

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Diana Hynek  
Departmental Paperwork Clearance Officer  
Office of the Chief Information Officer  
14th and Constitution Ave. NW.  
Room 6625  
Washington, DC 20230

08/29/2005

In accordance with the Paperwork Reduction Act, OMB has taken the following action on your request for the extension of approval of an information collection received on 06/16/2005.

TITLE: Fishing Capacity Reduction Program Buyback Requests

AGENCY FORM NUMBER(S): None

ACTION : APPROVED WITHOUT CHANGE

OMB NO.: 0648-0376

EXPIRATION DATE: 08/31/2008

BURDEN:	RESPONSES	HOURS	COSTS(\$,000)
Previous	16,495	38,563	2
New	16,495	38,563	2
Difference	0	0	0
Program Change		0	0
Adjustment		0	0

TERMS OF CLEARANCE: None

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OMB Authorizing Official	Title
Donald R. Arbuckle	Deputy Administrator, Office of Information and Regulatory Affairs

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# PAPERWORK REDUCTION ACT SUBMISSION

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

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

## 19. Certification for Paperwork Reduction Act Submissions

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

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

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

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

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

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator or head of MB staff for L.O.s, or of the Director of a Program or Staff Office)	
Signature	Date
Signature of NOAA Clearance Officer	
Signature	Date

**SUPPORTING STATEMENT  
FISHING CAPACITY REDUCTION PROGRAM BUYBACK REQUESTS  
OMB CONTROL NO.: 0648-0376**

**A. JUSTIFICATION**

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

The Sustainable Fisheries Act (SFA) amended the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to provide for voluntary reduction of excess fishing capacity through fishing capacity reduction (buyback) programs. Excess fishing capacity decreases fisheries earnings, complicates fishery management and imperils fishery conservation. Congress acknowledged this by providing buyback program authority. This extension request for information collection approval involves standard information required to be included in any buyback request for any fishery.

The statutory objective of a buyback program is “to obtain the maximum sustained reduction in fishing capacity at the least cost and in a minimum period of time.” Buyback programs, pay fishermen either to (1) surrender their fishing permits or (2) both surrender their permits and either scrap their fishing vessels or restrict vessel title to prevent fishing. Buybacks can involve either a Federal or State fishery. Buybacks can be funded via a long-term loan from the Federal government to the fishery (called industry-funded buybacks), to be repaid by the industry by post-buyback landing fees, or funded from appropriations (non-industry funded) or other non-loan sources of funds.

An interim final rule to establish framework guidelines for future implementation of buyback programs for specific fisheries was published at 50 CRF part 600 (subpart L) on May 18, 2000. The Sustainable Fisheries Act amendments to the MSA require a separate rule for each specific buyback program. These guidelines are intended to provide direction and elaboration for future specific rules.

**2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.**

Buybacks can involve as many as seven types of information collection requirements on the public. These are:

- (1) Buyback requests,
- (2) Invitations to bid,
- (3) Referendum material review and vote,
- (4) Buyer reporting and recordkeeping,
- (5) Seller reports (if buyers do not collect the fee),
- (6) State actions for fisheries subject to State authority, and
- (7) Advisement of conflicts in ownership claims.

## FISHERIES SUBJECT TO FEDERAL AUTHORITY

The steps in an industry-funded buyback are as follows (steps involving information requirements are underlined):

- (1) Industry proponents (Private Sector):
  - (a) Develop buyback business plan and loan proposal (buyback business plan), and
  - (b) Submit buyback business plan to Fishery Management Council (FMC);
- (2) FMC:
  - (a) Approves buyback business plan;
  - (b) Approves Fishery Management Plan (FMP) amendment required to complement buyback business plan; and
  - (c) Submits buyback request to NMFS;
- (3) NMFS:
  - (a) Determines whether buyback request is sufficient;
  - (b) Conducts advanced referendum (if requested);
  - (c) Prepares buyback implementation plan and regulations;
  - (d) Approves buyback loan (assumes availability of sufficient appropriation and apportionment authority);
  - (e) Adopts buyback amendment to FMP;
  - (f) Proposes buyback implementation plan and regulations;
  - (g) Adopts buyback implementation plan and regulations;
  - (h) Invites buyback bids;
  - (i) Receives and tallies buyback bids;
  - (j) Accepts buyback bids;
  - (k) Conducts post-bid referendum;
  - (l) Certifies buyback referendum results approving the industry fee system;
  - (m) Advises accepted buyback bidders of removal of express condition subsequent (i.e., referendum approval);
  - (n) Conducts buyback;
  - (o) Upon completing the buyback, the FMP buyback amendment becomes effective, and buyback implementation regulations become fully effective, upon buyback completion; and.
  - (p) Collection-of-fees process begins (buyer reporting and recordkeeping and possible seller reports).

The steps in a non-industry financed buyback involve much less collection of information from the public, since the industry neither develops the plan or is subject to fees. The steps are:

- (1) FMC:
  - (a) Develops preliminary buyback proposal; and
  - (b) Submits buyback request to NMFS;
- (2) NMFS:
  - (a) Preliminarily determines whether buyback request is sufficient;
  - (b) Develops buyback plan;

- (c) Submits buyback development plan to FMC for confirmation;
- (3) FMC:
  - (a) Approves FMP amendment required to complement buyback development plan; and
  - (b) Submits buyback confirmation to NMFS; and
- (4) NMFS:
  - (a) Determines buyback request is sufficient;
  - (b) Adopts buyback FMP amendment;
  - (c) Prepares buyback implementation plan and regulations;
  - (d) Determines sufficiency of appropriation and apportionment authority;
  - (e) Proposes buyback implementation plan and regulations;
  - (f) Adopts buyback implementation plan and regulations;
  - (g) Invites buyback bids;
  - (h) Receives and tallies buyback bids;
  - (i) Accepts buyback bids; and
  - (j) Conducts buyback.

NOAA anticipates that most buybacks will be industry-funded.

## **FISHERIES SUBJECT TO STATE AUTHORITY**

If the fishery involved is subject to State authority, the buyback request must be made by the Governor(s) of the State(s) exercising management authority over the fishery. The term “fishery authority” can mean either the FMC or the Governor, as appropriate to the fishery.

The steps in an industry-funded buyback are as follows (steps involving information requirements are underlined):

- (1) Industry proponents (Private Sector):
  - (a) Develop buyback business plan and loan proposal (buyback business plan), and
  - (b) Submit buyback business plan to Governor;
- (2) Governor:
  - (a) Approves buyback business plan;
  - (b) Approves state FMP amendment required to complement buyback business plan; and
  - (c) Submits buyback request to NMFS;
- (3) NMFS:
  - (a) Determines whether buyback request is sufficient;
  - (b) Conducts advanced referendum (if requested);
  - (c) Prepares buyback implementation plan and regulations;
  - (d) Approves buyback loan (assumes availability of sufficient appropriation and apportionment authority);
  - (e) Proposes buyback implementation plan and regulations;
  - (f) Adopts buyback implementation plan and regulations;
  - (g) Invites buyback bids;
  - (h) Receives and tallies buyback bids;

- (i) Accepts buyback bids;
- (j) Conducts post-bid referendum;
- (k) Certifies buyback referendum results approving the industry fee system;
- (l) Advises accepted buyback bidders of removal of express condition subsequent (i.e., referendum approval);
- (m) Conducts buyback;
- (n) Upon completing the buyback, the state buyback implementation regulations become fully effective; and
- (o) Collection-of-fees process begins (buyer reporting and recordkeeping and possible seller reports).

The steps in a non-industry financed buyback involve much less collection of information from the public, since the industry neither develops the plan or is subject to fees. The steps are:

- (1) Governor:
  - (a) Develops preliminary buyback proposal; and
  - (b) Submits buyback request to NMFS;
- (2) NMFS:
  - (a) Preliminarily determines whether buyback request is sufficient;
  - (b) Develops buyback plan; and
  - (c) Submits buyback development plan to Governor for confirmation;
- (3) Governor:
  - (a) Approves state FMP amendment required to complement buyback development plan; and
  - (b) Submits buyback confirmation to NMFS; and
- (4) NMFS:
  - (a) Determines buyback request is sufficient;
  - (b) Approves state buyback implementation plan and regulations;
  - (c) Determines sufficiency of appropriation and apportionment authority;
  - (d) Adopts buyback implementation plan and regulations;
  - (e) Invites buyback bids;
  - (f) Receives and tallies buyback bids;
  - (g) Accepts buyback bids; and
  - (h) Conducts buyback.

The specific types of information requirements are addressed below.

### **Buyback Requests**

The relevant fishery management authorities are the parties authorized exclusively to initiate buyback requests, and buyback plans must support these requests. NMFS develops these for non-industry-funded buybacks for Federally-managed fisheries, while the State develops them for State-managed fisheries. For industry-funded buybacks, the relevant fishery management authority (usually an FMC) makes the request, but obtains the business plan from the buyback proponents in the fishery industry.

In industry-funded buybacks, NMFS is the lender and post-buyback harvesters are the borrower



(repaying the loan through landing fees). It is a conflict of interest for lenders to develop borrowers' plans for the conduct of borrowers' activities. Consequently, NMFS requires the borrower (in the form of buyback proponents who will potentially be post-buyback harvesters) to prepare buyback development plans for industry-funded buybacks. The buyback implementation plan and regulations that NMFS must propose and adopt for each industry-funded buyback institutionalize this buyback development plan. For subsidized buybacks, the requester must prepare a preliminary development plan. The preliminary development plan is a more precursory and generalized reduction proposal than the business plan required for a financed program and is used by NMFS to prepare a final development plan.

The buyback proponents must gather the information and do the analysis necessary to develop a successful buyback business plan. Buyback proponents asking the relevant fishery management authority to request an industry-funded buyback must be responsive to the practical necessity that buyback development plans reflect fairly the needs, interests, and desires of a broad spectrum of the buyback fishery's harvesters. The buyback business plan must include both those who may wish to leave the fishery (be bought back) and those who may wish to remain in the fishery (repay the buyback loan). Buyback development planners must demonstrate this by extensive coordination during plan development. This should be supported by surveys of affected harvesters. Buyback development plans that are not realistic and broadly supported by the buyback fishery's harvesters have little chance of referendum approval and may waste considerable time and effort.

Development plans for industry-funded buybacks must, if they are to succeed, be sufficient to:

- (1) Convince the relevant fishery management authority to request a buyback,
- (2) Convince NMFS to finance a buyback,
- (3) Allow NMFS to readily prepare buyback implementation plans and regulations based on the buyback development plans,
- (4) Enable bidding results that convince industry voters to approve buyback financing, and
- (5) Enable NMFS to complete the buyback.

To avoid conflicts of interest, however, NMFS neither develops nor assists in developing industry-funded buyback plans. NMFS will, however, provide buyback planners with whatever fisheries data, statistics, or other public information may be relevant to plan development. NMFS will, upon request, also review and comment on industry-funded buyback plans during its development stage.

A buyback business plan must:

- (1) Specify detailed buyback methodology and procedures, including the appropriate point to conduct a pre-bidding referendum;
- (2) Project the buyback fishery's annual gross ex-vessel income during the buyback loan's term;
- (3) Specify the buyback loan's principal and repayment term;
- (4) Specify the minimum amount of reduced capacity for the buyback to be cost-effective;
- (5) Analyze buyback cost-effectiveness at the minimum level and at additional

- incremental levels;
- (6) Specify measures to prevent replacement of removed fishing capacity by vessel upgrades or other means;
  - (7) Propose a specified or target total allowable catch that will trigger post-buyback closures or other measures to reduce catch;
  - (8) Specify the names and addresses of all likely post-buyback fish buyers;
  - (9) Specify fee collection and reporting procedures (in the case of fisheries in which some sellers sell unprocessed fish to buyers and others sell processed fish to buyers, a means of establishing the delivery value of processed fish needs to be specified; also the procedures may need specify what actions may be needed, and who must take them, if state confidentiality laws or other impediments will negatively affect the collection and reporting procedures);
  - (10) Demonstrate measures used to ensure wide industry support for the business plan;
  - (11) Include certification that the business plan will probably accomplish the buyback purpose; and
  - (12) assess the potential impact of the buyback on other fisheries, including the general economic impact and possible steps to mitigate undesirable impacts.

The information in the business plan will be used by the fishery management authority and NMFS to review the request, develop regulations, and to take other related actions. The fishery authority and NMFS will use the information to determine whether the buyback has a reasonable chance of achieving the goals of the program.

### **Buyback Bids**

Before a buyback program is instituted NMFS determines what permits and/or vessels will be bought back through the use of an inverse auction. The auction terms require the fishery participants to bid competitively against each other via sealed bid. The bids are accepted in inverse order which ensures that the Government is buying the most production capacity for the least amount of money.

Bids would contain the following types of information:

- self-identification information,
- the bid price,
- information on the permits and vessels affected,
- information on the vessel fishing history (if appropriate),
- statements and affirmations that the person owns the vessels, holds the permits, and retains the fishing history, and
- similar information pertaining to the specific buy-back being conducted.

Each invitation to bid will constitute the entire terms and conditions of a buyback agreement under which each bidder shall make an irrevocable offer to the United States of fishing capacity to be bought back by the United States, and the Assistant Administrator shall accept or reject, on behalf of the United States, each bidder's irrevocable offer.

### **Buyback Referendum**

Buybacks are a voluntary process and each individual buyback must be approved through a referendum of the fishery's participants. When a referendum is conducted each participant in the fishery will receive a ballot, accompanying information and enclosures. Persons may notify NMFS if they believe that they should be on a referendum list, or if they believe someone else should not be on the list.

The ballot will contain a randomly derived, 5-digit number assigned to each eligible voter, shall contain a place for the voter to vote "for" (yes) or "against" (no) the proposed industry-fee system, and shall contain a place adjacent to the 5-digit number for the original signature of the party purporting to have authority to sign the ballot on the voter's behalf.

The accompanying information will: (1) summarize the referendum's nature and purpose; (2) establish the last date by which the Assistant Administrator must receive a completed ballot in order for the ballot to be counted as a qualified vote; (3) identify the place on the ballot for the voter to vote "for" (yes) or "against" (no) the industry-fee system, the place where the person signing the ballot on the voter's behalf must sign the ballot, and the purpose of the enclosed envelope in returning the completed ballot to the Assistant Administrator; (4) establish the total buyback cost, the amount of the buyback loan (if different than the total buyback cost), the term of the buyback loan, and the amount of fishing capacity that the total buyback cost will buy back; (5) establish the fee rate necessary to amortize the buyback loan over its term and the fee rate for the first year after buyback completion; and (6) summarize such other factors as the Assistant Administrator deems pertinent.

The enclosures will include: (1) a specially marked and pre-addressed envelope that a voter must use to return the ballot to the Assistant Administrator by whatever means of delivery the voter chooses; (2) a copy of the adopted FMP amendment complementing buyback; (3) a copy of the adopted buyback implementation plan and regulations; and (4) a copy of the instructional portion of the framework regulation dealing with the referendum.

In the event of an early referendum the enclosures will include: (1) a specially marked and pre-addressed envelope that a voter must use to return the ballot to the Assistant Administrator by whatever means of delivery the voter chooses; (2) a copy of a proposed FMP amendment; (3) a copy of the proposed industry buyback plan and (4) a copy of the instructional portion of the framework regulation dealing with the referendum.

The referendum is necessary to establish the conditions under which NMFS can collect fees from the industry participants to repay the buyback loan.

### **Buyer reporting and Recordkeeping**

The repayment of an industry-funded buyback is dependant on the collection of fees by the first purchasers of the fish from the buyback fishery. These fees are remitted to a lockbox at the Treasury Department where they are eventually applied against the buyback loan. The statutory authority exists to collect up to 5% of the ex-vessel sale value of the fish to repay the loan.

Each fish buyer required to collect fees must maintain a segregated account at a Federally-

chartered national bank for the sole purpose of depositing fee collections and disbursing them therefrom to the Assistant Administrator. At the end of each business day the buyer must deposit into the account all collected fees. On the last business day of each calendar month the fish buyer

will send the full deposit principle to NMFS. To support this system the buyer must maintain certain records and submit an annual report.

Records maintenance: Each fish buyer must, on forms the Assistant Administrator specifies, maintain accurate records of all transactions involving fees. Each fish buyer must maintain such records in a secure and orderly manner for a period of at least 3 years from the date of the transactions involved. The following information shall be maintained by each fish buyer for all deliveries of post-buyback fish such fish buyer buys:

- (1) Delivery date;
- (2) Fish seller's name;
- (3) Number of pounds of each species of post-buyback fish bought;
- (4) Name of fishing vessel from which unloaded;
- (5) Ex-vessel price per pound of each species of such fish;
- (6) Total ex-vessel value of such fish;
- (7) Net ex-vessel value of such fish;
- (8) Name of party to whom net ex-vessel value paid if other than fish seller;
- (9) Date net ex-vessel value paid;
- (10) Total fee amount collected; and
- (11) Such other information as the Assistant Administrator shall deem reasonably necessary for each buyback.

Much of this information (date, name, pounds delivered, vessel, price per pound, date) is collected as part of normal fish ticket procedures in many fisheries. The fee information and the length of the record retention would always be an additional burden.

In addition, the buyer must maintain records on all fee collection deposits to, and disbursements from, the deposit account:

- (1) Dates and amounts of deposits;
- (2) Dates and amounts of disbursements to the Fund's lockbox account the Assistant Administrator designates; and
- (3) Dates and amounts of disbursements to the fish buyer, or other parties, of interest earned on deposits (this information would be a normal part of bank statements).

The fish ticket and deposit/disbursement information is necessary to enforce the fee collection process to ensure that the Federal government is repaid and that fishermen's fees are directed to that end.

Annual report: Buyers must also submit a report not later than the date specified in each fishery specific buyback rule. The report must contain the following buyback information for the preceding calendar year:

- (1) Total pounds of buyback fish purchased from each fish seller;
- (2) Total net ex-vessel value of payments to each fish seller;

- (3) Total fee amounts collected from each fish seller;
- (4) Total fee collection amounts deposited by month;
- (5) Dates and amounts of monthly disbursements to the Fund lockbox account;
- (6) Total amount of deposit interest withdrawn by fish buyer; and
- (7) Balance of depository account at year-end.

This information is also needed to track and enforce the fee collection system.

### **Seller/Buyer Reports**

These reporting requirements would apply in situations where one of the parties in a sale refuses to either pay or collect the required fees.

If a fish buyer refuses to collect the fee, the fish seller is supposed to advise the fish buyer of the fish seller's fee payment obligation and of the fish buyer's fee collection obligation. If the fish buyer still refuses to collect the fee, the fish seller must, within the next 24 hours, forward the fee to the Assistant Administrator and advise the Assistant Administrator in writing of the full particulars, including: the fish buyer's and fish seller's name, address, and telephone number; the name of the fishing vessel from which the fish seller made post-buyback fish delivery and the date of doing so; the quantity and ex-vessel value of each species of such fish delivered; and the fish seller's reason for refusing to collect the fee in accordance with this subpart.

If a fish seller refuses to pay the fee to the buyer, the fish buyer should advise the fish seller of the fish buyer's collection obligation and of the fish seller's payment obligation. If the fish seller still refuses to pay the fee, the fish buyer must either collect the fee over the fish seller's protest or refrain from buying the post-buyback fish and, within the next 24 hours, advise the Assistant Administrator in writing of the full particulars, including: the fish buyer's and fish seller's name, address, and telephone number; the name of the fishing vessel from which the fish seller made or attempted to make post-buyback fish delivery and the date of doing so; the quantity and ex-vessel value of each species of such fish delivered or attempted to be delivered; whether the fish buyer collected the fee over the fish seller's protest or refrained from buying such fish; and the fish seller's reason for refusing to pay the fee.

These reports are necessary to correct any problems that develop in the fee-collection process.

### **State Actions for Fisheries Subject to State Authority**

The information requirements on the State depend upon the type of buyback involved. For industry-funded buybacks, the Governor must: approve the buyback business plan submitted to him by the industry, approve any state FMP amendment required to complement the buyback business plan, and submit the buyback request to NMFS.

When the buyback is not to be funded by industry, the State develops and submits the business plan and buyback proposal. It also must approve any state FMP amendment required to

complement the buyback development plan and submit buyback confirmation to NMFS.

### **Advisement of Conflicts in Ownership Claims**

NMFS will consider any evidence submitted in order to resolve any disputes. Upon satisfaction of any such disputes, NMFS will tender reduction payments to the accepted bidders. NMFS anticipates infrequent use of this option.

It is anticipated that the information collected will be disseminated to the public or used to support publicly disseminated information. As explained in the preceding paragraphs, the information gathered has utility. NMFS will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NMFS standards for confidentiality, privacy, and electronic information. See response #10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Prior to dissemination, the information will be subjected to quality control measures and a pre-dissemination review pursuant to Section 515 of Public Law 106-554.

### **3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.**

No automated techniques are required as part of this process. Paper submission may actually be less burdensome on the public because many of these fish buyers and sellers are small firms and individuals who do not have internet access. Electronic means of submitting information may be allowed between industry and the fishery management authority. Exact procedures will depend upon the specific fisheries and parties involved but may include electronic means in certain situations.

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

Because NOAA is the sole Federal provider of buybacks, there is no duplication of other information requests.

### **5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.**

These requirements should not have a significant impact on small businesses or entities.

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

If the collections were not conducted statutorily-mandated financial assistance could not be delivered. The only requirement with a set frequency of submission is the fee-related submission

of an annual report. This frequency is deemed minimal for protecting the process from abuse.

**7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.**

The requirements are consistent with OMB guidelines except for the following. Reporting will take place more often than quarterly in the case of submission of the fee collections on a monthly basis. Increased frequency is deemed necessary for safer management and more efficient repayment. It is uncertain whether less than 30 days might be allowed for submissions of bids or responses to referenda. This would be determined by the specific buyback and it is possible that some cases might call for quicker response.

**8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

A Federal Register Notice solicited public comments. One comment was received but it was not responsive to the four areas listed in the request for comments.

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

Aside from the loan that may be part of a buyback program, no payments will be made to respondents.

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

No confidentiality is promised or given.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.**

No sensitive questions are asked.

**12. Provide an estimate in hours of the burden of the collection of information.**

This submission supports a framework regulation. Specific buyback programs will generate

additional rulemaking. While NOAA can identify the elements of information collection requirements, the specific burden imposed by the requirements can vary greatly because of the different sizes and natures of the fisheries that may be involved. The estimates that follow are based upon the assumption that there will be three buybacks per year, two for fisheries under Federal authority and one for fisheries under State authority. The estimates for the preparation of a plan are based on data from an actual buyback plan prepared by the Aleutian Islands/Bering Sea Crab Fishery, which is expected to be representative of submissions made. The estimates for the preparation of a bid are based on input from an accounting firm that prepared bids in a New England Groundfish Fishery buyback. The other estimates are more tentative; after some experience is obtained these figures will be adjusted as necessary.

For calculating total burden, we have assumed: that 2 buyback plans for fisheries under Federal management authority will be submitted per year; that referenda and bids in an average fishery will affect approximately 400 vessels; that there will be an average of 300 vessels in the fishery after the buyout; that there will be 24 buyers in a fishery; that buyers will report on a total of 2,700 trips per fishery (9 landings per 300 vessels); that seasons are 6 months, resulting in 6 monthly deposit reports; and that sellers or buyers will submit 20 reports per year. We estimate receiving 5 responses, which will each total 1 hour, advising us of any conflicts in ownership claims. Although not all 400 vessels would decide to make a bid, all would probably read the material sent to them and calculate whether a bid would be to their advantage, so we have included the entire fishery as bid respondents. We have also assumed 1 industry-funded buyback per year for fisheries under State management authority, with the same fishery-size and reporting assumptions as for a Federal fishery. The burden of plans is expected to drop as industry becomes familiar with the framework rule and other examples are available.

## **BURDEN IN YEAR 1:**

### **Industry-Funded Buybacks in Federally-Managed Fisheries**

2 Business Plans/yr. x 6,634 hours/plan = 13,268 hours  
2 advance referenda/yr. x 4 hrs./voter x 400 voters = 3,200 hours  
2 post-bid referenda/yr. x 4 hrs./voter x 400 voters = 3,200 hours  
2 Invitations to bid/yr. x 4 hrs./bid x 400 bids = 3,200 hours  
2,700 trips x 10 min./fish ticket x 2 buybacks = 900 hours  
24 buyers x 6 monthly reports/yr. x 2 hrs./report x 2 buybacks = 576 hours  
24 buyers x 1 annual report x 4 hrs./report x 2 buybacks = 192 hours  
20 seller/buyer reports/year x 2 hrs./report x 2 buybacks = 80 hours  
5 advisements of conflicts in ownership claims x 2 buybacks = 10 hours

### **Non-Industry-Funded Buybacks in Federally-Managed Fisheries**

No such buybacks are anticipated.

### **Industry-Funded Buybacks in State-Managed Fisheries**

1 Business Plan/yr. x 6,634 hours/plan = 6,634 hours



1 state approval of plan and amendment to state FMP x 270 hrs = 270 hours  
 1 advance referendum/yr. x 4 hrs./voters x 400 voters = 1,600 hours  
 1 post-bid referendum/yr. x 4 hrs./voter x 400 voters = 1,600 hours  
 1 Invitation to bid/yr. x 4 hrs./bid x 400 bids = 1,600 hours  
 600 trips x 10 min./fish ticket = 100 hours  
 8 buyers x 6 monthly reports/yr. x 2 hrs./report = 96 hours  
 8 buyers x 1 annual report x 4 hrs./report = 32 hours  
 6 seller/buyer reports/year x 2 hrs./report = 12 hours  
 5 advisements of conflicts in ownership claims = 5 hours

**Non-Industry-Funded Buybacks in State-Managed Fisheries**

No such buybacks are anticipated.

**Burden in Years 2 and 3:**

Assuming the same number of buyouts take place each year, the burden for referenda and invitations will be the same as for Year 1. The annual burden for plans will drop for the reasons explained above. Since buyer reporting and seller/buyer reports would continue for the first year participants until the loan is repaid, the burden for those requirements would increase year to year by increments of the first year burden. No hours for a second advanced referendum are estimated as such a referendum is not expected.

Averaging the total 3-year burden of 115,689 hours produces an average annual burden of 38,563 hours.

<b>BURDEN ESTIMATE TOTALS</b>			
	<b>Year 1 Burden</b>	<b>Year 2 Burden</b>	<b>Year 3 Burden</b>
Business plans	19,902	19,902	19,902
State approvals	270	270	270
Advance Referenda	4,800	4,800	4,800
Post-bid Referenda	4,800	4,800	4,800
Invitations to bid and bids	4,800	4,800	4,800
Buyer recordkeeping (fish tickets)	1,000	2,000	3,000
Buyer monthly reports	672	1,344	2,016
Buyer annual reports	224	448	672
Seller/Buyer reports	92	184	276

<b>BURDEN ESTIMATE TOTALS</b>			
	<b>Year 1 Burden</b>	<b>Year 2 Burden</b>	<b>Year 3 Burden</b>
Advisements of conflicts in ownership claims	15	15	15
<b>TOTALS</b>	<b>36,575</b>	<b>38,563</b>	<b>40,551</b>

**13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).**

The costs to respondents would be those for copying and mailing submissions. Those are estimated to average \$2,196 over the 3-year approval period.

<b>COST ESTIMATE TOTALS</b>			
	<b>Year 1 Costs</b>	<b>Year 2 Costs</b>	<b>Year 3 Costs</b>
Business plans	400	400	400
State approvals	180	180	180
Advance Referenda	560	560	560
Post-bid Referenda	280	280	280
Invitations to bid and bids	180	180	180
Buyer recordkeeping (fish tickets)	240	480	720
Buyer monthly reports	40	80	120
Buyer annual reports	10	20	30
Seller/Buyer reports	8	16	24
<b>TOTALS</b>	<b>1,898</b>	<b>2,196</b>	<b>2,494</b>

Although recordkeeping will take place, most of the records involved would already be kept as part of normal business operations and to support tax submissions. Therefore, no additional costs have been estimated.

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

There is no annualized cost of this information collection to the Federal government.

**15. Explain the reasons for any program changes or adjustments reported in Items 13 or**

**14 of the OMB 83-I.**

There are no changes or adjustments from the previously approved collection.

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

There are no results to be published for the framework rule, however, results may be published for future individual buybacks.

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

N/A.

**18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.**

There are no exceptions.

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

This collection does not employ statistical methods.

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(2) *Coordination with states on recommendations to Federal agencies.* When an action that would adversely affect EFH requires authorization or funding by both Federal and state agencies, NMFS will provide the appropriate state agencies with copies of EFH conservation recommendations developed as part of the Federal consultation procedures in §600.920. NMFS will also seek agreements on sharing information and copies of recommendations with Federal or state agencies conducting similar consultation and recommendation processes to ensure coordination of such efforts.

**§ 600.930 Council comments and recommendations to Federal and state agencies.**

(a) *Establishment of procedures.* Each Council should establish procedures for reviewing Federal or state actions that may adversely affect the EFH of a species managed under its authority. Each Council may receive information on actions of concern by methods such as: Directing Council staff to track proposed actions; recommending that the Council's habitat committee identify actions of concern; or entering into an agreement with NMFS to have the appropriate Regional Administrator notify the Council of actions that may adversely impact EFH. Federal and state actions often follow specific timetables which may not coincide with Council meetings. Therefore, Councils should consider establishing abbreviated procedures for the development of Council recommendations.

(b) *Early involvement.* Councils should provide comments and recommendations on proposed state and Federal actions of concern as early as practicable in project planning to ensure thorough consideration of Council concerns by the action agency. Copies of Council comments and recommendations should be provided to NMFS.

(c) *Anadromous fishery resources.* For the purposes of the commenting requirement of section 305(b)(3)(B) of the Magnuson-Stevens Act, an "anadromous fishery resource under a Council's authority" is an anadromous species that inhabits waters under the Council's authority at some time during its life cycle.

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**Subpart L—Fishing Capacity Reduction**

AUTHORITY: 16 U.S.C. 1861a(b)-(e).

SOURCE: 65 FR 31443, May 18, 2000, unless otherwise noted.

**§ 600.1000 Definitions.**

In addition to the definitions in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and in §600.10 of this title, the terms used in this subpart have the following meanings:

*Address of Record* means the business address of a person, partnership, or corporation. Addresses listed on permits or other NMFS records are presumed to be business addresses, unless clearly indicated otherwise.

*Bid* means the price a vessel owner or reduction fishery permit holder requests for reduction of his/her fishing capacity. It is an irrevocable offer in response to the invitation to bid in §600.1009.

*Borrower* means, individually and collectively, each post-reduction fishing permit holder and/or fishing vessel owner fishing in the reduction fishery.

*Business plan* means the document containing the information specified in §600.1003(n) and required to be submitted with a request for a financed program.

*Business week* means a 7-day period, Saturday through Friday.

*Controlling fishery management plan or program (CFMP)* means either any fishery management plan or any state fishery management plan or program, including amendments to the plan or program, pursuant to which a fishery is managed.

*Delivery value* means:

(1) For unprocessed fish, all compensation that a fish buyer pays to a fish seller in exchange for fee fish; and

(2) For processed fish, all compensation that a fish buyer would have paid to a fish seller in exchange for fee fish if the fee fish had been unprocessed fish instead of processed fish.

Delivery value encompasses fair market value, as defined herein, and includes the value of all in-kind compensation or all other goods or services

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exchanged in lieu of cash. It is synonymous with the statutory term “ex-vessel value” as used in section 312 of the Magnuson Act.

*Deposit principal* means all collected fee revenue that a fish buyer deposits in a segregated account maintained at a federally insured financial institution for the sole purpose of aggregating collected fee revenue before sending the fee revenue to NMFS for repaying a reduction loan.

*Fair market value* means the amount that a buyer pays a seller in an arm’s length transaction or, alternatively, would pay a seller if the transaction were at arm’s length.

*Fee* means the amount that fish buyers deduct from the delivery value under a financed reduction program. The fee is the delivery value times the reduction fishery’s applicable fee rate under section 600.1013.

*Fee fish* means all fish harvested from a reduction fishery involving a financed program during the period in which any amount of the reduction loan remains unpaid. The term fee fish excludes fish harvested incidentally while fishing for fish not included in the reduction fishery.

*Final development plan* means the document NMFS prepares, under §600.1006(b) and based on the preliminary development plan the requester submits, for a subsidized program.

*Financed* means funded, in any part, by a reduction loan.

*Fish buyer* means the first ex-vessel party who:

- (1) in an arm’s—length transaction, purchases fee fish from a fish seller;
- (2) takes fish on consignment from a fish seller; or
- (3) otherwise receives fish from a fish seller in a non arm’s-length transaction.

*Fish delivery* means the point at which a fish buyer first purchases fee fish or takes possession of fee fish from a fish seller.

*Fishing capacity reduction specifications* means the minimum amount of fishing capacity reduction and the maximum amount of reduction loan principal specified in a business plan.

*Fish seller* means the party who harvests and first sells or otherwise delivers fee fish to a fish buyer.

*Fishery Management Plan (FMP)* means any Federal fishery management plan, including amendments to the plan, that the Secretary of Commerce approves or adopts pursuant to section 303 of the Magnuson-Stevens Act.

*Fund* means the Fishing Capacity Reduction Fund, and each subaccount for each program, established in the U.S. Treasury for the deposit into, and disbursement from, all funds, including all reduction loan capital and all fee revenue, involving each program.

*Implementation plan* means the plan in §600.1008 for carrying out each program.

*Implementation regulations* mean the regulations in §600.1008 for carrying out each program.

*Net delivery value* means the delivery value minus the fee.

*Post-bidding referendum* means a referendum that follows bidding under §600.1009.

*Post-reduction* means after a program reduces fishing capacity in a reduction fishery.

*Pre-bidding referendum* means a referendum that occurs at any time after a request for a financed program but before a proposal under §600.1008 of a implementation plan and implementation regulations.

*Preliminary development plan* means the document specified in §600.1005(g) and required to be submitted with a request for a subsidized program.

*Processed fish* means fish in any form different from the form in which the fish existed at the time the fish was first harvested, unless any such difference in form represents, in the reduction fishery involved, the standard ex-vessel form upon which fish sellers and fish buyers characteristically base the delivery value of unprocessed fish.

*Program* means each instance of reduction under this subpart, in each reduction fishery—starting with a request and ending, for a financed program, with full reduction loan repayment.

*Reduction* means the act of reducing fishing capacity under any program.

*Reduction amendment* means any amendment, or, where appropriate, framework adjustment, to a CFMP

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that may be necessary for a program to meet the requirements of this subpart.

*Reduction amendment specifications* mean the reduction amendment to a CFMP specified in a business plan.

*Reduction contract* means the invitation to bid under §600.1009, together with each bidder's irrevocable offer and NMFS' conditional or non-conditional acceptance of each such bid under §600.1009.

*Reduction cost* means the total dollar amount of all reduction payments to fishing permit owners, fishing vessel owners, or both, in a reduction fishery.

*Reduction fishery* means the fishery or portion of a fishery to which a program applies. The reduction fishery must specify each included species, as well as any limitations by gear type, fishing vessel size, geographic area, and any other relevant factor(s).

*Reduction loan* means a loan, under section 1111 and section 1112 of Title XI of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1279f and g App.), for financing any portion, or all, of a financed program's reduction cost and repayable by a fee under, and in accordance with, §600.1012, §600.1013, and §600.1014.

*Reduction payment* means the Federal Government's fishing capacity reduction payment to a fishing permit owner, fishing vessel owner, or both, under a reduction contract. Additionally, it is payment for reduction to each bidder whose bid NMFS accepts under §600.1009. In a financed program each reduction payment constitutes a disbursement of a reduction loan's proceeds and is for either revoking a fishing permit or both revoking a fishing permit and withdrawing a vessel from fishing either by scrapping or title restriction.

*Reduction permit* means any fishing permit revoked in a program in exchange for a reduction payment under a reduction contract.

*Reduction vessel* means any fishing vessel withdrawn from fishing either by scrapping or title restriction in exchange for a reduction payment under a reduction contract.

*Referendum* means the voting process under §600.1010 for approving the fee system for repaying a reduction loan.

*Request* means a request, under §600.1001, for a program.

*Requester* means a Council for a fishery identified in §600.1001(c), a state governor for a fishery identified in §600.1001(d), or the Secretary for a fishery identified in §600.1001(e).

*Scrap* means to completely and permanently reduce a fishing vessel's hull, superstructures, and other fixed structural components to fragments having value, if any, only as raw materials for reprocessing or for other non-fisheries use.

*Subsidized* means wholly funded by anything other than a reduction loan.

*Treasury percentage* means the annual percentage rate at which NMFS must pay interest to the U.S. Treasury on any principal amount that NMFS borrows from the U.S. Treasury in order to generate the funds with which to later disburse a reduction loan's principal amount.

*Unprocessed fish* means fish in the same form as the fish existed at the time the fish was harvested, unless any difference in form represents, in the reduction fishery involved, the standard ex-vessel form upon which fish sellers and fish buyers characteristically base the delivery value of unprocessed fish.

*Vote* means a vote in a referendum.

### § 600.1001 Requests.

(a) A Council or the Governor of a State under whose authority a proposed reduction fishery is subject may request that NMFS conduct a program in that fishery. Each request shall be in writing and shall be submitted to the Director, Office of Sustainable Fisheries, NMFS. Each request shall satisfy the requirements of §600.1003 or §600.1005, as applicable, and enable NMFS to make the determinations required by §600.1004 or §600.1006, as applicable.

(b) NMFS cannot conduct a program in any fishery subject to the jurisdiction of a Council or a state unless NMFS first receives a request from the Council or the governor to whose jurisdiction the fishery is subject.

(c) For a fishery subject to the jurisdiction of a Council, only that Council can or must make the request. If the fishery is subject to the jurisdiction of two or more Councils, those Councils

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must make a joint request. No Council may make a request, or join in making a request, until after the Council conducts a public hearing about the request.

(d) For a fishery subject to the jurisdiction of a State, only the Governor of that State can make the request. If the fishery is subject to the jurisdiction of two or more states, the Governors of those States shall make a joint request. No Governor of a State may make a request, or join in making a request, until the State conducts a public hearing about the request.

(e) For a fishery under the direct management authority of the Secretary, NMFS may conduct a program on NMFS' own motion by fulfilling the requirements of this subpart that reasonably apply to a program not initiated by a request.

(f) Where necessary to accommodate special circumstances in a particular fishery, NMFS may waive, as NMFS deems necessary and appropriate, compliance with any specific requirements under this subpart not required by statute.

### § 600.1002 General requirements.

(a) Each program must be: (1) Necessary to prevent or end overfishing, rebuild stocks of fish, or achieve measurable and significant improvements in the conservation and management of the reduction fishery;

(2) Accompanied by the appropriate environmental, economic and/or socioeconomic analyses, in accordance with applicable statutes, regulations, or other authorities; and

(3) Consistent with the CFMP, including any reduction amendment, for the reduction fishery.

(b) Each CFMP for a reduction fishery must: (1) Prevent the replacement of fishing capacity removed by the program through a moratorium on new entrants, restrictions on vessel upgrades, and other effort control measures, taking into account the full potential fishing capacity of the fleet;

(2) Establish a specified or target total allowable catch or other measures that trigger closure of the fishery or adjustments to reduce catch; and

(3) Include, for a financed program in a reduction fishery involving only a

portion of a fishery, appropriate provisions for the post-reduction allocation of fish between the reduction fishery and the rest of the fishery that both protect the borrower's reduction investment in the program and support the borrower's ability to repay the reduction loan.

### § 600.1003 Content of a request for a financed program.

A request for a financed program shall:

(a) Specify the reduction fishery.

(b) Project the amount of the reduction and specify what a reduction of that amount achieves in the reduction fishery.

(c) Specify whether the program is to be wholly or partially financed and, if the latter, specify the amount and describe the availability of all funding from sources other than a reduction loan.

(d) Project the availability of all Federal appropriation authority or other funding, if any, that the financed program requires, including the time at which funding from each source will be available and how that relates to the time at which elements of the reduction process are projected to occur.

(e) Demonstrate how the program meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(a).

(f) Demonstrate how the CFMP meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(b).

(g) If a reduction amendment is necessary, include an actual reduction amendment or the requester's endorsement in principle of the reduction amendment specifications in the business plan. Endorsement in principle is non-binding.

(h) Request that NMFS conduct, at the appropriate time, a referendum under § 600.1010 of this subpart.

(i) List the names and addresses of record of all fishing permit or fishing vessel owners who are currently authorized to harvest fish from the reduction fishery, excluding those whose authority is limited to incidentally harvesting fish from the reduction fishery during directed fishing for fish not in the reduction fishery. The list shall be

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based on the best information available to the requester. The list shall take into account any limitation by type of fishing gear operated, size of fishing vessel operated, geographic area of operation, or other factor that the proposed program involves. The list may include any relevant information that NMFS may supply to the requester.

(j) Specify the aggregate total allowable catch in the reduction fishery during each of the preceding 5 years and the aggregate portion of such catch harvested by the parties listed under paragraph (i) of this section.

(k) Specify the criteria for determining the types and number of fishing permits or fishing permits and fishing vessels that are eligible for reduction under the program. The criteria shall take into account:

- (1) The characteristics of the fishery;
- (2) Whether the program is limited to a particular gear type within the reduction fishery or is otherwise limited by size of fishing vessel operated, geographic area of operation, or other factor;
- (3) Whether the program is limited to fishing permits or involves both fishing permits and fishing vessels;
- (4) The reduction amendment required;
- (5) The needs of fishing communities;
- (6) Minimizing the program's reduction cost; and
- (7) All other relevant factors.

(l) Include the requester's assessment of the program's potential impact on fisheries other than the reduction fishery, including an evaluation of the likely increase in participation or effort in such other fisheries, the general economic impact on such other fisheries, and recommendations that could mitigate, or enable such other fisheries to mitigate, any undesirable impacts.

(m) Include any other information or guidance that would assist NMFS in developing an implementation plan and implementation regulations.

(n) Include a business plan, prepared by, or on behalf of, knowledgeable and concerned harvesters in the reduction fishery, that:

(1) Specifies a detailed reduction methodology that accomplishes the maximum sustained reduction in the reduction fishery's fishing capacity at

the least reduction cost and in the minimum period of time, and otherwise achieves the program result that the requester specifies under paragraph (b) of this section. The methodology shall:

(i) Establish the appropriate point for NMFS to conduct a pre-bidding referendum and be sufficiently detailed to enable NMFS to readily:

(A) Design, propose, and adopt a timely and reliable implementation plan,

(B) Propose and issue timely and reliable implementation regulations,

(C) Invite bids,

(D) Accept or reject bids, and

(E) Complete a program in accordance with this subpart, and

(ii) Address, consistently with this subpart:

(A) The contents and terms of invitations to bid,

(B) Bidder eligibility,

(C) The type of information that bidders shall supply,

(D) The criteria for accepting or rejecting bids,

(E) The terms of bid acceptances,

(F) Any referendum procedures in addition to, but consistent with, those in § 600.1010, and

(G) All other technical matters necessary to conduct a program;

(2) Projects and supports the reduction fishery's annual delivery value during the reduction loan's repayment period based on documented analysis of actual representative experience for a reasonable number of past years in the reduction fishery;

(3) Includes the fishing capacity reduction specifications upon which both the pre-bidding referendum and the bidding under § 600.1009 will be based. The reduction loan's maximum principal amount cannot, at the interest rate projected to prevail at the time of reduction, exceed the principal amount that can be amortized in 20 years by 5 percent of the projected delivery value;

(4) States the reduction loan's repayment term and the fee rate, or range of fee rates, prospectively necessary to amortize the reduction loan over its repayment term;

(5) Analyzes and demonstrates the ability to repay the reduction loan at the minimum reduction level and at



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various reduction-level increments reasonably greater than the minimum one, based on the:

(i) Best and most representative historical fishing revenue and expense data and any other relevant productivity measures available in the reduction fishery, and

(ii) Projected effect of the program on the post-reduction operating economics of typical harvesters in the reduction fishery, with particular emphasis on the extent to which the reduction increases the ratio of delivery value to fixed cost and improves harvesting's other relevant productivity measures;

(6) Demonstrates how the business plan's proposed program meets, or will meet after an appropriate reduction amendment, the requirements in §600.1002(a);

(7) Demonstrates how the CFMP meets, or will meet after an appropriate reduction amendment, the requirements in §600.1002(b);

(8) Includes, if a reduction amendment is necessary, the reduction amendment specifications upon which the pre-bidding referendum will be based;

(9) Includes an assessment of the program's potential impact on fisheries other than the reduction fishery, including an evaluation of the likely increase in participation or effort in such other fisheries, the general economic impact on such other fisheries, and recommendations that could mitigate, or enable such other fisheries to mitigate, any undesirable impacts;

(10) Specifies the names and addresses of record of all fish buyers who can, after reduction, reasonably be expected to receive deliveries of fee fish. This shall be based on the best information available, including any information that NMFS may be able to supply to the business planners;

(11) Specifies, after full consultation with fish buyers, any special circumstances in the reduction fishery that may require the implementing regulations to contain provisions in addition to, or different from, those contained in §600.1013 and/or §600.1014 in order to accommodate the circumstances of, and practices in, the reduction fishery while still fulfilling the

intent and purpose of §600.1013 and/or §600.1014—including, but not limited to:

(i) In the case of reduction fisheries in which state data confidentiality laws or other impediments may negatively affect the efficient and effective conduct of the same, specification of who needs to take what action to resolve any such impediments, and

(ii) In the case of reduction fisheries in which some fish sellers sell unprocessed, and other fish sellers sell processed fish to fish buyers, specification of an accurate and efficient method of establishing the delivery value of processed fish; and

(12) Demonstrates by a survey of potential voters, or by any other convincing means, a substantial degree of potential voter support for the business plan and confidence in its feasibility.

(o) Include the requester's statement of belief that the business plan, the CFMP, the reduction amendment specifications, and all other request aspects constitute a complete, realistic, and practical prospect for successfully completing a program in accordance with this subpart.

### **§ 600.1004 Accepting a request for, and determinations about initiating, a financed program.**

(a) *Accepting a request.* Once it receives a request, NMFS will review any request for a financed program to determine whether the request conforms with the requirements of §600.1003. If the request does not conform, NMFS will return the request with guidance on how to make the request conform. If the request conforms, NMFS shall accept it and publish a notice in the FEDERAL REGISTER requesting public comments on the request. Such notice shall state the name and address of record of each eligible voter, as well as the basis for having determined the eligibility of those voters. This shall constitute notice and opportunity to respond about adding eligible voters, deleting ineligible voters, and/or correcting any voter's name and address of record. If, in NMFS' discretion, the comments received in response to such notice warrants it, or other good cause warrants it, NMFS may modify such list by publishing another notice in the FEDERAL REGISTER.

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(b) *Determination about initiating a financed program.* After receipt of a conforming request for a financed program, NMFS will, after reviewing and responding to any public comments received in response to the notice published in the FEDERAL REGISTER under paragraph (a) of this section, initiate the program if NMFS determines that:

- (1) The program meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(a);
- (2) The CFMP meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(b);
- (3) The program, if successfully implemented, is cost effective;
- (4) The reduction requested constitutes a realistic and practical prospect for successfully completing a program in accordance with this subpart and the borrower is capable of repaying the reduction loan. This includes enabling NMFS to readily design, propose, and adopt a timely and reliable implementation plan as well as propose and issue timely and reliable implementation regulations and otherwise complete the program in accordance with this subpart; and
- (5) The program accords with all other applicable law.

**§ 600.1005 Content of a request for a subsidized program.**

A request for a subsidized program shall:

- (a) Specify the reduction fishery.
- (b) Project the amount of the reduction and specify what a reduction of that amount achieves in the reduction fishery.
- (c) Project the reduction cost, the amount of reduction cost to be funded by Federal appropriations, and the amount, if any, to be funded by other sources.
- (d) Project the availability of Federal appropriations or other funding, if any, that completion of the program requires, including the time at which funding from each source will be available and how that relates to the time at which elements of the reduction process are projected to occur.
- (e) List the names and addresses of record of all fishing permit or fishing vessel owners who are currently authorized to harvest fish from the reduc-

tion fishery, excluding those whose authority is limited to incidentally harvesting fish from the reduction fishery during directed fishing for fish not in the reduction fishery. The list shall be based on the best information available to the requester, including any information that NMFS may supply to the requester, and take into account any limitation by type of fishing gear operated, size of fishing vessel operated, geographic area of operation, or other factor that the proposed program involves.

(f) Specify the aggregate total allowable catch in the reduction fishery during each of the preceding 5 years and the aggregate portion of such catch harvested by the parties listed under paragraph (e) of this section.

(g) Include a preliminary development plan that: (1) Specifies a detailed reduction methodology that accomplishes the maximum sustained reduction in the reduction fishery's fishing capacity at the least cost and in a minimum period of time, and otherwise achieves the program result that the requester specifies under paragraph (b) of this section. The methodology shall:

(i) Be sufficiently detailed to enable NMFS to prepare a final development plan to serve as the basis for NMFS to readily design, propose, and adopt a timely and reliable implementation plan and propose and issue timely and reliable implementation regulations, and

- (ii) Include:
  - (A) The contents and terms of invitations to bid,
  - (B) Eligible bidders,
  - (C) The type of information that bidders shall supply,
  - (D) The criteria for accepting or rejecting bids, and
  - (E) The terms of bid acceptances;

(2) Specifies the criteria for determining the types and numbers of fishing permits or fishing permits and fishing vessels that are eligible for reduction under the program. The criteria shall take into account:

- (i) The characteristics of the fishery,
- (ii) Whether the program is limited to a particular gear type within the reduction fishery, or is otherwise limited

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by size of fishing vessel operated, geographic area of operation, or other factor,

(iii) Whether the program is limited to fishing permits or involves both fishing permits and fishing vessels,

(iv) The reduction amendment required,

(v) The needs of fishing communities, and

(vi) The need to minimize the program's reduction cost; and

(3) Demonstrates the program's cost effectiveness.

(h) Demonstrate how the program meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(a).

(i) Demonstrate how the CFMP meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(b)(1) and (2).

(j) Specify any other information or guidance that assists NMFS in preparing a final development plan and a proposed implementation plan and proposed implementation regulations.

(k) Include the requester's statement of belief that the program constitutes a reasonably realistic and practical prospect for successfully completing a program in accordance with this subpart.

### **§ 600.1006 Accepting a request for, and determinations about conducting, a subsidized program.**

(a) *Accepting a request.* NMFS will review any request for a subsidized program submitted to NMFS to determine whether the request conforms with the requirements of § 600.1005. If the request does not conform, NMFS will return it with guidance on how to make the request conform. If the request conforms, NMFS shall accept it and publish a notice in the FEDERAL REGISTER requesting public comments about the request.

(b) *Final development plan.* After receipt of a conforming request, NMFS will prepare a final development plan if NMFS determines that the reduction requested constitutes a realistic and practical prospect for successfully completing a program in accordance with this subpart. This includes enabling NMFS to readily design, propose, and adopt a timely and reliable implementation plan as well as propose and issue timely and reliable implementa-

tion regulations and otherwise complete the program in accordance with this subpart. NMFS will, as far as possible, base the final development plan on the requester's preliminary development plan. Before completing the final development plan, NMFS will consult, as NMFS deems necessary, with the requester, Federal agencies, state and regional authorities, affected fishing communities, participants in the reduction fishery, conservation organizations, and other interested parties in preparing the final development plan.

(c) *Reaffirmation of the request.* After completing the final development plan, NMFS will submit the plan to the requester for the requester's reaffirmation of the request. Based on the final development plan, the reaffirmation shall: (1) Certify that the final development plan meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(a);

(2) Certify that the CFMP meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(b)(1) and (2); and

(3) Project the date on which the requester will forward any necessary reduction amendment and, if the requester is a Council, proposed regulations to implement the reduction amendment. The requester shall base any necessary reduction amendment on the final development plan.

(d) *Determinations about conducting a subsidized program.* After NMFS' receipt of the requester's reaffirmation, any required reduction amendment, and any proposed regulations required to implement the amendment, NMFS will initiate the program if NMFS determines that:

(1) The program meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(a);

(2) The CFMP meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(b)(1) and (2); and

(3) The program is reasonably capable of being successfully implemented;

(4) The program, if successfully implemented, will be cost effective; and

(5) The program is in accord with all other applicable provisions of the Magnuson-Stevens Act and this subpart.

**§ 600.1007 Reduction amendments.**

(a) Each reduction amendment may contain provisions that are either dependent upon or independent of a program. Each provision of a reduction amendment is a dependent provision unless the amendment expressly designates the provision as independent.

(b) Independent provisions are effective without regard to any subsequent program actions.

(c) Dependent provisions are initially effective for the sole limited purpose of enabling initiation and completion of the pre-reduction processing stage of a program.

(d) All dependent provisions of a reduction amendment for a financed program are fully in force and effect for all other purposes only when NMFS either:

(1) For bidding results that conform to the fishing capacity reduction specifications and are not subject to any other condition, notifies bidders, under § 600.1009(e)(3), that reduction contracts then exist between the bidders and the United States; or

(2) For bidding results that do not conform to the fishing capacity reduction specifications or are subject to any other condition, notifies bidders whose bids NMFS had conditionally accepted, under § 600.1010 (d)(8)(iii), that the condition pertaining to the reduction contracts between them and the United States is fulfilled.

(e) If NMFS does not, in accordance with this subpart and any special provisions in the implementation regulations, subsequently make all reduction payments that circumstances, in NMFS' judgment, reasonably permit NMFS to make and, thus, complete a program, no dependent provisions shall then have any further force or effect for any purpose and all final regulations involving such dependent provisions shall then be repealed.

**§ 600.1008 Implementation plan and implementation regulations.**

(a) As soon as practicable after deciding to initiate a program, NMFS will prepare and publish, for a 60-day public comment period, a proposed implementation plan and implementation regulations. During the public comment period, NMFS will conduct a public hear-

ing of the proposed implementation plan and implementation regulations in each state that the program affects.

(b) To the greatest extent practicable, NMFS will base the implementation plan and implementation regulations for a financed program on the business plan. The implementation plan for a financed program will describe in detail all relevant aspects of implementing the program, including:

- (1) The reduction fishery;
- (2) The reduction methodology;
- (3) The maximum reduction cost;
- (4) The maximum reduction loan amount, if different from the maximum reduction cost;
- (5) The reduction cost funding, if any, other than a reduction loan;
- (6) The minimum acceptable reduction level;
- (7) The potential amount of the fee;
- (8) The criteria for determining the types and number of fishing permits or fishing permits and fishing vessels eligible to participate in the program;
- (9) The invitation to bid and bidding procedures;
- (10) The criteria for determining bid acceptance;
- (11) The referendum procedures; and
- (12) Any relevant post-referendum reduction procedures other than those in the implementation regulations or this subpart.

(c) NMFS will base each implementation plan and implementation regulations for a subsidized program on the final development plan. The implementation plan will describe in detail all relevant aspects of implementing the program, including:

- (1) The reduction fishery;
- (2) The reduction methodology;
- (3) The maximum reduction cost;
- (4) The reduction-cost funding, if any, other than Federal appropriations;
- (5) The criteria for determining the types and number of fishing permits or fishing permits and fishing vessels eligible to participate in the program;
- (6) The invitation to bid and bidding procedures;
- (7) The criteria for determining bid acceptance; and
- (8) Any relevant post-bidding program procedures other than those in

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the implementation regulations or this subpart.

(d) The implementation regulations will:

(1) Specify, for invitations to bid, bids, and reduction contracts under § 600.1009:

(i) Bidder eligibility,

(ii) Bid submission requirements and procedures,

(iii) A bid opening date, before which a bidder may not bid, and a bid closing date, after which a bidder may not bid,

(iv) A bid expiration date after which the irrevocable offer contained in each bid expires unless NMFS, before that date, accepts the bid by mailing a written acceptance notice to the bidder at the bidder's address of record,

(v) The manner of bid submission and the information each bidder shall supply for NMFS to deem a bid responsive,

(vi) The conditions under which NMFS will accept or reject a bid,

(vii) The manner in which NMFS will accept or reject a bid, and

(viii) The manner in which NMFS will notify each bidder of bid acceptance or rejection;

(2) Specify any other special referendum procedures or criteria; and

(3) Specify such other provisions, in addition to and consistent with those in this subpart, necessary to regulate the individual terms and conditions of each program and reduction loan. This includes, but is not limited to:

(i) Provisions for the payment of costs and penalties for non-payment, non-collection, non-deposit, and/or non-disbursement of the fee in accordance with § 600.1013 and § 600.1014,

(ii) Prospective fee rate determinations, and

(iii) Any other aspect of fee payment, collection, deposit, disbursement, accounting, record keeping, and/or reporting.

(e) NMFS will issue final implementation regulations and adopt a final implementation plan within 45 days of the close of the public-comment period.

(f) NMFS may repeal the final implementation regulations for any program if:

(1) For a financed program, the bidding results do not conform to the fishing capacity reduction specifications or a post-bidding referendum does not

subsequently approve an industry fee system based on the bidding results;

(2) For a subsidized program, NMFS does not accept bids; and

(3) For either a financed program or a subsidized program, if NMFS is unable to make all reduction payments due to a material adverse change.

### § 600.1009 Bids.

(a) Each invitation to bid, bid, bid acceptance, reduction contract, and bidder—or any other party in any way affected by any of the foregoing—under this subpart is subject to the terms and conditions in this section:

(1) Each invitation to bid constitutes the entire terms and conditions of a reduction contract under which:

(i) Each bidder makes an irrevocable offer to the United States of fishing capacity for reduction, and

(ii) NMFS accepts or rejects, on behalf of the United States, each bidder's offer;

(2) NMFS may, at any time before the bid expiration date, accept or reject any or all bids;

(3) For a financed program in which bidding results do not conform to the fishing capacity reduction specifications, NMFS' acceptance of any bid is subject to the condition that the industry fee system necessary to repay the reduction loan is subsequently approved by a successful post-bidding referendum conducted under § 600.1010. Approval or disapproval of the industry fee system by post-bidding referendum is an event that neither the United States nor the bidders can control. Disapproval of the industry fee system by an unsuccessful post-bidding referendum fully excuses both parties from any performance and fully discharges all duties under any reduction contract;

(4) For a financed program in one reduction fishery that is being conducted under appropriate implementation regulations simultaneously with another financed program in another reduction fishery, where the acceptance of bids for each financed program is conditional upon successful post-bidding referenda approving industry fee systems for both financed programs,

NMFS' acceptance of all bids is, in addition to any condition under paragraph (a)(3) of this section, also subject to the additional conditions that both referenda approve the industry fee systems required for both financed programs--all as otherwise provided in paragraph (a)(3) of this section;

(5) Upon NMFS' acceptance of the bid and tender of a reduction payment, the bidder consents to:

(i) The revocation, by NMFS, of any reduction permit, and

(ii) Where the program also involves the withdrawal of reduction vessels from fishing:

(A) Title restrictions imposed by the U.S. Coast Guard on any reduction vessel that is federally documented to forever prohibit and effectively prevent any future use of the reduction vessel for fishing in any area subject to the jurisdiction of the United States or any state, territory, commonwealth, or possession of the United States, or

(B) Where reduction vessel scrapping is involved and the reduction vessel's owner does not comply with the owner's obligation under the reduction contract to scrap the reduction vessel, take such measures as necessary to cause the reduction vessel's prompt scrapping. The scrapping will be at the reduction vessel owner's risk and expense. Upon completion of scrapping, NMFS will take such action as may be necessary to recover from the reduction vessel owner any cost or expense NMFS incurred in causing the reduction vessel to be scrapped and any other damages NMFS may have incurred and such owner shall be liable to the United States for such cost, expenses, and damages;

(6) Money damages not being an adequate remedy for a bidder's breach of a reduction contract, the United States is, in all particulars, entitled to specific performance of each reduction contract. This includes, but is not limited to, the scrapping of a reduction vessel;

(7) Any reduction payment is available, upon timely and adequately documented notice to NMFS, to satisfy liens, as allowed by law, against any reduction permit/and or reduction vessel; provided, however, that:

(i) No reduction payment to any bidder either relieves the bidder of responsibility to discharge the obligation which gives rise to any lien or relieves any lien holder of responsibility to protect the lien holder's interest,

(ii) No reduction payment in any way gives rise to any

liability of the United States for the obligation underlying any lien,

(iii) No lien holder has any right or standing, not otherwise provided by law, against the United States in connection with the revocation of any reduction permit or the title restriction or scrapping of any reduction vessel under this subpart, and

(iv) This subpart does not provide any lien holder with any right or standing to seek to set aside any revocation of any reduction permit or the title restriction or scrapping of any reduction vessel for which the United States made, or has agreed to make, any reduction payment. A lien holder is limited to recovery against the holder of the reduction permit or the owner of the reduction vessel as otherwise provided by law; and

(8) Each invitation to bid may specify such other terms and conditions as NMFS believes necessary to enforce specific performance of each reduction contract or otherwise to ensure completing each program. This includes, but is not limited to, each bidder's certification, subject to the penalties in §600.1017, of the bidder's full authority to submit each bid and to dispose of the property involved in the bid in the manner contemplated by each invitation to bid.

(b) NMFS will not invite bids for any program until NMFS determines that:

(1) Any necessary reduction amendment is fully and finally approved and all provisions except those dependent on the completion of reduction are implemented;

(2) The final implementation plan is adopted and the final implementation regulations are issued;

(3) All required program funding is approved and in place, including all Federal appropriation and apportionment authority;

(4) Any reduction loan involved is fully approved;

(5) Any non-Federal funding involved is fully available at the required time for NMFS disbursement as reduction payments; and

(6) All other actions necessary to disburse reduction payments, except for matters involving bidding and post-bidding referenda, are completed.

(c) After making the affirmative determinations required under paragraph (b) of this section, NMFS will publish a FEDERAL REGISTER notice inviting eligible bidders to offer to the United States, under this subpart, fishing capacity for reduction.

(d) NMFS may extend a bid closing date and/or a bid expiration date for a reasonable period. NMFS may also issue serial invitations to bid if the result of previous bidding, in NMFS' judgment, warrant this.

(e) After the bid expiration date, NMFS will:

- (1) Analyze responsive bids;
- (2) Determine which bids, if any, NMFS accepts; and
- (3) Notify, by U.S. mail at each bidder's address of

record, those bidders whose bids NMFS accepts that a reduction contract now exists between them and the United States—subject, where appropriate, to the conditions provided for elsewhere in this subpart.

(f) NMFS will keep confidential the identity of all bidders whose bids NMFS does not accept. In financed programs where bidding results do not conform to the fishing capacity reduction specifications, NMFS also will keep confidential the identity of all bidders whose bids NMFS does accept until after completing a successful post-bidding referendum under §600.1010.

**§ 600.1010 Referenda.**

(a) *Referendum success.* A referendum is successful if at least two-thirds of the ballots that qualify to be counted as referendum votes under subparagraph (d)(6) of this section are cast in favor of an industry fee system.

(b) *Pre-bidding referendum*—(1) *Initial referendum.* An initial pre-bidding referendum shall be conducted for each financed program. The business plan shall, subject to this subpart, determine the chronological relationship of

the initial pre-bidding referendum to other pre-bidding aspects of the reduction process sequence. The initial pre-bidding referendum shall be based on the fishing capacity reduction specifications. If the initial pre-bidding referendum precedes the adoption of any necessary reduction amendment, the initial pre-bidding referendum shall also be based on the reduction amendment specifications. If the initial pre-bidding referendum follows the adoption of any necessary reduction amendment, the initial pre-bidding referendum shall also be based on the adopted reduction amendment;

(2) *Successful initial pre-bidding referendum.* If the initial pre-bidding referendum is successful, the reduction process will proceed as follows:

(i) If the initial pre-bidding referendum follows reduction amendment adoption, no second pre-bidding referendum shall be conducted,

(ii) If the initial pre-bidding referendum precedes reduction amendment adoption, a second pre-bidding referendum shall be conducted if, in NMFS' judgment, the reduction amendment subsequently adopted differs, in any respect materially affecting the borrower's reduction investment in the program and the borrower's ability to repay the reduction loan, from the reduction amendment specifications upon which the initial pre-bidding referendum successfully occurred. The sole purpose of any second pre-bidding referendum shall be to determine whether the voters authorize an industry fee system despite any such difference between the reduction amendment specifications and a subsequently adopted reduction amendment.

(3) *Unsuccessful initial pre-bidding referendum.* If the initial pre-bidding referendum is unsuccessful, the reduction process will either cease or NMFS may suspend the process pending an appropriate amendment of the business plan and the request.

(c) *Post-bidding referendum.* A post-bidding referendum shall occur only if, in NMFS' judgment, the result of bidding under §600.1009 does not conform, in any material respect, to the fishing capacity reduction specifications and

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such result justifies, in NMFS' judgment, conducting a post-bidding referendum. Bidding that results in reducing fishing capacity in any amount not less than the minimum fishing capacity reduction amount for any reduction loan amount not more than the maximum reduction loan amount, and otherwise achieves all material requirements of the fishing capacity reduction specifications, shall conform to the fishing capacity reduction specifications. The sole purpose of any post-bidding referendum shall be to determine whether voters authorize an industry fee system for bidding that results in reducing fishing capacity in any amount materially less than the minimum amount in the fishing capacity reduction specifications.

(d) NMFS will conduct referenda in accordance with the following: (1) *Eligible voters.* The parties eligible to vote in each referendum are the parties whose names are listed as being eligible to vote in the notice published in the FEDERAL REGISTER under § 600.1004(a);

(2) *Ballot issuance.* NMFS will mail, by U.S. certified mail, return receipt requested, a ballot to each eligible voter. Each ballot will bear a randomly derived, 5-digit number assigned to each eligible voter. Each ballot will contain a place for the voter to vote for or against the proposed industry fee system and a place, adjacent to the 5-digit number, for the signature of the fishing permit or fishing vessel owner to whom the ballot is addressed or, if the fishing permit or fishing vessel owner is an organization, the person having authority to vote and cast the ballot on the organization's behalf. Each ballot will contain a place for the person signing the ballot to print his or her name. NMFS will enclose with each ballot a specially-marked, postage-paid, pre-addressed envelope that each voter shall use to return the ballot to NMFS;

(3) *Voter certification.* Each ballot will contain a certification, subject to the penalties set forth in § 600.1017, that the person signing the ballot is the fishing permit or fishing vessel owner to whom the ballot is addressed or, if the fishing permit or fishing vessel owner is an organization, the person having author-

ity to vote and cast the ballot on the organization's behalf;

(4) *Information included on a ballot.* Each ballot mailing will:

(i) Summarize the referendum's nature and purpose,

(ii) Specify the date by which NMFS must receive a ballot in order for the ballot to be counted as a qualified vote,

(iii) Identify the place on the ballot for the voter to vote for or against the proposed industry fee system, the place on the ballot where the voter shall sign the ballot, and the purpose of the return envelope,

(iv) For each pre-bidding referendum, state:

(A) The fishing capacity reduction specifications,

(B) The reduction loan's repayment term, and

(C) The fee rate, or range of fee rates, prospectively necessary to amortize the reduction loan over the loan's term,

(v) For each initial pre-bidding referendum that precedes reduction amendment adoption, state the reduction amendment specifications,

(vi) For each initial pre-bidding referendum that follows reduction amendment adoption, summarize the material aspects of the reduction amendment adopted,

(vii) For each second pre-bidding referendum, summarize how the adopted reduction amendment materially differs from the reduction amendment specifications upon which a successful initial pre-bidding referendum occurred and how this material difference affects the borrower's reduction investment in the program and the borrower's ability to repay the reduction loan,

(viii) For each post-bidding referendum, specify the actual bidding results that do not conform to the fishing capacity reduction specifications, and

(ix) State or include whatever else NMFS deems appropriate;

(5) *Enclosures to accompany a ballot.* Each ballot mailing will include:

(i) A specially-marked, postage-paid, and pre-addressed envelope that a voter must use to return the original of a ballot to NMFS by whatever means of delivery the voter chooses, and



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(ii) Such other materials as NMFS deems appropriate;

(6) *Vote qualification.* A completed ballot qualifies to be counted as a vote if the ballot:

(i) Is physically received by NMFS on or before the last day NMFS specifies for receipt of the ballot,

(ii) Is cast for or against the proposed industry fee system,

(iii) Is signed by the voter,

(iv) Is the original ballot NMFS sent to the voter bearing the same 5-digit number that NMFS assigned to the voter, and

(v) Was returned to NMFS in the specially-marked envelope that NMFS provided for the ballot's return;

(6) *Vote tally and notification.* NMFS will:

(i) Tally all ballots qualified to be counted as referendum votes,

(ii) Notify, by U.S. mail at the address of record, all eligible voters who received ballots of:

(A) The number of potential voters,

(B) The number of actual voters who returned a ballot,

(C) The number of returned ballots that qualified to be counted as referendum votes,

(D) The number of votes for and the number of votes against the industry fee system, and

(E) Whether the referendum was successful and approved the industry fee system or unsuccessful and disapproved the industry fee system, and

(iii) If a successful referendum is a post-bidding referendum, NMFS will, at the same time and in the same manner, also notify the bidders whose bids were conditionally accepted that the condition pertaining to the reduction contracts between them and the United States is fulfilled;

(7) *Conclusiveness of referendum determinations.* NMFS' determinations about ballot qualifications and about all other referendum matters, including, but not limited to, eligible voters and their addresses of record, are conclusive and final as of the date NMFS makes such determinations. No matter respecting such determinations shall impair, invalidate, avoid, or otherwise render unenforceable any referendum, reduction contract, reduction loan, or fee payment and collection obligation

under § 600.1013 and § 600.1014 necessary to repay any reduction loan;

(8) *Ballot confidentiality.* NMFS will not voluntarily release the name of any party who voted. NMFS will restrict the availability of all voter information to the maximum extent allowed by law; and

(9) *Conclusive authorization of industry fee system.* Each successful referendum conclusively authorizes NMFS' imposition of an industry fee system—including the fee payment, collection, and other provisions regarding fee payment and collection under § 600.1013 and § 600.1014—to repay the reduction loan for each financed program that NMFS conducts under this subpart.

### § 600.1011 Reduction methods and other conditions.

(a) *Reduction permits or reduction permits and reduction vessels.* Each program may involve either the surrender and revocation of reduction permits or both the surrender and revocation of reduction permits and the withdrawal from fishing either by title restriction or by scrapping of reduction vessels. No financed program may, however, require such title restriction or scrapping of reduction vessels unless the business plan voluntarily includes the same.

(b) *Reduction permit revocation and surrender.* Each reduction permit is, upon NMFS' tender of the reduction payment for the reduction permit, forever revoked. Each reduction permit holder shall, upon NMFS' tender of the reduction payment, surrender the original reduction permit to NMFS. The reduction permit holder, upon NMFS' tender of the reduction payment, forever relinquishes any claim associated with the reduction permit and with the fishing vessel that was used to harvest fishery resources under the reduction permit that could qualify the reduction permit holder or the fishing vessel owner for any present or future limited access system fishing permit in the reduction fishery.

(c) *Reduction vessel title restriction or scrapping.* For each program that involves reduction vessel title restriction or scrapping:

(1) Each reduction vessel that is subject to title restriction only and is thus not required to be scrapped, is, upon

NMFS' tender of the reduction payment, forever prohibited from any future use for fishing in any area subject to the jurisdiction of the United States or any State, territory, possession, or commonwealth of the United States. NMFS will request that the U.S. Coast Guard permanently restrict each such reduction vessel's title to exclude the reduction vessel's future use for fishing in any such area;

(2) Each reduction vessel owner whose reduction vessel is required to be scrapped shall, upon NMFS' tender of the reduction payment, immediately cease all further use of the reduction vessel and arrange, without delay and at the reduction vessel owner's expense, to scrap the reduction vessel to NMFS' satisfaction, including adequate provision for NMFS to document the physical act of scrapping; and

(3) Each reduction vessel owner, upon NMFS' tender of the reduction payment, forever relinquishes any claim associated with the reduction vessel and with the reduction permit that could qualify the reduction vessel owner or the reduction permit holder for any present or future limited access system fishing permit in the reduction fishery.

(d) *Fishing permits in a non-reduction fishery.* A financed program that does not involve the withdrawal from fishing or scrapping of reduction vessels may not require any holder of a reduction permit in a reduction fishery to surrender any fishing permit in any non-reduction fishery or restrict or revoke any fishing permit other than a reduction permit in the reduction fishery, except those fishing permits authorizing the incidental harvesting of species in any non-reduction fishery during, and as a consequence of, directed fishing for species in the reduction fishery.

(e) *Reduction vessels disposition.* Where a business plan requires the withdrawal from fishing of reduction vessels as well as the revocation of reduction permits: (1) Each reduction vessel that is not documented under Federal law must in every case always be scrapped, without regard to whether a program is a financed program or a subsidized program;

(2) No financed program may require any disposition of a reduction vessel documented under Federal law other than the title restriction in paragraph (b) of this section unless the business plan volunteers to do otherwise; and

(3) Any subsidized program may require the scrapping of reduction vessels documented under Federal law.

(f) *Reduction payments.* NMFS will disburse all reduction payments in the amount and in the manner prescribed in reduction contracts, except reduction payments that a bidder's reduction-contract nonperformance prevents NMFS from disbursing. In financed programs, the reduction loan's principal amount is the total amount of all reduction payments that NMFS disburses from the proceeds of a reduction loan. Any reduction payment that NMFS, because of a bidder's reduction-contract nonperformance, disburses but subsequently recovers, shall reduce the principal amount of the reduction loan accordingly.

(g) *Effect of reduction-contract non-performance.* No referendum, no reduction contract, no reduction loan, and no fee payment and collection obligation under § 600.1013 and § 600.1014 necessary to repay any reduction loan, shall be impaired, invalidated, avoided, or otherwise rendered unenforceable by virtue of any reduction contract's non-performance. This is without regard to the cause of, or reason for, non-performance. NMFS shall endeavor to enforce the specific performance of all reduction contracts, but NMFS' inability, for any reason, to enforce specific performance for any portion of such reduction contracts shall not relieve fish sellers of their obligation to pay, and fish buyers of their obligation to collect, the fee necessary to fully repay the full reduction loan balance that results from all reduction payments that NMFS actually makes and does not recover.

(h) *Program completion.* Other than the payment and collection of the fee that repays a reduction loan and any other residual matters regarding reduction payments and the disposition of reduction permits and reduction vessels, a program shall be completed when NMFS tenders or makes all reduction payments under all reduction

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contracts that circumstances, in NMFS' judgment, reasonably permit NMFS to make.

### § 600.1012 Reduction loan.

(a) *Obligation.* The borrower shall be obligated to repay a reduction loan. The borrower's obligation to repay a reduction loan shall be discharged by fish sellers paying a fee in accordance with § 600.1013. Fish buyers shall be obligated to collect the fee in accordance with § 600.1013 and to deposit and disburse the fee revenue in accordance with § 600.1014.

(b) *Principal amount, interest rate, repayment term, and penalties for non-payment or non-collection.* The reduction loan shall be:

(1) In a principal amount that shall be determined by subsequent program events under this subpart, but which shall not exceed the maximum principal amount in the fishing capacity reduction specifications;

(2) At an annual rate, that shall be determined by subsequent events, of simple interest on the reduction loan's principal balance that shall equal 2 percent plus the Treasury percentage;

(3) Repayable over the repayment term specified in the business plan or otherwise determined by subsequent events; and

(4) Subject to such provisions as implementation regulations shall specify for the payment of costs and penalties for non-payment, non-collection, non-deposit, and/or non-disbursement in accordance with § 600.1013 and § 600.1014.

(c) *Effect of prospective interest rate.* Any difference between a prospective interest rate projected, for the purpose of any aspect of reduction planning or processing under this subpart, before the U.S. Treasury determines the Treasury percentage and an interest rate first known after the U.S. Treasury determines the Treasury percentage shall not void, invalidate, or otherwise impair any reduction contract, any reduction loan repayment obligation, or any other aspect of the reduction process under this subpart. Should any such difference result in a reduction loan that cannot, at the maximum fee rate allowed by law, be repaid, as previously projected, within the maximum maturity, any amount of the re-

duction loan remaining unpaid at maturity shall be repaid after maturity by continuing fee payment and collection under this subpart at such maximum fee rate until the reduction loan's unpaid principal balance and accrued interest is fully repaid. The above notwithstanding, at the discretion of the Secretary, the reduction contract can be voided if a material adverse change affects the reduction contract, reduction loan obligation, or any other aspect of the reduction process under this subpart.

### § 600.1013 Fee payment and collection.

(a) *Amount.* The fee amount is the delivery value times the fee rate.

(b) *Rate.* NMFS will establish the fee rate. The fee rate may not exceed 5 percent of the delivery value. NMFS will establish the initial fee rate by calculating the fee revenue annually required to amortize a reduction loan over the reduction loan's term, projecting the annual delivery value, and expressing such fee revenue as a percentage of such delivery value. Before each anniversary of the initial fee rate determination, NMFS will recalculate the fee rate reasonably required to ensure reduction loan repayment. This will include any changed delivery value projections and any adjustment required to correct for previous delivery values higher or lower than projected.

(c) *Payment and collection.* (1) The full fee is due and payable at the time of fish delivery. Each fish buyer shall collect the fee at the time of fish delivery by deducting the fee from the delivery value before paying, or promising to pay, the net delivery value. Each fish seller shall pay the fee at the time of fish delivery by receiving from the fish buyer the net delivery value, or the fish buyer's promise to pay the net delivery value, rather than the delivery value. Regardless of when the fish buyer pays the net delivery value, the fish buyer shall collect the fee at the time of fish delivery;

(2) In the event of any post-delivery payment for fee fish—including, but not limited to bonuses—whose amount depends on conditions that cannot be known until after fish delivery, that either first determines the delivery value or later increases the previous delivery

value, the fish seller shall pay, and the fish buyer shall collect, at the time the amount of such post-delivery payment first becomes known, the fee that would otherwise have been due and payable as if the amount of the post-delivery payment had been known, and as if the post-delivery payment had consequently occurred, at the time of initial fish delivery;

(3)(i) Each fish seller shall be deemed to be, for the purpose of the fee collection, deposit, disbursement, and accounting requirements of this subpart, both the fish seller and the fish buyer, and shall be responsible for all requirements and liable for any penalties under this subpart applicable to fish sellers and/or fish buyers, each time that a fish seller sells fee fish to:

(A) Any party whose place of business is not located in the United States, who does not take delivery or possession of the fee fish in the United States, who is not otherwise subject to this subpart, or to whom or against whom NMFS cannot otherwise apply or enforce this subpart,

(B) Any party who is a general food-service wholesaler or supplier, a restaurant, a retailer, a consumer, some other type of end-user, or some other party not engaged in the business of buying fish from fish sellers for the purpose of reselling the fish, either with or without processing the fish, or

(C) Any other party who the fish seller has good reason to believe is a party not subject to this subpart or to whom or against whom NMFS cannot otherwise apply or enforce this subpart,

(ii) In each such case the fish seller shall, with respect to the fee fish involved in each such case, discharge, in addition to the fee payment requirements of this subpart, all the fee collection, deposit, disbursement, accounting, record keeping, and reporting requirements that this subpart otherwise imposes on the fish buyer, and the fish seller shall be subject to all the penalties this subpart provides for a fish buyer's failure to discharge such requirements;

(4) Fee payment begins on the date NMFS specifies under the notification procedures of paragraph (d) of this section and continues without interruption at the fee rates NMFS specifies in

accordance this subpart until NMFS determines that the reduction loan is fully repaid. If a reduction loan is, for any reason, not fully repaid at the maturity of the reduction loan's original amortization period, fee payment and collection shall continue until the reduction loan is fully repaid, notwithstanding that the time required to fully repay the reduction loan exceeds the reduction loan's initially permissible maturity.

(d) *Notification.* (1) At least 30 days before the effective date of any fee or of any fee rate change, NMFS will publish a FEDERAL REGISTER notice establishing the date from and after which the fee or fee rate change is effective. NMFS will then also send, by U.S. mail, an appropriate notification to each affected fish seller and fish buyer of whom NMFS has notice;

(2) When NMFS determines that a reduction loan is fully repaid, NMFS will publish a FEDERAL REGISTER notice that the fee is no longer in effect and should no longer be either paid or collected. NMFS will then also send, by U.S. mail, notification to each affected fish seller and fish buyer of whom NMFS has knowledge;

(3) If NMFS fails to notify a fish seller or a fish buyer by U.S. mail, or if the fish seller or fish buyer otherwise does not receive the notice, of the date fee payments start or of the fee rate in effect, each fish seller is, nevertheless, obligated to pay the fee at the fee rate in effect and each fish buyer is, nevertheless, obligated to collect the fee at the fee rate in effect.

(e) *Failure to pay or collect.* (1) If a fish buyer refuses to collect the fee in the amount and manner that this subpart requires, the fish seller shall then advise the fish buyer of the fish seller's fee payment obligation and of the fish buyer's fee collection obligation. If the fish buyer still refuses to properly collect the fee, the fish seller, within the next 7 calendar days, shall forward the fee to NMFS. The fish seller at the same time shall also advise NMFS in writing of the full particulars, including:

(i) The fish buyer's and fish seller's name, address, and telephone number,

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(ii) The name of the fishing vessel from which the fish seller made fish delivery and the date of doing so,

(iii) The quantity and delivery value of each species of fee fish that the fish seller delivered, and

(iv) The fish buyer's reason, if known, for refusing to collect the fee in accordance with this subpart;

(2) If a fish seller refuses to pay the fee in the amount and manner that this subpart requires, the fish buyer shall then advise the fish seller of the fish buyer's collection obligation and of the fish seller's payment obligation. If the fish seller still refuses to pay the fee, the fish buyer shall then either deduct the fee from the delivery value over the fish seller's protest or refuse to buy the fee fish. The fish buyer shall also, within the next 7 calendar days, advise NMFS in writing of the full particulars, including:

(i) The fish buyer's and fish seller's name, address, and telephone number,

(ii) The name of the fishing vessel from which the fish seller made or attempted to make fish delivery and the date of doing so,

(iii) The quantity and delivery value of each species of fee fish the fish seller delivered or attempted to deliver,

(iv) Whether the fish buyer deducted the fee over the fish seller's protest or refused to buy the fee fish, and

(v) The fish seller's reason, if known, for refusing to pay the fee in accordance with this subpart.

(f) *Implementation regulations at variance with this section.* If any special circumstances in a reduction fishery require, in NMFS's judgment, fee payment and/or collection provisions in addition to, or different from, those in this section in order to accommodate the circumstances of, and practices in, a reduction fishery while still fulfilling the intent and purpose of this section, NMFS may, notwithstanding this section, include such provisions in the implementation regulations for such reduction fishery.

### § 600.1014 Fee collection deposits, disbursements, records, and reports.

(a) *Deposit accounts.* Each fish buyer that this subpart requires to collect a fee shall maintain a segregated account at a federally insured financial

institution for the sole purpose of depositing collected fee revenue and disbursing the fee revenue directly to NMFS in accordance with paragraph (c) of this section.

(b) *Fee collection deposits.* Each fish buyer, no less frequently than at the end of each business week, shall deposit, in the deposit account established under paragraph (a) of this section, all fee revenue, not previously deposited, that the fish buyer collects through a date not more than two calendar days before the date of deposit. Neither the deposit account nor the principal amount of deposits in the account may be pledged, assigned, or used for any purpose other than aggregating collected fee revenue for disbursement to the Fund in accordance with paragraph (c) of this section. The fish buyer is entitled, at any time, to withdraw deposit interest, if any, but never deposit principal, from the deposit account for the fish buyer's own use and purposes.

(c) *Deposit principal disbursement.* On the last business 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 amount of deposit principal then in the deposit account. The fish buyer shall do this by check made payable to the Fund subaccount to which the deposit principal relates. The fish buyer shall mail each such check to the Fund subaccount lockbox that NMFS establishes for the receipt of the disbursements for each program. Each disbursement shall be accompanied by the fish buyer's settlement sheet completed in the manner and form that NMFS specifies. NMFS will specify the Fund subaccount lockbox and the manner and form of settlement sheet by means of the notification in § 600.1013(d).

(d) *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:

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

- (i) The date of delivery,
- (ii) The seller's identity,

- (iii) The weight, number, or volume of each species of fee fish delivered,
- (iv) The identity of the fishing vessel that delivered the fee fish,
- (v) The delivery value of each species of fee fish,
- (vi) The net delivery value,
- (vii) The identity of the party to whom the net delivery value is paid, if other than the fish seller,
- (viii) The date the net delivery value was paid, and
- (ix) The total fee amount collected;
- (2) For all fee collection deposits to and disbursements from the deposit account:
  - (i) The dates and amounts of deposits,
  - (ii) The dates and amounts of disbursements to the Fund's lockbox account, and
  - (iii) The dates and amounts of disbursements to the fish buyer or other parties of interest earned on deposits.
- (e) *Annual report.* In each year, on the date to be specified in each implementation regulation, succeeding the year during which NMFS first implemented a fee, each fish buyer shall submit to NMFS a report, on or in the form NMFS specifies, containing the following information for the preceding year, or whatever longer period may be involved in the first annual report, for all fee fish each fish buyer purchases from fish sellers: (1) Total weight, number, or volume bought;
  - (2) Total delivery value paid;
  - (3) Total fee amounts collected;
  - (4) Total fee collection amounts deposited by month;
  - (5) Dates and amounts of monthly disbursements to each Fund lockbox account;
  - (6) Total amount of interest earned on deposits; and
  - (7) Depository account balance at year-end.
- (f) *State records.* If landing records that a state requires from fish sellers contain some or all of the data that this section requires and state confidentiality laws or regulations do not prevent NMFS' access to the records maintained for the state, then fish buyers can use such records to meet appropriate portions of this section's record-keeping requirements. If, however, state confidentiality laws or regula-

tions make such records unavailable to NMFS, then fish buyers shall maintain separate records for NMFS that meet the requirements of this section. If any state law or regulation prohibits fish buyers, or fish sellers where appropriate, from keeping, for the purpose of complying with any requirement of this section, separate records that involve some or all of the same data elements as the landing records that the fish buyers also keep, for state purposes and under state law or regulation, then a financed reduction program will not be possible.

(g) *Audits.* NMFS or its agents may audit, in whatever manner NMFS believes reasonably necessary for the duly diligent administration of reduction loans, the financial records of fish buyers and fish sellers in each reduction fishery in order to ensure proper fee payment, collection, deposit, disbursement, accounting, record keeping, and reporting. Fish buyers and fish sellers shall make all records of all program transactions involving post-reduction fish harvests, fish deliveries, and fee payments, collections, deposits, disbursements, accounting, record keeping, and reporting available to NMFS or NMFS' agents at reasonable times and places and promptly provide all requested information reasonably related to these records that such fish sellers and fish buyers may otherwise lawfully provide. Trip tickets (or similar accounting records establishing the pounds of fee fish that each fish buyer buys from each fish seller each time that each fish buyer does so and each price that each fish buyer then pays to each fish seller for the fee fish) are essential audit documentation.

(h) *Confidentiality of records.* NMFS and NMFS' auditing agents shall maintain the confidentiality of all data to which NMFS has access under this section and shall neither release the data nor allow the data's use for any purpose other than the purpose of this subpart; provided, however, that NMFS may aggregate such data so as to preclude their identification with any fish buyer or any fish seller and use them in the aggregate for other purposes.

(i) *Refunds.* When NMFS determines that a reduction loan is fully repaid,

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NMFS will refund any excess fee receipts, on a last-in/first-out basis, to the fish buyers. Fish buyers shall return the refunds, on a last-in/first-out basis, to the fish sellers who paid the amounts refunded.

(j) *Implementation regulations at variance with this section.* If any special circumstances in a reduction fishery require, in NMFS's judgment, fee collection deposit, disbursement, or records provisions in addition to, or different from, those in this section in order to accommodate the circumstances of, and practices in, a reduction fishery while still fulfilling the intent and purpose of this section, NMFS may, notwithstanding this section, include such provisions in the implementation regulations for such reduction fishery.

### § 600.1015 Late charges.

The late charge to fish buyers for fee payment, collection, deposit, and/or disbursement shall be one and one-half (1.5) percent per month, or the maximum rate permitted by state law, for the total amount of the fee not paid, collected, deposited, and/or disbursed when due to be paid, collected, deposited, and/or disbursed. The full late charge shall apply to the fee for each month or portion of a month that the fee remains unpaid, uncollected, undeposited, and/or undisbursed.

### § 600.1016 Enforcement.

In accordance with applicable law or other authority, NMFS may take appropriate action against each fish seller and/or fish buyer responsible for non-payment, non-collection, non-deposit, and/or non-disbursement of the fee in accordance with this subpart to enforce the collection from such fish seller and/or fish buyer of any fee (including penalties and all costs of collection) due and owing the United States on account of the loan that such fish seller and/or fish buyer should have, but did not, pay, collect, deposit, and/or disburse in accordance with this subpart. All such loan recoveries shall be applied to reduce the unpaid balance of the loan.

### § 600.1017 Prohibitions and penalties.

(a) The following activities are prohibited, and it is unlawful for any party to:

(1) Vote in any referendum under this subpart if the party is ineligible to do so;

(2) Vote more than once in any referendum under this subpart;

(3) Sign or otherwise cast a ballot on behalf of a voter in any referendum under this subpart unless the voter has fully authorized the party to do so and doing so otherwise comports with this subpart;

(4) Interfere with or attempt to hinder, delay, buy, or otherwise unduly or unlawfully influence any eligible voter's vote in any referendum under this subpart;

(5) Submit a fraudulent, unauthorized, incomplete, misleading, unenforceable by specific performance, or inaccurate bid in response to an invitation to bid under this subpart or, in any other way, interfere with or attempt to interfere with, hinder, or delay, any invitation to bid, any bid submitted under any invitation to bid, any reduction contract, or any other reduction process in connection with any invitation to bid;

(6) Revoke or attempt to revoke any bid under this subpart;

(7) Fail to comply with the terms and conditions of any invitation to bid, bid, or reduction contract under this subpart, including NMFS' right under such reduction contracts to specific performance;

(8) Fail to fully and properly pay and collect any fee due payable, and collectible under this subpart or otherwise avoid, decrease, interfere with, hinder, or delay any such payment and collection,

(9) Convert, or otherwise use for any purpose other than the purpose this subpart intends, any paid or collected fee;

(10) Fail to fully and properly deposit on time the full amount of all fee revenue collected under this subpart into a deposit account and disburse the full amount of all deposit principal to the Fund's lockbox account—all as this subpart requires;

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(11) Fail to maintain full, timely, and proper fee payment, collection, deposit, and/or disbursement records or make full, timely, and proper reports of such information to NMFS—all as this subpart requires;

(12) Fail to advise NMFS of any fish seller's refusal to pay, or of any fish buyer's refusal to collect, any fee due and payable under this subpart;

(13) Refuse to allow NMFS or agents that NMFS designates to review and audit at reasonable times all books and records reasonably pertinent to fee payment, collection, deposit, disbursement, and accounting under this subpart or otherwise interfere with, hinder, or delay NMFS or its agents in the course of their activities under this subpart;

(14) Make false statements to NMFS, any of the NMFS' employees, or any of NMFS' agents about any of the matters in this subpart;

(15) Obstruct, prevent, or unreasonably delay or attempt to obstruct, prevent, or unreasonably delay any audit or investigation NMFS or its agents conduct, or attempt to conduct, in connection with any of the matters in this subpart; and/or

(16) Otherwise materially interfere with the efficient and effective conduct of reduction and the repayment of reduction loans under this subpart.

(b) Any party who violates one or more of the prohibitions of paragraph (a) of this section is subject to the full range of penalties the Magnuson-Stevens Act and 15 CFR part 904 provide—including, but not limited to: civil penalties, sanctions, forfeitures, and punishment for criminal offenses—and to the full penalties and punishments otherwise provided by any other applicable law of the United States.

(c) Additionally, NMFS may take any and all appropriate actions, including the communication of action at law, against each party responsible for the non-payment, non-collection, non-deposit, and/or non-disbursement in accordance with § 600.1013 and/or § 600.1014 to enforce the United States' receipt from such party of any fee—including penalties and all costs of collection—due and owing the United States on account of the reduction loan that such party should have, but did not, pay,

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collect, deposit, and/or disburse in accordance with § 600.1013 and/or § 600.1014. All such reduction loan recoveries shall be applied to reduce the unpaid balances of reduction loans.

### § 600.1018 Implementation regulations for each program. [Reserved]

## PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

### Subpart A—General Provisions

- Sec.
- 622.1 Purpose and scope.
  - 622.2 Definitions and acronyms.
  - 622.3 Relation to other laws and regulations.
  - 622.4 Permits and fees.
  - 622.5 Recordkeeping and reporting.
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### Subpart B—Effort Limitations

- 622.15 Wreckfish individual transferable quota (ITQ) system.
- 622.16 Red snapper individual transferable quota (ITQ) system.
- 622.17 South Atlantic golden crab controlled access.
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### Subpart C—Management Measures

- 622.30 Fishing years.
- 622.31 Prohibited gear and methods.
- 622.32 Prohibited and limited-harvest species.
- 622.33 Caribbean EEZ seasonal and/or area closures.
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- 622.36 Seasonal harvest limitations.
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- 622.39 Bag and possession limits.
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- 622.41 Species specific limitations.
- 622.42 Quotas.
- 622.43 Closures.
- 622.44 Commercial trip limits.
- 622.45 Restrictions on sale/purchase.
- 622.46 Prevention of gear conflicts.
- 622.47 Gulf groundfish trawl fishery.
- 622.48 Adjustment of management measures.

APPENDIX A TO PART 622—SPECIES TABLES  
APPENDIX B TO PART 622—GULF AREAS



## Sec. 1861a. Transition to sustainable fisheries

- (a) Fisheries disaster relief
  - (1) At the discretion of the Secretary or at the request of the Governor of an affected State or a fishing community, the Secretary shall determine whether there is a commercial fishery failure due to a fishery resource disaster as a result of -
    - (A) natural causes;
    - (B) man-made causes beyond the control of fishery managers to mitigate through conservation and management measures; or
    - (C) undetermined causes.
  - (2) Upon the determination under paragraph (1) that there is a commercial fishery failure, the Secretary is authorized to make sums available to be used by the affected State, fishing community, or by the Secretary in cooperation with the affected State or fishing community for assessing the economic and social effects of the commercial fishery failure, or any activity that the Secretary determines is appropriate to restore the fishery or prevent a similar failure in the future and to assist a fishing community affected by such failure. Before making funds available for an activity authorized under this section, the Secretary shall make a determination that such activity will not expand the size or scope of the commercial fishery failure in that fishery or into other fisheries or other geographic regions.
  - (3) The Federal share of the cost of any activity carried out under the authority of this subsection shall not exceed 75 percent of the cost of that activity.
  - (4) There are authorized to be appropriated to the Secretary such sums as are necessary for each of the fiscal years 1996, 1997, 1998, and 1999.
- (b) Fishing capacity reduction program
  - (1) The Secretary, at the request of the appropriate Council for fisheries under the authority of such Council, or the Governor of a State for fisheries under State authority, may conduct a fishing capacity reduction program (referred to in this section as the "program") in a fishery if the Secretary determines that the program -
    - (A) is necessary to prevent or end overfishing, rebuild stocks of fish, or achieve measurable and significant improvements in the conservation and management of the fishery;
    - (B) is consistent with the Federal or State fishery management plan or program in effect for such fishery, as appropriate, and that the fishery management plan -
      - (i) will prevent the replacement of fishing capacity removed by the program through a moratorium on new entrants, restrictions on vessel upgrades, and other effort control measures, taking into account the full potential fishing capacity of the fleet; and

(ii) establishes a specified or target total allowable catch or other measures that trigger closure of the fishery or adjustments to reduce catch; and  
(C) is cost-effective and capable of repaying any debt obligation incurred under section [1279f \[1\]](#) of title 46, Appendix.

- (2) The objective of the program shall be to obtain the maximum sustained reduction in fishing capacity at the least cost and in a minimum period of time. To achieve that objective, the Secretary is authorized to pay -
    - (A) the owner of a fishing vessel, if such vessel is (i) scrapped, or (ii) through the Secretary of the department in which the Coast Guard is operating, subjected to title restrictions that permanently prohibit and effectively prevent its use in fishing, and if the permit authorizing the participation of the vessel in the fishery is surrendered for permanent revocation and the owner relinquishes any claim associated with the vessel and permit that could qualify such owner for any present or future limited access system permit in the fishery for which the program is established; or
    - (B) the holder of a permit authorizing participation in the fishery, if such permit is surrendered for permanent revocation, and such holder relinquishes any claim associated with the permit and vessel used to harvest fishery resources under the permit that could qualify such holder for any present or future limited access system permit in the fishery for which the program was established.
  - (3) Participation in the program shall be voluntary, but the Secretary shall ensure compliance by all who do participate.
  - (4) The Secretary shall consult, as appropriate, with Councils, Federal agencies, State and regional authorities, affected fishing communities, participants in the fishery, conservation organizations, and other interested parties throughout the development and implementation of any program under this section.
- (c) Program funding
    - (1) The program may be funded by any combination of amounts -
      - (A) available under clause (iv) of section 713c-3(b)(1)(A) of title 15;
      - (B) appropriated for the purposes of this section;
      - (C) provided by an industry fee system established under subsection (d) of this section and in accordance with section [1279f \[1\]](#) of title 46, Appendix; or
      - (D) provided from any State or other public sources or private or non-profit organizations.

- (2) All funds for the program, including any fees established under subsection (d) of this section, shall be paid into the fishing capacity reduction fund established under section [1279f \[1\]](#) of title 46, Appendix.
- (d) Industry fee system
- (1)
  - (A) If an industry fee system is necessary to fund the program, the Secretary, at the request of the appropriate Council, may conduct a referendum on such system. Prior to the referendum, the Secretary, in consultation with the Council, shall -
    - (i) identify, to the extent practicable, and notify all permit or vessel owners who would be affected by the program; and
    - (ii) make available to such owners information about the industry fee system describing the schedule, procedures, and eligibility requirements for the referendum, the proposed program, and the amount and duration and any other terms and conditions of the proposed fee system.
  - (B) The industry fee system shall be considered approved if the referendum votes which are cast in favor of the proposed system constitute a two-thirds majority of the participants voting.
- (2) Notwithstanding section [1854](#)(d) of this title and consistent with an approved industry fee system, the Secretary is authorized to establish such a system to fund the program and repay debt obligations incurred pursuant to section [1279f \[1\]](#) of title 46, Appendix. The fees for a program established under this section shall -
  - (A) be determined by the Secretary and adjusted from time to time as the Secretary considers necessary to ensure the availability of sufficient funds to repay such debt obligations;
  - (B) not exceed 5 percent of the ex-vessel value of all fish harvested from the fishery for which the program is established;
  - (C) be deducted by the first ex-vessel fish purchaser from the proceeds otherwise payable to the seller and accounted for and forwarded by such fish purchasers to the Secretary in such manner as the Secretary may establish; and
  - (D) be in effect only until such time as the debt obligation has been fully paid.
- (e) Implementation plan
  - (1) The Secretary, in consultation with the appropriate Council or State and other interested parties, shall prepare and publish in the Federal Register for a 60-day public comment period an implementation plan, including proposed regulations, for each program. The implementation plan shall -

- (A) define criteria for determining types and numbers of vessels which are eligible for participation in the program taking into account characteristics of the fishery, the requirements of applicable fishery management plans, the needs of fishing communities, and the need to minimize program costs; and
  - (B) establish procedures for program participation (such as submission of owner bid under an auction system or fair market-value assessment) including any terms and conditions for participation which the Secretary deems to be reasonably necessary to meet the goals of the program.
  - (2) During the 60-day public comment period -
    - (A) the Secretary shall conduct a public hearing in each State affected by the program; and
    - (B) the appropriate Council or State shall submit its comments and recommendations, if any, regarding the plan and regulations.
  - (3) Within 45 days after the close of the public comment period, the Secretary, in consultation with the appropriate Council or State, shall analyze the public comment received and publish in the Federal Register a final implementation plan for the program and regulations for its implementation. The Secretary may not adopt a final implementation plan involving industry fees or debt obligation unless an industry fee system has been approved by a referendum under this section.
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(B) by renumbering the remaining subsections;

(C) in section 3(g), as redesignated by this subsection, by striking “The appointing authorities” and inserting in lieu thereof “For the northern, southern, and Fraser River panels, the appointing authorities”; and

(D) in section 3(h)(3), as redesignated by this subsection, by striking “northern and southern” and inserting in lieu thereof “northern, southern, and transboundary”.

(6) The fishery research vessel for which funds were appropriated in Public Law 106-113 shall be homeported in Kodiak, Alaska, and is hereby named “OSCAR DYSON”.

(d)(1) The Secretary of Commerce (hereinafter “the Secretary”) shall, after notice and opportunity for public comment, adopt final regulations not later than May 1, 2001 to implement a fishing capacity reduction program for crab fisheries included in the Fishery Management Plan for Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands (hereinafter “BSAI crab fisheries”). In implementing the program the Secretary shall—

(A) reduce the fishing capacity in the BSAI crab fisheries by permanently reducing the number of license limitation program crab licenses;

(B) permanently revoke all fishery licenses, fishery permits, area and species endorsements, and any other fishery privileges, for all fisheries subject to the jurisdiction of the United States, issued to a vessel or vessels (or to persons on the basis of their operation or ownership of that vessel or vessels) for which a BSAI crab fisheries reduction permit is surrendered and revoked under section 6011(b) of title 50, Code of Federal Regulations;

(C) ensure that the Secretary of Transportation is notified of each vessel for which a reduction permit is surrendered and revoked under the program, with a request that such Secretary permanently revoke the fishery endorsement of each such vessel and refuse permission to transfer any such vessel to a foreign flag under paragraph (5);

(D) ensure that vessels removed from the BSAI crab fisheries under the program are made permanently ineligible to participate in any fishery worldwide, and that the owners of such vessels contractually agree that such vessels will operate only under the United States flag or be scrapped as a reduction vessel pursuant to section 600.1011(c) of title 50, Code of Federal Regulations;

(E) ensure that vessels removed from the BSAI crab fisheries, the owners of such vessels, and the holders of fishery permits for such vessels forever relinquish any claim associated with such vessel, permits, and any catch history associated with such vessel or permits that could qualify such vessel, vessel owner, or permit holder for any present or future limited access system fishing permits in the United States fisheries based on such vessel, permits, or catch history;

(F) not include the purchase of Norton Sound red king crab or Norton Sound blue king crab endorsements in the program, though any such endorsements associated with a reduction permit or vessel made ineligible or scrapped under the program shall also be surrendered and revoked as if surrendered and revoked pursuant to section 600.1011(b) of title 50, Code of Federal Regulations;

(G) seek to obtain the maximum sustained reduction in fishing capacity at the least cost by establishing bidding procedures that—

(i) assign a bid score to each bid by dividing the price bid for each reduction permit by the total value of the crab landed in the most recent 5-year period in each crab fishery from 1990 through 1999 under that permit, with the value for each year determined by multiplying the average price per pound published by the State of Alaska in each year for each crab fishery included in such reduction permit by the total pounds landed in each crab fishery under that permit in that year; and

(ii) use a reverse auction in which the lowest bid score ranks first, followed by each bid with the next lowest bid score, until the total bid amount of all bids equals a reduction cost that the next lowest bid would cause to exceed \$100,000,000;

(H) not waive or otherwise make inapplicable any requirements of the License Limitation Program applicable to such crab fisheries, in particular any requirements in sections 679.4(k) and (l) of title 50, Code of Federal Regulations;

(I) not waive or otherwise make inapplicable any catcher vessel sideboards implemented under the American Fisheries Act (AFA), except that the North Pacific Fishery Management Council shall recommend to the Secretary and to the State of Alaska, not later than February 16, 2001, and the Secretary and the State of Alaska shall implement as appropriate, modifications to such sideboards to the extent necessary to permit AFA catcher vessels that remain in the crab fisheries to share proportionately in any increase in crab harvest opportunities that accrue to all remaining AFA and non-AFA catcher vessels if the fishing capacity reduction program required by this section is implemented;

(J) establish sub-amounts and repayment fees for each BSAI crab fishery prosecuted under a separate endorsement for repayment of the reduction loan, such that—

(i) a reduction loan sub-amount is established for each separate BSAI crab fishery (other than Norton Sound red king crab or Norton Sound blue king crab) by dividing the total value of the crab landed in that fishery under all reduction permits by the total value of all crab landed under such permits in the BSAI crab fisheries (determined using the same average prices and years used under subparagraph (G)(i) of this paragraph), and multiplying the reduction loan amount by the percentage expressed by such ratio; and

(ii) fish sellers who participate in the crab fishery under each endorsement repay the reduction loan sub-amount attributable to that fishery; and

(K) notwithstanding section 1111(b) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f(b)(4)), establish a repayment period for the reduction loan of not less than 30 years.

(2)(A) Only persons to whom a non-interim BSAI crab license and an area/species endorsement have been issued (other than persons to whom only a license and an area/species endorsement for Norton Sound red king crab or Norton Sound blue king crab have been issued) for vessels that—

(i) qualify under the License Limitation Program criteria set forth in section 679.4 of title 50, Code of Federal Regulations, and

(ii) have made at least one landing of BSAI crab in either 1996, 1997, or prior to February 7 in 1998, may submit a bid in the fishing capacity reduction program established by this section.

(B) After the date of enactment of this section—

(i) no vessel 60 feet or greater in length overall may participate in any BSAI crab fishery (other than for Norton Sound red king crab or Norton Sound blue king crab) unless such vessel meets the requirements set forth in subparagraphs (A)(i) and (A)(ii) of this paragraph; and

(ii) no vessel between 33 and 60 feet in length overall may participate in any BSAI crab fishery (other than for Norton Sound red king crab or Norton Sound blue king crab) unless such vessel meets the requirements set forth in subparagraph (A)(i) of this paragraph. Nothing in this paragraph shall be construed to affect the requirements for participation in the fisheries for Norton Sound red king crab or Norton Sound blue king crab. The Secretary may, on a case by case basis and after notice and opportunity for public comment, waive the application of subparagraph (A)(ii) of this paragraph if the Secretary determines such waiver is necessary to implement one of the specific exemptions to the recent participation requirement that were recommended by the North Pacific Fishery Management Council in the record of its October, 1998 meeting.

(3) The fishing capacity reduction program required under this subsection shall be implemented under this subsection and sections 312(b)–(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(b)–(e)). Section 312 and the regulations found in Subpart L of Part 600 of title 50, Code of Federal Regulations, shall apply only to the extent such section or regulations are not inconsistent with or made inapplicable by the specific provisions of this subsection. Sections 600.1001, 600.1002, 600.1003, 600.1005, 600.1010(b), 600.1010(d)(1), 600.1011(d), the last sentence of 600.1011(a), and the last sentence of 600.1014(f) of such Subpart shall not apply to the program implemented under this subsection. The program shall be deemed accepted under section 600.1004, and any time period specified in Subpart L that would prevent the Secretary from complying with the May 1, 2001 date required by this subsection shall be modified as appropriate to permit compliance with that date. The referendum required for the program under this subsection shall be a post-bidding referendum under section 600.1010 of title 50, Code of Federal Regulations.

(4)(A) The fishing capacity reduction program required under this subsection is authorized to be financed in equal parts through a reduction loan of \$50,000,000 under sections 1111 and 1112 of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f and 1279g) and \$50,000,000 which is authorized to be appropriated for the purposes of such program.

(B) Of the \$1,000,000 appropriated in section 120 of division A of Public Law 105-277 for the cost of a direct loan in the Bering Sea and Aleutian Islands crab fisheries—

(i) \$500,000 shall be for the cost of guaranteeing the reduction loan required under subparagraph (A) of this paragraph in accordance with the requirements of the Federal Credit Reform Act; and

(ii) \$500,000 shall be available to the Secretary to pay for the cost of implementing the fishing capacity reduction program required by this subsection.

(C) The funds described in this subsection shall remain available, without fiscal year limitation, until expended. Any funds not used for the fishing capacity reduction program required by this subsection, whether due to a rejection by referendum or otherwise, shall be available on or after October 15, 2002, without fiscal year limitation, for assistance to fishermen or fishing communities.

(5)(A) The Secretary of Transportation shall, upon notification and request by the Secretary, for each vessel identified in such notification and request—

(i) permanently revoke any fishery endorsement issued to such vessel under section 12108 of title 46, United States Code; and

(ii) refuse to grant the approval required under section 9(c)(2) of the Shipping Act, 1916 (46 U.S.C. App. 808(c)(2)) for the placement of such vessel under foreign registry or the operation of such vessel under the authority of a foreign country.

(B) The Secretary shall, after notice and opportunity for public comment, adopt final regulations not later than May 1, 2001, to prohibit any vessel for which a reduction permit is surrendered and revoked under the fishing capacity reduction program required by this section from engaging in fishing activities on the high seas or under the jurisdiction of any foreign country while operating under the United States flag.

(6) The purpose of this subsection is to implement a fishing capacity reduction program for the BSAI crab fisheries that results in final action to permanently remove harvesting capacity from such fisheries prior to December 31, 2001. In implementing this subsection the Secretary is directed to use, to the extent practicable, information collected and maintained by the State of Alaska. Any requirements of the Paperwork Reduction Act, the Regulatory Flexibility Act, or any Executive order that would, in the opinion of the Secretary, prevent the Secretary from meeting the deadlines set forth in this subsection shall not apply to the fishing capacity reduction program or the promulgation of regulations to implement such program required by this subsection. Nothing in this subsection shall be construed to prohibit the North Pacific Fishery Management Council from recommending, or the Secretary from approving, changes to any Fishery Management Plan, License Limitation Program, or American Fisheries Act provisions affecting catcher vessel sideboards in accordance with applicable law: *Provided*, That except as specifically provided in this subsection, such Council may not recommend, and the Secretary may not approve, any action that would have the



effect of increasing the number of vessels eligible to participate in the BSAI crab fisheries after March 1, 2001.

(e)(1) This subsection may be referred to as the “Pribilof Islands Transition Act”.

(2) The purpose of this subsection is to complete the orderly withdrawal of the National Oceanic and Atmospheric Administration from the civil administration of the Pribilof Islands, Alaska.

(3) Public Law 89-702 (16 U.S.C. 1151 et seq.), popularly known and referred to in this subsection as the Fur Seal Act of 1966, is amended by amending section 206 (16 U.S.C. 1166) to read as follows:

“SEC. 206. (a)(1) Subject to the availability of appropriations, the Secretary shall provide financial assistance to any city government, village corporation, or tribal council of St. George, Alaska, or St. Paul, Alaska.

“(2) Notwithstanding any other provision of law relating to matching funds, funds provided by the Secretary as assistance under this subsection may be used by the entity as non-Federal matching funds under any Federal program that requires such matching funds.

“(3) The Secretary may not use financial assistance authorized by this Act—

“(A) to settle any debt owed to the United States;

“(B) for administrative or overhead expenses; or

“(C) for contributions sought or required from any person for costs or fees to clean up any matter that was caused or contributed to by such person on or after March 15, 2000.

“(4) In providing assistance under this subsection the Secretary shall transfer any funds appropriated to carry out this section to the Secretary of the Interior, who shall obligate such funds through instruments and procedures that are equivalent to the instruments and procedures required to be used by the Bureau of Indian Affairs pursuant to title IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

“(5) In any fiscal year for which less than all of the funds authorized under subsection (c)(1) are appropriated, such funds shall be distributed under this subsection on a pro rata basis among the entities referred to in subsection (c)(1) in the same proportions in which amounts are authorized by that subsection for grants to those entities.

“(b)(1) Subject to the availability of appropriations, the Secretary shall provide assistance to the State of Alaska for designing, locating, constructing, redeveloping, permitting, or certifying solid waste management facilities on the Pribilof Islands to be operated under permits issued to the City of St. George and the City of St. Paul, Alaska, by the State of Alaska under section 46.03.100 of the Alaska Statutes.

“(2) The Secretary shall transfer any appropriations received under paragraph (1) to the State of Alaska for the benefit of rural and Native villages in Alaska for obligation under section 303 of Public Law 104-182, except that subsection (b) of that section shall not apply to those funds.

“(3) In order to be eligible to receive financial assistance under this subsection, not later than 180 days after the date of enactment of this paragraph, each of the Cities of St. Paul and St. George shall enter into a written agreement with the State of Alaska under which such City shall identify by its legal boundaries the

Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4340.

#### SUPPLEMENTARY INFORMATION:

##### Background

On April 1, 2004, the Department initiated a sunset review of the CVD order on SSPC from Italy pursuant to section 751(c) of the Act. See Initiation of Five-Year (Sunset) Reviews, 69 FR 17129 (April 1, 2004). On October 21, 2004, the Department published the preliminary results of the full sunset review of the CVD on SSPC from Italy. See *Notice of Preliminary Results of Full Sunset Review: Stainless Steel Plate in Coils from Italy* (“preliminary sunset review results”), 69 FR 61800 (October 21, 2004) and the accompanying *Issues and Decision Memorandum for the Full Sunset Review of the Countervailing Duty Order on Stainless Steel Plate in Coils from Italy: Preliminary Results* (“preliminary results decision memorandum”) dated October 15, 2004.<sup>1</sup> In our preliminary sunset review results, we found that benefits from the following programs would likely continue or recur were the order revoked:

- (1) Law 675/77;
- (2) Law 451/94 Early Retirement Benefits; and
- (3) European Social Fund.

On December 6, 2004, the Department received a joint case brief from the Government of Italy (GOI) and the European Commission (EC). See Case Brief from the EC and the GOI re: Sunset Review of the Countervailing Duty Order on Stainless Steel Plate in Coils from Italy (December 6, 2004) including separate GOI and EC Attachments. The Department also received a case brief from ThyssenKrupp Acciai Speciali Terni, S.p.A. (“TKAST”) (formerly Acciai Speciali Terni, S.p.A.) in a timely manner. See Case Brief from TKAST re: Stainless Steel Plate in Coils from Italy (Sunset) (December 13, 2004). The Department did not receive a case brief from the domestic interested parties but did receive a rebuttal brief to the case briefs submitted by the GOI, EC and TKAST. See Rebuttal Brief from Petitioners re: Sunset Review of the Countervailing Duty Order on Stainless Steel Plate in Coils from Italy (December 20, 2004).

##### Scope of Review

The product covered by this order is certain SSPC. Stainless steel is an alloy steel containing, by weight, 1.2 percent

or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (e.g., cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this order are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars. In addition, certain cold-rolled SSPC is also excluded from the scope of this order. The excluded cold-rolled SSPC is defined as that merchandise which meets the physical characteristics described above that has undergone a cold-reduction process that reduced the thickness of the steel by 25 percent or more, and has been annealed and pickled after this cold reduction process. The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.20, 7219.12.00.25, 7219.12.00.50, 7219.12.00.55, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the orders is dispositive.

##### Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum (“Decision Memorandum”) from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated February 25, 2005, which is hereby adopted by this notice. The issues discussed in the accompanying Decision Memorandum include the likelihood of continuation or recurrence of countervailable subsidies and the net subsidy likely to prevail were the order revoked. Parties can find a complete

discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B-099, of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at <http://ia.ita.doc.gov/frn>, under the heading “March 2005.” The paper copy and electronic version of the Decision Memorandum are identical in content.

##### Final Results of Review

We determine that revocation of the countervailing duty order on SSPC from Italy would be likely to lead to continuation or recurrence of countervailable subsidies at the rate listed below:

Producers/exporters	Net countervailable subsidy (percent)
TKAST .....	0.73
All Others .....	0.73

##### Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (“APO”) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department’s regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

**Joseph A. Spetrini,**

*Assistant Secretary for Import Administration.*

[FR Doc. E5-863 Filed 3-2-05; 8:45 am]

BILLING CODE 3510-DS-P

#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### Proposed Information Collection; Comment Request; Fishing Capacity Reduction Program Buyback Requests

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

<sup>1</sup> For a full discussion of the history of this order prior to the preliminary results of this sunset review, see the October 15, 2004, preliminary results decision memorandum.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before May 2, 2005.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Michael A. Sturtevant, (301) 713-2390 or [michael.a.sturtevant@noaa.gov](mailto:michael.a.sturtevant@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

NOAA has established a program to reduce excess fishing capacity by paying fishermen to (1) surrender their fishing permits or (2) both surrender their permits and either scrap their vessels or restrict vessel titles to prevent fishing. The buybacks can be funded by a Federal loan to the industry or by direct Federal or other funding. Depending upon the type of buyback involved, the program can entail the submission of buyback requests by industry; the submission of bids; referenda, if fishery participants; and reporting of the collection of fees to repay a Federal loan. For buybacks involving State-managed fisheries, the State may need to develop the buyback plan and comply with other information requirements.

**II. Method of Collection**

Paper forms.

**III. Data**

*OMB Number:* 0648-0376.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Business or other for-profit organizations; individuals or households; and State, local, or tribal government.

*Estimated Number of Respondents:* 1,272.

*Estimated Time Per Response:* 6,634 hours for a business plan; 4 hours for a referenda vote; 4 hours for an invitation to bid; 10 minutes to submit a fish ticket; 2 hours for a monthly buyer report; 4 hours for an annual buyer

report; 2 hours for a seller/buyer report; 270 hours for a state approval of plans and amendments to state fishery management plan; and 1 hour for advising of any holder or owner claims that conflict with accepted bidders' representations about reduction permit ownership or reduction vessel ownership.

*Estimated Total Annual Burden Hours:* 38,563.

*Estimated Total Annual Cost to Public:* \$2,000.

**IV. Request for Comments**

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 25, 2005.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 05-4059 Filed 3-2-05; 8:45 am]

**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

[I.D. 021805H]

**Request for a Limited Waiver of the Moratorium on Taking Marine Mammals**

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

**ACTION:** Notice of availability.

**SUMMARY:** The Makah Tribe of Washington State submitted a request to NMFS for a waiver of the moratorium in the Marine Mammal Protection Act on taking marine mammals. The request is available for public inspection.

**ADDRESSES:** A copy of the request may be obtained by writing Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS/PR2, 1315 East West Highway, Silver Spring, MD 20910

**FOR FURTHER INFORMATION CONTACT:** Tom Eagle, Office of Protected Resources, 301-713-2322, ext. 105, e-mail [Tom.Eagle@noaa.gov](mailto:Tom.Eagle@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

The request for waiver and supplemental material are available via the Internet at <http://www.nmfs.noaa.gov/pr/>. See Makah Request for Waiver under "Recent News and Hot Topics".

**Background**

On February 14, 2005, NMFS received a request from the Makah Tribe of Washington State for a waiver of the MMPA's moratorium on taking marine mammals to allow Tribal members to take limited number of Eastern North Pacific gray whales under an aboriginal subsistence quota issued by the International Whaling Commission (IWC). The Makah request to harvest up to 20 whales in a 5-year period; however, in a single year, no more than seven whales could be struck, and no more than five whales could be landed.

MMPA section 101(a) places a moratorium on the taking of marine mammals with limited specific exceptions. MMPA section 101(a)(3)(A) allows and directs NMFS to determine when, to what extent, if at all, and by what means, it is compatible with the MMPA to waive the moratorium. In so doing, NMFS must have due regard for the distribution, abundance, breeding habits, and times and lines of migratory movements of such marine mammals. Formal procedures for waiving the moratorium and issuing pertinent regulations are described in MMPA section 103(d).

Dated: February 23, 2005.

**Laurie K. Allen,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 05-4048 Filed 3-2-05; 8:45 am]

**BILLING CODE 3510-22-S**