

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 01/27/2009

Department of Commerce  
National Oceanic and Atmospheric Administration  
FOR CERTIFYING OFFICIAL: Suzanne Hilding  
FOR CLEARANCE OFFICER: Diana Hynek

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 07/18/2008

ACTION REQUESTED: Extension without change of a currently approved collection  
TYPE OF REVIEW REQUESTED: Regular  
ICR REFERENCE NUMBER: 200807-0648-002  
AGENCY ICR TRACKING NUMBER:  
TITLE: Fisheries Finance Program Requirements  
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change  
OMB CONTROL NUMBER: 0648-0012  
The agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

EXPIRATION DATE: 01/31/2012 DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	1,250	10,000	5,000
New	1,735	13,880	8,050
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	0	0	0
Change due to Agency Adjustment	485	3,880	3,050
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE:

OMB Authorizing Official: Kevin F. Neyland  
Deputy Administrator,  
Office Of Information And Regulatory Affairs

List of ICs

IC Title	Form No.	Form Name	CFR Citation
Fisheries Finance Program Application	88-1	Fisheries Finance Program Loan Application	
Annual Financial Statement for Current Borrowers			50 CFR 253

# 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.**

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

## 19. Certification for Paperwork Reduction Act Submissions

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

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

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

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

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

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

**SUPPORTING STATEMENT  
FISHERIES FINANCING PROGRAM REQUIREMENTS  
OMB CONTROL NO. 0648-0012**

**A. JUSTIFICATION**

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

Title XI of the Merchant Marine Act ([46 U.S.C. 1271 et seq.](#)) authorizes the Fisheries Financing Program (FFP) to assist small businessmen in financing or refinancing commercial fishing vessels, fisheries shoreside facilities, aquaculture operations, and individual fishing quotas (IFQ). Title XI also authorizes the Fishing Capacity Reduction Program (FCRP) to reduce excess fishing capacity by paying fishermen to either surrender their fishing permits or vessels, or both. All obligations involving any fishing vessel, fishery facility, aquaculture facility, or individual fishing quota issued subsequent to the Sustainable Fisheries Act are direct loan obligations. These financings contribute to the stability of the fishing industry, which continues to be viewed by the Congress as in the national interest. The relevant portions of Title XI are implemented at [50 CFR Part 253](#).

The FFP application form, National Oceanic and Atmospheric Administration (NOAA) Form 88-1, is used by commercial fishermen to apply for financing. The form has been redesigned to provide for additional loan services authorized by the Sustainable Fisheries Act and to clarify requirements. Annual reporting is also required by all current borrowers.

The FFP involves providing three types of loans.

**a. Direct Loans for Vessels, Shoreside Facilities, and Aquaculture**

The loans requested under the FFP will provide the financial assistance authorized under the 1996 Sustainable Fisheries Act (SFA), as amended, Title XI of the Merchant Marine Act, 1936 as amended, and the Magnuson-Stevens Fishery Conservation and Management Act.

Traditional FFP direct loans financing offers the fishing industry slightly better interest rates and longer term loans than are available elsewhere. The longer term loans allow the industry to amortize their capital investment over the actual economic life of the fisheries asset. Lower debt service reduces economic pressure, thus allowing the borrower to more easily accommodate more restrictive fishery management initiatives. FFP regulations ensure that FFP traditional lending will not increase harvesting capacity in the fisheries but will simply permit the financing of the acquisition of existing vessels or the refinancing of existing debt for vessels already in the fishery.

Shoreside processing loans are capacity neutral. Aquaculture financing is an activity that NOAA is actively encouraging because increases in aquaculture grown fish remove pressure on the wild stock.

## **b. Mariculture Fisheries Finance**

NOAA encourages the development of mariculture (growing seafood in salt waters beyond low tide) projects. This technology is not as mature as traditional aquaculture activities and consequently has been assigned a higher risk.

## **c. FFP Halibut and Sablefish IFQ loans**

The SFA (Public Law 104-297) amended section 1104A (a)(7) of Title XI of the Merchant Marine Act (46 U.S.C. App. 1274) and section 303(d)(4) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 et. seq.) to authorize financing and refinancing the cost of entry-level fishermen and fishermen who fish from small boats purchasing individual fishing quota (IFQ). SFA amendments to section 303(d)(4) and section 304(d)(2) of the Magnuson-Stevens Act authorize the Federal Credit Reform Act cost of IFQ lending to be funded by up to 25% of the IFQ and Community Development Quota (CDQ) fee revenue from the IFQ fishery involved.

## **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.**

The application for FFP financing (NOAA Form 88-1) provides the information needed to determine whether the applicant is a good credit risk. All applicants for FFP financing are requested to provide information such as the applicant's identity (name and tax identification number), and address, the amount of financing applied for, the purpose of loan, an appraisal of the vessel or facility involved, financial information including the last three tax returns, a list of creditors and buyers with relevant credit terms, identification of authorized representatives (accountant, attorney, insurance agent), and legal history (status regarding bankruptcy, litigation, delinquency on and Federal debt, etc.).

This information is generally required by any commercial lending institution and provides a basis for evaluating credit-worthiness and repayment prospects. The requirement is to ensure that the loan is for purposes authorized for this program. Applicants with a history of credit problems, litigation or bankruptcy, lack of capital, etc. generally cannot meet the FFP's stringent credit standards. Applications are approved only for those loans with excellent repayment prospects.

Annual financial statements are required of all borrowers. These statements update the balance sheet information presented with the original application. The financial statements are used to monitor the borrower's financial condition and to trigger servicing actions if indicated.

As explained in the preceding paragraphs, the information gathered has utility. NOAA Fisheries will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. See response #10 of the Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. There is no plan to disseminate this information, but if

dissemination is warranted the information will be subjected to quality control measures and a pre-dissemination review pursuant to Section 515 of Public Law 106-554.

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

The information requested is the minimum necessary to comply with customary banking practices to extend credit. Hard copy applications were required in the past because original signatures are required and there are severe penalties for fraud. The division has initiated action to determine, through senior management and General Counsel, Fisheries, if use of electronic signatures would be acceptable. There should be a determination by October 1, 2008. If acceptable, the program will make the application available on the National Marine Fisheries Service (NMFS) website, <http://www.nmfs.noaa.gov/>.

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

Because NOAA is the sole Federal provider of FFP financing, 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.**

Information collected relates to specific applicants and proposed financings. The information collected is the minimum necessary to determine eligibility and amount of assistance.

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

Statutorily-mandated financial assistance could not be delivered without this information collection.

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

Not applicable.



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

A Federal Register Notice, published December 10, 2007 (72 FR 69668) solicited comments on this collection. One comment was received but it did not address the information collection requirements or public burden.

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

Not applicable.

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

The information collected is confidential under NOAA Administrative Order 216-100, which “prescribes policies and procedures for protecting the confidentiality of data submitted to and collected by NOAA/ NMFS as authorized or required by law.” Confidentiality is assured on the form.

A Privacy Act System of Records Notice for all Fisheries Finance Programs is currently under review at NOAA.

**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.**

135 FFP respondents x 1 NOAA Form 88-1 x 8 hrs/application = 1,080 hours.

100 IFQ respondents x 1 NOAA Form 88-1 x 8 hrs/application = 800 hours.

1,500 respondents x 1 annual financial statement for current borrowers x 8 hrs/statement = 12,000 hours.

Totals: 1,735 responses and 13,880 hours.

**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).**

There is only a minimal cost burden of this information collection to respondents, primarily for copying of supporting documents and mailing applications and reports. The average estimated cost per response is \$4.64, with a total annual cost of \$8,050.

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

There is no annualized cost of this information collection to the Federal government; the time reviewing the applications and reports is already covered under the staff salary.

**15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.**

The net increase of 485 in responses and 3,880 in hours is due to:

- 1) an increase from 1,000 to 1,500 in the current number of respondents who are loan recipients and thus need to provide an annual financial statement, adding 4,000 hours.
- 2) a decrease in the estimated number of FFP applicants and applications, from 150 to 135, removing 120 hours.

The net increase of \$2,675 in cost, or a per-response cost of \$0.34, is a reflection of postage rate increases since 2003. The increase in ROCIS appears to be \$3,050, as the previous cost of \$5,275 was rounded down to \$5,000 when migrated to ROCIS.

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

The results will not be published.

**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.**

The expiration date will be displayed.

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

No exceptions are requested.

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

This collection does not employ statistical methods.

### FISHERIES FINANCE PROGRAM (FFP) – LOAN APPLICATION FORM

**KNOWINGLY SUPPLYING FALSE INFORMATION OR WILLFULLY OVERVALUING ANY ASSET OR INCOME FOR THE PURPOSE OF OBTAINING A LOAN IS A VIOLATION OF FEDERAL LAW PUNISHABLE BY A FINE OF UP TO \$25,000 AND/OR IMPRISONMENT FOR 1 TO 5 YEARS.**

**PRIVACY ACT NOTICE:** This request for information is authorized by Title 46 U.S.C. 1271-1279 and 50 CFR Part 253, Subpart B, and is voluntary. The data will primarily be used for the evaluation of financial condition in connection with application for financing under the Fisheries Finance Program. Financing will not be considered unless all requested information is furnished.

Applicant's Name (exact legal title)

Address	Tax ID Number or Social Security No.
	Phone Number (     )
	Fax Number (     )

Applicant is:  Individual    Partnership    Corporation    Limited Liability Company

Loan Amount Requested \$ \_\_\_\_\_ Term Requested: \_\_\_\_\_ years

**Note:** Loan amount cannot exceed 80% of the cost or depreciated actual cost of the project.

**Application Fee:**  
**Attach a check payable to "NOAA, NMFS, FFP" for one-half of one percent of the loan amount you are requesting.** (If your application is not approved, one-half of the fee is refundable.)

Do you want to keep this application confidential and withheld from public disclosure to the extent authorized by law, including, but not limited to, the Freedom of Information Act, 5 U.S.C. section 552?    Yes    No

The Applicant certifies that: (1) it is a citizen of the United States (if a corporation, at least 75% of the stock must be held by U.S. citizens), and (2) all information in this application is true and correct to the best of the applicant's knowledge and belief and is submitted to obtain a loan from the Fisheries Finance Program.

The applicant authorizes anyone possessing financial, credit, business, or character information to release it to the Financial Services Division of the National Marine Fisheries Service (all such information shall be kept confidential by that agency). Duplicates of this authorization shall have the same validity as the original.

\_\_\_\_\_ Date: \_\_\_\_\_  
(signature)

\_\_\_\_\_ Date: \_\_\_\_\_  
(signature)

\_\_\_\_\_ Date: \_\_\_\_\_  
(signature)

**Note: Both spouses must sign if they are co-applicants; each partner must sign if applicant is a partnership; authorized corporate officer must sign and signature must be properly attested if applicant is a corporation, and corporate seal affixed, if applicable.**

<b>Purpose of Loan:</b> (Attach additional sheet(s) if necessary.)

- |  |
|--|
| <p>(1) <b>For Refinancing</b> existing long-term debt, attach copies of current notes and mortgages, or</p> <p>(2) <b>For New Construction</b> (<i>New construction is limited only to aquaculture projects</i>), attach copy of construction contract(s).</p> <p>(3) <b>For Purchase</b> of used Vessels, Shoreside Facilities, or Aquaculture Facilities, attach a copy of purchase and sales agreement.</p> <p>(4) <b>For Reconstruction</b> (<i>Vessel reconstruction which increases harvesting capacity is not permitted</i>) of Vessels, Shoreside Facilities, or Aquaculture Facilities, attach a copy of appropriate contracts and invoices.</p> <p>(5) <b>For Permit Financing</b> (certain Federal fishing permits may be eligible for FFP financing or refinancing), attach a copy of the purchase contract.</p> |
|--|

<b>Appraisals and Surveys Required:</b>
<p>(1) <b>Vessels</b> – Provide a current (within the last year) condition and valuation survey by a licensed marine surveyor, (Naval Architect, Stability Test and/or Appraisal may be required.)</p> <p>Also include copies of all Federal and State fishing permits owned or utilized by the vessel.</p> <p>(2) <b>Land and Shoreside Facilities</b> - Provide a current appraisal that includes an alternate use appraisal by a licensed appraiser. Member, Appraisal Institute (MAI) appraisal may be required.</p>

<b>Your Business</b>
Provide a brief description of your business including major products or services, markets, and operation. (Attach additional sheets, if needed.)

<b>List your major customers, credit terms and percentage of annual sales.</b>		
Customer's Name and Address	Credit Terms	% of Sales

<b>List your suppliers, credit terms and credit limits.</b>		
Supplier's Name & Address	Credit Terms	Credit Limit

**Ownership**

List owners/partners/shareholders/members, the percentage of the company they own, and their compensation from the company.

Name	Position/Title	% Owned	Compensation

**Documents Required:**

- (1) **Partnerships:** Provide a copy of your Partnership Agreement
- (2) **Corporations:** Provide a certified copy of your Articles of Incorporation, Bylaws, Declaration of Corporate Officers, Corporate Resolution authorizing transaction, Certificate of Incumbency, and a Good Standing Certificate from the Secretary of State.
- (3) **Limited Liability Companies:** Provide a certified copy of the Articles of Organization, Operating Agreement, Resolution by members authorizing transaction, and a Certificate of Good Standing from the Secretary of State.

**Résumé**

Attach a brief personal résumé including work experience for each individual, partner, officer, or major shareholder.

Are there any amounts due to the company from owners or other related parties?

Yes     No (If **yes**, describe.)

Is your company in compliance with applicable federal and state regulations (such as environmental, employment, and safety?)

Yes     No (If **no**, describe.)

**Legal History**

If any of the following questions apply to the applicant, partners, stockholders or guarantors connected with the applicant, provide complete history and current status.

- (1) Is the applicant delinquent on any Federal debt?  Yes  No
- (2) Are any partners, shareholders, or members of the applicant delinquent on any Federal debt?  Yes  No
- (3) Have you ever been in bankruptcy or made an assignment for the benefit of creditors?  Yes  No
- (4) Have any judgments or compromise settlements ever been obtained against you?  Yes  No
- (5) Are you involved in any pending litigation, either as a defendant or plaintiff?  Yes  No
- (6) Do you buy from, sell to, lease from, or use the services of any concern in which someone in your company has a significant financial interest?  Yes  No
- (7) Does your business have any subsidiaries or affiliates?  Yes  No
- If yes, please provide their names and the relationship with your company and include a current financial statement for each.
- (8) Have you ever had any fishing violations or have any outstanding unpaid fines?  Yes  No

**All applicants to provide the following information:**

Accountant (name & address)	Phone Number (     )
	Fax Number (     )
Attorney (name & address)	Phone Number (     )
	Fax Number (     )
Insurance Agent (name & address)	Phone Number (     )
	Fax Number (     )

**FINANCIAL INFORMATION REQUIRED**

**NOTE: All financial statements and tax returns must be signed and dated.** (Audited financial statements may be required.)

**(1) Individual/Proprietor**

- (a) Current personal financial statement (current within 30 days).
- (b) A complete copy of your Federal Income Tax Return for the last 3 years.

**(2) Partnerships, Corporations, and Companies**

- (a) Current personal financial statement (current within 30 days) for each partner/shareholder.
- (b) A complete copy of each partner/shareholder's Federal Income Tax Return for the last 3 years.
- (c) Current Balance Sheet and Operating Statement for the partnership/corporation/company (current within 30 days).
- (d) Balance Sheet and Profit and Loss Statement for the partnership/corporation/company for the last 3 years.
- (e) A complete copy of the partnership/corporation/company's Federal Income Tax return for the last 3 years.
- (f) Current aging of accounts receivable and payable.

**(3) All Applicants:**

All applicants must provide a projection of income and cash flow, including a proforma balance sheet for two years operation of the project.

Public reporting burden for this collection of information is estimated to average 8 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other suggestions for reducing this burden to Charles L. Cooper, Financial Services Division, NOAA Fisheries, 1315 East West Highway, Silver Spring, MD 20910. Confidential name and address information will be released via a NOAA website for informational purposes. All other data submitted will be handled as confidential material in accordance with NOAA Administrative Order 216-100, Protection of Confidential Fishery Statistics. Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subjected to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number



**e-CFR Data is current as of June 20, 2008**

**Title 50: Wildlife and Fisheries**

**PART 253—FISHERIES ASSISTANCE PROGRAMS**

**Section Contents \_\_\_\_\_**

**Subpart A—General**

§ 253.1 Purpose.

**Subpart B—Fisheries Obligation Guarantee Program**

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§ 253.13 Ability and experience requirements.

§ 253.14 Economic and financial requirements.

§ 253.15 Miscellaneous.

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§ 253.18 Program operating guidelines. § 253.19 Default and liquidation.

**Subpart C—Interjurisdictional Fisheries**

§ 253.20 Definitions.

§ 253.21 Apportionment.

§ 253.22 State projects.

§ 253.23 Other funds.

§ 253.24 Administrative requirements.

**Authority:** 46 U.S.C. 1271–1279 and 16 U.S.C. 4101 *et seq.*

**Source:** 61 FR 19172, May 1, 1996, unless otherwise noted.

## **Subpart A—General**

### **§ 253.1 Purpose.**

(a) The regulations in this part pertain to fisheries assistance programs. Subpart B of these rules governs the Fisheries Obligation Guarantee Program, which guarantees the repayment of certain longterm fisheries and aquacultural debts. This allows those debts to be placed in the same private investment market that buys U.S. Treasury securities, where interest rates are lower and maturities are longer. The Program does all credit work and holds and services all credit collateral. The Program's guarantee fee makes it self-supporting.

(b) Subpart C implements Title III of Public Law 99–659 (16 U.S.C. 4100 *et seq.* ), which has two objectives:

(1) To promote and encourage State activities in support of the management of interjurisdictional fishery resources identified in interstate or Federal fishery management plans; and

(2) To promote and encourage management of interjurisdictional fishery resources throughout their range.

(3) The scope of this part includes guidance on making financial assistance awards to States or Interstate Commissions to undertake projects in support of management of interjurisdictional fishery resources in both the exclusive economic zone (EEZ) and State waters, and to encourage States to enter into enforcement agreements with either the Department of Commerce or the Department of the Interior.

## **Subpart B—Fisheries Obligation Guarantee Program**

### **§ 253.10 Definitions.**

The terms used in this subpart have the following meanings:

*Act* means Title XI of the Merchant Marine Act, 1936, as amended.

*Actual cost* means project cost (less a 10-percent salvage value), depreciated (excluding land) on a straightline basis at 1-year intervals over the project property's useful life including architectural, engineering, inspection, delivery, outfitting, and interest costs, as well as the cost of any consulting contract the Division requires.

*Applicant* means the one applying for a guarantee (the prospective notemaker).

*Application* means an application for a guarantee.

*Application fee* means 0.5 percent of the dollar amount of an application.

*Aquacultural facility* means land, land structures, water structures, water craft built in the U.S., and equipment for hatching, caring for, or growing fish under controlled circumstances and for its unloading, receiving, holding, processing, or distribution for commercial purposes.

*CCF* means Capital Construction Fund.

*Citizen* means a citizen or national of the U.S. who is otherwise also a citizen for the purpose of documenting a vessel in the coastwise trade under section 2 of the Shipping Act, 1916, as amended.

*Contributory project* means any project that contributes to developing the U.S. fishing industry by: Causing any vessel to catch less overutilized species than before; applying new technology; improving safety or fuel efficiency; making project property more efficient, productive, or competitive; potentially increasing fisheries exports; helping develop an underutilized fishery; or enhancing financial stability, financial performance, growth, productivity, or any other business attribute.

*Demand* means a noteholder's request that the guarantor pay a guaranteed note's full principal and interest balance.

*Division* means the Financial Services Division, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

*Dual Use CCF* means a CCF agreement whose qualified vessel is project property and whose deposits are pledged to repayment of the U.S. note.

*Facility* means a fisheries facility or aquacultural facility.

*Financing* means the first permanent debt placed on project property for financing its project cost.

*Fish* means all forms of aquatic animal and plant life, except marine mammals and birds.

*Fishery facility* means land, land structures, water craft that do not fish, and equipment used for transporting, unloading, receiving, holding, processing, or distributing fish for commercial purposes (including any fishery facility for passenger fishing).

*Fishing* means catching wild fish for commercial purposes (including passenger fishing).

*Guarantee* means the guarantor's contractual promise, backed by the full faith and credit of the United States, to repay a guaranteed note if a notemaker fails to repay it as agreed.

*Guarantee fee* means 1 percent of a guaranteed note's average annual unpaid principal balance.

*Guaranteed note* means a promissory note from a notemaker to a noteholder whose repayment the guarantor guarantees.

*Guarantor* means the U.S., acting, under the Act, by and through the Secretary of Commerce.

*Industry* means the fisheries and/or aquacultural industry.

*Noteholder* means a guaranteed note payee.

*Notemaker* means a guaranteed note payor.

*Passenger fishing* means carrying in vessels for commercial purposes passengers who catch fish.

*Program* means the Fisheries Obligation Guarantee Program.

*Project* means the construction of new project property or the refurbishing or purchase of used project property including architectural, engineering, inspection, delivery, outfitting, and interest costs, as well as the cost of any consulting contract the Division requires.

*Project property* means the vessel or facility involved in a project whose actual cost is eligible under the Act for guarantee and controls the dollar amount of a guaranteed note.

*Property* means the project property and all other property pledged as security for a U.S. note.

*Qualified* means acceptable, in the Division's credit risk judgment, and otherwise meeting the Division's requirements for guarantee.

*Refinancing* means newer debt that either replaces older debt or reimburses applicants for previous expenditures.

*Refinancing/assumption fee* means 0.25 percent of the principal amount of a guaranteed note to be refinanced or assumed.

*Refurbishing* means any reconstruction, reconditioning, or other improvement of used project property involving more than routine repair or maintenance.

*Security documents* mean all collateral securing the U.S. note's repayment and all other assurances, undertakings, and contractual arrangements associated with the U.S. note.

*Underutilized fishery* means:

- (1) For a vessel, any fish species harvested below its sustainable yield.
- (2) For a fisheries facility, any facility using that species or any for which aggregate facilities are inadequate to best use harvests of that or any other species.

*U.S.* means the United States of America and, for citizenship purposes, includes the Commonwealth of Puerto Rico; American Samoa; the U.S. Virgin Islands; Guam; the Republic of the Marshall Islands; the Federated States of Micronesia; the Commonwealth of the Northern Mariana Islands; any other commonwealth, territory, or possession of the United States; or any political subdivision of any of them.

*U.S. note* means a promissory note payable by the notemaker to the guarantor.

*Useful life* means the period during which project property will, as determined by the Division, remain economically productive.

*Vessel* means any vessel documented under U.S. law and used for fishing.

*Wise use* means the wise use of fisheries resources and their development, advancement, management, conservation, and protection.

### **§ 253.11 Guarantee policy.**

(a) A guarantee financing or refinancing up to 80 percent of a project's actual cost shall be available to any qualified citizen otherwise eligible under the Act and these rules, except:

(1) *Vessel construction.* The Program will not finance this project cost. The Program will only refinance this project cost for an existing vessel whose previous construction cost has already been financed (or otherwise paid). Refinancing this project cost for a vessel that already exists is not inconsistent with wise use, but financing it may be.

(2) *Vessel refurbishing that materially increases an existing vessel's harvesting capacity.* The Program will not finance this project cost. The Program will only refinance this project cost for a vessel whose previous refurbishing cost has already been financed (or otherwise paid). Refinancing this project cost is not inconsistent with wise use, but financing it may be.

(3) *Purchasing a used vessel or used fishery facility.* The Program will neither finance nor refinance this project cost (except for a used vessel or fishery facility that the Program purchased and is reselling), unless the used vessel or fishery facility will be refurbished in the United States and will be a contributory project or it will be used in an underutilized fishery.

(b) Every project, other than those specified in paragraphs (a) (1) and (2) of this section, is consistent with wise use and every project, other than those specifically precluded in paragraphs (a) (1) and (2) of this section, may be financed, as well as refinanced.

### **§ 253.12 Guaranteed note, U.S. note, and security documents.**

(a) *Guaranteed note* —(1) *Principal.* This may not exceed 80 percent of actual cost, but may, in the Division's credit judgment, be less.

(2) *Maturity.* This may not exceed 25 years, but shall not exceed the project property's useful life and may, in the Division's credit judgment, be less.

(3) *Interest rate.* This may not exceed the amount the Division deems reasonable.

(4) *Prepayment penalty.* The Division will allow a reasonable prepayment penalty, but the guarantor will not guarantee a notemaker's payment of it.

(5) *Form.* This will be the simple promissory note (with the guarantee attached) the Division prescribes, promising only to pay principal, interest, and prepayment penalty.

(6) *Sole security.* The guaranteed note and the guarantee will be the noteholder's sole security.

(b) *U.S. note and security documents* —(1) *Form.* The U.S. note and security documents will be in the form the Division prescribes.

(2) *U.S. note.* This exists to evidence the notemaker's actual and contingent liability to the guarantor (contingent if the guarantor does not pay the guaranteed note (including any portion of it), on the notemaker's behalf or if the guarantor does not advance any other amounts or incur any other expenses on the notemaker's behalf to protect the U.S. or accommodate the notemaker; actual if, and to the same monetary extent that, the guarantor does). Payment of the guaranteed note by anyone but the guarantor will amortize the original principal balance (and interest accruing on it) of the U.S. note to the same extent that it amortizes the guaranteed note. The U.S. note will, among other things, contain provisions for adding to its principal balance all amounts the Program advances, or expenses it incurs, to protect the U.S. or accommodate the notemaker.

(3) *Security documents.* The Division will, at a minimum, require a pledge of all project property (or adequate substitute collateral). The Division will require such other security as it deems the circumstances of each notemaker and project require to protect the U.S. All security documents will secure the U.S. note. The security documents will, among other things, contain provisions for adding to the U.S. note all Program advances, expenditures, and expenses required to protect the U.S. or accommodate the notemaker.

(4) *Recourse.* Significant Program reliance, as a secondary means of repayment, on the net worths of parties other than the notemaker will ordinarily require secured recourse against those net worths. Recourse may be by a repayment guarantee or irrevocable letter of credit. Ordinarily, the Division will require recourse against: All major shareholders of a closely-held corporate notemaker, the parent corporation of a subsidiary corporate notemaker without substantial pledged assets other than the project property, and all major limited partners. The Division may also require recourse against others it deems necessary to protect the U.S. The principal parties in interest, who ultimately stand most to benefit from the project, should ordinarily be held financially accountable for the project's performance. Where otherwise appropriate recourse is unavailable, the conservatively projected net liquidating value of the notemaker's assets pledged to the Program must, in the Division's credit judgment, substantially exceed all projected Program exposure.

(c) *Dual-use CCF.* For a vessel, the Division may require annually depositing some portion of the project property's net income into a dual-use CCF. A dual-use CCF provides the normal CCF tax-deferral benefits, but also both gives the Program control of CCF withdrawals and recourse against CCF deposits and ensures an emergency refurbishing reserve (tax-deferred) for project property.

### **§ 253.13 Ability and experience requirements.**

A notemaker and the majority of its principals must generally have the ability, experience, resources, character, reputation, and other qualifications the Division deems necessary for successfully operating the project property and protecting the U.S. The Program will ordinarily not provide guarantees: For venture capital purposes; to a notemaker whose principals are all from outside the industry; or for a notemaker the majority of whose principals cannot document successful industry ability and experience of a duration, degree, and nature consistent with protecting the U.S.

### **§ 253.14 Economic and financial requirements.**

(a) *Income and expense projections.* The Division's conservative income and expense projections for the project property's operation must prospectively indicate net earnings that can service all debt, properly maintain the project property, and protect the U.S. against the industry's cyclical economics and other risks of loss.

(b) *Working capital.* The Division's conservative assessment of an applicant's financial condition must indicate initial working capital prospectively sufficient to provide for the project property to achieve net earnings projections, fund all foreseeable contingencies, and protect the U.S. At the Division's discretion, some portion of projected working capital needs may be met by something other than current assets minus current liabilities (i.e., by a line or letter of credit, noncurrent assets readily capable of generating working capital, a guarantor with sufficient financial resources, etc.).

(c) *Audited financial statements.* These will ordinarily be required for any notemaker with large or financially extensive operations whose financial condition the Division believes it cannot otherwise assess with reasonable certainty.

(d) *Consultant services.* Infrequently, expert consulting services may be necessary to help the Division assess a project's economic, technical, or financial feasibility. The Division will select and employ the necessary consultant, but require the applicant to reimburse the Division. A subsequently approved application will not be closed until the applicant reimburses the Division. This cost may, at the Division's discretion, be included in a guaranteed note's amount. For a declined application, the Division may reimburse itself from the remaining 25 percent of the application fee.

### **§ 253.15 Miscellaneous.**

(a) *Applicant.* Only the legal title holder of project property (or the lessee of an appropriate long-term financing lease) may apply for a guarantee. Applicants must submit an "Application for Fisheries Obligation Program Guarantee" to the appropriate NMFS Regional Financial Services Branch to be considered for a guaranteed loan.

(b) *Investigation and approval.* The Division shall do a due diligence investigation of every application it accepts and determine if, in the Division's sole judgment, the application is eligible and qualified. Applications the Division deems ineligible or unqualified will be declined. The Division will approve eligible and qualified applications based on the applicability of the information obtained during the application and investigation process to the programmatic goals and financial requirements of the program and under terms and conditions that, in the Division's sole discretion, protect the U.S. The Division will state these terms and conditions in its approval in principal letter.

(c) *Insurance.* All property and other risks shall be continuously insured during the term of the U.S. note. Insurers must be acceptable to the Division. Insurance must be in such forms and amounts and against such risks as the Division deems necessary to protect the U.S. Insurance must be endorsed to include the requirements the U.S., as respects its interest only, deems necessary to protect the U.S. (e.g., the Program will ordinarily be an additional insured as well as the sole loss payee for the amount of its interest; cancellation will require 20 days' advance written notice; vessel seaworthiness will be admitted,

and the Program will be adequately protected against other insureds' breaches of policy warranties, negligence, omission, etc.)

(d) *Property inspections.* The Division will require adequate condition and valuation inspection of all property as the basis for assessing the property's worth and suitability for guarantee. The Division may also require these at specified periods during guarantee life. These must be conducted by competent and impartial inspectors acceptable to the Division. Inspection cost will be at an applicant's expense. Those occurring before application approval may be included in actual cost.

(e) *Guarantee terms and conditions.* The Division's approval in principle letter shall specify the terms and conditions of the guarantor's willingness to guarantee. These shall be incorporated in closing documents that the Division prepares. Terms and conditions are at the Division's sole discretion. An applicant's nonacceptance will result in disqualification for guarantee.

(f) *Noteholder.* The Division will, as a gratuitous service, request parties interested in investing in guaranteed notes to submit offers to fund each prospective guaranteed note. The Division and the applicant will, by mutual consent, choose the responsive bidder, which ordinarily will be the prospective noteholder whose bid represents the lowest net effective annual cost of capital. Until the Division has closed the guarantee, arrangements between an applicant and a prospective noteholder are a matter of private contract between them, and the Program is not responsible to either for nonperformance by the other.

(g) *Closing* —(1) *Approval in principle letters.* Every closing will be in strict accordance with a final approval in principle letter.

(2) *Contracts.* The guaranteed note, U.S. note, and security documents will ordinarily be on standard Program forms that may not be altered without Divisional approval. The Division will ordinarily prepare all contracts, except certain pledges involving real property, which will be prepared by each notemaker's attorney at the direction and approval of the Division's attorney.

(3) *Closing schedules.* The Division will ordinarily close guarantee transactions with minimal services from applicants' attorneys, except where real property pledges or other matters appropriate for private counsel are involved. Real property services required from an applicant's attorney may include: Title search, mortgage and other document preparation, execution and recording, escrow and disbursement, and a legal opinion and other assurances. An applicant's attorney's expense, and that of any other private contractor required, is for applicant's account. Attorneys and other contractors must be satisfactory to the Division. The Division will attempt to meet reasonable closing schedules, but will not be liable for adverse interest-rate fluctuations, loss of commitments, or other consequences of being unable to meet an applicant's and a prospective noteholder's closing schedule. These parties should work closely with the Division to ensure a closing schedule the Division can meet.

#### **§ 253.16 Fees.**

(a) *Application fee.* The Division will not accept an application without the application fee. Fifty percent of the application fee is fully earned at application acceptance, and is not refundable. The rest is fully earned when the Division issues an approval in principal letter, and it is refundable only if the Division declines an application or an applicant requests refund before the Division issues an approval in principal letter.

(b) *Guarantee fee.* Each guarantee fee will be due in advance and will be based on the guaranteed note's repayment provisions for the prospective year. The first annual guarantee fee is due at guarantee closing. Each subsequent one is due and payable on the guarantee closing's anniversary date. Each is fully earned when due, and shall not subsequently be refunded for any reason.

(c) *Refinancing or assumption fee.* This fee applies only to refinancing or assuming existing guaranteed notes. It is due upon application for refinancing or assuming a guaranteed note. It is fully earned when due and shall be nonrefundable. The Division may waive a refinancing or assumption fee's payment when the refinancing or assumption's primary purpose is to protect the U.S.

(d) *Where payable.* Fees are payable by check made payable to "NMFS/FSFF." Other than those collected at application or closing, fees are payable by mailing checks to: U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, P.O. Box 73004, Chicago, Ill. 60673. To ensure proper crediting, each check must include the official case number the Division assigns to each guarantee.

#### **§ 253.17 Demand and payment.**

Every demand must be delivered in writing to the Division. Each must include the noteholder's certified record of the date and amount of each payment made on the guaranteed note and the manner of its application. Should the Division not acknowledge receipt of a timely demand, the noteholder must possess evidence of the demand's timely delivery.

#### **§ 253.18 Program operating guidelines.**

The Division may issue Program operating guidelines, as the need arises, governing national Program policy and administrative issues not addressed by these rules.

### **§ 253.19 Default and liquidation.**

Upon default of the security documents, the Division shall take such remedial action (including, where appropriate, liquidation) as it deems best able to protect the U.S.' interest.

## **Subpart C—Interjurisdictional Fisheries**

### **§ 253.20 Definitions.**

The terms used in this subpart have the following meanings:

*Act* means the Interjurisdictional Fisheries Act of 1986, Public Law 99–659 (Title III).

*Adopt* means to implement an interstate fishery management plan by State action or regulation.

*Commercial fishery failure* means a serious disruption of a fishery resource affecting present or future productivity due to natural or undetermined causes. It does not include either:

- (1) The inability to harvest or sell raw fish or manufactured and processed fishery merchandise; or
- (2) Compensation for economic loss suffered by any segment of the fishing industry as the result of a resource disaster.

*Enforcement agreement* means a written agreement, signed and dated, between a state agency and either the Secretary of the Interior or Secretary of Commerce, or both, to enforce Federal and state laws pertaining to the protection of interjurisdictional fishery resources.

*Federal fishery management plan* means a plan developed and approved under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.* ).

*Fisheries management* means all activities concerned with conservation, restoration, enhancement, or utilization of fisheries resources, including research, data collection and analysis, monitoring, assessment, information dissemination, regulation, and enforcement.

*Fishery resource* means finfish, mollusks, and crustaceans, and any form of marine or Great Lakes animal or plant life, including habitat, other than marine mammals and birds.

*Interjurisdictional fishery resource* means:

- (1) A fishery resource for which a fishery occurs in waters under the jurisdiction of one or more states and the U.S. Exclusive Economic Zone; or
- (2) A fishery resource for which an interstate or a Federal fishery management plan exists; or
- (3) A fishery resource which migrates between the waters under the jurisdiction of two or more States bordering on the Great Lakes.

*Interstate Commission* means a commission or other administrative body established by an interstate compact.

*Interstate compact* means a compact that has been entered into by two or more states, established for purposes of conserving and managing fishery resources throughout their range, and consented to and approved by Congress.

*Interstate Fisheries Research Program* means research conducted by two or more state agencies under a formal interstate agreement.

*Interstate fishery management plan* means a plan for managing a fishery resource developed and adopted by the member states of an Interstate Marine Fisheries Commission, and contains information regarding the status of the fishery resource and fisheries, and recommends actions to be taken by the States to conserve and manage the fishery resource.

*Landed* means the first point of offloading fishery resources.

*NMFS Regional Director* means the Director of any one of the five National Marine Fisheries Service regions.

*Project* means an undertaking or a proposal for research in support of management of an interjurisdictional

fishery resource or an interstate fishery management plan.

*Research* means work or investigative study, designed to acquire knowledge of fisheries resources and their habitat.

*Secretary* means the Secretary of Commerce or his/her designee.

*State* means each of the several states, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, or the Commonwealth of the Northern Mariana Islands.

*State Agency* means any department, agency, commission, or official of a state authorized under the laws of the State to regulate commercial fisheries or enforce laws relating to commercial fisheries.

*Value* means the monetary worth of fishery resources used in developing the apportionment formula, which is equal to the price paid at the first point of landing.

*Volume* means the weight of the fishery resource as landed, at the first point of landing.

### **§ 253.21 Apportionment.**

(a) Apportionment formula. The amount of funds apportioned to each state is to be determined by the Secretary as the ratio which the equally weighted average of the volume and value of fishery resources harvested by domestic commercial fishermen and landed within such state during the 3 most recent calendar years for which data satisfactory to the Secretary are available bears to the total equally weighted average of the volume and value of all fishery resources harvested by domestic commercial fishermen and landed within all of the states during those calendar years.

(1) The equally weighted average value is determined by the following formula:

$$\frac{\text{Volume of X State}}{\text{Volume of all States}} = A \text{ percent}$$

$$\frac{\text{Value of X State}}{\text{Value of all States}} = B \text{ percent}$$

$$\frac{[A\% + B\%]}{2} = \text{State percentage used to determine state's share of the total available funds}$$

(2) Upon appropriation of funds by Congress, the Secretary will take the following actions:

- (i) Determine each state's share according to the apportionment formula.
- (ii) Certify the funds to the respective NMFS Regional Director.
- (iii) Instruct NMFS Regional Directors to promptly notify states of funds' availability.

(b) No state, under the apportionment formula in paragraph (a) of this section, that has a ratio of onethird of 1 percent or higher may receive an apportionment for any fiscal year that is less than 1 percent of the total amount of funds available for that fiscal year.

(c) If a State's ratio under the apportionment formula in paragraph (b) of this section is less than onethird of 1 percent, that state may receive funding if the state:

- (1) Is signatory to an interstate fishery compact;
- (2) Has entered into an enforcement agreement with the Secretary and/or the Secretary of the Interior for a fishery that is managed under an interstate fishery management plan;
- (3) Borders one or more of the Great Lakes;
- (4) Has entered into an interstate cooperative fishery management agreement and has in effect an interstate fisheries management plan or an interstate fisheries research program; or
- (5) Has adopted a Federal fishery management plan for an interjurisdictional fishery resource.



(d) Any state that has a ratio of less than one-third of 1 percent and meets any of the requirements set forth in paragraphs (c) (1) through (5) of this section may receive an apportionment for any fiscal year that is not less than 0.5 percent of the total amount of funds available for apportionment for such fiscal year.

(e) No state may receive an apportionment under this section for any fiscal year that is more than 6 percent of the total amount of funds available for apportionment for such fiscal year.

(f) Unused apportionments. Any part of an apportionment for any fiscal year to any state:

(1) That is not obligated during that year;

(2) With respect to which the state notifies the Secretary that it does not wish to receive that part; or

(3) That is returned to the Secretary by the state, may not be considered to be appropriated to that state and must be added to such funds as are appropriated for the next fiscal year. Any notification or return of funds by a state referred to in this section is irrevocable.

### **§ 253.22 State projects.**

(a) *General*—(1) *Designation of state agency.* The Governor of each state shall notify the Secretary of which agency of the state government is authorized under its laws to regulate commercial fisheries and is, therefore, designated receive financial assistance awards. An official of such agency shall certify which official(s) is authorized in accordance with state law to commit the state to participation under the Act, to sign project documents, and to receive payments.

(2) States that choose to submit proposals in any fiscal year must so notify the NMFS Regional Director before the end of the third quarter of that fiscal year.

(3) Any state may, through its state agency, submit to the NMFS Regional Director a completed NOAA Grants and Cooperative Agreement Application Package with its proposal for a project, which may be multiyear. Proposals must describe the full scope of work, specifications, and cost estimates for such project.

(4) States may submit a proposal for a project through, and request payment to be made to, an Interstate Fisheries Commission. Any payment so made shall be charged against the apportionment of the appropriate state(s). Submitting a project through one of the Commissions does not remove the matching funds requirement for any state, as provided in paragraph (c) of this section.

(b) *Evaluation of projects.* The Secretary, before approving any proposal for a project, will evaluate the proposal as to its applicability, in accordance with 16 U.S.C. 4104(a)(2).

(c) *State matching requirements.* The Federal share of the costs of any project conducted under this subpart, including a project submitted through an Interstate Commission, cannot exceed 75 percent of the total estimated cost of the project, unless:

(1) The state has adopted an interstate fishery management plan for the fishery resource to which the project applies; or

(2) The state has adopted fishery regulations that the Secretary has determined are consistent with any Federal fishery management plan for the species to which the project applies, in which case the Federal share cannot exceed 90 percent of the total estimated cost of the project.

(d) *Financial assistance award.* If the Secretary approves or disapproves a proposal for a project, he or she will promptly give written notification, including, if disapproved, a detailed explanation of the reason (s) for the disapproval.

(e) *Restrictions.* (1) The total cost of all items included for engineering, planning, inspection, and unforeseen contingencies in connection with any works to be constructed as part of such a proposed project shall not exceed 10 percent of the total cost of such works, and shall be paid by the state as a part of its contribution to the total cost of the project.

(2) The expenditure of funds under this subpart may be applied only to projects for which a proposal has been evaluated under paragraph (b) of this section and approved by the Secretary, except that up to \$25,000 each fiscal year may be awarded to a state out of the state's regular apportionment to carry out an "enforcement agreement." An enforcement agreement does not require state matching funds.

(f) *Prosecution of work.* All work must be performed in accordance with applicable state laws or regulations, except when such laws or regulations are in conflict with Federal laws or regulations such that the Federal law or regulation prevails.

## **§ 253.23 Other funds.**

(a) *Funds for disaster assistance.* (1) The Secretary shall retain sole authority in distributing any disaster assistance funds made available under section 308(b) of the Act. The Secretary may distribute these funds after he or she has made a thorough evaluation of the scientific information submitted, and has determined that a commercial fishery failure of a fishery resource arising from natural or undetermined causes has occurred. Funds may only be used to restore the resource affected by the disaster, and only by existing methods and technology. Any fishery resource used in computing the states' amount under the apportionment formula in §253.21(a) will qualify for funding under this section. The Federal share of the cost of any activity conducted under the disaster provision of the Act shall be limited to 75 percent of the total cost.

(2) In addition, pursuant to section 308(d) of the Act, the Secretary is authorized to award grants to persons engaged in commercial fisheries, for uninsured losses determined by the Secretary to have been suffered as a direct result of a fishery resource disaster. Funds may be distributed by the Secretary only after notice and opportunity for public comment of the appropriate limitations, terms, and conditions for awarding assistance under this section. Assistance provided under this section is limited to 75 percent of an uninsured loss to the extent that such losses have not been compensated by other Federal or State programs.

(b) *Funds for interstate commissions.* Funds authorized to support the efforts of the three chartered Interstate Marine Fisheries Commissions to develop and maintain interstate fishery management plans for interjurisdictional fisheries will be divided equally among the Commissions.

## **§ 253.24 Administrative requirements.**

Federal assistance awards made as a result of this Act are subject to all Federal laws, Executive Orders, Office of Management and Budget Circulars as incorporated by the award; Department of Commerce and NOAA regulations; policies and procedures applicable to Federal financial assistance awards; and terms and conditions of the awards.

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[Section 508 / Accessibility](#)

**16 U.S.C. 1853a note, 1854**  
**MSA §§ 303A note, 304**

**P.L. 109-479, sec. 106(e), MSA § 303A note**

**16 U.S.C. 1853a note**

**APPLICATION WITH AMERICAN FISHERIES ACT.**—Nothing in section 303A of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), as added by subsection (a) [P.L. 109-479], shall be construed to modify or supersede any provision of the American Fisheries Act (46 U.S.C. 12102 note; 16 U.S.C. 1851 note; et alia).

**P.L. 104-297, sec. 108(i), MSA § 303 note**

**EXISTING QUOTA PLANS.**—Nothing in this Act [P.L.104-297] or the amendments made by this Act shall be construed to require a reallocation of individual fishing quotas under any individual fishing quota program approved by the Secretary before January 4, 1995.

## **SEC. 304. ACTION BY THE SECRETARY**

**16 U.S.C. 1854**

### **104-297**

(a) REVIEW OF PLANS.—

(1) Upon transmittal by the Council to the Secretary of a fishery management plan or plan amendment, the Secretary shall—

(A) immediately commence a review of the plan or amendment to determine whether it is consistent with the national standards, the other provisions of this Act, and any other applicable law; and

(B) immediately publish in the Federal Register a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.

(2) In undertaking the review required under paragraph (1), the Secretary shall—

(A) take into account the information, views, and comments received from interested persons;

(B) consult with the Secretary of State with respect to foreign fishing; and

(C) consult with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea and to fishery access adjustments referred to in section 303(a)(6).

(3) The Secretary shall approve, disapprove, or partially approve a plan or amendment within 30 days of the end of the comment period under paragraph (1) by written notice to the Council. A notice of disapproval or partial approval shall specify—

(A) the applicable law with which the plan or amendment is inconsistent;

(B) the nature of such inconsistencies; and

(C) recommendations concerning the actions that could be taken by the Council to conform such plan or amendment to the requirements of applicable law.

If the Secretary does not notify a Council within 30 days of the end of the comment period of the approval, disapproval, or partial approval of a plan or amendment, then such plan or amendment shall take effect as if approved.

(4) If the Secretary disapproves or partially approves a plan or amendment, the Council may submit a revised plan or amendment to the Secretary for review under this subsection.

(5) For purposes of this subsection and subsection (b), the term “immediately” means on or before the 5th day after the day on which a Council transmits to the Secretary a fishery management plan, plan amendment, or proposed regulation that the Council characterizes as final.

**104-297**

**(b) REVIEW OF REGULATIONS.—**

(1) Upon transmittal by the Council to the Secretary of proposed regulations prepared under section 303(c), the Secretary shall immediately initiate an evaluation of the proposed regulations to determine whether they are consistent with the fishery management plan, plan amendment, this Act and other applicable law. Within 15 days of initiating such evaluation the Secretary shall make a determination and—

(A) if that determination is affirmative, the Secretary shall publish such regulations in the Federal Register, with such technical changes as may be necessary for clarity and an explanation of those changes, for a public comment period of 15 to 60 days; or

(B) if that determination is negative, the Secretary shall notify the Council in writing of the inconsistencies and provide recommendations on revisions that would make the proposed regulations consistent with the fishery management plan, plan amendment, this Act, and other applicable law.

(2) Upon receiving a notification under paragraph (1)(B), the Council may revise the proposed regulations and submit them to the Secretary for reevaluation under paragraph (1).

(3) The Secretary shall promulgate final regulations within 30 days after the end of the comment period under paragraph (1)(A). The Secretary shall consult with the Council before making any revisions to the proposed regulations, and must publish in the Federal Register an explanation of any differences between the proposed and final regulations.

**97-453, 99-659, 104-297**

**(c) PREPARATION AND REVIEW OF SECRETARIAL PLANS.—**

(1) The Secretary may prepare a fishery management plan, with respect to any fishery, or any amendment to any such plan, in accordance with the national standards, the other provisions of this Act, and any other applicable law, if—

(A) the appropriate Council fails to develop and submit to the Secretary, after a reasonable period of time, a fishery management plan for such fishery, or any necessary amendment to such a plan, if such fishery requires conservation and management;

(B) the Secretary disapproves or partially disapproves any such plan or amendment, or disapproves a revised plan or amendment, and the Council involved fails to submit a revised or further revised plan or amendment; or

(C) the Secretary is given authority to prepare such plan or amendment under this section.

**16 U.S.C. 1854**  
**MSA § 304**

In preparing any such plan or amendment, the Secretary shall consult with the Secretary of State with respect to foreign fishing and with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea. The Secretary shall also prepare such proposed regulations as he deems necessary or appropriate to carry out each plan or amendment prepared by him under this paragraph.

- (2) In preparing any plan or amendment under this subsection, the Secretary shall—
- (A) conduct public hearings, at appropriate times and locations in the geographical areas concerned, so as to allow interested persons an opportunity to be heard in the preparation and amendment of the plan and any regulations implementing the plan; and
  - (B) consult with the Secretary of State with respect to foreign fishing and with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea.

**109-479**

(3) Notwithstanding paragraph (1) for a fishery under the authority of a Council, the Secretary may not include in any fishery management plan, or any amendment to any such plan, prepared by him, a provision establishing a limited access system, including any limited access privilege program unless such system is first approved by a majority of the voting members, present and voting, of each appropriate Council.

- (4) Whenever the Secretary prepares a fishery management plan or plan amendment under this section, the Secretary shall immediately—
- (A) for a plan or amendment for a fishery under the authority of a Council, submit such plan or amendment to the appropriate Council for consideration and comment; and
  - (B) publish in the Federal Register a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.

(5) Whenever a plan or amendment is submitted under paragraph (4)(A), the appropriate Council must submit its comments and recommendations, if any, regarding the plan or amendment to the Secretary before the close of the 60-day period referred to in paragraph (4)(B). After the close of such 60-day period, the Secretary, after taking into account any such comments and recommendations, as well as any views, information, or comments submitted under paragraph (4)(B), may adopt such plan or amendment.

(6) The Secretary may propose regulations in the Federal Register to implement any plan or amendment prepared by the Secretary. In the case of a plan or amendment to which paragraph (4)(A) applies, such regulations shall be submitted to the Council with such plan or amendment. The comment period on proposed regulations shall be 60 days, except that the Secretary may shorten the comment period on minor revisions to existing regulations.

(7) The Secretary shall promulgate final regulations within 30 days after the end of the comment period under paragraph (6). The Secretary must publish in the Federal Register an explanation of any substantive differences between the proposed and final rules. All final regulations must be consistent with the fishery management plan, with the national standards and other provisions of this Act, and with any other applicable law.

**97-453, 104-297**

(d) ESTABLISHMENT OF FEES.—

(1) The Secretary shall by regulation establish the level of any fees which are authorized to be charged pursuant to section 303(b)(1). The Secretary may enter into a cooperative agreement with the States concerned under which the States administer the permit system and the agreement may provide that all or part of the fees collected under the system shall accrue to the States. The level of fees charged under this subsection shall not exceed the administrative costs incurred in issuing the permits.

**109-479**

(2)(A) Notwithstanding paragraph (1), the Secretary is authorized and shall collect a fee to recover the actual costs directly related to the management, data collection, and enforcement of any—

- (i) limited access privilege program; and
- (ii) community development quota program that allocates a percentage of the total allowable catch of a fishery to such program.

(B) Such fee shall not exceed 3 percent of the ex-vessel value of fish harvested under any such program, and shall be collected at either the time of the landing, filing of a landing report, or sale of such fish during a fishing season or in the last quarter of the calendar year in which the fish is harvested.

(C)(i) Fees collected under this paragraph shall be in addition to any other fees charged under this Act and shall be deposited in the Limited Access System Administration Fund established under section 305(h)(5)(B).

(ii) Upon application by a State, the Secretary shall transfer to such State up to 33 percent of any fee collected pursuant to subparagraph (A) under a community development quota program and deposited in the Limited Access System Administration Fund in order to reimburse such State for actual costs directly incurred in the management and enforcement of such program.

**104-297**

(e) REBUILDING OVERFISHED FISHERIES.—

(1) The Secretary shall report annually to the Congress and the Councils on the status of fisheries within each Council's geographical area of authority and identify those fisheries that are overfished or are approaching a condition of being overfished. For those fisheries managed under a fishery management plan or international agreement, the status shall be determined using the criteria for overfishing specified in such plan or agreement. A fishery shall be classified as approaching a condition of being overfished if, based on trends in fishing effort, fishery resource size, and other appropriate factors, the Secretary estimates that the fishery will become overfished within two years.

(2) If the Secretary determines at any time that a fishery is overfished, the Secretary shall immediately notify the appropriate Council and request that action be taken to end overfishing in the fishery and to implement conservation and management measures to rebuild affected stocks of fish. The Secretary shall publish each notice under this paragraph in the Federal Register.

**109-479**

(3) Within 2 years after an identification under paragraph (1) or notification under paragraphs (2) or (7), the appropriate Council (or the Secretary, for fisheries under section 302(a)(3)) shall prepare and implement a fishery management plan, plan amendment, or proposed regulations for the fishery to which the identification or notice applies—

(A) to end overfishing immediately in the fishery and to rebuild affected stocks of fish; or

(B) to prevent overfishing from occurring in the fishery whenever such fishery is identified as approaching an overfished condition.

**109-479**

(4) For a fishery that is overfished, any fishery management plan, amendment, or proposed regulations prepared pursuant to paragraph (3) or paragraph (5) for such fishery shall—

(A) specify a time period for rebuilding the fishery that shall—

(i) be as short as possible, taking into account the status and biology of any overfished stocks of fish, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the overfished stock of fish within the marine ecosystem; and

(ii) not exceed 10 years, except in cases where the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise;

(B) allocate both overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery; and

(C) for fisheries managed under an international agreement, reflect traditional participation in the fishery, relative to other nations, by fishermen of the United States.

(5) If, within the 2-year period beginning on the date of identification or notification that a fishery is overfished, the Council does not submit to the Secretary a fishery management plan, plan amendment, or proposed regulations required by paragraph (3)(A), the Secretary shall prepare a fishery management plan or plan amendment and any accompanying regulations to stop overfishing and rebuild affected stocks of fish within 9 months under subsection (c).

(6) During the development of a fishery management plan, a plan amendment, or proposed regulations required by this subsection, the Council may request the Secretary to implement interim measures to reduce overfishing under section 305(c) until such measures can be replaced by such plan, amendment, or regulations. Such measures, if otherwise in compliance with the provisions of this Act, may be implemented even though they are not sufficient by themselves to stop overfishing of a fishery.

(7) The Secretary shall review any fishery management plan, plan amendment, or regulations required by this subsection at routine intervals that may not exceed two years. If the Secretary finds as a result of the review that such plan, amendment, or regulations have not resulted in adequate progress toward ending overfishing and rebuilding affected fish stocks, the Secretary shall—

(A) in the case of a fishery to which section 302(a)(3) applies, immediately make revisions necessary to achieve adequate progress; or

(B) for all other fisheries, immediately notify the appropriate Council. Such notification shall recommend further conservation and management measures which the Council should consider under paragraph (3) to achieve adequate progress.

**101-627, 104-297**

(f) FISHERIES UNDER AUTHORITY OF MORE THAN ONE COUNCIL.—

(1) Except as provided in paragraph (3)<sup>18</sup>, if any fishery extends beyond the geographical area of authority of any one Council, the Secretary may—

(A) designate which Council shall prepare the fishery management plan for such fishery and any amendment to such plan; or

(B) may require that the plan and amendment be prepared jointly by the Councils concerned.

No jointly prepared plan or amendment may be submitted to the Secretary unless it is approved by a majority of the voting members, present and voting, of each Council concerned.

(2) The Secretary shall establish the boundaries between the geographical areas of authority of adjacent Councils.

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<sup>18</sup> Former paragraph (3) now appears at section 302(a)(3) and section 304(g).



**104-297**

(g) ATLANTIC HIGHLY MIGRATORY SPECIES.—

(1) PREPARATION AND IMPLEMENTATION OF PLAN OR PLAN AMENDMENT.—The Secretary shall prepare a fishery management plan or plan amendment under subsection (c) with respect to any highly migratory species fishery to which section 302(a)(3) applies. In preparing and implementing any such plan or amendment, the Secretary shall—

(A) consult with and consider the comments and views of affected Councils, commissioners and advisory groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species, and the advisory panel established under section 302(g);

(B) establish an advisory panel under section 302(g) for each fishery management plan to be prepared under this paragraph;

(C) evaluate the likely effects, if any, of conservation and management measures on participants in the affected fisheries and minimize, to the extent practicable, any disadvantage to United States fishermen in relation to foreign competitors;

(D) with respect to a highly migratory species for which the United States is authorized to harvest an allocation, quota, or at a fishing mortality level under a relevant international fishery agreement, provide fishing vessels of the United States with a reasonable opportunity to harvest such allocation, quota, or at such fishing mortality level;

(E) review, on a continuing basis (and promptly whenever a recommendation pertaining to fishing for highly migratory species has been made under a relevant international fishery agreement), and revise as appropriate, the conservation and management measures included in the plan;

(F) diligently pursue, through international entities (such as the International Commission for the Conservation of Atlantic Tunas), comparable international fishery management measures with respect to fishing for highly migratory species; and

(G) ensure that conservation and management measures under this subsection--

(i) promote international conservation of the affected fishery;

(ii) take into consideration traditional fishing patterns of fishing vessels of the United States and the operating requirements of the fisheries;

(iii) are fair and equitable in allocating fishing privileges among United States fishermen and do not have economic allocation as the sole purpose; and

(iv) promote, to the extent practicable, implementation of scientific research programs that include the tagging and release of Atlantic highly migratory species.

**109-479**

(2) CERTAIN FISH EXCLUDED FROM “BYCATCH” DEFINITION.—

Notwithstanding section 3(2), fish harvested in a commercial fishery managed by the Secretary under this subsection or the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971d), or highly migratory species harvested in a commercial fishery managed by a Council under this Act or the Western and Central Pacific Fisheries Convention Implementation Act, that are not regulatory discards and that are tagged and released alive under a scientific tagging and release program established by the Secretary shall not be considered bycatch for purposes of this Act.

**104-297**

(h) REPEAL OR REVOCATION OF A FISHERY MANAGEMENT PLAN.—The Secretary may repeal or revoke a fishery management plan for a fishery under the authority of a Council only if the Council approves the repeal or revocation by a three-quarters majority of the voting members of the Council.

**109-479**

(i)[sic]<sup>19</sup> ENVIRONMENTAL REVIEW PROCESS.—

(1) PROCEDURES.—The Secretary shall, in consultation with the Councils and the Council on Environmental Quality, revise and update agency procedures for compliance with the National Environmental Policy Act (42 U.S.C. 4231 et seq.). The procedures shall—

(A) conform to the time lines for review and approval of fishery management plans and plan amendments under this section; and

(B) integrate applicable environmental analytical procedures, including the time frames for public input, with the procedure for the preparation and dissemination of fishery management plans, plan amendments, and other actions taken or approved pursuant to this Act in order to provide for timely, clear and concise analysis that is useful to decision makers and the public, reduce extraneous paperwork, and effectively involve the public.

(2) USAGE.—The updated agency procedures promulgated in accordance with this section used by the Councils or the Secretary shall be the sole environmental impact assessment procedure for fishery management plans, amendments, regulations, or other actions taken or approved pursuant to this Act.

(3) SCHEDULE FOR PROMULGATION OF FINAL PROCEDURES.—The Secretary shall—

(A) propose revised procedures within 6 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006;

(B) provide 90 days for public review and comments; and

(C) promulgate final procedures no later than 12 months after the date of enactment of that Act.

(4) PUBLIC PARTICIPATION.—The Secretary is authorized and directed, in cooperation with the Council on Environmental Quality and the Councils, to involve the affected public in the development of revised procedures, including workshops or other appropriate means of public involvement.

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<sup>19</sup> So in original. P.L. 109-479 added two subsections as 304(i).

**16 U.S.C. 1854, 1854 note**  
**MSA §§ 304, 304 note**

**109-479**

(i) [sic]<sup>20</sup> **INTERNATIONAL OVERFISHING.**—The provisions of this subsection shall apply in lieu of subsection (e) to a fishery that the Secretary determines is overfished or approaching a condition of being overfished due to excessive international fishing pressure, and for which there are no management measures to end overfishing under an international agreement to which the United States is a party. For such fisheries—

(1) the Secretary, in cooperation with the Secretary of State, [sic]<sup>20a</sup> immediately take appropriate action at the international level to end the overfishing; and

(2) within 1 year after the Secretary’s determination, the appropriate Council, or Secretary, for fisheries under section 302(a)(3) shall—

(A) develop recommendations for domestic regulations to address the relative impact of fishing vessels of the United States on the stock and, if developed by a Council, the Council shall submit such recommendations to the Secretary; and

(B) develop and submit recommendations to the Secretary of State, and to the Congress, for international actions that will end overfishing in the fishery and rebuild the affected stocks, taking into account the relative impact of vessels of other nations and vessels of the United States on the relevant stock.

**P.L. 109-479, sec. 104(d), MSA § 304 note**

**16 U.S.C. 1854 note**

**EFFECTIVE DATE FOR SUBSECTION (c).**—The amendments made by subsection (c)<sup>21</sup> shall take effect 30 months after the date of enactment of this Act.

**P.L. 101-627, sec. 108(k), MSA § 304 note**

**16 U.S.C. 1854 note**

**INTERIM MANAGEMENT OF HIGHLY MIGRATORY SPECIES FISHERIES.**—

Notwithstanding the amendments made by subsections (a) and (g) [of section 108 of Pub. L. 101-627], any fishery management plan or amendment which—

(1) addresses a highly migratory species fishery to which section 304(f)(3) of the Magnuson Fishery Conservation and Management Act (as amended by this Act [101-627]) applies,

(2) was prepared by one or more Regional Fishery Management Councils, and

(3) was in force and effect on January 1, 1990,

shall remain in force and effect until superseded by a fishery management plan prepared by the Secretary, and regulations implementing that plan.

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<sup>20</sup> So in original. P.L. 109-479 added two subsections as 304(i).

<sup>20a</sup> So in original.

<sup>21</sup> Section 104(c) of P.L. 109-479 amended section 304(e)(3)-(5).

(b) **REPORT.**—The Secretary shall report the results of the study, together with any recommendations for legislation deemed necessary based on the study, within 6 months after the date of enactment of this Act to the Committee on Resources of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

**SEC. 210. REVIEW OF NORTHEAST FISHERY STOCK ASSESSMENTS.**

The National Academy of Sciences, in consultation with regionally recognized fishery experts, shall conduct a peer review of Canadian and United States stock assessments, information collection methodologies, biological assumptions and projections, and other relevant scientific information used as the basis for conservation and management in the Northeast multispecies fishery. The National Academy of Sciences shall submit the results of such review to the Congress and the Secretary of Commerce no later than March 1, 1997.

**SEC. 211. CLERICAL AMENDMENTS.**

The table of contents is amended by striking the matter relating to title IV and inserting the following:

“Sec. 312. Transition to sustainable fisheries.

“Sec. 313. North Pacific fisheries conservation.

“Sec. 314. Northwest Atlantic Ocean fisheries reinvestment program.

“TITLE IV—FISHERY MONITORING AND RESEARCH

“Sec. 401. Registration and information management.

“Sec. 402. Information collection.

“Sec. 403. Observers.

“Sec. 404. Fisheries research.

“Sec. 405. Incidental harvest research.

“Sec. 406. Fisheries systems research.

“Sec. 407. Gulf of Mexico red snapper research.”.

## TITLE III—FISHERIES FINANCING

Fisheries  
Financing Act.

**SEC. 301. SHORT TITLE.**

This title may be cited as the “Fisheries Financing Act”.

46 USC app.  
1245 note.

**SEC. 302. INDIVIDUAL FISHING QUOTA LOANS.**

(a) **AMENDMENT OF MERCHANT MARINE ACT, 1936.**—Section 1104A of the Merchant Marine Act, 1936 (46 U.S.C. App. 1274) is amended—

(1) by striking “or” at the end of subsection (a)(5);

(2) by striking the period at the end of subsection (a)(6) and inserting a semicolon and “or”;

(3) by adding at the end of subsection (a) the following:

“(7) financing or refinancing, including, but not limited to, the reimbursement of obligors for expenditures previously made, for the purchase of individual fishing quotas in accordance with section 303(d)(4) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1853(d)(4)).”; and

(4) by striking “paragraph (6)” in the last sentence of subsection (a) and inserting “paragraphs (6) and (7)”; and

(5) by striking “equal to” in the third proviso of subsection (b)(2) and inserting “not to exceed”.

(b) **PROHIBITION.**—Until October 1, 2001, no new loans may be guaranteed by the Federal Government for the construction of new fishing vessels if the construction will result in an increased

46 USC app.  
1274 note.

harvesting capacity within the United States exclusive economic zone.

**SEC. 303. FISHERIES FINANCING AND CAPACITY REDUCTION.**

(a) CAPACITY REDUCTION AND FINANCING AUTHORITY.—Title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et seq.), is amended by adding at the end the following new sections:

46 USC app.  
1279f.

“SEC. 1111. (a) The Secretary is authorized to guarantee the repayment of debt obligations issued by entities under this section. Debt obligations to be guaranteed may be issued by any entity that has been approved by the Secretary and has agreed with the Secretary to such conditions as the Secretary deems necessary for this section to achieve the objective of the program and to protect the interest of the United States.

“(b) Any debt obligation guaranteed under this section shall—

“(1) be treated in the same manner and to the same extent as other obligations guaranteed under this title, except with respect to provisions of this title that by their nature cannot be applied to obligations guaranteed under this section;

“(2) have the fishing fees established under the program paid into a separate subaccount of the fishing capacity reduction fund established under this section;

“(3) not exceed \$100,000,000 in an unpaid principal amount outstanding at any one time for a program;

“(4) have such maturity (not to exceed 20 years), take such form, and contain such conditions as the Secretary determines necessary for the program to which they relate;

“(5) have as the exclusive source of repayment (subject to the proviso in subsection (c)(2)) and as the exclusive payment security, the fishing fees established under the program; and

“(6) at the discretion of the Secretary be issued in the public market or sold to the Federal Financing Bank.

“(c)(1) There is established in the Treasury of the United States a separate account which shall be known as the fishing capacity reduction fund (referred to in this section as the ‘fund’). Within the fund, at least one subaccount shall be established for each program into which shall be paid all fishing fees established under the program and other amounts authorized for the program.

“(2) Amounts in the fund shall be available, without appropriation or fiscal year limitation, to the Secretary to pay the cost of the program, including payments to financial institutions to pay debt obligations incurred by entities under this section: *Provided*, That funds available for this purpose from other amounts available for the program may also be used to pay such debt obligations.

“(3) Sums in the fund that are not currently needed for the purpose of this section shall be kept on deposit or invested in obligations of the United States.

“(d) The Secretary is authorized and directed to issue such regulations as the Secretary deems necessary to carry out this section.

“(e) For the purposes of this section, the term ‘program’ means a fishing capacity reduction program established under section 312 of the Magnuson Fishery Conservation and Management Act.

46 USC app.  
1279g.

“SEC. 1112. (a) Notwithstanding any other provision of this title, all obligations involving any fishing vessel, fishery facility, aquaculture facility, individual fishing quota, or fishing capacity

reduction program issued under this title after the date of enactment of the Sustainable Fisheries Act shall be direct loan obligations, for which the Secretary shall be the obligee, rather than obligations issued to obligees other than the Secretary and guaranteed by the Secretary. All direct loan obligations under this section shall be treated in the same manner and to the same extent as obligations guaranteed under this title except with respect to provisions of this title which by their nature can only be applied to obligations guaranteed under this title.

“(b) Notwithstanding any other provisions of this title, the annual rate of interest which obligors shall pay on direct loan obligations under this section shall be fixed at two percent of the principal amount of such obligations outstanding plus such additional percent as the Secretary shall be obligated to pay as the interest cost of borrowing from the United States Treasury the funds with which to make such direct loans.”.

## **TITLE IV—MARINE FISHERY STATUTE REAUTHORIZATIONS**

### **SEC. 401. MARINE FISH PROGRAM AUTHORIZATION OF APPROPRIATIONS.**

(a) **FISHERIES INFORMATION COLLECTION AND ANALYSIS.**—There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out fisheries information and analysis activities under the Fish and Wildlife Act of 1956 (16 U.S.C. 742a et seq.) and any other law involving those activities, \$51,800,000 for fiscal year 1997, and \$52,345,000 for each of the fiscal years 1998, 1999, and 2000. Such activities may include, but are not limited to, the collection, analysis, and dissemination of scientific information necessary for the management of living marine resources and associated marine habitat.

(b) **FISHERIES CONSERVATION AND MANAGEMENT OPERATIONS.**—There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out activities relating to fisheries conservation and management operations under the Fish and Wildlife Act of 1956 (16 U.S.C. 742a et seq.) and any other law involving those activities, \$29,028,000 for fiscal year 1997, and \$29,899,000 for each of the fiscal years 1998, 1999, and 2000. Such activities may include, but are not limited to, development, implementation, and enforcement of conservation and management measures to achieve continued optimum use of living marine resources, hatchery operations, habitat conservation, and protected species management.

(c) **FISHERIES STATE AND INDUSTRY COOPERATIVE PROGRAMS.**—There are authorized to be appropriated to the Secretary of Commerce, to enable the National Oceanic and Atmospheric Administration to carry out State and industry cooperative programs under the Fish and Wildlife Act of 1956 (16 U.S.C. 742a et seq.) and any other law involving those activities, \$27,932,000 for fiscal year 1997, and \$28,226,000 for each of the fiscal years 1998, 1999, and 2000. These activities include, but are not limited to, ensuring the quality and safety of seafood products and providing grants to States for improving the management of interstate fisheries.



- **TITLE 46, APPENDIX--SHIPPING**
  - **CHAPTER 27--MERCHANT MARINE ACT, 1936**
    - **SUBCHAPTER XI--FEDERAL SHIP MORTGAGE INSURANCE**

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### SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1152, 1160, 1161, 1273a, 1295d of this Appendix; title 11 section 362; title 16 section 742c-1; title 46 sections 31308, 31326.

#### § 1271. Definitions

As used in this subchapter--

(a) The term "mortgage" includes--

- (1) a preferred mortgage as defined in section 31301 of title 46; and
- (2) a mortgage on a vessel that will become a preferred mortgage when filed or recorded under chapter 313 of title 46.<sup>1</sup>

<sup>1</sup> So in original. The period probably should be a semicolon.

(b) The term "vessel" includes all types, whether in existence or under construction, of passenger cargo and combination passenger-cargo carrying vessels, tankers, tugs, towboats, barges, dredges and ocean thermal energy conversion facilities or plantships which are or will be documented under the laws of the United States, fishing vessels whose ownership will meet the citizenship requirements for documenting vessels in the coastwise trade within the meaning of section 802 of this Appendix, floating drydocks which have a capacity of thirty-five thousand or more lifting tons and a beam of one hundred and twenty-five feet or more between the wing walls and oceanographic research or instruction or pollution treatment, abatement or control vessels;

(c) The term "obligation" shall mean any note, bond, debenture, or other evidence of indebtedness (exclusive of notes or other obligations issued by the Secretary pursuant to section 1275(d) of this Appendix and obligations eligible for investment of funds under sections 1272 and 1279a(d) of this Appendix), issued for one of the purposes specified in section 1274(a)<sup>2</sup> of this Appendix;

<sup>2</sup> See References in Text note below.

(d) The term "obligor" shall mean any party primarily liable for payment of the principal of or interest on any obligation;

(e) The term "obligee" shall mean the holder of an obligation;

(f) The term "actual cost" of a vessel as of any specified date means the aggregate, as determined by the Secretary, of (i) all amounts paid by or for the account of the obligor on or before that date, and (ii) all amounts which the obligor is then obligated to pay from time to time thereafter, for the construction, reconstruction, or reconditioning of such vessel;

(g) The term "depreciated actual cost" of a vessel means the actual cost of the vessel depreciated on a straightline basis over the useful life of the vessel as determined by the Secretary, not to exceed twenty-five years from the date the vessel was delivered by the shipbuilder, or, if the vessel has been reconstructed or reconditioned, the actual cost of the vessel depreciated on a straightline basis from the date the vessel was delivered by the shipbuilder to the date of such reconstruction or reconditioning on the basis of the original useful life of the vessel and from the date of such reconstruction or reconditioning on a straightline basis and on the basis of a useful life of the vessel determined by the Secretary, plus all amounts paid or obligated to be paid for the reconstruction or reconditioning depreciated on a straightline basis and on the basis of a useful life of the vessel determined by the Secretary.

(h) The terms "construction," "reconstruction," or "reconditioning" shall include, but shall not be limited to, designing, inspecting, outfitting, and equipping;

(i) The term "ocean thermal energy conversion facility or plantship" means any at-sea facility or vessel, whether mobile, floating unmoored, moored, or standing on the seabed, which uses temperature differences in ocean water to produce electricity or another form of energy capable of being used directly to perform work, and includes any equipment installed on such facility or vessel to use such electricity or other form of energy to produce, process, refine, or manufacture a product, and any cable or pipeline used to deliver such electricity, freshwater, or product to shore, and all other associated equipment and appurtenances of such facility or vessel, to the extent they are located seaward of the highwater mark;

(j) The term "citizen of the Northern Mariana Islands" means--

(1) an individual who qualifies as such under section 8 of the Schedule on Transitional Matters attached to the Constitution of the Northern Mariana Islands; or

(2) a corporation, partnership, association, or other entity formed under the laws of the Northern Mariana Islands, not less than 75 percent of the interest in which is owned by individuals referred to in paragraph (1) or citizens or nationals of the United States, in cases in which "owned" is used in the same sense as in section 802 of this Appendix;

(k) The term "fishery facility" means--

(1) for operations on land--

(A) any structure or appurtenance thereto designed for the unloading and receiving from vessels, the processing, the holding pending processing, the distribution after processing, or the holding pending distribution, of fish from one or more fisheries,

(B) the land necessary for any such structure or appurtenance described in subparagraph (A), and

(C) equipment which is for use in connection with any such structure or appurtenance and which is necessary for the performance of any function referred to in subparagraph (A);

(2) for operations other than on land, any vessel built in the United States used for, equipped to be used for, or of a type which is normally used for, the processing of fish; or

(3) for aquaculture, including operations on land or elsewhere--

(A) any structure or appurtenance thereto designed for aquaculture;

(B) the land necessary for any such structure or appurtenance described in subparagraph (A);

(C) equipment which is for use in connection with any such structure or appurtenance and which is necessary for the performance of any function referred to in subparagraph (A); and

(D) any vessel built in the United States used for, equipped to be used for, or of a type which is normally used for aquaculture;

but only if such structure, appurtenance, land, equipment, or vessel is owned by an individual who is a citizen or national of the United States or a citizen of the Northern Mariana Islands or by a corporation, partnership, association, or other entity that is a citizen of the United States within the meaning of section 802 of this Appendix, and for purposes of applying such section 802 of this Appendix with respect to this section--

(i) the term "State" as used therein includes any State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the Northern Mariana Islands, or any other Commonwealth, territory, or possession of the United States; and

(ii) citizens of the United States must own not less than 75 percent of the interest in the entity and nationals of the United States or citizens of the Northern Mariana Islands shall be treated as citizens of the United States in meeting such ownership requirement;

(l) The term "fishing vessel" has the meaning given such term by section 1802(11)<sup>3</sup> of title 16; and any reference in this subchapter to a vessel designed principally for commercial use in the fishing trade or industry shall be treated as a reference to a fishing vessel;

<sup>3</sup> See References in Text note below.

(m) The term "United States" when used in a geographical context with respect to fishing vessels or fishery facilities includes all States referred to in subsection (k)(i) of this section.

(n) The term "Secretary" means the Secretary of Commerce with respect to fishing vessels and fishing facilities as provided by this subchapter, and the Secretary of Transportation with respect to all other vessels and general shipyard facilities (as defined in section 1279e(d)(3) of this Appendix).

(o) The term "eligible export vessel" means a vessel constructed, reconstructed, or reconditioned in the United States for use in world-wide trade which will, upon delivery or redelivery, be placed under or continued to be documented under the laws of a country other than the United States.

(June 29, 1936, ch. 858, title XI, § 1101, as added June 23, 1938, ch. 600, § 46, 52 Stat. 969; amended Sept. 3, 1954, ch. 1265, § 1, 68 Stat. 1267; Aug. 7, 1956, ch. 1026, § 1(a), (b), 70 Stat. 1087; Pub. L. 86-127, § 1(1), July 31, 1959, 73 Stat. 272; Pub. L. 86-685, § 1, Sept. 2, 1960, 74 Stat. 733; Pub. L. 87-303, § 2, Sept. 26, 1961, 75 Stat. 661; Pub. L. 91-469, § 29, Oct. 21, 1970, 84 Stat. 1035; Pub. L. 92-507, § 1, Oct. 19, 1972, 86 Stat. 909; Pub. L. 96-320, title II, § 202(a), Aug. 3, 1980, 94 Stat. 992; Pub. L. 96-561, title II, § 220(1), 238(b), Dec. 22, 1980, 94 Stat. 3291, 3300; Pub. L. 97-31, § 12(135), Aug. 6, 1981, 95 Stat. 165; Pub. L. 100-710, title I, § 104(d), Nov. 23, 1988, 102 Stat. 4750; Pub. L. 102-567, title III, § 304, Oct. 29, 1992, 106 Stat. 4283; Pub. L. 103-160, div. A, title XIII, § 1356(1), 1357(b), Nov. 30, 1993, 107 Stat. 1812, 1815; Pub. L. 104-208, div. A, title I, § 101(a) [title II, § 211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41; Pub. L. 104-239, § 11(1), Oct. 8, 1996, 110 Stat. 3134.)



## REFERENCES IN TEXT

Section 1274(a) of this Appendix, referred to in subsec. (c), was in the original a reference to subsection (a) of section 1104 of this title, meaning section 1104 of title XI of the Merchant Marine Act, 1936, act June 29, 1936, ch. 858. Section 1104 of that Act was renumbered as section 1104A of that Act by Pub. L. 101-380, title IV, § 4115(f)(1), Aug. 18, 1990, 104 Stat. 521.

Section 1802 of title 16, referred to in subsec. (l), was subsequently amended, and section 1802(11) no longer defines the term "fishing vessel". However, such term is defined elsewhere in that section.

## AMENDMENTS

1996--Subsec. (b). Pub. L. 104-239 struck out "owned by citizens of the United States" before semicolon at end.

Subsec. (l). Pub. L. 104-208 made technical amendment to reference in original act which appears in text as reference to section 1802(11) of title 16.

1993--Subsec. (n). Pub. L. 103-160, § 1357(b), substituted "vessels and general shipyard facilities (as defined in section 1279e(d)(3) of this Appendix)" for "vessels".

Subsec. (o). Pub. L. 103-160, § 1356(1), added subsec. (o).

1992--Subsec. (k)(3). Pub. L. 102-567 added par. (3).

1988--Subsec. (a). Pub. L. 100-710 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "The term 'mortgage' includes a preferred mortgage as defined in the Ship Mortgage Act, 1920, as amended, on any vessel of the United States (other than a towboat, barge, scow, lighter, car float, canal boat, or tank vessel of less than twenty-five gross tons), and a mortgage on such a vessel which will become a preferred mortgage when recorded and endorsed as required by the Ship Mortgage Act, 1920, as amended;"

1981--Subsecs. (c), (f), (g). Pub. L. 97-31, § 12(135)(A), struck out "of Commerce" after "Secretary" wherever appearing.

Subsec. (n). Pub. L. 97-31, § 12(135)(B), added subsec. (n).

1980--Subsec. (b). Pub. L. 96-320, § 202(a)(1), inserted reference to ocean thermal energy conversion facilities or plantships.

Subsec. (i). Pub. L. 96-320, § 202(a)(2)-(4), added subsec. (i).

Subsecs. (j), (k). Pub. L. 96-561, § 220(1), added subsecs. (j) and (k).

Subsec. (l). Pub. L. 96-561, § 238(b), made technical amendment to reference in original act which appears in text as reference to section 1802(11) of title 16.

Pub. L. 96-561, § 220(1), added subsec. (l).

Subsec. (m). Pub. L. 96-561, § 220(1), added subsec. (m).

1972--Subsec. (a). Pub. L. 92-507 reduced the minimum size requirement for certain vessels from 200 gross tons to 25 gross tons.

Subsec. (b). Pub. L. 92-507 substituted definition of "vessel" for definition of "loan".

Subsec. (c). Pub. L. 92-507 substituted definition of "obligation" for definition of "vessel".

Subsec. (d). Pub. L. 92-507 substituted definition of "obligor" for definition of "mortgagee".

Subsec. (e). Pub. L. 92-507 substituted definition of "obligee" for definition of "mortgagor".

Subsec. (f). Pub. L. 92-507 struck out proviso and substituted obligor for mortgagor or borrower.

Subsecs. (g), (h). Pub. L. 92-507 added subsecs. (g) and (h).

1970--Subsec. (c). Pub. L. 91-469 included oceanographic research or instruction vessels in definition of term "vessel".

1961--Subsec. (a). Pub. L. 87-303 excluded towboats, barges, scows, lighters, car floats, canal boats or tank vessels of less than two hundred gross tons.

1960--Subsec. (c). Pub. L. 86-685 included floating drydocks which have a capacity of 35,000 or more lifting tons and a beam of 125 feet or more between the wing walls.

1959--Subsec. (f). Pub. L. 86-127 inserted in proviso "in respect of the unpaid balance of the principal of a mortgage or loan" and exception clause.

1956--Subsec. (f). Act Aug. 7, 1956, struck out ", except for certain special purpose vessels as provided for in subsections (a) and (b) of section 1273 of this Appendix," in proviso following "That in no event", and struck out "90 per centum of" both before and after "75 per centum, or".

1954--Act Sept. 3, 1954, defined "loan" and "actual cost" and redefined "mortgagee".

#### **EFFECTIVE DATE OF 1996 AMENDMENT**

Section 101(a) [title II, § 211(b)] of div. A of Pub. L. 104-208 provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

#### **EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100-710 effective Jan. 1, 1989, with certain exceptions and qualifications, see section 107 of Pub. L. 100-710, set out as an Effective Date note under section 30101 of Title 46, Shipping.

#### **EFFECTIVE DATE OF 1980 AMENDMENT**

Section 238(b) of Pub. L. 96-561 provided that the amendment made by that section is effective 15 days after Dec. 22, 1980.

#### **REGULATIONS**

Pub. L. 103-160, div. A, title XIII, § 1362, Nov. 30, 1993, 107 Stat. 1817, provided that:

"(a) In General.--Within 90 days after the date of the enactment of this Act [Nov. 30, 1993], the Secretary of Transportation shall prescribe regulations as necessary to carry out the Secretary's responsibilities under this title [probably should be "subtitle" meaning subtitle D (§ 1351-1363) of title XIII of div. A of Pub. L. 103-160, see Tables for classification] (including the amendments made by this title [subtitle]).

"(b) Interim Regulations.--The Secretary of Transportation may prescribe interim regulations necessary to carry out this title [subtitle] and for accepting applications under title XI of the Merchant Marine Act, 1936 [46 App. U.S.C. 1271 et seq.], as amended by this title [subtitle]. For that purpose, the Secretary is excepted from compliance with the notice and comment requirements of section 553 of title 5, United States Code. All regulations prescribed under this subsection that are not earlier superseded by final rules shall expire 270 days after the date of the enactment of this Act."

#### **SECRETARY OF COMMERCE: FISHING VESSEL INSURANCE**

Secretary of Commerce authorized to exercise authority in relation to issuance of insurance on fishing vessels comparable to authority of Secretary of Commerce under this subchapter, see note set out under section 1275 of this Appendix.

#### **SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 1274, 1274a, 1279c of this Appendix; title 30 section 1412.

#### **§ 1272. Federal Ship Financing Fund**

There is created a Federal Ship Financing Fund (hereinafter referred to as the Fund) which shall be used by the Secretary as a revolving fund for the purpose of carrying out the provisions of this subchapter, and there shall be allocated to such fund the sum of \$1,000,000 out of funds made available to the Secretary under the appropriation authorized by section 1279<sup>1</sup> of this Appendix. Moneys in the Fund shall be deposited in the Treasury of the United States to the credit of the Fund or invested in bonds or other obligations of, or guaranteed as to principal and interest by, the United States.

<sup>1</sup> See References in Text note below.

(June 29, 1936, ch. 858, title XI, § 1102, as added June 23, 1938, ch. 600, § 46, 52 Stat. 969; amended Sept. 3, 1954, ch. 1265, § 2, 68 Stat. 1268; Pub. L. 86-123, § 1(2), July 31, 1959, 73 Stat. 269; Pub. L. 92-507, § 2, Oct. 19, 1972, 86 Stat. 910; Pub. L. 97-31, § 12(136), Aug. 6, 1981, 95 Stat. 166.)

#### **REFERENCES IN TEXT**

Section 1279 of this Appendix, referred to in text, was repealed by Pub. L. 101-225, title III, § 307(7), Dec. 12, 1989, 103 Stat. 1925.

#### **AMENDMENTS**

1981--Pub. L. 97-31 struck out "of Commerce" after "Secretary" in two places.

1972--Pub. L. 92-507 substituted "Federal Ship Financing Fund" for "Federal Ship Mortgage Insurance Fund", and "Fund" for "fund" in four places.

1959--Pub. L. 86-123 substituted "section 1110" for "section 1109" of act June 29, 1936, which for purposes of codification has been changed to "section 1279 of this Appendix".

1954--Act Sept. 3, 1954, omitted provisions relating to the purchase of debentures and substituted "Secretary of Commerce" for "Commission".

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1271, 1274, 1274a, 1275, 1279c of this Appendix; title 16 section 742c-1.

### § 1273. Authorization of Secretary to guarantee obligations

#### (a) Principal and interest

The Secretary is authorized to guarantee, and to enter into commitments to guarantee, the payment of the interest on, and the unpaid balance of the principal of, any obligation which is eligible to be guaranteed under this subchapter. A guarantee, or commitment to guarantee, made by the Secretary under this subchapter shall cover 100 percent of the amount of the principal and interest of the obligation.

#### (b) Security interest

No obligation shall be guaranteed under this subchapter unless the obligor conveys or agrees to convey to the Secretary such security interest, which may include a mortgage or mortgages on a vessel or vessels, as the Secretary may reasonably require to protect the interest of the United States.

#### (c) Amount of guarantee; percentage limitation; determination of actual cost of vessel

The Secretary shall not guarantee the principal of obligations in an amount in excess of 75 per centum, or 87<sup>1/2</sup> per centum, whichever is applicable under section 1274<sup>1</sup> of this Appendix, of the amount, as determined by the Secretary which determination shall be conclusive, paid by or for the account of the obligor for the construction, reconstruction, or reconditioning of a vessel or vessels with respect to which a security interest has been conveyed to the Secretary, unless the obligor creates an escrow fund as authorized by section 1279a of this Appendix, in which case the Secretary may guarantee 75 per centum or 87<sup>1/2</sup> per centum, whichever is applicable under section 1274 of this Appendix, of the actual cost of such vessel or vessels.

<sup>1</sup> See References in Text note below.

#### (d) Pledge of United States

The full faith and credit of the United States is pledged to the payment of all guarantees made under this subchapter with respect to both principal and interest, including interest, as may be provided for in the guarantee, accruing between the date of default under a guaranteed obligation and the payment in full of the guarantee.

#### (e) Proof of obligations

Any guarantee, or commitment to guarantee, made by the Secretary under this subchapter shall be conclusive evidence of the eligibility of the obligations for such guarantee, and the validity of any guarantee, or commitment to guarantee, so made shall be incontestable. Notwithstanding an assumption of an obligation by the Secretary under section 1275(a) or (b) of this Appendix, the validity of the guarantee of an obligation made by the Secretary under this subchapter is unaffected and the guarantee remains in full force and effect.

#### (f) Limitation on outstanding amount

The aggregate unpaid principal amount of the obligations guaranteed under this section and outstanding at any one time shall not exceed \$12,000,000,000, of which (1) \$850,000,000 shall be limited to obligations pertaining to guarantees of obligations for fishing vessels and fishery facilities made under this subchapter, and (2) \$3,000,000,000 shall be limited to obligations pertaining to guarantees of obligations for eligible export vessels. No additional limitations may be imposed on new commitments to guarantee loans for any fiscal year, except in such amounts as established in advance in annual authorization Acts. No vessel eligible for guarantees under this subchapter shall be denied eligibility because of its type.

#### (g) Restrictions on commitments to guarantee obligations on eligible export vessels

(1) The Secretary may not issue a commitment to guarantee obligations for an eligible export vessel unless, after considering--

(A) the status of pending applications for commitments to guarantee obligations for vessels documented under the laws of the United States and operating or to be operated in the domestic or foreign commerce of the United States,

(B) the economic soundness of the applications referred to in subparagraph (A), and

(C) the amount of guarantee authority available,

the Secretary determines, in the sole discretion of the Secretary, that the issuance of a commitment to guarantee obligations for an eligible export vessel will not result in the denial of an economically sound application to issue a commitment to guarantee obligations for vessels documented under the laws of the United States operating in the domestic or foreign commerce of the United States.

(2) The Secretary may not issue commitments to guarantee obligations for eligible export vessels under this section after the later of--

(A) the 5th anniversary of the date on which the Secretary publishes final regulations setting forth the application procedures for the issuance of commitments to guarantee obligations for eligible export vessels,

(B) the last day of any 5-year period in which funding and guarantee authority for obligations for eligible export vessels have been continuously available, or

(C) the last date on which those commitments may be issued under any treaty or convention entered into after November 30, 1993, that prohibits guarantee of those obligations.

(h) Risk categories

(1) The Secretary shall--

(A) establish in accordance with this subsection a system of risk categories for obligations guaranteed under this subchapter, that categorizes the relative risk of guarantees made under this subchapter with respect to the risk factors set forth in paragraph (3); and

(B) determine for each of the risk categories a subsidy rate equivalent to the cost of obligations in the category, expressed as a percentage of the amount guaranteed under this subchapter for obligations in the category.

(2)(A) Before making a guarantee under this section for an obligation, the Secretary shall apply the risk factors set forth in paragraph (3) to place the obligation in a risk category established under paragraph (1)(A).

(B) The Secretary shall consider the aggregate amount available to the Secretary for making guarantees under this subchapter to be reduced by the amount determined by multiplying--

(i) the amount guaranteed under this subchapter for an obligation, by

(ii) the subsidy rate for the category in which the obligation is placed under subparagraph (A) of this paragraph.

(C) The estimated cost to the Government of a guarantee made by the Secretary under this subchapter for an obligation is deemed to be the amount determined under subparagraph (B) for the obligation.

(D) The Secretary may not guarantee obligations under this subchapter after the aggregate amount available to the Secretary under appropriations Acts for the cost of loan guarantees is required by subparagraph (B) to be considered reduced to zero.

(3) The risk factors referred to in paragraphs (1) and (2) are the following:

(A) If applicable, the country risk for each eligible export vessel financed or to be financed by an obligation.

(B) The period for which an obligation is guaranteed or to be guaranteed.

(C) The amount of an obligation, which is guaranteed or to be guaranteed, in relation to the total cost of the project financed or to be financed by the obligation.

(D) The financial condition of an obligor or applicant for a guarantee.

(E) If applicable, any guarantee related to the project, other than the guarantee under this subchapter for which the risk factor is applied.

(F) If applicable, the projected employment of each vessel or equipment to be financed with an obligation.

(G) If applicable, the projected market that will be served by each vessel or equipment to be financed with an obligation.

(H) The collateral provided for a guarantee for an obligation.

(I) The management and operating experience of an obligor or applicant for a guarantee.

(J) Whether a guarantee under this subchapter is or will be in effect during the construction period of the project.

(4) In this subsection, the term "cost" has the meaning given that term in section 661a of title 2.

(June 29, 1936, ch. 858, title XI, § 1103, as added June 23, 1938, ch. 600, § 46, 52 Stat. 969; amended Aug. 15, 1953, ch. 513, § 1, 67 Stat. 626; Sept. 3, 1954, ch. 1265, § 3, 68 Stat. 1268; June 25, 1956, ch. 438, 70 Stat. 332; Aug. 7, 1956, ch. 1026, § 1(a), (c), (d), 70 Stat. 1087; Pub. L. 91-469, § 30, Oct. 21, 1970, 84 Stat. 1035; Pub. L. 92-507, § 3, Oct. 19, 1972, 86 Stat. 910; Pub. L. 93-70, § 3, July 10, 1973, 87 Stat. 168; Pub. L. 94-127, § 5, Nov. 13, 1975, 89 Stat. 681; Pub. L. 95-298, § 5, June 26, 1978, 92 Stat. 340; Pub. L. 96-320, title II, § 203(b)(1), Aug. 3, 1980, 94 Stat. 994; Pub. L. 96-561, title II, § 220(2), Dec. 22, 1980, 94 Stat. 3292; Pub. L. 97-31, § 12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 97-35, title XVI, § 1606(a), (b), Aug. 13, 1981, 95 Stat. 752; Pub. L. 97-424, title IV, § 425, Jan. 6, 1983, 96 Stat. 2167; Pub. L. 98-595, § 1(1), Oct. 30, 1984, 98 Stat. 3130; Pub. L. 99-509, title V, § 5002, Oct. 21, 1986, 100 Stat. 1912; Pub. L. 103-160, div. A, title XIII, § 1356(2), (5), Nov. 30, 1993, 107 Stat. 1812, 1814; Pub. L. 104-239, § 13(a), Oct. 8, 1996, 110 Stat. 3134.)

## REFERENCES IN TEXT

Section 1274 of this Appendix, referred to in subsec. (c), was in the original a reference to title XI of section 1104 of this title, meaning section 1104 of title XI of the Merchant Marine Act, 1936, act June 29, 1936, ch. 858. Section 1104 of that Act was renumbered as section 1104A of that Act by Pub. L. 101-380, title IV, § 4115(f)(1), Aug. 18, 1990, 104 Stat. 521.

## AMENDMENTS

1996--Subsec. (h). Pub. L. 104-239 added subsec. (h).

1993--Subsec. (a). Pub. L. 103-160, § 1356(5), substituted "The Secretary is authorized" for "The Secretary, upon application by a citizen of the United States, is authorized".

Subsec. (f). Pub. L. 103-160, § 1356(2)(A), amended first sentence generally. Prior to amendment, first sentence read as follows: "The aggregate unpaid principal amount of the obligations guaranteed under this section and outstanding at any one time shall not exceed \$12,000,000,000, of which \$1,650,000,000 shall be limited to obligations pertaining to commercial [sic] demonstration ocean thermal energy conversion facilities or plantships guaranteed under section 1279c of this Appendix, and of which \$850,000,000 shall be limited to obligations pertaining to guarantees of obligations for fishing vessels and fishery facilities made under this subchapter."

Subsec. (g). Pub. L. 103-160, § 1356(2)(B), added subsec. (g).

1986--Subsec. (a). Pub. L. 99-509 inserted at end "A guarantee, or commitment to guarantee, made by the Secretary under this subchapter shall cover 100 percent of the amount of the principal and interest of the obligation."

1984--Subsec. (e). Pub. L. 98-595 inserted "Notwithstanding an assumption of an obligation by the Secretary under section 1275(a) or (b) of this Appendix, the validity of the guarantee of an obligation made by the Secretary under this subchapter is unaffected and the guarantee remains in full force and effect."

1983--Subsec. (f). Pub. L. 97-424 inserted provision that no additional limitations may be imposed on new commitments to guarantee loans for any fiscal year, except in such amounts as established in advance in annual authorization Acts, and that no vessel eligible for guarantees under this subchapter shall be denied eligibility because of its type.

1981--Subsecs. (a) to (c), (e). Pub. L. 97-31 struck out "of Commerce" after "Secretary" wherever appearing.

Subsec. (f). Pub. L. 97-35, § 1606(b), increased maximum amount from \$10,000,000,000 to \$12,000,000,000, and substituted provisions relating to monetary limitations and criteria for obligations, for former pars. (1) and (2) relating to percentage limitations and criteria for obligations, and required aggregate amount.

1980--Subsec. (f). Pub. L. 96-561 added pars. (1) and (2) and provision that the aggregate amount reserved for the purposes set forth in pars. (1) and (2) equal 10 percent of such sum.

Pub. L. 96-320, § 203(b), which, effective Oct. 1, 1981, substituted "\$12,000,000,000, of which \$2,000,000,000 shall be limited to obligations pertaining to commercial demonstration ocean thermal energy conversion facilities or plantships guaranteed pursuant to section 1279c of this Appendix" for "\$10,000,000,000" was later repealed by Pub. L. 97-35. See Repeals note set out below.

1978--Subsec. (f). Pub. L. 95-298 increased limitation on amount of outstanding obligations from \$7,000,000,000 to \$10,000,000,000.

1975--Subsec. (f). Pub. L. 94-127 increased limitation on amount of outstanding obligations from \$5,000,000,000 to \$7,000,000,000.

1973--Subsec. (f). Pub. L. 93-70 increased limitation on amount of outstanding obligations from \$3,000,000,000 to \$5,000,000,000.

1972--Subsec. (a). Pub. L. 92-507 incorporated provisions of former subsecs. (a) and (b) into subsec. (a) and substituted provisions authorizing the Secretary to guarantee the payment of principal and interest on the obligation for provisions authorizing the Secretary to insure a mortgage or a loan.

Subsec. (b). Pub. L. 92-507 added subsec. (b). Provisions of former subsec. (b) were incorporated into subsec. (a).

Subsec. (c). Pub. L. 92-507 substituted provisions making the Secretary's determination of actual cost of the vessel conclusive for the purposes of determining the maximum amount which may be guaranteed, for provisions making the mortgagee or lender the beneficiary of insurance contracts.

Subsec. (d). Pub. L. 92-507 substituted provisions pledging the full faith and credit of the United States for payment of all guarantees with interest, for provisions pledging the faith of the United States to the payment of principal and interest of each mortgage and loan.

Subsec. (e). Pub. L. 92-507 added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 92-507 redesignated former subsec. (e) as subsec. (f), and in subsec. (f) as so redesignated, substituted "obligations guaranteed" for "mortgages and loans insured".

1970--Subsec. (e). Pub. L. 91-469 increased limitation on outstanding amount of mortgages and loans insured under this section from one to three billion dollars.

1956--Subsec. (a). Act Aug. 7, 1956, § 1(a), (c), struck out "90 per centum of" before "the unpaid balance" and proviso that as to special purpose vessels certified essential to national defense, Secretary of Commerce may insure 100 per centum of principal and interest on eligible mortgages.

Subsec. (b). Act Aug. 7, 1956, § 1(a), (c), struck out "90 per centum of" before "the unpaid balance" and proviso that as to special purpose vessels certified essential to national defense, Secretary of Commerce may insure 100 per centum of principal and interest on eligible loans.

Subsec. (d). Act Aug. 7, 1956, § 1(d), struck out "the" before "interest on and" and "90 per centum of" after such words.

Act June 25, 1956, pledged the faith of the United States, in the case of special-purpose vessels, to the payment of the interest on and 100 per centum of the unpaid balance of the principal amount of each mortgage and loan insured under this subchapter.

1954--Act Sept. 3, 1954, provided for the insurance of mortgages by Secretary up to 90 per centum of unpaid balance except that vessels essential to national defense may be insured up to 100 per centum, to provide for insurance contracts, pledged the United States as security, and limited aggregate unpaid principal to \$1,000,000,000.

1953--Act Aug. 15, 1953, designated existing provisions as subsec. (a), inserted "90 per centum of the unpaid balance" after "provided" and struck out last sentence relating to aggregate amount of mortgage obligations, and added subsecs. (b) and (c).

#### **EFFECTIVE DATE OF 1996 AMENDMENT**

Section 13(b) of Pub. L. 104-239 provided that: "Subsection (h)(2) of section 1103 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1273), as amended by subsection (a) of this section, shall apply to guarantees that the Secretary of Transportation makes or commits to make with any amounts that are unobligated on or after the date of enactment of this Act [Oct. 8, 1996]."

#### **EFFECTIVE DATE OF 1956 AMENDMENT**

Act June 25, 1956, provided that the amendment made by that act is effective Sept. 3, 1954.

#### **REPEALS**

Pub. L. 96-320, title II, § 203(b), Aug. 3, 1980, 94 Stat. 994, cited as a credit to this section, which amended subsec. (f) of this section, effective Oct. 1, 1981, by increasing the aggregate unpaid principal amount of obligations guaranteed under this section to \$12,000,000,000 of which \$2,000,000,000 was to be limited to obligations pertaining to commercial demonstration ocean thermal energy conversion facilities or plantships guaranteed pursuant to section 1279c of this Appendix, was repealed by Pub. L. 97-35, title XVI, § 1606(a), Aug. 13, 1981, 95 Stat. 752.

#### **REACTIVATION OF CLOSED SHIPYARDS**

Pub. L. 104-324, title XI, § 1139, Oct. 19, 1996, 110 Stat. 3989, provided that:

"(a) In General.--The Secretary may issue a guarantee or a commitment to guarantee obligations under title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271 et seq.), upon such terms as the Secretary may prescribe, to assist in the reactivation and modernization of any shipyard in the United States that is closed on the date of the enactment of this Act [Oct. 19, 1996], if the Secretary finds that--

"(1) the closed shipyard historically built military vessels and responsible entities now seek to reopen it as an internationally competitive commercial shipyard;

"(2)(A) the closed shipyard has been designated by the President as a public-private partnership project; or

"(B) has a reuse plan approved by the Navy in which commercial shipbuilding and repair are primary activities and has a revolving economic conversion fund approved by the Department of Defense; and

"(3) the State in which the shipyard is located, and each other involved State, or a State-chartered agency, is making a significant financial investment in the overall cost of reactivation and modernization as its contribution to the reactivation and modernization project, in addition to the funds required by subsection (d)(2) of this section.

"(b) Waivers.--Notwithstanding any other provision of title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271 et seq.), the Secretary shall not apply the requirements of section 1104A(d) of that Act [46 App. U.S.C. 1274(d)] when issuing a guarantee or a commitment to guarantee an obligation under this section.

"(c) Conditions.--The Secretary shall impose such conditions on the issuance of a guarantee or a commitment to guarantee under this section as are necessary to protect the interests of the United States from the risk of a default. The Secretary shall consider the interdependency of such shipyard modernization and reactivation projects and related vessel loan guarantee requests pending under title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271 et seq.) before issuing a guarantee or a commitment to guarantee under this section.

"(d) Funding Provisions.--

"(1) The Secretary may not guarantee or commit to guarantee obligations under this section that exceed \$100,000,000 in the aggregate.

"(2) The amount of appropriated funds required by the Federal Credit Reform Act of 1990 (2 U.S.C. 661a et seq.) [2 U.S.C. 661 et seq.] in advance of the Secretary's issuance of a guarantee or a commitment to guarantee under this section shall be provided by the State in which the shipyard is located, and other involved States, or by a State-chartered agency, and deposited by the Secretary in the financing account established under the Federal Credit Reform Act of 1990 (2 U.S.C. 661a et seq.) for loan guarantees issued by the Secretary under title XI of the Merchant Marine Act of 1936 (46 App. U.S.C. 1271 et seq.). No federally appropriated funds shall be available for this purpose. The funds deposited into that financing account shall be held and applied by the Secretary in accordance with the provisions of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a et seq.), except that, unless the Secretary shall have earlier paid an obligee or been required to pay an obligee pursuant to the terms of a loan guarantee, the funds deposited in that financing account shall be returned, upon the expiration of the Secretary's loan guarantee, to the State, States, or State-chartered agency which originally provided the funds to the Secretary.

"(3) Notwithstanding the provisions of any other law or regulation, the cost (as that term is defined by the Federal Credit Reform Act of 1990 (2 U.S.C. 661a et seq.)) of a guarantee or commitment to guarantee issued under this section--

"(A) may only be determined with reference to the merits of the specific closed shipyard reactivation project which is the subject of that guarantee or commitment to guarantee, without reference to any other project, type of project, or averaged risk; and

"(B) may not be used in determining the cost of any other project, type of project, or averaged risk applicable to guarantees or commitments to guarantee issued under title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271 et seq.).

"(e) Sunset.--No commitment to guarantee obligations under this section shall be issued by the Secretary after one year after the date of enactment of this section [Oct. 19, 1996].

"(f) Definition.--As used in this section, the term 'Secretary' means the Secretary of Transportation."

Similar provisions were contained in the following prior appropriation Act:

Pub. L. 104-208, div. A, title I, § 101(a) [title VI, § 618], Sept. 30, 1996, 110 Stat. 3009, 3009-68.

#### **ELECTION OF COVERAGE**

Section 7 of Pub. L. 92-507 provided that: "Any citizen of the United States to whom the Secretary of Commerce issued an approval in principle of an application for loan or mortgage insurance or a commitment with respect to such insurance under the provisions of title XI of the Merchant Marine Act, 1936 [this subchapter], prior to the effective date of this Act [Oct. 19, 1972] may elect, with respect to the vessels covered by such approval or commitment, to be bound either by the provisions of title XI of the Merchant Marine Act, 1936 [this subchapter], as in effect prior to the effective date of this Act [Oct. 19, 1972] or by the provisions of this Act [see Short Title of 1972 Amendment note under section 1245 of this Appendix]."

#### **SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 1274, 1274a, 1279c, 1279e of this Appendix.

#### **§ 1273a. Certain loan guarantees and commitments**

(a) The Secretary of Transportation may not issue a guarantee or commitment to guarantee a loan for the construction, reconstruction, or reconditioning of a liner vessel under the authority of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et seq.) after October 14, 1998, unless the Chairman of the Federal Maritime Commission certifies that the operator of such vessel--

(1) has not been found by the Commission to have violated section 19 of the Merchant Marine Act, 1920 (46 U.S.C. App. 876), or the Foreign Shipping Practices Act of 1988 [46 App. U.S.C. 1710a], within the previous 5 years; and

(2) has not been found by the Commission to have committed a violation of the Shipping Act of 1984 (46 U.S.C. App. 1701 et seq.), which involves unjust or unfair discriminatory treatment or undue or unreasonable prejudice or disadvantage with respect to a United States shipper, ocean transportation intermediary, ocean common carrier, or port within the previous 5 years.

(b) The Secretary of Commerce may not issue a guarantee or a commitment to guarantee a loan for the construction, reconstruction, or reconditioning of a fishing vessel under the authority of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et seq.) if the fishing vessel operator has been--

(1) held liable or liable in rem for a civil penalty pursuant to section 1858 of title 16 and not paid the penalty;

(2) found guilty of an offense pursuant to section 1859 of title 16 and not paid the assessed fine or served the assessed sentence;

(3) held liable for a civil or criminal penalty pursuant to section 1375 of title 16 and not paid the assessed fine or served the assessed sentence; or

(4) held liable for a civil penalty by the Coast Guard pursuant to title 33 or 46 and not paid the assessed fine.

(Pub. L. 105-258, title IV, § 401, Oct. 14, 1998, 112 Stat. 1916.)

#### REFERENCES IN TEXT

The Merchant Marine Act, 1936, referred to in text, is act June 29, 1936, ch. 858, 49 Stat. 1985, as amended. Title XI of the Act is classified generally to this subchapter (§ 1271 et seq.). For complete classification of this Act to the Code, see section 1245 of this Appendix and Tables.

The Foreign Shipping Practices Act of 1988, referred to in subsec. (a)(1), is subtitle A (§ 10001-10003) of Pub. L. 100-418, title X, Aug. 23, 1988, 102 Stat. 1570, which enacted section 1710a of this Appendix, amended section 1122b of this Appendix, and enacted provisions set out as a note under section 3302 of Title 46, Shipping. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 1701 of this Appendix and Tables.

The Shipping Act of 1984, referred to in subsec. (a)(2), is Pub. L. 98-237, Mar. 20, 1984, 98 Stat. 67, as amended, which is classified principally to chapter 36 (§ 1701 et seq.) of this Appendix. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of this Appendix and Tables.

#### *Codification*

Section was enacted as part of the Ocean Shipping Reform Act of 1998, and not as part of the Merchant Marine Act, 1936, which comprises this chapter.

#### EFFECTIVE DATE

Section effective May 1, 1999, see section 2 of Pub. L. 105-258, set out as an Effective Date of 1998 Amendment note under section 1701 of this Appendix.

#### **§ 1274. Eligibility for guarantee**

##### (a) Purpose of obligations

Pursuant to the authority granted under section 1273(a) of this Appendix, the Secretary, upon such terms as he shall prescribe, may guarantee or make a commitment to guarantee, payment of the principal of and interest on an obligation which aids in--

(1) financing, including reimbursement of an obligor for expenditures previously made for, construction, reconstruction, or reconditioning of a vessel (including an eligible export vessel), which is designed principally for research, or for commercial use (A) in the coastwise or intercoastal trade; (B) on the Great Lakes, or on bays, sounds, rivers, harbors, or inland lakes of the United States; (C) in foreign trade as defined in section 1244 of this Appendix for purposes of subchapter V of this chapter; or (D) as an ocean thermal energy conversion facility or plant; (E) with respect to floating drydocks in the construction, reconstruction, reconditioning, or repair of vessels; or (F) with respect to an eligible export vessel, in world-wide trade;<sup>1</sup> *Provided, however,* That no guarantee shall be entered into pursuant to this paragraph (a)(1) later than one year after delivery, or redelivery in the case of reconstruction or reconditioning of any such vessel unless the proceeds of the obligation are used to finance the construction, reconstruction, or reconditioning of a vessel or vessels, or facilities or equipment pertaining to marine operations;

<sup>1</sup> So in original. The semicolon probably should be a colon.

(2) financing, including reimbursement of an obligor for expenditures previously made for, construction, reconstruction, reconditioning, or purchase of a vessel or vessels owned by citizens or nationals of the United States or citizens of the Northern Mariana Islands which are designed principally for research, or for commercial use in the fishing trade or industry;



(3) financing the purchase, reconstruction, or reconditioning of vessels or fishery facilities for which obligations were guaranteed under this subchapter that, under the provisions of section 1275 of this Appendix:

(A) are vessels or fishery facilities for which obligations were accelerated and paid;

(B) were acquired by the Fund; or

(C) were sold at foreclosure instituted by the Secretary;

(4) financing, in whole or in part, the repayment to the United States of any amount of construction-differential subsidy paid with respect to a vessel pursuant to subchapter V of this chapter;

(5) refinancing existing obligations issued for one of the purposes specified in (1), (2), (3), or (4) whether or not guaranteed under this subchapter, including, but not limited to, short-term obligations incurred for the purpose of obtaining temporary funds with the view to refinancing from time to time;

(6) financing or refinancing, including, but not limited to, the reimbursement of obligors for expenditures previously made for, the construction, reconstruction, reconditioning, or purchase of fishery facilities; or

(7) financing or refinancing, including, but not limited to, the reimbursement of obligors for expenditures previously made, for the purchase of individual fishing quotas in accordance with section 1853(d)(4) of title 16.

Any obligation guaranteed under paragraphs (6) and (7) shall be treated, for purposes of this subchapter in the same manner and to the same extent as an obligation guaranteed under this subchapter which aids in the construction, reconstruction, reconditioning, or purchase of a vessel; except with respect to provisions of this subchapter that by their nature can only be applied to vessels.

(b) Contents of obligations

Obligations guaranteed under this subchapter--

(1) shall have an obligor approved by the Secretary as responsible and possessing the ability, experience, financial resources, and other qualifications necessary to the adequate operation and maintenance of the vessel or vessels which serve as security for the guarantee of the Secretary;

(2) subject to the provisions of subsection (c)(1) of this section and subsection (i) of this section, shall be in an aggregate principal amount which does not exceed 75 per centum of the actual cost or depreciated actual cost, as determined by the Secretary, of the vessel which is used as security for the guarantee of the Secretary: *Provided, however*, That in the case of a vessel, the size and speed of which are approved by the Secretary; and which is or would have been eligible for mortgage aid for construction under section 1159 of this Appendix (or would have been eligible for mortgage aid under section 1159 of this Appendix except that the vessel was built with the aid of construction-differential subsidy and said subsidy has been repaid) and in respect of which the minimum downpayment by the mortgagor required by that section would be or would have been 12<sup>1/2</sup> per centum of the cost of such vessel, such obligations may be in an amount which does not exceed 87<sup>1/2</sup> per centum of such actual cost or depreciated actual cost: *Provided, further*, That the obligations which relate to a barge which is constructed without the aid of construction-differential subsidy, or, if so subsidized, on which said subsidy has been repaid, may be in an aggregate principal amount which does not exceed 87<sup>1/2</sup> per centum of the actual cost or depreciated actual cost thereof: *Provided further*, That in the case of a fishing vessel or fishery facility, the obligation shall be in an aggregate principal amount not to exceed 80 percent of the actual cost or depreciated actual cost of the fishing vessel or fishery facility, except that no debt may be placed under this proviso through the Federal Financing Bank: *Provided further*, That in the case of an ocean thermal energy conversion facility or plantship which is constructed without the aid of construction-differential subsidy, such obligations may be in an aggregate principal amount which does not exceed 87<sup>1/2</sup> percent of the actual cost or depreciated actual cost of the facility or plantship: *Provided further*, That in the case of an eligible export vessel, such obligations may be in an aggregate principal amount which does not exceed 87<sup>1/2</sup> of the actual cost or depreciated actual cost of the eligible export vessel;

(3) shall have maturity dates satisfactory to the Secretary but, subject to the provisions of paragraph (2) of subsection (c) of this section, not to exceed twenty-five years from the date of the delivery of the vessel which serves as security for the guarantee of the Secretary or, if the vessel has been reconstructed or reconditioned, not to exceed the later of (i) twenty-five years from the date of delivery of the vessel and (ii) the remaining years of the useful life of the vessel as determined by the Secretary;

(4) shall provide for payments by the obligor satisfactory to the Secretary;

(5) shall bear interest (exclusive of charges for the guarantee and service charges, if any) at rates not to exceed such per centum per annum on the unpaid principal as the Secretary determines to be reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the Secretary;

(6) shall provide, or a related agreement shall provide, that if the vessel used as security for the guarantee of the Secretary is a delivered vessel, the vessel shall be in class A-1, American Bureau of Shipping, or shall meet such other standards as may be acceptable to the Secretary, with all required certificates, including but not limited to, marine inspection certificates of the United States Coast Guard or, in the case of an eligible export vessel, of the appropriate national flag authorities under a treaty, convention, or other international agreement to which the United States is a party, with all outstanding requirements and

recommendations necessary for retention of class accomplished, unless the Secretary permits a deferment of such repairs, and shall be tight, staunch, strong, and well and sufficiently tackled, appareled, furnished, and equipped, and in every respect seaworthy and in good running condition and repair, and in all respects fit for service; and

(7) may provide, or a related agreement may provide, if the vessel used as security for the guarantee of the Secretary is a passenger vessel having the tonnage, speed, passenger accommodations and other characteristics set forth in subchapter V of this chapter, and if the Secretary approves, that the sole recourse against the obligor by the United States for any payments under the guarantee shall be limited to repossession of the vessel and the assignment of insurance claims and that the liability of the obligor for any payments of principal and interest under the guarantee shall be satisfied and discharged by the surrender of the vessel and all right, title, and interest therein to the United States: *Provided*, That the vessel upon surrender shall be (i) free and clear of all liens and encumbrances whatsoever except the security interest conveyed to the Secretary under this subchapter, (ii) in class, and (iii) in as good order and condition, ordinary wear and tear excepted, as when acquired by the obligor, except that any deficiencies with respect to freedom from encumbrances, condition and class may, to the extent covered by valid policies of insurance, be satisfied by the assignment to the Secretary of claims of the obligor under such policies.

The Secretary may not establish, as a condition of eligibility for guarantee under this subchapter, a minimum principal amount for an obligation covering the reconstruction or reconditioning of a fishing vessel or fishery facility. For purposes of this subchapter, the reconstruction or reconditioning of a fishing vessel or fishery facility does not include the routine minor repair of maintenance of the vessel or facility.

(c) Security

(1) The security for the guarantee of an obligation by the Secretary under this subchapter may relate to more than one vessel and may consist of any combination of types of security. The aggregate principal amount of obligations which have more than one vessel as security for the guarantee of the Secretary under this subchapter may equal, but not exceed, the sum of the principal amount of obligations permissible with respect to each vessel.

(2) If the security for the guarantee of an obligation by the Secretary under this subchapter relates to more than one vessel, such obligation may have the latest maturity date permissible under subsection (b) of this section with respect to any of such vessels: *Provided*, That the Secretary may require such payments of principal, prior to maturity, with respect to all related obligations as he deems necessary in order to maintain adequate security for his guarantee.

(d) Restrictions

(1)(A) No commitment to guarantee, or guarantee of, an obligation shall be made by the Secretary of Transportation unless the Secretary finds that the property or project with respect to which the obligation will be executed will be economically sound. In making that determination, the Secretary shall consider--

(i) the need in the particular segment of the maritime industry for new or additional capacity, including any impact on existing equipment for which a guarantee under this subchapter is in effect;

(ii) the market potential for the employment of the vessel over the life of the guarantee;

(iii) projected revenues and expenses associated with employment of the vessel;

(iv) any charters, contracts of affreightment, transportation agreements, or similar agreements or undertakings relevant to the employment of the vessel;

(v) other relevant criteria; and

(vi) for inland waterways, the need for technical improvements, including but not limited to increased fuel efficiency, or improved safety.

(B) No commitment to guarantee, or guarantee of, an obligation shall be made by the Secretary of Commerce unless the Secretary finds, at or prior to the time such commitment is made or guarantee becomes effective, that the property or project with respect to which the obligation will be executed will be, in the Secretary's opinion, economically sound and in the case of fishing vessels, that the purpose of the financing or refinancing is consistent with the wise use of the fisheries resources and with the development, advancement, management, conservation, and protection of the fisheries resources, or with the need for technical improvements including but not limited to increased fuel efficiency or improved safety.

(2) No commitment to guarantee, or guarantee of an obligation may be made by the Secretary under this subchapter for the purchase of a used fishing vessel or used fishery facility unless--

(A) the vessel or facility will be reconstructed or reconditioned in the United States and will contribute to the development of the United States fishing industry; or

(B) the vessel or facility will be used in the harvesting of fish from, or for a purpose described in section 1271(k) of this Appendix with respect to, an underutilized fishery.

(3) No commitment to guarantee, or guarantee of an obligation may be made by the Secretary under this subchapter for the construction, reconstruction, or reconditioning of an eligible export vessel unless--

(A) the Secretary finds that the construction, reconstruction, or reconditioning of that vessel will aid in the transition of United States shipyards to commercial activities or will preserve shipbuilding assets that would be essential in time of war or national emergency, and

(B) the owner of the vessel agrees with the Secretary of Transportation that the vessel shall not be transferred to any country designated by the Secretary of Defense as a country whose interests are hostile to the interests of the United States.

(e) Guarantee fees

(1) Except as otherwise provided in this subsection, the Secretary shall prescribe regulations to assess in accordance with this subsection a fee for the guarantee of an obligation under this subchapter.

(2)(A) The amount of a fee under this subsection for a guarantee is equal to the sum determined by adding the amounts determined under subparagraph (B) for the years in which the guarantee is in effect.

(B) The amount referred to in subparagraph (A) for a year is the present value (determined by applying the discount rate determined under subparagraph (F)) of the amount determined by multiplying--

(i) the estimated average unpaid principal amount of the obligation that will be outstanding during the year (determined in accordance with subparagraph (E)), by

(ii) the fee rate established under subparagraph (C) for the obligation for each year.

(C) The fee rate referred to in subparagraph (B)(ii) for an obligation shall be--

(i) in the case of an obligation for a delivered vessel or equipment, not less than one-half of 1 percent and not more than 1 percent, determined by the Secretary for the obligation under the formula established under subparagraph (D); or

(ii) in the case of an obligation for a vessel to be constructed, reconstructed, or reconditioned, or of equipment to be delivered, not less than one-quarter of 1 percent and not more than one-half of 1 percent, determined by the Secretary for the obligation under the formula established under subparagraph (D).

(D) The Secretary shall establish a formula for determining the fee rate for an obligation for purposes of subparagraph (C), that--

(i) is a sliding scale based on the creditworthiness of the obligor;

(ii) takes into account the security provided for a guarantee under this subchapter for the obligation; and

(iii) uses--

(I) in the case of the most creditworthy obligors, the lowest rate authorized under subparagraph (C)(i) or (ii), as applicable; and

(II) in the case of the least creditworthy obligors, the highest rate authorized under subparagraph (C)(i) or (ii), as applicable.

(E) For purposes of subparagraph (B)(i), the estimated average unpaid principal amount does not include the average amount (except interest) on deposit in a year in the escrow fund under section 1279a of this Appendix.

(F) For purposes of determining present value under subparagraph (B) for an obligation, the Secretary shall apply a discount rate determined by the Secretary of the Treasury taking into consideration current market yields on outstanding obligations of the United States having periods to maturity comparable to the period to maturity for the obligation with respect to which the determination of present value is made.

(3) A fee under this subsection shall be assessed and collected not later than the date on which amounts are first paid under an obligation with respect to which the fee is assessed.

(4) A fee paid under this subsection is not refundable. However, an obligor shall receive credit for the amount paid for the remaining term of the guaranteed obligation if the obligation is refinanced and guaranteed under this subchapter after such refinancing.

(5) A fee paid under subsection (e) of this section shall be included in the amount of the actual cost of the obligation guaranteed under this subchapter and is eligible to be financed under this subchapter.

(f) Investigation of applications

The Secretary shall charge and collect from the obligor such amounts as he may deem reasonable for the investigation of applications for a guarantee, for the appraisal of properties offered as security for a guarantee, for the issuance of commitments, for services in connection with the escrow fund authorized by section 1279a of this Appendix and for the inspection of such properties during construction, reconstruction, or reconditioning: *Provided*, That such charges shall not aggregate more than one-half of 1 per centum of the original principal amount of the obligations to be guaranteed.

(g) Disposition of moneys

All moneys received by the Secretary under the provisions of sections 1271 to 1276 and 1279<sup>2</sup> of this Appendix shall be deposited in the Fund.

<sup>2</sup> See References in Text note below.

(h) Additional requirements

Obligations guaranteed under this subchapter and agreements relating thereto shall contain such other provisions with respect to the protection of the security interests of the United States (including acceleration, assumption, and subrogation provisions and the issuance of notes by the obligor to the Secretary), liens and releases of liens, payments of taxes, and such other matters as the Secretary may, in his discretion, prescribe.

(i) Limitation on authority to establish uniform percentage limitations

The Secretary may not, with respect to--

(1) the general 75 percent or less limitation in subsection (b)(2) of this section;

(2) the 87<sup>1/2</sup> percent or less limitation in the 1st, 2nd, 4th, or 5th proviso to subsection (b)(2) of this section or section 1279e(b) of this title; or

(3) the 80 percent or less limitation in the 3rd proviso to such subsection;

establish by rule, regulation, or procedure any percentage within any such limitation that is, or is intended to be, applied uniformly to all guarantees or commitments to guarantee made under this section that are subject to the limitation.

(j) Guarantees for eligible export vessels

(1) Upon receiving an application for a loan guarantee for an eligible export vessel, the Secretary shall promptly provide to the Secretary of Defense notice of the receipt of the application. During the 30-day period beginning on the date on which the Secretary of Defense receives such notice, the Secretary of Defense may disapprove the loan guarantee based on the assessment of the Secretary of the potential use of the vessel in a manner that may cause harm to United States national security interests. The Secretary of Defense may not disapprove a loan guarantee under this section solely on the basis of the type of vessel to be constructed with the loan guarantee. The authority of the Secretary to disapprove a loan guarantee under this section may not be delegated to any official other than a civilian officer of the Department of Defense appointed by the President, by and with the advice and consent of the Senate.

(2) The Secretary of Transportation may not make a loan guarantee disapproved by the Secretary of Defense under paragraph (1).

(June 29, 1936, ch. 858, title XI, § 1104A, formerly § 1104, as added June 23, 1938, ch. 600, § 46, 52 Stat. 970; amended Aug. 4, 1939, ch. 417, § 14, 53 Stat. 1187; Sept. 28, 1950, ch. 1093, § 4, 64 Stat. 1078; Aug. 15, 1953, ch. 513, § 2, 67 Stat. 626; Sept. 3, 1954, ch. 1265, § 4, 68 Stat. 1269; Pub. L. 86-123, § 1(3), 2, July 31, 1959, 73 Stat. 269, 271; Pub. L. 86-127, § 1(3), (4), July 31, 1959, 73 Stat. 273; Pub. L. 86-518, § 1, June 12, 1960, 74 Stat. 216; Pub. L. 86-685, § 2, 3, Sept. 2, 1960, 74 Stat. 733; Pub. L. 90-341, June 15, 1968, 82 Stat. 180; Pub. L. 91-469, § 31, 32, Oct. 21, 1970, 84 Stat. 1035; Pub. L. 92-507, § 3, Oct. 19, 1972, 86 Stat. 910; Pub. L. 95-257, Apr. 7, 1978, 92 Stat. 194; Pub. L. 96-320, title II, § 202(b), (c), Aug. 3, 1980, 94 Stat. 992; Pub. L. 96-561, title II, § 220(3), Dec. 22, 1980, 94 Stat. 3292; Pub. L. 97-31, § 12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 97-35, title XVI, § 1606(c), (d), Aug. 13, 1981, 95 Stat. 752; Pub. L. 98-595, § 1(2)-(7), (12), Oct. 30, 1984, 98 Stat. 3130, 3131; Pub. L. 99-509, title V, § 5003, Oct. 21, 1986, 100 Stat. 1912; renumbered § 1104A, Pub. L. 101-380, title IV, § 4115(f)(1), Aug. 18, 1990, 104 Stat. 521; Pub. L. 103-160, div. A, title XIII, § 1356(3), Nov. 30, 1993, 107 Stat. 1813; Pub. L. 104-208, div. A, title I, § 101(a) [title II, § 211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41; Pub. L. 104-239, § 13(c), Oct. 8, 1996, 110 Stat. 3136; Pub. L. 104-297, title III, § 302(a), Oct. 11, 1996, 110 Stat. 3615.)

#### REFERENCES IN TEXT

Sections 1276 and 1279 of this Appendix, referred to in subsec. (g), were repealed by Pub. L. 101-225, title III, § 307(7), Dec. 12, 1989, 103 Stat. 1925.

#### AMENDMENTS

1996--Subsec. (a). Pub. L. 104-297, § 302(a)(4), substituted "paragraphs (6) and (7)" for "paragraph (6)" in concluding provisions.

Subsec. (a)(7). Pub. L. 104-208 made technical amendment to reference in original act which appears in text as reference to section 1853(d)(4) of title 16.

Pub. L. 104-297, § 302(a)(1)-(3), added par. (7).

Subsec. (b)(2). Pub. L. 104-297, § 302(a)(5), substituted "not to exceed" for "equal to" in third proviso.

Subsec. (e). Pub. L. 104-239 amended subsec. (e) generally. Prior to amendment, subsec. (e) authorized Secretary to fix fees, calculate fee amount, prorate principal amount of obligation in certain cases, and compute and pay fees under regulations prescribed by Secretary, which regulations were to provide a formula to determine creditworthiness of obligors.

1993--Subsec. (a)(1). Pub. L. 103-160, § 1356(3)(A), amended provisions before proviso generally. Prior to amendment, such provisions read as follows: "financing, including reimbursement of an obligor for expenditures previously made for, construction, reconstruction, or reconditioning of a vessel or vessels owned by citizens of the United States which are designed principally for research, or for commercial use (A) in the coastwise or intercoastal trade; (B) on the Great Lakes, or on bays, sounds, rivers, harbors, or inland lakes of the United States; (C) in foreign trade as defined in section 1244 of this Appendix for purposes of subchapter V of this chapter;; or (D) as an ocean thermal energy conversion facility or plantship; or (E) with respect to floating drydocks, in the construction, reconstruction, reconditioning, or repair of vessels:".

Subsec. (b)(2). Pub. L. 103-160, § 1356(3)(B), substituted "subject to the provisions of subsection (c)(1) of this section and subsection (i) of this section," for "subject to the provisions of paragraph (1) of subsection (c) of this section," and inserted before semicolon at end ": *Provided further*, That in the case of an eligible export vessel, such obligations may be in an aggregate principal amount which does not exceed 87<sup>1/2</sup> of the actual cost or depreciated actual cost of the eligible export vessel".

Subsec. (b)(6). Pub. L. 103-160, § 1356(3)(C), inserted "or, in the case of an eligible export vessel, of the appropriate national flag authorities under a treaty, convention, or other international agreement to which the United States is a party" after "United States Coast Guard".

Subsec. (d)(3). Pub. L. 103-160, § 1356(3)(D), added par. (3).

Subsecs. (i), (j). Pub. L. 103-160, § 1356(3)(E), added subsecs. (i) and (j).

1986--Subsec. (b)(2). Pub. L. 99-509 substituted "That in the case of a fishing vessel or fishery facility, the obligation shall be in an aggregate principal amount equal to 80 percent of the actual cost or depreciated actual cost of the fishing vessel or fishery facility, except that no debt may be placed under this proviso through the Federal Financing Bank" for "That in the case of any vessel to be used in the fishing trade or industry, such obligations may be in an aggregate principal amount which does not exceed 87<sup>1/2</sup> per centum of the actual cost or depreciated actual cost of the vessel".

1984--Subsec. (a)(3). Pub. L. 98-595, § 1(2), substituted provisions relating to financing of purchase, reconstruction or reconditioning of designated vessels or fishery facilities for former provisions relating to financing of vessels acquired by the Federal Ship Financing Fund pursuant to section 1275 of this Appendix.

Subsec. (a)(5). Pub. L. 98-595, § 1(3), inserted "or" after "time".

Subsec. (a)(6). Pub. L. 98-595, § 1(4), substituted a period for "; or" after "facilities".

Subsec. (a)(7). Pub. L. 98-595, § 1(5), struck out par. (7) which related to the financing of the purchase of fishing vessels or fishery facilities sold at foreclosure instituted by the Secretary.

Subsec. (d)(1). Pub. L. 98-595, § 1(6), substituted provisions establishing economical soundness as a requirement for a commitment by the Secretary and detailing factors for evaluation for former provisions which established the general criteria of economical soundness and wise use of fishery resources.

Subsec. (e). Pub. L. 98-595, § 1(12), inserted "Such regulations shall provide a formula for determining the creditworthiness of obligors under which the most creditworthy obligors pay a fee computed on the lowest allowable percentage and the least creditworthy obligors pay a fee which may be computed on the highest allowable percentage (the range of creditworthiness to be based on obligors which have actually issued guaranteed obligations)."

Subsec. (h). Pub. L. 98-595, § 1(7), inserted ", assumption," after "acceleration".

1981--Subsecs. (a) to (c). Pub. L. 97-31 struck out "of Commerce" after "Secretary" wherever appearing.

Subsec. (d). Pub. L. 97-35, § 1606(c), in par. (1) substituted "No" for "Except as provided in paragraph (2), no", struck out par. (2) which related to application of par. (1), and redesignated par. (3) as (2).

Pub. L. 97-31 struck out "of Commerce" after "Secretary" wherever appearing.

Subsecs. (e), (f). Pub. L. 97-31 struck out "of Commerce" after "Secretary" wherever appearing.

Subsec. (g). Pub. L. 97-35, § 1606(d), designated par. (1) as entire provision, and struck out par. (2) which required the Secretary to establish subfunds within the Fund.

Pub. L. 97-31 struck out "of Commerce" after "Secretary".

Subsec. (h). Pub. L. 97-31 struck out "of Commerce" after "Secretary" in two places.

1980--Subsec. (a). Pub. L. 96-561, § 220(3)(A)(vi), inserted provision after par. (7) that any obligation guaranteed under par. (6)

be treated, for purposes of this subchapter, in the same manner and to the same extent as an obligation guaranteed under this subchapter which aids in the construction, reconstruction, reconditioning, or purchase of a vessel, except with respect to provisions of this subchapter that by their nature can only be applied to vessels.

Subsec. (a)(1). Pub. L. 96-561, § 220(3)(A)(i), (ii), substituted "; or (D)" for "(D) in the fishing trade or industry; (E)" and redesignated cl. (F) as (E).

Pub. L. 96-320, § 202(b), redesignated cl. (E), relating to floating drydocks, as cl. (F) and added cl. (E) relating to ocean thermal energy conversion facilities or plantships.

Subsec. (a)(2). Pub. L. 96-561, § 220(3)(A)(iii), added par. (2) and redesignated former par. (2) as (3).

Subsec. (a)(3). Pub. L. 96-561, § 220(3)(A)(iii), redesignated former par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (a)(4). Pub. L. 96-561, § 220(3)(A)(iii), (iv), redesignated former par. (3) as (4) and substituted "this chapter;" for "this chapter; or". Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 96-561, § 220(3)(A)(iii), (v), redesignated former par. (4) as (5) and substituted "(3), or (4)" for "or (3)" and a semicolon for the period at end.

Subsec. (a)(6), (7). Pub. L. 96-561, § 220(3)(A)(vi), added pars. (6) and (7).

Subsec. (b). Pub. L. 96-561, § 220(3)(B), inserted provision after par. (7) prohibiting the Secretary from establishing, as a condition of eligibility for guarantee, a minimum principal amount for an obligation covering the reconstruction or reconditioning of a fishing vessel or fishery facility, which reconstruction or reconditioning does not include the routine minor repair or maintenance of the vessel or facility.

Subsec. (b)(2). Pub. L. 96-320, § 202(c), inserted proviso that in the case of an ocean thermal energy conversion facility or plantship which is constructed without the aid of construction-differential subsidy, the obligations may be in an aggregate principal amount which does not exceed 87<sup>1/2</sup> percent of the actual cost or depreciated actual cost of the facility or plantship.

Subsec. (d). Pub. L. 96-561, § 220(3)(C), designated existing provision as par. (1), substituted "Except as provided in paragraph (2), no" for "No", and added pars. (2) and (3).

Subsec. (g). Pub. L. 96-561, § 220(3)(D), designated existing provision as par. (1) and added par. (2).

1978--Subsec. (b)(2). Pub. L. 95-257 inserted proviso relating to vessels to be used in the fishing trade or industry.

1972--Subsec. (a). Pub. L. 92-507 substituted provisions relating to the purposes for which guarantees may be made, for provisions relating to the eligibility of mortgages for insurance.

Subsec. (b). Pub. L. 92-507 substituted provisions relating to the eligibility requirements of obligations for guarantee, for provisions relating to the eligibility of loans for insurance.

Subsec. (c). Pub. L. 92-507 substituted provisions that security for guarantee may relate to more than one vessel, that security may consist of any combination of types of security, and that an obligation may have the latest maturity date permissible for any vessel which serves as security for the government guarantee of the related obligations, for provisions relating to the prior determination of the soundness of the property or project for mortgage or loan.

Subsec. (d). Pub. L. 92-507 incorporated provisions of former subsec. (c) into subsec. (d) and extended provisions of this subchapter to commercial fishing vessels. Provisions of former subsec. (d) were incorporated into subsec. (e).

Subsec. (e). Pub. L. 92-507 incorporated provisions of former subsec. (d) into subsec. (e) and substituted therein provisions authorizing the Secretary to fix a fee for the guarantee of obligations and providing separate formulae for delivered vessels and vessels under construction, for provisions authorizing the Secretary to fix a premium charge for the insurance of mortgages and loans and providing separate formulae for mortgages and loans by reference to section 1273 of this Appendix. Provisions of former subsec. (e) were incorporated into subsec. (f).

Subsec. (f). Pub. L. 92-507 incorporated provisions of former subsec. (e), relating to the collection of investigation fees from applicants for insurance into subsec. (f), and substituted therefor provisions relating to the collection of investigation fees from applicants for guarantee. Provisions of former subsec. (f) incorporated into subsec. (g).

Subsec. (g). Pub. L. 92-507 incorporated provisions of former subsec. (f) into subsec. (g).

Subsec. (h). Pub. L. 92-507 added subsec. (h).

1970--Subsec. (a)(8). Pub. L. 91-469, § 31, inserted "research, or for" before "commercial use".

Subsec. (b). Pub. L. 91-469, § 32, inserted in par. (2) "research, or for" before "commercial use", substituted in par. (4) "not exceed" for "be less than", and inserted in par. (4) restriction that advance and principal amount of other advances under insured loans outstanding at time of advance shall not exceed 87<sup>1/2</sup> per centum of actual cost of vessel where in the case of the approved

vessel the minimum downpayment by the mortgagor required by section 1159 of this Appendix would be 12<sup>1/2</sup> per centum of cost of vessel.

1968--Subsec. (a)(5). Pub. L. 90-341 substituted provision that the maximum interest rates allowed on ship mortgages eligible for insurance coverage be at such rates on the outstanding principle obligation as determined by the Secretary of Commerce to be reasonable, taking into account the prevailing rates and the risks assumed by the Department of Commerce, for provision setting a maximum of 5 per centum per annum, or 6 per centum per annum when the Secretary determined that in certain areas or under special circumstances the mortgage or lending market demanded it.

1960--Subsec. (a)(3). Pub. L. 86-518 substituted "twenty-five years" for "twenty years".

Subsec. (a)(8). Pub. L. 86-685, § 2, inserted cl. (e).

Subsec. (b)(2). Pub. L. 86-685, § 3, inserted cl. (e).

1959--Subsec. (a)(2). Pub. L. 86-123, § 2, substituted "and which is, or in the case of a vessel to be reconstructed or reconditioned would have been, eligible for mortgage aid for construction" for "which is eligible for mortgage aid" in proviso.

Subsec. (d). Pub. L. 86-127, § 1(3), inserted "excluding the average amount (except interest) on deposit in an escrow fund created under section 1279a of this Appendix" in two places.

Subsec. (e). Pub. L. 86-127, § 1(4), inserted "for services in connection with the escrow fund authorized by section 1279a of this Appendix" after "commitments" .

Subsec. (f). Pub. L. 86-123, § 1(3), substituted "sections 1101 to 1110" for "sections 1101 to 1109" of Act June 29, 1936, which, for purposes of codification, has been changed to "sections 1271 to 1279 of this Appendix".

1954--Act Sept. 3, 1954, provided standards of eligibility for both mortgages and loans, set up restrictions, and provided for premium charges.

1953--Subsec. (a)(2). Act Aug. 15, 1953, § 2(1), inserted "or, in the case of vessels, constructed under subchapter V of this title, involved in an obligation in a principal amount which does not exceed 75 per centum of the cost of the vessel (exclusive of construction-differential subsidy and cost of national-defense features)".

Subsec. (a)(8). Act Aug. 15, 1953, § 2(2), (3), inserted "construction of vessels under subchapter V of this chapter" in introductory provisions, and in cl. (c) substituted "in foreign trade" for provisions relating to specified trade.

1950--Subsec. (a)(2), (7), (8). Act Sept. 28, 1950, inserted provisions concerning purchase of vessels for use on the Great Lakes pursuant to the Merchant Ship Sales Act of 1946.

1939--Subsec. (a)(8). Act Aug. 4, 1939, included mortgages to secure new loans or advances made to aid financing of vessels designed for use in the fishing trade or industry.

#### **EFFECTIVE DATE OF 1996 AMENDMENT**

Section 101(a) [title II, § 211(b)] of div. A of Pub. L. 104-208 provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

#### **EFFECTIVE DATE OF 1960 AMENDMENT**

Amendment by Pub. L. 86-518 applicable only to vessels delivered by the shipbuilder on or after Jan. 1, 1946, and with respect to such vessels shall become effective on Jan. 1, 1960, and with respect to vessels delivered by the shipbuilder before Jan. 1, 1946, the provisions of this chapter existing immediately before June 12, 1960, shall continue in effect, see section 8(a) of Pub. L. 86-518, set out as a note under section 1125 of this Appendix.

#### **PROHIBITION OF NEW LOANS FOR CONSTRUCTION OF FISHING VESSELS UNDER CERTAIN CONDITIONS**

Pub. L. 104-297, title III, § 302(b), Oct. 11, 1996, 110 Stat. 3615, as amended by Pub. L. 105-277, div. C, title II, § 212, Oct. 21, 1998, 112 Stat. 2681-635, provided that:

"(1) Until October 1, 2001, no new loans may be guaranteed by the Federal Government for the construction of new fishing vessels if the construction will result in an increased harvesting capacity within the United States exclusive economic zone.

"(2) No loans may be provided or guaranteed by the Federal Government for the construction or rebuilding of a vessel intended for use as a fishing vessel (as defined in section 2101 of title 46, United States Code), if such vessel will be greater than 165 feet in registered length, of [or] more than 750 gross registered tons, or have an engine or engines capable of producing a total of more than 3,000 shaft horsepower, after such construction or rebuilding is completed. This prohibition shall not apply to vessels to be used in the menhaden fishery or in tuna purse seine fisheries outside the exclusive economic zone of the United States or the area of the South Pacific Regional Fisheries Treaty."

#### **REVISION OF CONTRACTS, COMMITMENTS TO INSURE MORTGAGES, MORTGAGES, AND MORTGAGE**

## INSURANCE CONTRACTS ENTERED INTO PRIOR TO JUNE 12, 1960

For provisions authorizing revision, see section 8(c) of Pub. L. 86-518, set out as a note under section 1125 of this Appendix.

### COMMERCIAL EXPECTANCY OR PERIOD OF DEPRECIATION OF TANKERS AND OTHER LIQUID BULK CARRIERS

Nothing in any amendment made by Pub. L. 86-518 to operate or be interpreted to change from 20 to 25 years the provisions of this chapter relating to the commercial expectancy or period of depreciation of any tanker or other liquid bulk carrier, see section 9 of Pub. L. 86-518, set out as a note under section 1125 of this Appendix.

### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1271, 1273, 1274a, 1279a, 1279c of this Appendix; title 16 section 1853.

#### **§ 1274a. Authorization of Secretary to guarantee obligations arising from statutorily mandated change in standards for operation of vessels**

(a) Purpose of obligations; principal and interest

Notwithstanding the provisions of this subchapter, except as provided in subsection (d) of this section, the Secretary, upon the terms the Secretary may prescribe, may guarantee or make a commitment to guarantee, payment of the principal of and interest on an obligation which aids in financing and refinancing, including reimbursement to an obligor for expenditures previously made, of a contract for construction or reconstruction of a vessel or vessels which are designed and to be employed for commercial use in the coastwise or intercoastal trade or in foreign trade as defined in section 1244 of this Appendix if--

(1) the construction or reconstruction by an applicant is made necessary to replace vessels the continued operation of which is denied by virtue of the imposition of a statutorily mandated change in standards for the operation of vessels, and where, as a matter of law, the applicant would otherwise be denied the right to continue operating vessels in the trades in which the applicant operated prior to the taking effect of the statutory or regulatory change;

(2) the applicant is presently engaged in transporting cargoes in vessels of the type and class that will be constructed or reconstructed under this section, and agrees to employ vessels constructed or reconstructed under this section as replacements only for vessels made obsolete by changes in operating standards imposed by statute;

(3) the capacity of the vessels to be constructed or reconstructed under this subchapter will not increase the cargo carrying capacity of the vessels being replaced;

(4) the Secretary has not made a determination that the market demand for the vessel over its useful life will diminish so as to make the granting of the guarantee fiducially imprudent; and

(5) the Secretary has considered the provisions of section 1274(d)(1)(A)(iii), (iv), and (v) of this Appendix.

(b) Limitations on length and amount of guaranteed obligations; useful life of vessel

For the purposes of this section--

(1) the maximum term for obligations guaranteed under this program may not exceed 25 years;

(2) obligations guaranteed may not exceed 87<sup>1/2</sup> percent of the actual cost or depreciated actual cost to the applicant for the construction or reconstruction of the vessel; and

(3) reconstruction cost obligations may not be guaranteed unless the vessel after reconstruction will have a useful life of at least 15 years.

The Secretary may not by rule, regulation, or procedure establish any percentage within the 87<sup>1/2</sup> percent or less limitation in paragraph (2) that is, or is intended to be, applied uniformly to all guarantees or commitments to guarantee made under this section.

(c) Security against default; fees; Vessel Replacement Guarantee Fund

(1) The Secretary shall by rule require that the applicant provide adequate security against default. The Secretary may, in addition to any fees assessed under section 1274(e) of this Appendix, establish a Vessel Replacement Guarantee Fund into which shall be paid by obligors under this section--

(A) annual fees which may be an additional amount on the loan guarantee fee in section 1274(e) of this Appendix not to exceed an additional 1 percent; or

(B) fees based on the amount of the obligation versus the percentage of the obligor's fleet being replaced by vessels constructed or reconstructed under this section.



(2) The Vessel Replacement Guarantee Fund shall be a subaccount in the Federal Ship Financing Fund, and shall--

(A) be the depository for all moneys received by the Secretary under sections 1271 through 1276 and 1279<sup>1</sup> of this Appendix with respect to guarantee or commitments to guarantee made under this section;

<sup>1</sup> See References in Text note below.

(B) not include investigation fees payable under section 1274(f) of this Appendix which shall be paid to the Federal Ship Financing Fund; and

(C) be the depository, whenever there shall be outstanding any notes or obligations issued by the Secretary under section 1275(d) of this Appendix with respect to the Vessel Replacement Guarantee Fund, for all moneys received by the Secretary under sections 1271 through 1276 and 1279<sup>1</sup> of this Appendix from applicants under this section.

(d) Additional requirements

The program created by this section shall, in addition to the requirements of this section, be subject to the provisions of sections 1271 through 1273; 1274(b)(1), (4), (5), (6); 1274(e); 1274(f); 1274(h); and 1275, 1276, and 1279<sup>1</sup> of this Appendix; except that the Federal Ship Financing Fund is not liable for any guarantees or commitments to guarantee issued under this section.

(June 29, 1936, ch. 858, title XI, § 1104B, as added Pub. L. 101-380, title IV, § 4115(f)(2), Aug. 18, 1990, 104 Stat. 521; amended Pub. L. 102-587, title VI, § 6204, Nov. 4, 1992, 106 Stat. 5094; Pub. L. 103-160, div. A, title XIII, § 1356(4), Nov. 30, 1993, 107 Stat. 1814; Pub. L. 104-239, § 11(2), Oct. 8, 1996, 110 Stat. 3134.)

#### REFERENCES IN TEXT

Sections 1276 and 1279 of this Appendix, referred to in subsecs. (c)(2) and (d), were repealed by Pub. L. 101-225, title III, § 307(7), Dec. 12, 1989, 103 Stat. 1925.

#### AMENDMENTS

1996--Subsec. (a). Pub. L. 104-239 struck out "owned by citizens of the United States" after "vessel or vessels" in introductory provisions.

1993--Subsec. (b). Pub. L. 103-160 inserted at end "The Secretary may not by rule, regulation, or procedure establish any percentage within the 87<sup>1/2</sup> percent or less limitation in paragraph (2) that is, or is intended to be, applied uniformly to all guarantees or commitments to guarantee made under this section."

1992--Subsec. (b)(2). Pub. L. 102-587, which directed the amendment of par. (2) by substituting "87<sup>1/2</sup> percent" for "73 percent", was executed by making the substitution for "75 percent", to reflect the probable intent of Congress.

#### EFFECTIVE DATE

Section applicable to incidents occurring after Aug. 18, 1990, see section 1020 of Pub. L. 101-380, set out as a note under section 2701 of Title 33, Navigation and Navigable Waters.

#### § 1275. Defaults

(a) Rights of obligee

In the event of a default, which has continued for thirty days, in any payment by the obligor of principal or interest due under an obligation guaranteed under this subchapter, the obligee or his agent shall have the right to demand (unless the Secretary shall, upon such terms as may be provided in the obligation or related agreements, prior to that demand, have assumed the obligor's rights and duties under the obligation and agreements and shall have made any payments in default), at or before the expiration of such period as may be specified in the guarantee or related agreements, but not later than ninety days from the date of such default, payment by the Secretary of the unpaid principal amount of said obligation and of the unpaid interest thereon to the date of payment. Within such period as may be specified in the guarantee or related agreements, but not later than thirty days from the date of such demand, the Secretary shall promptly pay to the obligee or his agent the unpaid principal amount of said obligation and unpaid interest thereon to the date of payment: *Provided*, That the Secretary shall not be required to make such payment if prior to the expiration of said period he shall find that there was no default by the obligor in the payment of principal or interest or that such default has been remedied prior to any such demand.

(b) Notice of default

In the event of a default under a mortgage, loan agreement, or other security agreement between the obligor and the Secretary, the Secretary may upon such terms as may be provided in the obligation or related agreement, either:

(1) assume the obligor's rights and duties under the agreement, make any payment in default, and notify the obligee or the obligee's agent of the default and the assumption by the Secretary; or

(2) notify the obligee or the obligee's agent of the default, and the obligee or the obligee's agent shall have the right to demand at or before the expiration of such period as may be specified in the guarantee or related agreements, but not later than 60 days from the date of such notice, payment by the Secretary of the unpaid principal amount of said obligation and of the unpaid interest thereon. Within such period as may be specified in the guarantee or related agreements, but not later than 30 days from the date of such demand, the Secretary shall promptly pay to the obligee or the obligee's agent the unpaid principal amount of said obligation and unpaid interest thereon to the date of payment.

(c) Secretary to complete, sell or operate property

In the event of any payment or assumption by the Secretary under subsection (a) or (b) of this section, the Secretary shall have all rights in any security held by him relating to his guarantee of such obligations as are conferred upon him under any security agreement with the obligor. Notwithstanding any other provision of law relating to the acquisition, handling, or disposal of property by the United States, the Secretary shall have the right, in his discretion, to complete, recondition, reconstruct, renovate, repair, maintain, operate, charter, or sell any property acquired by him pursuant to a security agreement with the obligor or may place a vessel in the national defense reserve. The terms of the sale shall be as approved by the Secretary.

(d) Cash payments; issuance of notes or obligations

Any amount required to be paid by the Secretary pursuant to subsection (a) or (b) of this section, shall be paid in cash. If at any time the moneys in the Fund authorized by section 1272 of this Appendix are not sufficient to pay any amount the Secretary is required to pay by subsection (a) or (b) of this section, the Secretary is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary, with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such notes or other obligations. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations to be issued hereunder and for such purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under such chapter, are extended to include any purchases of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. Funds borrowed under this section shall be deposited in the Fund and redemptions of such notes and obligations shall be made by the Secretary from such Fund.

(e) Actions against obligor

In the event of a default under any guaranteed obligation or any related agreement, the Secretary shall take such action against the obligor or any other parties liable thereunder that, in his discretion, may be required to protect the interests of the United States. Any suit may be brought in the name of the United States or in the name of the obligee and the obligee shall make available to the United States all records and evidence necessary to prosecute any such suit. The Secretary shall have the right, in his discretion, to accept a conveyance of title to and possession of property from the obligor or other parties liable to the Secretary, and may purchase the property for an amount not greater than the unpaid principal amount of such obligation and interest thereon. In the event that the Secretary shall receive through the sale of property an amount of cash in excess of the unpaid principal amount of the obligation and unpaid interest on the obligation and the expenses of collection of those amounts, the Secretary shall pay the excess to the obligor.

(June 29, 1936, ch. 858, title XI, § 1105, as added June 23, 1938, ch. 600, § 46, 52 Stat. 971; amended Aug. 15, 1953, ch. 513, § 3, 67 Stat. 626; Sept. 3, 1954, ch. 1265, § 5, 68 Stat. 1272; Aug. 7, 1956, ch. 1026, § 1(e)-(g), 70 Stat. 1087; Pub. L. 85-520, July 15, 1958, 72 Stat. 358; Pub. L. 91-469, § 33, Oct. 21, 1970, 84 Stat. 1035; Pub. L. 92-507, § 3, Oct. 19, 1972, 86 Stat. 914; Pub. L. 96-561, title II, § 220(4), Dec. 22, 1980, 94 Stat. 3294; Pub. L. 97-31, § 12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 97-35, title XVI, § 1606(e), Aug. 13, 1981, 95 Stat. 752; Pub. L. 98-595, § 1(8)-(11), Oct. 30, 1984, 98 Stat. 3131.)

#### *Codification*

In subsec. (d), "chapter 31 of title 31" and "such chapter" substituted for "the Second Liberty Bond Act, as amended" and "such Act, as amended," respectively, on authority of Pub. L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

### **AMENDMENTS**

1984--Subsec. (a). Pub. L. 98-595, § 1(8), inserted "(unless the Secretary shall, upon such terms as may be provided in the obligation or related agreements, prior to that demand, have assumed the obligor's rights and duties under the obligation and agreements and shall have made any payments in default)".

Subsec. (b). Pub. L. 98-595, § 1(9), expanded provisions relating to the Secretary's rights in the case of default under a security agreement between the obligor and the Secretary to include the option of assuming the obligor's rights and duties under the agreement.

Subsec. (c). Pub. L. 98-595, § 1(10), inserted "or assumption".

Subsec. (e). Pub. L. 98-595, § 1(11), substituted "the unpaid principal amount of the obligation and unpaid interest on the obligation and the expenses of collection of those amounts, the Secretary" for "any payment made to an obligee under subsection (a) or (b) of this section and the expenses of collection of such amounts, he".

1981--Subsecs. (a) to (c). Pub. L. 97-31 struck out "of Commerce" after "Secretary" wherever appearing.

Subsec. (d). Pub. L. 97-35 struck out of first sentence the requirement of payment from the appropriate subfund established under section 1274(g)(2) of this Appendix.

Pub. L. 97-31 struck out "of Commerce" after "Secretary" in five places.

Subsec. (e). Pub. L. 97-31 struck out "of Commerce" after "Secretary" in four places.

1980--Subsec. (d). Pub. L. 96-561 inserted in first sentence ", and shall be paid from the appropriate subfund required to be established under section 1274(g)(2) of this Appendix" after "paid in cash".

1972--Subsec. (a). Pub. L. 92-507 substituted provisions relating to the rights of obligee to demand and receive payment from the Secretary under certain circumstances, for provisions relating to the rights of mortgagee and lender to demand and receive payment under certain circumstances and the authority of the Secretary to terminate the insurance contract by notification to the mortgagee or the lender as the case may be.

Subsec. (b). Pub. L. 92-507 inserted provisions relating to notification of default to the obligee, and payment of unpaid principal and interest amount, by the Secretary within certain time. Former subsec. (b) redesignated (d).

Subsec. (c). Pub. L. 92-507 incorporated substantially the provisions of subsec. (d) into subsec. (c). Former subsec. (c) is now covered by subsec. (e).

Subsec. (d). Pub. L. 92-507 incorporated provisions of former subsec. (b) into subsec. (d). Former subsec. (d) is now covered by subsec. (c).

Subsec. (e). Pub. L. 92-507 incorporated provisions of former subsec. (c) relating to actions by the Secretary in the event of defaults by mortgagors and borrowers, into subsec. (e), and substituted therefor provisions relating to actions by the Secretary in the event of defaults by obligors of guaranteed obligations and related agreements. Provisions of former subsec. (e) relating to termination and cancellation of insurance contracts and the incontestability of such contracts except for fraud, duress or mutual mistake of fact are omitted.

1970--Subsec. (d). Pub. L. 91-469 substituted provision for inclusion of interest in the installments on the purchase price remaining unpaid at a rate not less than a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such installments, adjusted to the nearest one-eighth of 1 per centum plus an administrative cost allowance, for prior rate of  $3^{1/2}$  per centum per annum on installments of purchase price remaining unpaid.

1958--Subsec. (b). Pub. L. 85-520 authorized the Secretary of Commerce to issue notes or obligations whenever the moneys in the Federal Ship Mortgage Insurance Fund are insufficient to pay amounts required to be paid under subsec. (a) of this section.

1956--Subsec. (a)(1), (2). Act Aug. 7, 1956, § 1(e), struck out "the insured portion of" before "the unpaid principal amount", wherever appearing.

Subsec. (c)(1). Act Aug. 7, 1956, § 1(f), substituted "such excess to the borrower" for "to the mortgagee such cash amounts to the extent that the mortgagee has not been made whole through other sources for amounts advanced to the mortgagor but in no event shall such payments to the mortgagee exceed 10 per centum of the unpaid principal amount of mortgage and the interest thereon, and any excess of the amounts thus due the Government and the mortgagee shall be paid to the mortgagor".

Subsec. (c)(2). Act Aug. 7, 1956, § 1(g), substituted "such excess to the borrower" for "to the lender such cash amount to the extent that the lender has not been made whole through other sources for amounts advanced to the borrower but in no event shall such payment to the lender exceed 10 per centum of the unpaid principal amount of loan and the interest thereon, and any excess of the amounts thus due the Government and the lender shall be paid to the borrower".

1954--Act Sept. 3, 1954, gave new rights to both borrowers and lenders and set up new foreclosure procedures.

1953--Act Aug. 15, 1953, provided that in the event of a default in payment of either principal or interest, the lender may tender an assignment of the mortgage and all collateral to the Secretary who shall promptly pay the unpaid balance in cash, provided for the foreclosure and repossession of mortgaged vessels; allowed the Secretary to take any necessary steps to minimize the loss, and made all insurance commitments conclusive.

#### **SECRETARY OF COMMERCE; FISHING VESSEL INSURANCE**

Pub. L. 86-577, July 5, 1960, 74 Stat. 314, provided: "That in order to permit the efficient execution of functions relating to the issuance of Federal ship mortgage insurance on fishing vessels, pursuant to the Merchant Marine Act of June 29, 1936, as amended [this chapter] (49 Stat. 1985; 46 U.S.C., 1952 edition, sec. 1271 and the following), which functions relating to fishing

vessels have been transferred to the Secretary of the Interior pursuant to the Fish and Wildlife Act of 1956 [section 742a et seq. of Title 16, Conservation], the Secretary of the Interior hereafter may exercise authority comparable to the authority of the Secretary of Commerce under the said Merchant Marine Act of 1936 [this chapter], including, but not limited to the authority contained in the amendment to such Act of July 15, 1958 (72 Stat. 358) [amending this section]."

Functions relating to the issuance of Federal ship mortgage insurance on fishing vessels, which functions were transferred to the Secretary of the Interior, were retransferred to the Secretary of Commerce by Reorg. Plan No. 4 of 1970, § 1, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to Title 5, Government Organization and Employees.

### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1271, 1273, 1274, 1274a, 1279c, 1280 of this Appendix; title 16 section 742c-1.

#### § 1279a. Escrow fund

##### (a) Creation

If the proceeds of an obligation guaranteed under this subchapter are to be used to finance the construction, reconstruction, or reconditioning of a vessel or vessels which will serve as security for the guarantee of the Secretary, the Secretary is authorized to accept and hold, in escrow under an escrow agreement with the obligor, a portion of the proceeds of all obligations guaranteed under this subchapter whose proceeds are to be so used which is equal to: (i) the excess of the principal amount of all obligations whose proceeds are to be so used over 75 per centum, or 87<sup>1/2</sup> per centum, whichever is applicable under section 1274<sup>1</sup> of this Appendix, of the amount paid by or for the account of the obligor for the construction, reconstruction, or reconditioning of the vessel or vessels; (ii) with such interest thereon, if any, as the Secretary may require: *Provided*, That in the event the security for the guarantee of an obligation by the Secretary relates both to a vessel or vessels to be constructed, reconstructed or reconditioned and to a delivered vessel or vessels, the principal amount of such obligation shall be prorated for purposes of this subsection (a) under regulations prescribed by the Secretary.

<sup>1</sup> See References in Text note below.

##### (b) Disbursement prior to termination of escrow agreement

The Secretary shall, as specified in the escrow agreement, disburse the escrow fund to pay amounts the obligor is obligated to pay as interest on such obligations or for the construction, reconstruction, or reconditioning of the vessel or vessels used as security for the guarantee of the Secretary under this subchapter, to redeem such obligations in connection with a refinancing under paragraph (4)<sup>1</sup> of section 1274(a) of this Appendix or to pay to the obligor at such times as may be provided for in the escrow agreement any excess interest deposits, except that if payments become due under the guarantee prior to the termination of the escrow agreement, all amounts in the escrow fund at the time such payments become due (including realized income which has not yet been paid to the obligor) shall be paid into the Fund and (i), be credited against any amounts due or to become due to the Secretary from the obligor with respect to the guaranteed obligations and (ii) to the extent not so required, be paid to the obligor.

##### (c) Disbursement upon termination of escrow agreement

If payments under the guarantee have not become due prior to the termination of the escrow agreement, any balance of the escrow fund at the time of such termination shall be disbursed to prepay the excess of the principal of all obligations whose proceeds are to be used to finance the construction, reconstruction, or reconditioning of the vessel or vessels which serve or will serve as security for such guarantee over 75 per centum or 87<sup>1/2</sup> per centum, whichever is applicable under section 1274<sup>1</sup> of this Appendix, of the actual cost of such vessel or vessels to the extent paid, and to pay interest on such prepaid amount of principal, and the remainder of such balance of the escrow fund shall be paid to the obligor.

##### (d) Investment of fund

The Secretary may invest and reinvest all or any part of the escrow fund in obligations of the United States with such maturities that the escrow fund will be available as required for purposes of the escrow agreement.

##### (e) Payment of income

Any income realized on the escrow fund shall, upon receipt, be paid to the obligor.

##### (f) Terms of escrow agreement

The escrow agreement shall contain such other terms as the Secretary may consider necessary to protect fully the interests of the United States.

(June 29, 1936, ch. 858, title XI, § 1108, formerly § 1111, as added Pub. L. 86-127, § 1(2), July 31, 1959, 73 Stat. 272; renumbered and amended Pub. L. 92-507, § 5, Oct. 19, 1972, 86 Stat. 916; Pub. L. 97-31, § 12(136), Aug. 6, 1981, 95 Stat. 166.)

### REFERENCES IN TEXT

References in subsecs. (a) to (c) to section 1274 of this Appendix, were in the original references to section 1104 of this title, meaning section 1104 of title XI of the Merchant Marine Act, 1936, act June 29, 1936, ch. 858. Section 1104 of that Act was

renumbered as section 1104A of that Act by Pub. L. 101-380, title IV, § 4115(f)(1), Aug. 18, 1990, 104 Stat. 521.

Paragraph (4) of section 1274(a) of this Appendix, referred to in subsec. (b), was redesignated paragraph (5) of section 1274(a) of this Appendix by Pub. L. 96-561, title II, § 220(3)(A)(iii), Dec. 22, 1980, 94 Stat. 3292.

#### AMENDMENTS

1981--Subsecs. (a), (b), (d), (f). Pub. L. 97-31 struck out "of Commerce" after "Secretary" wherever appearing.

1972--Subsec. (a). Pub. L. 92-507 substantially reenacted subsec. (a) and substituted requirement that an escrow fund be created out of proceeds of obligations, for requirement that such fund be created out of sale of bonds.

Subsec. (b). Pub. L. 92-507 substituted provisions for the disbursement of escrow fund to pay certain payments the obligor is obligated to pay, for provisions for the disbursement of such fund to pay certain payments the mortgagor or borrower is obligated to pay.

Subsec. (c). Pub. L. 92-507 substituted provisions for the disbursement of the remainder of funds in the escrow fund to the obligor on the termination of the escrow agreement, for provisions for the disbursement of such funds to the mortgagor or borrower as the case may be.

Subsec. (d). Pub. L. 92-507 substituted "the escrow fund" for "such fund".

Subsec. (e). Pub. L. 92-507 substituted provisions for payment of income to obligor, for provisions for payment of such income to mortgagor or borrower.

Subsec. (f). Pub. L. 92-507 substituted "to protect fully" for "to fully protect".

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1271, 1273, 1274 of this Appendix.

#### § 1279c. Ocean thermal energy conversion demonstration facilities and plantships

(a) Financing of construction, reconstruction, or reconditioning

Pursuant to the authority granted under section 1273(a) of this Appendix, the Secretary, upon such terms as he shall prescribe, may guarantee or make a commitment to guarantee, payment of the principal of and interest on an obligation which aids in financing, including reimbursement of an obligor for expenditures previously made for, construction, reconstruction, or reconditioning of a commercial demonstration ocean thermal energy conversion facility or plantship. Guarantees or commitments to guarantee under this subsection shall be subject to all the provisos, requirements, regulations, and procedures which apply to guarantees or commitments to guarantee made pursuant to section 1274(a)(1)<sup>1</sup> of this Appendix, except that--

<sup>1</sup> See References in Text note below.

(1) no guarantees or commitments to guarantee may be made by the Secretary under this subsection before October 1, 1981;

(2) the provisions of subsection (d) of section 1274<sup>1</sup> of this Appendix shall apply to guarantees or commitments to guarantee for that portion of a commercial demonstration ocean thermal energy conversion facility or plantship not to be supported with appropriated Federal funds;

(3) guarantees or commitments to guarantee made pursuant to this section may be in an aggregate principal amount which does not exceed 87<sup>1/2</sup> percent of the actual cost or depreciated actual cost of the commercial demonstration ocean thermal energy conversion facility or plantship: *Provided*, That, if the commercial demonstration ocean thermal energy conversion facility or plantship is supported with appropriated Federal funds, such guarantees or commitments to guarantee may not exceed 87<sup>1/2</sup> percent of the aggregate principal amount of that portion of the actual cost or depreciated actual cost for which the obligor has an obligation to secure financing in accordance with the terms of the agreement between the obligor and the Department of Energy or other Federal agency; and

(4) the provisions of this section may be used to guarantee obligations for a total of not more than 5 separate commercial demonstration ocean thermal energy conversion facilities and plantships or a demonstrated 400 megawatt capacity, whichever comes first.

(b) Certification of reasonableness of risk

A guarantee or commitment to guarantee shall not be made under this section unless the Secretary of Energy, in consultation with the Secretary, certifies to the Secretary that, for the ocean thermal energy conversion facility or plantship for which the guarantee or commitment to guarantee is sought, there is sufficient guarantee of performance and payment to lower the risk to the Federal Government to a level which is reasonable. The Secretary of Energy must base his considerations on the following: (1) the successful demonstration of the technology to be used in such facility at a scale sufficient to establish the likelihood of technical and economic viability in the proposed market; and (2) the need of the United States to develop new and renewable sources of energy and the benefits to be realized from the construction and successful operation of such facility or plantship.

(c) OTEC Demonstration Fund

A special subaccount in the Federal Ship Financing Fund, to be known as the OTEC Demonstration Fund, shall be established on October 1, 1981. The OTEC Demonstration Fund shall be used for obligation guarantees authorized under this section which do not qualify under other sections of this subchapter. Except as specified otherwise in this section, the operation of the OTEC Demonstration Fund shall be identical with that of the parent Federal Ship Financing Fund: except that, notwithstanding the provisions of section 1274(g) <sup>1</sup> of this Appendix, (1) all moneys received by the Secretary pursuant to sections 1271 through 1276 and 1279 <sup>1</sup> of this Appendix with respect to guarantees or commitments to guarantee made pursuant to this section shall be deposited only in the OTEC Demonstration Fund, and (2) whenever there shall be outstanding any notes or other obligations issued by the Secretary pursuant to section 1275(d) of this Appendix with respect to the OTEC Demonstration Fund, all moneys received by the Secretary pursuant to sections 1271 through 1276 and 1279 <sup>1</sup> of this Appendix with respect to ocean thermal energy conversional facilities or plantships shall be deposited in the OTEC Demonstration Fund. Assets in the OTEC Demonstration Fund may at any time be transferred to the parent fund whenever and to the extent that the balance thereof exceeds the total guarantees or commitments to guarantee made pursuant to this section then outstanding, plus any notes or other obligations issued by the Secretary pursuant to section 1275(d) of this Appendix with respect to the OTEC Demonstration Fund. The Federal Ship Financing Fund shall not be liable for any guarantees or commitments to guarantee issued pursuant to this section. The aggregate unpaid principal amount of the obligations guaranteed with the backing of the OTEC Demonstration Fund and outstanding at any one time shall not exceed \$1,650,000,000.

(d) Notes and obligations

The provisions of section 1275(d) of this Appendix shall apply specifically to the OTEC Demonstration Fund as well as to the Fund: *Provided, however,* That any notes or obligations issued by the Secretary pursuant to section 1275(d) of this Appendix with respect to the OTEC Demonstration Fund shall be payable solely from proceeds realized by the OTEC Demonstration Fund.

(e) Taxability of interest

The interest on any obligation guaranteed under this section shall be included in gross income for purposes of chapter 1 of the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.].

(June 29, 1936, ch. 858, title XI, § 1110, as added Pub. L. 96-320, title II, § 203(a), Aug. 3, 1980, 94 Stat. 992; amended Pub. L. 97-31, § 12(136), Aug. 6, 1981, 95 Stat. 166; Pub. L. 97-35, title XVI, § 1606(f), Aug. 13, 1981, 95 Stat. 752; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 104-239, § 11(3), Oct. 8, 1996, 110 Stat. 3134.)

#### REFERENCES IN TEXT

References in subsecs. (a) to (c) to section 1274 of this Appendix, were in the original references to section 1104 of this title, meaning section 1104 of title XI of the Merchant Marine Act, 1936, act June 29, 1936, ch. 858. Section 1104 of that Act was renumbered as section 1104A of that Act by Pub. L. 101-380, title IV, § 4115(f)(1), Aug. 18, 1990, 104 Stat. 521.

Sections 1276 and 1279 of this Appendix, referred to in subsec. (c), were repealed by Pub. L. 101-225, title III, § 307(7), Dec. 12, 1989, 103 Stat. 1925.

#### AMENDMENTS

1996--Subsec. (a). Pub. L. 104-239 struck out "owned by citizens of the United States" after "facility or plantship" in introductory provisions.

1986--Subsec. (e). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

1981--Subsecs. (a), (b). Pub. L. 97-31 struck out "of Commerce" after "Secretary" wherever appearing.

Subsec. (c). Pub. L. 97-35 substituted "\$1,650,000,000" for "\$2,000,000,000".

Pub. L. 97-31 struck out "of Commerce" after "Secretary" wherever appearing.

Subsec. (d). Pub. L. 97-31 struck out "of Commerce" after "Secretary".

#### § 1279d. Loan guarantees for eligible vessels

(a) Authority to guarantee obligations for eligible export vessels

The Secretary may guarantee obligations for eligible export vessels--

(1) in accordance with the terms and conditions of this subchapter applicable to loan guarantees in the case of vessels documented under the laws of the United States; or

(2) in accordance with such other terms as the Secretary determines to be more favorable than the terms otherwise provided in this subchapter and to be compatible with export credit terms offered by foreign governments for the sale of vessels built in foreign shipyards.

(b) Interagency council

(1) Establishment; composition

There is hereby established an interagency council for the purposes of this section. The council shall be composed of the Secretary of Transportation, who shall be chairman of the Council,<sup>1</sup> the Secretary of the Treasury, the Secretary of State, the Assistant to the President for Economic Policy, the United States Trade Representative, and the President and Chairman of the United States Export-Import Bank, or their designees.

<sup>1</sup> So in original. Probably should not be capitalized.

(2) Purpose of the council

The council shall--

(A) obtain information on shipbuilding loan guarantees, on direct and indirect subsidies, and on other favorable treatment of shipyards provided by foreign governments to shipyards in competition with United States shipyards; and

(B) provide guidance to the Secretary in establishing terms for loan guarantees for eligible export vessels under subsection (a)(2) of this section.

(3) Consultation with U.S. shipbuilders

The council shall consult regularly with United States shipbuilders to obtain the essential information concerning international shipbuilding competition on which to set terms and conditions for loan guarantees under subsection (a)(2) of this section.

(4) Annual report

Not later than January 31 of each year (beginning in 1995), the Secretary of Transportation shall submit to Congress a report on the activities of the Secretary under this section during the preceding year. Each report shall include documentation of sources of information on assistance provided by the governments of other nations to shipyards in those nations and a summary of recommendations made to the Secretary during the preceding year regarding applications submitted to the Secretary during that year for loan guarantees under this subchapter for construction of eligible export vessels.

(June 29, 1936, ch. 858, title XI, § 1111, as added Pub. L. 103-160, div. A, title XIII, § 1355(a), Nov. 30, 1993, 107 Stat. 1811.)

*Codification*

Another section 1111 of act June 29, 1936, is classified to section 1279f of this Appendix.

**INTERAGENCY COUNCIL DESIGNEES**

Section 1355(b) of Pub. L. 103-160 provided that:

"(1) Initial designation of council members.--Each member of the council established under section 1111(b) of the Merchant Marine Act, 1936 [46 App. U.S.C. 1279d(b)], as added by subsection (a), shall name a designee for service on the council not later than 30 days after the date of the enactment of this Act [Nov. 30, 1993]. Each such member shall promptly notify the Secretary of Transportation of that designation.

"(2) Designation of senior marad official.--Not later than 30 days after the date of the enactment of this Act, the Secretary of Transportation shall designate a senior official within the Maritime Administration to have the responsibility and authority to carry out the terms and conditions set forth under section 1111 of title XI the Merchant Marine Act, 1936, as added by subsection (a). The Secretary shall make the designation of that official known through a public announcement in a national periodical."

**§ 1279e. Loan guarantees for shipyard modernization and improvement**

(a) General authority

The Secretary, under section 1273(a) of this Appendix and subject to the terms the Secretary shall prescribe, may guarantee or make a commitment to guarantee the payment of the principal of, and the interest on, an obligation for advanced shipbuilding technology and modern shipbuilding technology of a general shipyard facility located in the United States.

(b) Applicable laws, requirements, regulations, and procedures

Guarantees or commitments to guarantee under this section are subject to the extent applicable to all the laws, requirements, regulations, and procedures that apply to guarantees or commitments to guarantee made under this subchapter, except that guarantees or commitments to guarantee made under this section may be in the aggregate principal amount that does not exceed 87<sup>1/2</sup> percent of the actual cost of the advanced shipbuilding technology or modern shipbuilding technology.

(c) Transfer of funds

The Secretary may accept the transfer of funds from any other department, agency, or instrumentality of the United States Government and may use those funds to cover the cost (as defined in section 661a of title 2) of making guarantees or commitments to guarantee loans entered into under this section.

(d) Definitions

For purposes of this section:

(1) The term "advanced shipbuilding technology" includes--

(A) numerically controlled machine tools, robots, automated process control equipment, computerized flexible manufacturing systems, associated computer software, and other technology for improving shipbuilding and related industrial production which advance the state-of-the-art; and

(B) novel techniques and processes designed to improve shipbuilding quality, productivity, and practice, and to promote sustainable development, including engineering design, quality assurance, concurrent engineering, continuous process production technology, energy efficiency, waste minimization, design for recyclability or parts reuse, inventory management, upgraded worker skills, and communications with customers and suppliers.

(2) The term "modern shipbuilding technology" means the best available proven technology, techniques, and processes appropriate to enhancing the productivity of shipyards.

(3) The term "general shipyard facility" means--

(A) for operations on land--

(i) any structure or appurtenance thereto designed for the construction, repair, rehabilitation, refurbishment or rebuilding of any vessel (as defined in title 1) and including graving docks, building ways, ship lifts, wharves, and pier cranes;

(ii) the land necessary for any structure or appurtenance described in clause (i); and

(iii) equipment that is for the use in connection with any structure or appurtenance and that is necessary for the performance of any function referred to in subparagraph (A);

(B) for operations other than on land, any vessel, floating drydock or barge built in the United States and used for, equipped to be used for, or of a type that is normally used for activities referred to in subparagraph (A)(i) of this paragraph.

(June 29, 1936, ch. 858, title XI, § 1112, as added Pub. L. 103-160, div. A, title XIII, § 1357(a), Nov. 30, 1993, 107 Stat. 1814.)

*Codification*

Another section 1112 of act June 29, 1936, is classified to section 1279g of this Appendix.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 1271, 1274 of this Appendix.

**§ 1279f. Fisheries financing and capacity reduction**

(a) Authorization for guarantees; issuance of obligations

The Secretary is authorized to guarantee the repayment of debt obligations issued by entities under this section. Debt obligations to be guaranteed may be issued by any entity that has been approved by the Secretary and has agreed with the Secretary to such conditions as the Secretary deems necessary for this section to achieve the objective of the program and to protect the interest of the United States.

(b) Requirements for guaranteed obligations

Any debt obligation guaranteed under this section shall--

(1) be treated in the same manner and to the same extent as other obligations guaranteed under this subchapter, except with respect to provisions of this subchapter that by their nature cannot be applied to obligations guaranteed under this section;

(2) have the fishing fees established under the program paid into a separate subaccount of the fishing capacity reduction fund established under this section;

(3) not exceed \$100,000,000 in an unpaid principal amount outstanding at any one time for a program;

(4) have such maturity (not to exceed 20 years), take such form, and contain such conditions as the Secretary determines necessary for the program to which they relate;



(5) have as the exclusive source of repayment (subject to the proviso in subsection (c)(2) of this section) and as the exclusive payment security, the fishing fees established under the program; and

(6) at the discretion of the Secretary be issued in the public market or sold to the Federal Financing Bank.

(c) Fishing capacity reduction fund; establishment; availability of amounts; deposit or investment

(1) There is established in the Treasury of the United States a separate account which shall be known as the fishing capacity reduction fund (referred to in this section as the "fund"). Within the fund, at least one subaccount shall be established for each program into which shall be paid all fishing fees established under the program and other amounts authorized for the program.

(2) Amounts in the fund shall be available, without appropriation or fiscal year limitation, to the Secretary to pay the cost of the program, including payments to financial institutions to pay debt obligations incurred by entities under this section: *Provided*, That funds available for this purpose from other amounts available for the program may also be used to pay such debt obligations.

(3) Sums in the fund that are not currently needed for the purpose of this section shall be kept on deposit or invested in obligations of the United States.

(d) Issuance of regulations

The Secretary is authorized and directed to issue such regulations as the Secretary deems necessary to carry out this section.

(e) "Program" defined

For the purposes of this section, the term "program" means a fishing capacity reduction program established under section 1861a of title 16.

(June 29, 1936, ch. 858, title XI, § 1111, as added Pub. L. 104-297, title III, § 303(a), Oct. 11, 1996, 110 Stat. 3616; amended Pub. L. 104-208, div. A, title I, § 101(a) [title II, § 211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41.)

#### *Codification*

Another section 1111 of act June 29, 1936, is classified to section 1279d of this Appendix.

### **AMENDMENTS**

1996--Subsec. (e). Pub. L. 104-208 made technical amendment to reference in original act which appears in text as reference to section 1861a of title 16.

### **EFFECTIVE DATE OF 1996 AMENDMENT**

Section 101(a) [title II, § 211(b)] of div. A of Pub. L. 104-208 provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

### **SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in title 16 section 1861a.

### **§ 1279g. Direct loan obligations for fisheries financing and capacity reduction**

(a) Notwithstanding any other provision of this subchapter, all obligations involving any fishing vessel, fishery facility, aquaculture facility, individual fishing quota, or fishing capacity reduction program issued under this subchapter after October 11, 1996, shall be direct loan obligations, for which the Secretary shall be the obligee, rather than obligations issued to obligees other than the Secretary and guaranteed by the Secretary. All direct loan obligations under this section shall be treated in the same manner and to the same extent as obligations guaranteed under this subchapter except with respect to provisions of this subchapter which by their nature can only be applied to obligations guaranteed under this subchapter.

(b) Notwithstanding any other provisions of this subchapter, the annual rate of interest which obligors shall pay on direct loan obligations under this section shall be fixed at two percent of the principal amount of such obligations outstanding plus such additional percent as the Secretary shall be obligated to pay as the interest cost of borrowing from the United States Treasury the funds with which to make such direct loans.

(June 29, 1936, ch. 858, title XI, § 1112, as added Pub. L. 104-297, title III, § 303(a), Oct. 11, 1996, 110 Stat. 3616.)

#### *Codification*

Another section 1112 of act June 29, 1936, is classified to section 1279e of this Appendix.

### **§ 1280. Advances to fund**

The Secretary is authorized to advance to the Federal Ship Financing Fund from the "Vessel operations revolving fund" (46 U.S.C. 1241a),<sup>1</sup> such amounts as may be required for the payment, pursuant to section 1275 of this Appendix, of unpaid principal amounts of defaulted mortgages and loans and of unpaid interest thereon: *Provided*, That such advances shall be repaid to the "Vessel operations revolving fund" as soon as practicable consistent with the status of the Federal Ship Financing Fund: *Provided further*, That the total advances outstanding at any one time shall not exceed \$10,000,000.

<sup>1</sup> Now 46 App. U.S.C. 1241a.

(Pub. L. 85-469, title I, § 101, June 25, 1958, 72 Stat. 231; Pub. L. 92-507, § 2, Oct. 19, 1972, 86 Stat. 910; Pub. L. 97-31, § 12(137), Aug. 6, 1981, 95 Stat. 166.)

#### *Codification*

"Federal Ship Financing Fund" substituted for "Federal Ship Mortgage Insurance Fund" to conform to change of name in the amendment of section 1272 of this Appendix by Pub. L. 92-507, § 2, Oct. 19, 1972, 86 Stat. 910.

Section was not enacted as part of the Merchant Marine Act, 1936, which comprises this chapter.

### AMENDMENTS

1981--Pub. L. 97-31 struck out "of Commerce" after "Secretary".

#### **§ 1280a. Eligible shipyards**

To be eligible to receive loan guarantee assistance under title XI of the Merchant Marine Act, 1936 [46 App. U.S.C. 1271 et seq.], a shipyard must be a private shipyard located in the United States.

(Pub. L. 103-160, div. A, title XIII, § 1358, Nov. 30, 1993, 107 Stat. 1816.)

### REFERENCES IN TEXT

The Merchant Marine Act, 1936, referred to in text, is act June 29, 1936, ch. 858, 49 Stat. 1985, as amended. Title XI of the Act is classified generally to this subchapter (§ 1271 et seq.). For complete classification of this Act to the Code, see section 1245 of this Appendix and Tables.

#### *Codification*

Section was enacted as part of the National Defense Authorization Act for Fiscal Year 1994 and also as part of the Defense Conversion, Reinvestment, and Transition Assistance Amendments of 1993, and the National Shipbuilding and Shipyard Conversion Act of 1993, and not as part of the Merchant Marine Act, 1936, which comprises this chapter.

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(Last updated January 21, 2004)

## SECTION 515 PRE-DISSEMINATION REVIEW & DOCUMENTATION GUIDELINES

### Background

Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554, aka the Data Quality Act or Information Quality Act) directed the Office of Management and Budget (OMB) to issue government-wide guidelines that “provide policy and procedural guidance to federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by federal agencies.” OMB complied by issuing guidelines which direct each federal agency to 1) issue its own guidelines; 2) establish administrative mechanisms allowing affected persons to seek and obtain correction of information that does not comply with the OMB 515 Guidelines or the agency guidelines; and 3) report periodically to OMB on the number and nature of complaints received by the agency and how the complaints were handled. The OMB Guidelines can be found at: <http://www.whitehouse.gov/omb/fedreg/reproducible2.pdf>

The Department of Commerce Guidelines can be found at: <http://www.osec.doc.gov/cio/oipr/iqg.htm>

The NOAA Section 515 Information Quality Guidelines, created with input and reviews from each of the components of NOAA Fisheries, went into effect on October 1, 2002. **The NOAA Information Quality Guidelines are posted on the NOAA home page under “Information Quality.”** <http://www.noaanews.noaa.gov/stories/iq.htm>

The guidelines apply to a wide variety of government information products and all types of media, including printed, electronic, broadcast or other. The guidelines define “Information” as, “any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms.” For example, this definition includes information that an agency disseminates from a web page. The guidelines define “Dissemination” as, “agency initiated or sponsored distribution of information to the public.” Explicitly **not** included within this term is distribution limited to “government employees or agency contractors or grantees; intra- or inter-agency use or sharing of government information; and responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or other similar law.” It also does not include distribution limited to correspondence with individuals or persons, press releases, archival records, public filings, subpoenas or adjudicative processes. (See the NOAA IQ Guidelines, pgs 5-6).

To assist in Data Quality Act compliance, NOAA Fisheries has established a series of actions that should be completed for each new information product subject to the Data Quality Act. (See “Information Generation and Compliance Documentation” and “Pre-Dissemination Review” below.) **In addition to the information contained in this document, familiarity with the NOAA Section 515 Information Quality Guidelines (<http://www.noaanews.noaa.gov/stories/iq.htm>) is crucial for NOAA Fisheries employees who engage in the generation and dissemination of information.**

### Information Generation and Compliance Documentation

- The fundamental step in the process is to create a Sec. 515 Information Quality file for each new information product. To aid in this process, a Section 515 Pre-Dissemination Review and Documentation form has been created. These guidelines are intended to serve as a supplement to the Pre-Dissemination Review and Documentation Form. The basic steps to the documentation process are outlined below.
- Complete general information (e.g., author/responsible office, title/description) section of the form.
- Determine the information category (i.e., original data; synthesized products; interpreted products; hydrometeorological, hazardous chemical spill, and space weather warnings, forecasts, and advisories; experimental products; natural resource plans; corporate and general information). **For most information products, you will only need to check one box.** More complex documents may be an “aggregate” of different categories of information products.
- Generate the information in a way that meets each of the applicable standards for the appropriate information category. See the NOAA Information Quality Guidelines.
- Document how the standards for **utility, integrity and objectivity** are met for each information product, describing what measures were taken to meet each of the applicable standards. Use the 2 page Pre-Dissemination Review & Documentation Form to document compliance with the Utility and Integrity standards contained in NOAA’s Information Quality Guidelines. The Utility and Integrity standards pertain to all categories of information disseminated by NOAA. Use these guidelines (pgs 4-11) to document compliance with the applicable objectivity standards for your information product and attach that documentation to the Pre-Dissemination Review & Documentation Form.
- Maintain the Sec. 515 Information Quality file in a readily accessible place. [Pre-Dissemination Review](#)
- Before information is disseminated, it must be reviewed for compliance with the NOAA Sec. 515 Information Quality Guidelines. This is accomplished by reviewing the information and the Sec. 515 Information Quality file.
- The Pre-Dissemination Review should be conducted during the normal course of clearing the information product for release. The person conducting the Pre-Dissemination Review will sign and date the Pre-Dissemination Review & Documentation Form. The reviewing official must be at least one level above the person generating the information product.
- The Pre-Dissemination Review form and the supporting information quality documentation must accompany the information product through the clearance process and be maintained on file.

### Completing the Section 515 Pre-Dissemination Review & Documentation Form

Using the Section 515 Pre-Dissemination Review & Documentation Form and these guidelines, document how the information product meets the

following standards for **Utility, Integrity and Objectivity**. **Please note:** Use the Pre-Dissemination Review & Documentation Form to document how the information product complies with the Utility and Integrity standards that pertain to all categories of information products. The Utility and Integrity standards are presented here for your convenience. Use these guidelines to explain how the information product meets the applicable Objectivity standards for the information product and attach that documentation to the Pre-Dissemination Review & Documentation Form.

### I. Utility of Information Product

Utility means that disseminated information is useful to its intended users. "Useful" means that the content of the information is helpful, beneficial, or serviceable to its intended users, or that the information supports the usefulness of other disseminated information by making it more accessible or easier to read, see, understand, obtain or use.

- A. Is the information helpful, beneficial or serviceable to the intended user? Explain.
- B. Who are the intended users of the data or information product? (e.g., the American public; other federal agencies; state and local governments; recreational concerns; national and international organizations). Is this data or information product an improvement over previously available information? Is it more detailed or current? Is it more useful or accessible to the public? Has it been improved based on comments or interactions with users?
- C. What media are used in the dissemination of the information? Printed publications? CD-ROM? Internet?  
Is the product made available in a standard data format?  
Does it use consistent attribute naming and unit conventions to ensure that the information is accessible to a broad range of users with a variety of operating systems and data needs?

### II. Integrity of Information Product

Integrity refers to security - the protection of information from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification. Prior to dissemination, NOAA information, independent of the specific intended distribution mechanism, is safeguarded from improper access, modification, or destruction, to a degree commensurate with the risk and magnitude of harm that could result from the loss, misuse, or unauthorized access to or modification of such information. **Please note: all electronic information disseminated by NOAA adheres to the standards set forth in paragraph A below. If the information product is disseminated electronically, simply circle paragraph II(A) on the form.** You may also contact your IT Manager for further information.

Explain (circle) how the information product meets the following standards for integrity:

- A. All electronic information disseminated by NOAA adheres to the standards set out in Appendix III, "Security of Automated Information Resources," OMB Circular A-130; the Computer Security Act; and the Government Information Security Reform Act.
- B. If information is confidential, it is safeguarded pursuant to the Privacy Act and Titles 13, 15, and 22 of the U. S. Code (confidentiality of census, business and financial information).
- C. Other/Discussion  
(e.g., 50 CFR 600, Subpart E, Confidentiality of Statistics of the Magnuson-Stevens Fishery Conservation and Management Act; NOAA Administrative Order 216-100, Protection of Confidential Fisheries Statistics; 50 CFR 229.11, Confidentiality of information collected under the Marine Mammal Protection Act.)

### III. Objectivity of Information Product

(1) Indicate which one of the following categories of information products apply for this product (check one):

- Original Data - go to Section A
- Synthesized Products - go to Section B
- Interpreted Products - go to Section C
- Hydrometeorological, Hazardous Chemical Spill, and Space Weather Warnings, Forecasts, and Advisories - go to Section D
- Experimental Products - go to Section E
- Natural Resource Plans - go to Section F
- Corporate and General Information - go to Section G

(2) Describe how this information product meets the applicable objectivity standards.

General Standard: Information is presented in an accurate, clear, complete, and unbiased manner, and in proper context. The substance of the information is accurate, reliable, and unbiased; in the scientific, financial or statistical context, original and supporting data are generated and the analytical results are developed using sound, commonly accepted scientific and research methods. "Accurate" means that information is within an acceptable degree of imprecision or error appropriate to the particular kind of information at issue and otherwise meets commonly accepted scientific, financial and statistical standards.

If the information is "influential," that is, it is expected to have a genuinely clear and substantial impact on major public policy and private sector decisions, it is noted as such and it is presented with the highest degree of transparency. If influential information constitutes an assessment of risks to human health, safety or the environment, indicate whether the risk assessment was qualitative or quantitative, and describe which SDWA-adapted quality standards at page 9 of NOAA's Section 515 Information Quality Guidelines were applied to the information product.

Use of third party information in the product (information not collected or generated by NOAA) is only done when the information is of known quality and consistent with NOAA's Section 515 Guidelines; any limitations, assumptions, collection methods, or uncertainties concerning the information are taken into account and disclosed.

Specific Standards: Specific objectivity standards for categories of information products disseminated by NOAA are listed below. Document how the general and specific objectivity standards for the particular information product were met.

**A. Original Data**

Original Data are data in their most basic useful form. These are data from individual times and locations that have not been summarized or processed to higher levels of analysis. While these data are often derived from other direct measurements (e.g., spectral signatures from a chemical analyzer, electronic signals from current meters), they represent properties of the environment. These data can be disseminated in both real time and retrospectively. Examples of original data include buoy data, survey data (e.g., living marine resource and hydrographic surveys), biological and chemical properties, weather observations, and satellite data.

Objectivity of original data is achieved using sound quality control techniques.

Detail how the data collection methods, systems, instruments, training, and/or tools are appropriate to meet the requirements of the intended users.

Were the methods, systems, instruments, etc., validated before use?

Were standard operating procedures (SOPs) followed for time series data collections? If not, document the valid scientific reasons for the deviation.

Document the quality control techniques used, for example:

- Gross error checks for data that fall outside of physically realistic ranges (e.g., a minimum, maximum or maximum change)
- Comparisons made with other independent sources of the same measurement
- Examination of individual time series and statistical summaries
- Application of sensor drift coefficients determined by a comparison of pre- and post-deployment calibrations
- Visual inspection of data

Describe any evolution and/or improvements in survey techniques, instrument performance and/or data processing.

Have metadata record descriptions and explanations of the methods and quality controls to which original data are subjected been included in the disseminated product? If not, they must be made available upon request.

**B. Synthesized Products**

Synthesized Products are those that have been developed through analysis of original data. This includes analysis through statistical methods; model interpolations, extrapolations, and simulations; and combinations of multiple sets of original data.

While some scientific evaluation and judgment is needed, the methods of analysis are well documented and relatively routine.

Examples of synthesized products include summaries of fisheries landings statistics, weather statistics, model outputs, data display through Geographical Information System techniques, and satellite-derived maps.

The objectivity of synthesized products is achieved by using data of known quality, applying sound analytical techniques, and reviewing the products or processes used to create them before dissemination. For synthesized products, please document the following:

Identify data sources (preferred option) or be prepared to make them available upon request.

Are the data used of known quality or from sources acceptable to the relevant scientific and technical communities?

Are the methods used to create the synthesized product published in standard methods manuals or generally accepted by the relevant scientific and technical communities? Are the methods documented in readily accessible formats by the disseminating office?

Describe the review process used to ensure the validity of the synthesized product or the procedures used to create them, e.g., statistical procedures, models, or other analysis tools.

If the synthesized product is unique or not regularly produced, was this product reviewed by internal and/or external experts?

If this is a routinely produced synthesized product, was the process for developing the product reviewed by internal and/or external experts?

Does the synthesized product include information about the methods used to create the product? If not, the methods must be made available upon request.

**C. Interpreted Products**

Interpreted Products are those that have been developed through interpretation of original data and synthesized products. In many cases, this information incorporates additional contextual and/or normative data, standards, or information that puts original data and synthesized products into larger spatial, temporal, or issue contexts. This information is subject to scientific interpretation, evaluation, and judgment. Examples of interpreted products include journal articles, scientific papers, technical reports, and production of and contributions to integrated assessments.

Objectivity of interpreted products is achieved by using data of known quality or from sources acceptable to the relevant scientific and technical communities and reliable supporting products, applying sound analytical techniques, presenting the information in the proper context, and reviewing the products before dissemination.

Are all data and information sources identified or properly referenced?

Are the methods used to create the interpreted product generally accepted by the relevant scientific and technical communities?

Is information concerning the quality and limitations of the interpreted product provided to help the user assess the suitability of the product for the user's application?

Describe the review process used to ensure that the product is valid, complete, unbiased, objective and relevant. For example, peer reviews, ranging from internal peer review by staff who were not involved in the development of the product to formal, independent, external peer review. The review should be conducted at a level commensurate with the importance of the interpreted product.

Does the interpreted product include a description of the methods used to create the product? If not, they must be made available upon

request.

**D. Hydrometeorological, Hazardous Chemical Spill, and Space Weather**

**Warnings, Forecasts, and Advisories**

Hydrometeorological, Hazardous Chemical Spill, and Space Weather Warnings, Forecasts, and Advisories are time-critical interpretations of original data and synthesized products, prepared under tight time constraints and covering relatively short, discrete time periods. As such, these warnings, forecasts, and advisories represent the best possible information in given circumstances. They are subject to scientific interpretation, evaluation, and judgment. Some products in this category, such as weather forecasts, are routinely prepared. Other products, such as tornado warnings, hazardous chemical spill trajectories, and solar flare alerts, are of an urgent nature and are prepared for unique circumstances.

Objectivity of information in this category is achieved by using reliable data collection methods and sound analytical techniques and systems to ensure the highest possible level of accuracy given the time critical nature of the products.

What is the source of the data or information used in the product? Are the data used of known quality or from sources acceptable to the relevant scientific and technical communities? Are the sources included in the information product? If not, they must be made available upon request. Are the methods used to create the product generally accepted by the relevant scientific and technical communities?

Please note if individual best judgment was used due to the time-critical nature of the product.

What mechanisms were used to evaluate the accuracy of the information product? Statistical analysis may be carried out for a subset of products for verification purposes.

**E. Experimental Products**

Experimental products are products that are experimental (in the sense that their quality has not yet been fully determined) in nature, or are products that are based in part on experimental capabilities or algorithms. Experimental products fall into two classes.

They are either (1) disseminated for experimental use, evaluation or feedback, or (2) used in cases where, in the view of qualified scientists who are operating in an urgent situation in which the timely flow of vital information is crucial to human health, safety, or the environment, the danger to human health, safety, or the environment will be lessened if every tool available is used. Examples of experimental products include imagery or data from non-NOAA sources, algorithms currently being tested and evaluated, experimental climate forecasts, and satellite imagery processed with developmental algorithms for urgent needs (e.g., wildfire detection).

Objectivity of experimental products is achieved by using the best science and supporting studies available, in accordance with sound and objective scientific practices, evaluated in the relevant scientific and technical communities, and peer-reviewed where feasible.

Describe the science and/or supporting studies used, the evaluation techniques used, and note any peer-review of the experimental product. Were the results of initial tests or evaluations made available where possible? Describe the review, by the appropriate NOAA unit, of the experimental products and capabilities documentation, along with any tests or evaluations.

Are explicit limitations provided concerning the quality of the experimental product? Is the degree of uncertainty indicated?

Describe the testing process used, e.g., the experimental product or capabilities are used only after careful testing, evaluation, and review by NOAA experts, and then are approved for provisional use only by selected field offices or other NOAA components. This process is repeated as needed to ensure an acceptable and reliable level of quality.

**F. Natural Resource Plans**

Natural Resource Plans are information products that are prescribed by law and have content, structure, and public review processes (where applicable) that will be based upon published standards, e.g., statutory or regulatory guidelines. Examples of such published standards include the National Standard Guidelines (50 CFR Part 600, Subpart D), Essential Fish Habitat Guidelines, and Operational Guidelines - Fishery Management Plan Process, all under the Magnuson-Stevens Fishery Conservation and Management Act; and the National Marine Sanctuary Management Plan Handbook (16 U.S.C. section 1434) under the National Marine Sanctuary Act. These Natural Resource Plans are a composite of several types of information (e.g., scientific, management, stakeholder input, and agency policy) from a variety of internal and external sources. Examples of Natural Resources Plans include fishery, protected resource, and sanctuary management plans and regulations, and natural resource restoration plans.

Objectivity of Natural Resource Plans will be achieved by adhering to published standards, using information of known quality or from sources acceptable to the relevant scientific and technical communities, presenting the information in the proper context, and reviewing the products before dissemination.

What published standard(s) governs the creation of the Natural Resource Plan? Does the Plan adhere to the published standards? (See the NOAA Sec. 515 Information Quality Guidelines, Section II(F) for links to the published standards for the Plans disseminated by NOAA.)

Was the Plan developed using the best information available? Please explain.

Have clear distinctions been drawn between policy choices and the supporting science upon which they are based? Have all supporting materials, information, data and analyses used within the Plan been properly referenced to ensure transparency?

Describe the review process of the Plan by technically qualified individuals to ensure that the Plan is valid, complete, unbiased, objective and relevant. For example, internal review by staff who were not involved in the development of the Plan to formal, independent, external peer review. The level of review should be commensurate with the importance of the Plan and the constraints imposed by legally enforceable deadlines.

**G. Corporate and General Information**

Corporate or general information includes all non-scientific, non-financial, non-statistical information. Examples include program and organizational descriptions, brochures, pamphlets, education and outreach materials, newsletters, and other general descriptions of NOAA operations and capabilities.

Corporate and general information disseminated by NOAA must be presented in a clear, complete, and unbiased manner, and in a context that enhances usability to the intended audience. To the extent possible, identify the sources of the disseminated information, consistent with confidentiality, privacy and security considerations and protections, and taking into account timely presentation, the medium of dissemination, and the importance of the information, balanced against the resources required and the time available.

Information disseminated by NOAA is reliable and accurate to an acceptable degree of error as determined by factors such as the importance of the information, the intended use, time sensitivity, expected degree of permanence, relation to the primary mission(s) of the disseminating office, and the context of the dissemination, balanced against the resources required and the time available.

For non-scientific, non-statistical information, has the information product been reasonably determined to be factually correct in the view of the disseminating office as of the time of dissemination?

Describe the review process for the information product. Review can be accomplished in a number of ways, including but not limited to combinations of the following:

- Active personal review of information by supervisory and management layers, either by reviewing each individual dissemination, or selected samples, or by any other reasonable method.
- Use of quality check lists, charts, statistics, or other means of tracking quality, completeness, and usefulness.
- Process design and monitoring to ensure that the process itself imposes checks on information quality .
- Review during information preparation.
- Use of management controls.
- Any other method, which serves to enhance the accuracy, reliability and objectivity of the information.



**P.L. 109-479, sec. 113(c) [uncodified]**

**OREGON AND CALIFORNIA SALMON FISHERY.**—Federally recognized Indian tribes and small businesses, including fishermen, fish processors, and related businesses serving the fishing industry, adversely affected by Federal closures and fishing restrictions in the Oregon and California 2006 fall Chinook salmon fishery are eligible to receive direct assistance under section 312(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(a)) and section 308(d) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(d)). The Secretary may use no more than 4 percent of any monetary assistance to pay for administrative costs.

**P.L. 109-479, sec. 114 [uncodified]****FISHERY FINANCE PROGRAM HURRICANE ASSISTANCE.**

(a) **LOAN ASSISTANCE.**—Subject to availability of appropriations, the Secretary of Commerce shall provide assistance to eligible holders of fishery finance program loans and allocate such assistance among eligible holders based upon their outstanding principal balances as of December 2, 2005, for any of the following purposes:

- (1) To defer principal payments on the debt for 1 year and re-amortize the debt over the remaining term of the loan.
- (2) To allow for an extension of the term of the loan for up to 1 year beyond the remaining term of the loan, or September 30, 2013, whichever is later.
- (3) To pay the interest costs for such loans over fiscal years 2007 through 2013, not to exceed amounts authorized under subsection (d).
- (4) To provide opportunities for loan forgiveness, as specified in subsection (c).<sup>25</sup>

(b) **LOAN FORGIVENESS.**—Upon application made by an eligible holder of a fishery finance program loan, made at such time, in such manner, and containing such information as the Secretary may require, the Secretary, on a calendar year basis beginning in 2005, may, with respect to uninsured losses—

- (1) offset against the outstanding balance on the loan an amount equal to the sum of the amounts expended by the holder during the calendar year to repair or replace covered vessels or facilities, or to invest in new fisheries infrastructure within or for use within the declared fisheries disaster area; or
- (2) cancel the amount of debt equal to 100 hundred percent of actual expenditures on eligible repairs, reinvestment, expansion, or new investment in fisheries infrastructure in the disaster region, or repairs to, or replacement of, eligible fishing vessels.

(c) **DEFINITIONS.**—In this section:

(1) **DECLARED FISHERIES DISASTER AREA.**—The term “declared fisheries disaster area” means fisheries located in the major disaster area designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) as a result of Hurricane Katrina or Hurricane Rita.

(2) **ELIGIBLE HOLDER.**—The term “eligible holder” means the holder of a fishery finance program loan if—

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<sup>25</sup> The editors assume Congress intended to refer to subsection (b).

## Appendix

(A) that loan is[sic]<sup>26</sup> used to guarantee or finance any fishing vessel or fish processing facility home-ported or located within the declared fisheries disaster area; and

(B) the holder makes expenditures to repair or replace such covered vessels or facilities, or invests in new fisheries infrastructure within or for use within the declared fisheries disaster area, to restore such facilities following the disaster.

(3) FISHERY FINANCE PROGRAM LOAN.—The term “fishery finance program loan” means a loan made or guaranteed under the fishery finance program under chapter 537 of title 46, United States Code.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Commerce for the purposes of this section not more than \$15,000,000 for each eligible holder for the period beginning with fiscal year 2007 through fiscal year 2013.

### **P.L. 109-479, sec. 120 [uncodified] CLARIFICATION OF FLEXIBILITY.**

(a) IN GENERAL.—The Secretary of Commerce has the discretion under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851 et seq.) to extend the time for rebuilding the summer flounder fishery to not later than January 1, 2013, only if—

(1) the Secretary has determined that—

(A) overfishing is not occurring in the fishery and that a mechanism is in place to ensure overfishing does not occur in the fishery; and

(B) stock biomass levels are increasing;

(2) the biomass rebuilding target previously applicable to such stock will be met or exceeded within the new time for rebuilding;

(3) the extension period is based on the status and biology of the stock and the rate of rebuilding;

(4) monitoring will ensure rebuilding continues;

(5) the extension meets the requirements of section 301(a)(1) of that Act (16 U.S.C. 1851(a)(1)); and

(6) the best scientific information available shows that the extension will allow continued rebuilding.

(b) AUTHORITY.—Nothing in this section shall be construed to amend the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851 et seq.) or to limit or otherwise alter the authority of the Secretary under that Act concerning other species.

### **P.L. 109-479, sec. 122 [uncodified] CONVERSION TO CATCHER/PROCESSOR SHARES.**

(a) IN GENERAL.—

(1) AMENDMENT OF PLAN.—Not later than 90 days after the date of enactment of this Act, the Secretary of Commerce shall amend the fishery management plan for the Bering Sea/Aleutian Islands King and Tanner Crabs for the Northern Region (as that term is used in the plan) to authorize—

(A) an eligible entity holding processor quota shares to elect on an annual basis to work together with other entities holding processor quota shares and affiliated with such eligible entity through common ownership to combine any catcher vessel quota shares for the Northern Region with their processor quota shares and to exchange them for newly created catcher/processor owner quota shares for the Northern Region; and

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<sup>26</sup> The editors assume Congress intended this to read “was”.

FEDERAL CREDIT REFORM ACT OF 1990  
Title V of the Congressional Budget Act of 1990

Title V

TITLE V--CREDIT REFORM

§ 500

SEC. 500. SHORT TITLE.

This title may be cited as the "Federal Credit Reform Act of 1990";.

§ 501

SEC. 501. PURPOSES.

The purposes of this title are to--

§ 501(1)

(1) measure more accurately the costs of Federal credit programs;

§ 501(2)

(2) place the cost of credit programs on a budgetary basis equivalent to other Federal spending;

§ 501(3)

(3) encourage the delivery of benefits in the form most appropriate to the needs of beneficiaries; and

§ 501(4)

(4) improve the allocation of resources among credit programs and between credit and other spending programs.

§ 502

SEC. 502. DEFINITIONS.

For purposes of this title--

§ 502(1)

(1) The term "direct loan" means a disbursement of funds by the Government to a non-Federal borrower under a contract that requires the repayment of such funds with or without interest. The term includes the purchase of, or participation in, a loan made by another lender and financing arrangements that defer payment for more than 90 days, including the sale of a government asset on credit terms. The term does not include the acquisition of a federally guaranteed loan in satisfaction of default claims or the price support loans of the Commodity Credit Corporation.

§ 502(2)

(2) The term "direct loan obligation" means a binding agreement by a Federal agency to make a direct loan when specified conditions are fulfilled by the borrower.

§ 502(3)

(3) The term "loan guarantee" means any guarantee, insurance, or other pledge with respect to the payment of all or a part of the principal or interest on any debt obligation of a non-Federal borrower to a non-Federal lender, but does not include the insurance of deposits, shares, or other withdrawable accounts in financial institutions.

§ 502(4)

(4) The term "loan guarantee commitment" means a binding agreement by a Federal agency to make a loan guarantee when specified conditions are fulfilled by the borrower, the lender, or any other party to the guarantee agreement.

§ 502(5)(A)

(5)(A) The term "cost" means the estimated long-term cost to the Government of a direct loan or loan guarantee or modification thereof, calculated on a net present value basis, excluding administrative costs and any incidental effects on governmental receipts or outlays.

§ 502(5)(B)

(B) The cost of a direct loan shall be the net present value, at the time when the direct loan is disbursed, of the following estimated cash flows:

§ 502(5)(B)(i)

(i) loan disbursements;

§ 502(5)(B)(ii)

(ii) repayments of principal; and

§ 502(5)(B)(iii)

(iii) payments of interest and other payments by or to the Government over the life of the loan after adjusting for estimated defaults, prepayments, fees, penalties, and other recoveries;

including the effects of changes in loan terms resulting from the exercise by the borrower of an option included in the loan contract.

§ 502(5)(C)

(C) The cost of a loan guarantee shall be the net present value, at the time when the guaranteed loan is disbursed, of the following estimated cash flows:

§ 502(5)(C)(i)

(i) payments by the Government to cover defaults and delinquencies, interest subsidies, or other payments; and

§ 502(5)(C)(ii)

(ii) payments to the Government including origination and other fees, penalties and recoveries;

including the effects of changes in loan terms resulting from the exercise by the guaranteed lender of an option included in the loan guarantee contract, or by the borrower of an option included in the guaranteed loan contract.

§ 502(5)(D)

(D) The cost of a modification is the difference between the current estimate of the net present value of the remaining cash flows under the terms of a direct loan or loan guarantee contract, and the current estimate of the net present value of the remaining cash flows under the terms of the contract, as modified.

§ 502(5)(E)

(E) In estimating net present values, the discount rate shall be the average interest rate on marketable Treasury securities of similar maturity to the cash flows of the direct loan or loan guarantee for which the estimate is being made.

§ 502(5)(F)

(F) When funds are obligated for a direct loan or loan guarantee, the estimated cost

shall be based on the current assumptions, adjusted to incorporate the terms of the loan contract, for the fiscal year in which the funds are obligated.

§ 502(6)

(6) The term "credit program account" means the budget account into which an appropriation to cover the cost of a direct loan or loan guarantee program is made and from which such cost is disbursed to the financing account.

§ 502(7)

(7) The term "financing account" means the non-budget account or accounts associated with each credit program account which holds balances, receives the cost payment from the credit program account, and also includes all other cash flows to and from the Government resulting from direct loan obligations or loan guarantee commitments made on or after October 1, 1991.

§ 502(8)

(8) The term "liquidating account" means the budget account that includes all cash flows to and from the Government resulting from direct loan obligations or loan guarantee commitments made prior to October 1, 1991. These accounts shall be shown in the budget on a cash basis.

§ 502(9)

(9) The term "modification" means any Government action that alters the estimated cost of an outstanding direct loan (or direct loan obligation) or an outstanding loan guarantee (or loan guarantee commitment) from the current estimate of cash flows. This includes the sale of loan assets, with or without recourse, and the purchase of guaranteed loans. This also includes any action resulting from new legislation, or from the exercise of administrative discretion under existing law, that directly or indirectly alters the estimated cost of outstanding direct loans (or direct loan obligations) or loan guarantees (or loan guarantee commitments) such as a change in collection procedures.

§ 502(10)

(10) The term "current" has the same meaning as in section 250(c)(9) of the Balanced Budget and Emergency Deficit Control Act of 1985.

§ 502(11)

(11) The term "Director" means the Director of the Office of Management and Budget.

§ 503

SEC. 503. OMB AND CBO ANALYSIS, COORDINATION, AND REVIEW.

§ 503(a)

(a) IN GENERAL.--For the executive branch, the Director shall be responsible for coordinating the estimates required by this title. The Director shall consult with the agencies that administer direct loan or loan guarantee programs.

§ 503(b)

(b) DELEGATION.--The Director may delegate to agencies authority to make estimates of costs. The delegation of authority shall be based upon written guidelines, regulations, or criteria consistent with the definitions in this title.

§ 503(c)

(c) COORDINATION WITH THE CONGRESSIONAL BUDGET OFFICE.--In developing estimation guidelines, regulations, or criteria to be used by Federal agencies, the Director shall consult with the Director of the Congressional Budget Office.

§ 503(d)

(d) IMPROVING COST ESTIMATES.--The Director and the Director of the Congressional Budget Office shall coordinate the development of more accurate data on historical performance of direct loan and loan guarantee programs. They shall annually review the performance of outstanding direct loans and loan guarantees to improve estimates of costs. The Office of

Management and Budget and the Congressional Budget Office shall have access to all agency data that may facilitate the development and improvement of estimates of costs.

§ 503(e)

(e) HISTORICAL CREDIT PROGRAMS COSTS.--The Director shall review, to the extent possible, historical data and develop the best possible estimates of adjustments that would convert aggregate historical budget data to credit reform accounting.

§ 503(f)

(f) ADMINISTRATIVE COSTS.--The Director and the Director of the Congressional Budget Office shall each analyze and report to Congress on differences in long-term administrative costs for credit programs versus grant programs by January 31, 1992. Their reports shall recommend to Congress any changes, if necessary, in the treatment of administrative costs under credit reform accounting.

§ 504

SEC. 504. BUDGETARY TREATMENT.

§ 504(a)

(a) PRESIDENT'S BUDGET.--Beginning with fiscal year 1992, the President's budget shall reflect the costs of direct loan and loan guarantee programs. The budget shall also include the planned level of new direct loan obligations or loan guarantee commitments associated with each appropriations request.

§ 504(b)

(b) APPROPRIATIONS REQUIRED. --Notwithstanding any other provision of law, new direct loan obligations may be incurred and new loan guarantee commitments may be made of fiscal year 1992 and thereafter only to the extent that--

§ 504(b)(1)

(1) new budget authority to cover their costs is provided in advance in an appropriations Act;

§ 504(b)(2)

(2) a limitation on the use of funds otherwise available for the cost of a direct loan or loan guarantee program has been provided in advance in an appropriations Act; or

§ 504(b)(3)

(3) authority is otherwise provided in appropriation Acts.

§ 504(c)

(c) EXEMPTION FOR MANDATORY PROGRAMS.--Subsections (b) and (e) shall not apply to a direct loan or loan guarantee program that--

§ 504(c)(1)

(1) constitutes an entitlement (such as the guaranteed student loan program or the veteran's home loan guaranty program); or

§ 504(c)(2)

(2) all existing credit programs of the Commodity Credit Corporation on the date of enactment of this title.

§ 504(d)

(d) BUDGET ACCOUNTING.--

§ 504(d)(1)

(1) The authority to incur new direct loan obligations, make new loan guarantee commitments, or modify outstanding direct loans (or direct loan obligations) or loan guarantees (or loan guarantee commitments) shall constitute new budget authority in an amount equal to the cost of the direct loan or loan guarantee in the fiscal year in which definite authority becomes available or indefinite authority is used. Such budget authority shall constitute an obligation of the credit program account to pay to the financing account.

§ 504(d)(2)

(2) The outlays resulting from new budget authority for the cost of direct loans or loan guarantees described in paragraph (1) shall be paid from the credit program account into the financing account and recorded in the fiscal year in which the direct loan or the guaranteed loan is disbursed or its costs altered.

§ 504(d)(3)

(3) All collections and payments of the financing accounts shall be a means of financing.

§ 504(e)

(e) MODIFICATIONS.--An outstanding direct loan (or direct loan obligation) or loan guarantee (or loan guarantee commitment) shall not be modified in a manner that increases its costs unless budget authority for the additional cost has been provided in advance in an appropriations Act.

§ 504(f)

(f) REESTIMATES.--When the estimated cost for a group of direct loans or loan guarantees for a given credit program made in a single fiscal year is reestimated in a subsequent year, the difference between the reestimated cost and the previous cost estimate shall be displayed as a distinct and separately identified subaccount in the credit program account as a change in program costs and a change in net interest. There is hereby provided permanent indefinite authority for these reestimates.

§ 504(g)

(g) ADMINISTRATIVE EXPENSES.--All funding for an agency's administration of a direct loan or loan guarantee program shall be displayed as distinct and separately identified subaccounts within the same budget account as the program's cost.

§ 505

SEC. 505. AUTHORIZATIONS.

§ 505(a)

(a) AUTHORIZATION OF APPROPRIATIONS FOR COSTS.--There are authorized to be appropriated to each Federal agency authorized to make direct loan obligations or loan guarantee commitments, such sums as may be necessary to pay the cost associated with such direct loan obligations or loan guarantee commitments.

§ 505(b)

(b) AUTHORIZATION FOR FINANCING ACCOUNTS.--In order to implement the accounting required by this title, the President is authorized to establish such non-budgetary accounts as may be appropriate.

§ 505(c)

(c) TREASURY TRANSACTIONS WITH THE FINANCING ACCOUNTS.--The Secretary of the Treasury

shall borrow from, receive from, lend to, or pay to the financing accounts such amounts as may be appropriate. The Secretary of the Treasury may prescribe forms and denominations, maturities, and terms and conditions for the transactions described above, except that the rate of interest charged by the Secretary on lending to financing accounts (including amounts treated as lending to financing accounts by the Federal Financing Bank (hereinafter in this subsection referred to as the "Bank") pursuant to section 406(b)) and the rate of interest paid to financing accounts on uninvested balances in financing accounts shall be the same as the rate determined pursuant to section 502(5)(E). For guaranteed loans financed by the Bank and treated as direct loans by a Federal agency pursuant to section 406(b), any fee or interest surcharge (the amount by which the interest rate charged exceeds the rate determined pursuant to section 502(5)(E)) that the Bank charges to a private borrower pursuant to section 6(c) of the Federal Financing Bank Act of 1973 shall be considered a cash flow to the Government for the purposes of determining the cost of the direct loan pursuant to section 502(5). All such amounts shall be credited to the appropriate financing account. The Bank is authorized to require reimbursement from a Federal agency to cover the administrative expenses of the Bank that are attributable to the direct loans financed for that agency. All such payments by an agency shall be considered administrative expenses subject to section 504(g). This subsection shall apply to transactions related to direct loan obligations or loan guarantee commitments made on or after October 1,

1991. The authorities described above shall not be construed to supersede or override the authority of the head of a Federal agency to administer and operate a direct loan or loan guarantee program. All of the transactions provided in this subsection shall be subject to the provisions of subchapter II of chapter 15 of title 31, United States Code. Cash balances of the financing accounts in excess of current requirements shall be maintained in a form of uninvested funds and the Secretary of the Treasury shall pay interest on these funds.

§ 505(d)(1)

(d) AUTHORIZATION FOR LIQUIDATING ACCOUNTS.--(1) Amounts in liquidating accounts shall be available only for payments resulting from direct loan obligations or loan guarantee commitments made prior to October 1, 1991, for--

§ 505(d)(1)(A)

(A) interest payments and principal repayments to the Treasury or the Federal Financing Bank for amounts borrowed;

§ 505(d)(1)(B)

(B) disbursements of loans;

§ 505(d)(1)(C)

(C) default and other guarantee claim payments;

§ 505(d)(1)(D)

(D) interest supplement payments;

§ 505(d)(1)(E)

(E) payments for the costs of foreclosing, managing, and selling collateral that are capitalized or routinely deducted from the proceeds of sales;

§ 505(d)(1)(F)

(F) payments to financing accounts when required for modifications;

§ 505(d)(1)(G)

(G) administrative expenses, if--

§ 505(d)(1)(G)(i)

(i) amounts credited to the liquidating account would have been available for administrative expenses under a provision of law in effect prior to October 1, 1991; and

§ 505(d)(1)(G)(ii)

(ii) no direct loan obligation or loan guarantee commitment has been made, or any modification of a direct loan or loan guarantee has been made, since September 30, 1991; or

§ 505(d)(1)(H)

(H) such other payments as are necessary for the liquidation of such direct loan obligations and loan guarantee commitments.

§ 505(d)(2)

(2) Amounts credited to liquidating accounts in any year shall be available only for payments required in that year. Any unobligated balances in liquidating accounts at the end of a fiscal year shall be transferred to miscellaneous receipts as soon as practicable after the end of the fiscal year.

§ 505(d)(3)

(3) If funds in liquidating accounts are insufficient to satisfy obligations and commitments of such accounts, there is hereby provided permanent, indefinite authority to make any payments



required to be made on such obligations and commitments.

§ 505(e)

(e) AUTHORIZATION OF APPROPRIATIONS FOR IMPLEMENTATION EXPENSES.--There are authorized to

be appropriated to existing accounts such sums as may be necessary for salaries and expenses to carry out the responsibilities under this title.

§ 505(f)

(f) REINSURANCE.--Nothing in this title shall be construed as authorizing or requiring the purchase of insurance or reinsurance on a direct loan or loan guarantee from private insurers. If any such reinsurance for a direct loan or loan guarantee is authorized, the cost of such insurance and any recoveries to the Government shall be included in the calculation of the cost.

§ 505(g)

(g) ELIGIBILITY AND ASSISTANCE.--Nothing in this title shall be construed to change the authority or the responsibility of a Federal agency to determine the terms and conditions of eligibility for, or the amount of assistance provided by a direct loan or a loan guarantee.

§ 506

SEC. 506. TREATMENT OF DEPOSIT INSURANCE AND AGENCIES AND OTHER INSURANCE PROGRAMS.

§ 506(a)

(a) IN GENERAL.--This title shall not apply to the credit or insurance activities of the Federal Deposit Insurance Corporation, National Credit Union Administration, Resolution Trust Corporation, Pension Benefit Guaranty Corporation, National Flood Insurance, National Insurance Development Fund, Crop Insurance, or Tennessee Valley Authority.

§ 506(b)

(b) STUDY.--The Director and the Director of the Congressional Budget Office shall each study whether the accounting for Federal deposit insurance programs should be on a cash basis<sup>1</sup> on the same basis as loan guarantees, or on a different basis. Each Director shall report findings and recommendations to the President and the Congress on or before May 31, 1991.

§ 506(c)

(c) ACCESS TO DATA.-- For the purposes of subsection (b), the Office of Management and Budget and the Congressional Budget Office shall have access to all agency data that may facilitate these studies.

§ 507

SEC. 507. EFFECT ON OTHER LAWS

§ 507(a)

(a) EFFECT ON OTHER LAWS.--This title shall supersede, modify, or repeal any provision of law enacted prior to the date of enactment of this title to the extent such provision is inconsistent with this title. Nothing in this title shall be construed to establish a credit limitation on any Federal loan or loan guarantee program.

§ 507(b)

(b) CREDITING OF COLLECTIONS.--Collections resulting from direct loans obligated or loan guarantees committed prior to October 1, 1991, shall be credited to the liquidating accounts of Federal agencies. Amounts so credited shall be available, to the same extent that they were available prior to the date of enactment of this title, to liquidate obligations arising from such direct loans obligated or loan guarantees committed prior to October 1, 1991, including repayment of any obligations held by the Secretary of the Treasury or the Federal Financing Bank. The unobligated balances of such accounts that are in excess of current needs shall be transferred to the general fund of the Treasury. Such transfers shall be made from time to time but, at least once each year.

<sup>1</sup>So in law. There probably should be a comma after "basis".

December 27, 2004, through June 30, 2006:

Manufacturer/Exporter	Weighted-Average Margin (Percent)
CP Kelco AB .....	3.84

#### Assessment Rates

The Department will determine, and U.S. Bureau of Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. Pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise covered by the review. Upon issuance of the final results of this review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (i.e., at or above 0.50 percent), we will issue appraisal instructions directly to CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. To determine whether the duty-assessment rate covering the period is *de minimis*, in accordance with the requirement set forth in sections 733(b)(3) and 735 of the Act, and 19 CFR 351.106(c)(2), we have calculated an importer-specific assessment *ad valorem* rate by aggregating the dumping margins calculated for all U.S. sales to the importers of CP Kelco's subject merchandise and dividing this amount by the total entered value of the sales to that importer. Where the importer-specific *ad valorem* rate is greater than *de minimis* and because the respondent has reported reliable entered values, we will instruct CBP to apply the assessment rate to the entered value of the importer's entries during the period of review. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

The Department clarified its "automatic assessment" regulation on May 6, 2003. See *Notice of Policy Concerning Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by CP Kelco, for which CP Kelco did not know that the merchandise it sold to an intermediary (e.g., a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no company-specific rate for an

intermediary involved in the transaction. See *Assessment Policy Notice* for a full discussion of this clarification.

#### Cash-Deposit Requirements

The following deposit requirements will be effective upon publication of these final results of this administrative review for all shipments of CMC from Sweden that are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Act: (1) the cash-deposit rate for CP Kelco will be 3.84 percent; (2) for merchandise exported by producers or exporters that were previously reviewed or investigated, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the producer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash-deposit rate shall be 25.29 percent, the all-others rate established in the less-than-fair-value investigation. These cash-deposit requirements shall remain in effect until further notice.

#### Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO as explained in the administrative protective order itself. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of APO.

These final results of administrative review and notice are issued and

published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 3, 2007.

**Stephen J. Claeys,**

*Acting Assistant Secretary for Import Administration.*

#### Appendix I

*Comment 1: Programming Errors regarding Foreign Currency Conversions*  
*Comment 2: Zeroing of Non-Dumping Margins*

[FR Doc. E7-23893 Filed 12-7-07; 8:45 am]

BILLING CODE 3510-DS-S

#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### Proposed Information Collection; Comment Request; Fisheries Finance Program Requirements

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

**ACTION:** Notice.

**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 February 8, 2008.

**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 Brian C. Summers at (301) 713-2390 or [Brian.Summers@noaa.gov](mailto:Brian.Summers@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

NOAA operates a direct loan program to assist in financing certain actions relating to commercial fishing vessels, shoreside fishery facilities, aquaculture operations, and individual fishing quotas. The application information is required to determine eligibility pursuant to 50 CFR part 253 and to determine the type and amount of assistance requested by the applicant. An annual financial statement is required from the recipients to monitor the financial status of the loan.

**II. Method of Collection**

Paper applications.

**III. Data**

*OMB Number:* 0648-0012.

*Form Number:* NOAA Form 88-1.

*Type of Review:* Regular submission.

*Affected Public:* Individuals or households and business or other for-profit organizations.

*Estimated Number of Respondents:* 1,735.

*Estimated Time per Response:* 8 hours.

*Estimated Total Annual Burden Hours:* 13,880.

*Estimated Total Annual Cost to Public:* \$8,050.

**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: December 4, 2007.

**Gwellnar Banks,**

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

[FR Doc. E7-23858 Filed 12-7-07; 8:45 am]

**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****Proposed Information Collection; Comment Request; Vessel Monitoring System Requirement for American Samoa Pelagic Longline Fishery**

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

**ACTION:** Notice.

**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 February 8, 2008.

**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 Walter Ikehara, (808) 944-2275 or [walter.ikehara@noaa.gov](mailto:walter.ikehara@noaa.gov).

**SUPPLEMENTARY INFORMATION:****I. Abstract**

The commercial fishing vessels active in the American Samoa-based pelagic longline fishery that are greater than 50 feet in length overall must allow the National Marine Fisheries Service (NMFS) to install Vessel Monitoring System (VMS) units on their vessels when directed to do so by NMFS enforcement personnel. VMS units automatically send periodic reports on the position of the vessel. NMFS uses the reports to monitor the vessel's location and activities while enforcing longline fishing area closures. NMFS provide the funds for the units and messaging.

**II. Method of Collection**

The only information collected is vessel position reports, which are automatically transmitted via the VMS.

**III. Data**

*OMB Number:* 0648-0519.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Business or other for-profits organizations.

*Estimated Number of Respondents:* 40.

*Estimated Time per Response:* 4 hours to install a VMS; 2 hours per year to maintain a VMS; 24 seconds a day to transmit hourly automated position reports from a vessel.

*Estimated Total Annual Burden Hours:* 193.

*Estimated Total Annual Cost to Public:* \$0.

**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: December 4, 2007.

**Gwellnar Banks,**

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

[FR Doc. E7-23862 Filed 12-7-07; 8:45 am]

**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****Meeting: Climate Change Science Program (CCSP) Product Development Committee (CPDC) for Synthesis and Assessment Product 5.3**

**AGENCY:** Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice of open meeting.

**SUMMARY:** The Climate Change Science Program (CCSP) Product Development Committee for Synthesis and Assessment Product 5.3 (CPDC-S&A 5.3) was established by a Decision Memorandum dated October 12, 2006. CPDC-S&A 5.3 is the Federal Advisory Committee charged with responsibility to develop a draft Synthesis and Assessment Product that addresses CCSP Topic 5.3: "Decision Support Experiments and Evaluations Using Seasonal to Interannual Forecasts and Observational Data".

*Place:* The meeting will be held at the Southwest Center, 1052 North Highland Ave, University of Arizona, Tucson, Arizona 85721.

*Time and Date:* The meeting will convene at 9 a.m. on Thursday, January 10, 2008 and adjourn the afternoon of January 11, 2008. Meeting information will be available online on the CPDC-S&A 5.3 Web site (<http://www.fxsp0/climate.noaa.gov/>)