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 041126332-5039-02; I.D. 070805A]

#### Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands Management Area

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific Ocean perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2005 Pacific Ocean perch total allowable catch (TAC) in the Eastern Aleutian District of the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), July 10, 2005, through 2400 hrs, A.l.t., December 31, 2005.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2005 Pacific Ocean perch TAC in the Eastern Aleutian District of the BSAI is 2,849 metric tons (mt) as established by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS, has determined that the 2005

Pacific Ocean perch TAC in the Eastern Aleutian District of the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,799 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific Ocean perch in the Eastern Aleutian District of the BSAI.

After the effective date of this closure the maximum retainable amounts at §§ 679.20(e) and (f) apply at any time during a trip.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific Ocean perch in the Eastern Aleutian District of the BSAI.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: July 8, 2005.

**Alan D. Risenhoover,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 05-13791 Filed 7-08-05; 3:01 pm]

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